

**SUPREME COURT OF NIGERIA**11<sup>TH</sup> JULY, 1995. SC. 51/1988

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

ELI OYAH & ANOTHER .....DEFENDANTS/APPELLANTS

AND

VINCENT W.O. IKALILE

& 4 OTHERS .....PLAINTIFFS/RESPONDENTS

(For themselves and on behalf  
of the Okuru Ikalile family of Okirika)

**ACTIONS** - *Native Courts* - Form of action in native Courts - stressed on form - Where issues involved are clear - Correct decisions reached on them - Are not to be disturbed.

**ACTIONS** - *Representative action* - Defence presented in a representative capacity - Though not expressed on the summons - Whether action is personal or representative.

**ACTIONS** - *Representative action* - Where dispute is fought and defended - As interfamily dispute - The action is a representative one.

**APPEALS** - *Concurrent findings of fact* - Supported by previous customs court's decision - Appellate court will not disturb it.

**LAND LAW** - *Trespass* - Action for trespass is maintainable by person possession and occupation - Against any unauthorized entry.

### **FACTS**

The Plaintiffs, herein respondents, in representative capacity caused a writ of summons to issue against the appellants/defendants, in the High Court Rivers State Port Harcourt claiming N1000.00 general damages for trespass and perpetual injunction.

The case proceeded to trial at which both parties testified and called witnesses on their behalf. At the close of hearing, the trial judge found for the plaintiffs. The defendants, being dissatisfied with the judgment appealed to the Court of Appeal, Enugu Division, which Court, dismissed the appeal and

affirmed the decision of the trial court. Against that judgment of the court of Appeal, the defendants have further appealed raising two issues for determination by the Supreme Court.

**ISSUES FOR DETERMINATION**

*“1. Whether the defendants in Exhibit A defended the action therein in a representative capacity on behalf of the respondents’ family. Such that the respondents could take the benefit of the judgment therein; and*

*2. Whether the respondents had the locus standi to prosecute the action herein and obtain the judgment they obtained.”*

**HELD** (Unanimously dismissing the appeal per lead judgment of IGUH JSC)  
***Form of action in native court***

1. Although the plaintiffs therein were not stated against their names as prosecuting the action in a representative capacity, this was not a matter of any great moment. This is because the main body of their claim clearly indicated that they were prosecuting the action in a representative capacity for themselves and on behalf of the Oruboko family of Okrika. It cannot be over emphasized that in dealing with matters from native courts or tribunals, appellate courts must not be unduly strict or rigid with regard to matters of procedure in those courts as the whole object of such trials is that the real dispute between the parties are fairly adjudicated upon in the best interest of justice. Accordingly the form of an action in a native tribunal must not be stressed so long as the issues involved are clear and decisions on such issues must not be disturbed by the appellate courts without very clear proof that they are wrong. (p. 1449 D)

***Defence presented in a representative capacity***

2. A close examination of these inspection notes must leave one in no doubt that the defendants therein were projecting their defence not in their personal capacities but as members of and representatives of Okuru Ikalile family. Their defence was not based on their personal rights over the land in dispute. On the contrary, it was based entirely on the communal rights of their Okuru Ikalile family of which the 1st, 5th and 6th defendants therein were members and the 2nd, 3rd and 4th defendants claimed their interest over the land through the 1st, 5th and 6th defendants and their people of Okuru Ikalile family. Family shrines, houses, tombs and jujus were relied on by the defence in no mistakable term to the effect that the defence claim did not relate to individual ownership but to that of a class, namely, the Okuru Ikalile family of Okrika. I agree

with both courts below that although representation was not expressed on the summons, a study of the proceedings confirm that Exhibit A was fought in a representative capacity by the defendants therein. (p. 1451 G)

***Representative action - Dispute fought as interfamily dispute***

3. I agree entirely with these observations of the learned trial Judge on the interpretation of the above judgment as confirmed by the court below. I fully endorse them. The dispute between the parties was clearly an inter- family or intra-family dispute and was fought as such. It was not particular to the parties but was prosecuted and defended in a representative capacity between the two families concerned respectively. I therefore entertain no difficulty in holding that the answer to the first issue must be in the affirmative. (p. 1453 C)

***Concurrent finding of facts***

4. The respondents' family laid claim to de facto et de jure possession occupation of the said land in dispute. The claim is fully supported by the judgment of the Okrika Customary Court in Exhibit A. The respondents having pleaded various acts of trespass committed by the appellants or land in dispute in paragraphs 10 and 11 of their statement of Claim averred. The above findings were affirmed by the court below. I have myself examined these findings and observations of the trial court critically and confess that I find no reason whatsoever to disturb them. (p. 1454 A)

***Action for trespass***

5. It cannot be seriously argued that the land in dispute is not in the possession and occupation of the respondents. There is clear evidence that respondents made available to Alfred Okuru, one of their members, the portion of their communal land upon which he erected his house. In my view, the trial court was clearly right when it held that after the house fell into ruins and as long as the Ikalile House, as a family, continued with their pos right over the land in issue, any unauthorized entry on any part thereof by the appellants was a violation of the respondents' right over the land and was therefore actionable. In my view, issue number two must also be resolved against the appellants. (p. 1455 H)

**NOTABLE POINTS OF INTEREST**

**IGUHJSC**

***1. Technical rules of procedure - Not applicable in Native Courts***

The technical procedural rules of English Law or of our courts of law will

certainly not apply to cases brought under customary law before a native court for tribunal. In trials in native courts, there was no necessity to observe the strict or technical rules of pleadings and practice as are required in the High Court or the Magistrate's Court. (p. 1449H)

## ***2. Right of action for trespass***

It is an elementary principle of law that trespass is actionable at the suit of the person in possession of land. A reversioner may only sue where the trespass is of a nature which has caused a permanent injury of damage to the reversion. (p. 1453 H)

## **BELLOCJN**

### ***3. Rules of pleadings do not operate in native courts***

It is a notorious fact that the rules of pleadings do not operate in Native Courts. It is also trite law that in a case decided by a Native Court the cause of action, the nature of the claim, the subject matter of the suit, the issues canvassed and the decision of the court are to be ascertained not from the form but from the substance of the case upon a proper examination of the entire records of the proceedings of the Court. (p. 1457 A)

## **BELGOREJSC**

### ***4. Nature of native court***

The Native Courts or Customary Courts, are by their nature cheap Courts that are very close to the grass roots. They are easily accessible because they are not prisoners of cumbersome procedure, and if they have rules of procedure they are merely to be guided by them. The essence of those courts is to dispense justice quickly, efficiently and without miscarriage of justice. Once on the face of their records it is clear that justice has been done, failure of strictly adhering to the procedure will not vitiate the judgment. (p. 1457E)

### ***5. Technical rules - Why not applicable in native courts***

The costly and cumbersome technicality of the Common Law if applied to the Customary/Area Courts in civil matters will deal a hard and destructive damage to our general sense of justice. (p. 1457 H)

## **REPRESENTATION**

Mr. E.G. Sofunde, S.A.N. with A. Eghobamien Esq. for the appellants  
Professor A.B. Kasunmu, S.A.N. with O. Blaize Esq. for the respondents

**CASES REFERRED TO**

- Dinsey v. Ossei 5 W.A.C.A. 177  
 Akyin v. Essie Egymah 3 W.A.C.A. 65  
 Jonah v. Owu 3 W.A.C.A. 170 at 171  
 Chukwunta v. Chukwu 14 W.A.C.A. 241  
 Ajayi v. Aina 16 N.L.R. 67  
 B Ogo v. Ogo (1964) N.M.L.R. 117  
 Oluijinle v. Adeagbo (1988) 2 N.W.L.R. (Part 75) 238 at 251  
 Osu v. Igiri (1988) 1 N.W.L.R. 9 Part 69 (231)  
 Ikpong v. Idoho (1978) 2 L.R.N. 29 at p. 35-36  
 C Ibero v. Ume-Ohama (1993) 2 N.W.L.R. (Part 277) 510 at 521

**LEAD JUDGMENT BY IGUH JSC**

In the Port Harcourt Judicial Division of the High Court of Justice, River State, the plaintiffs, who are now the respondents, for themselves and on behalf of the Okuru Ikalile family of Okrika, caused a writ of summons to issue against the appellants who therein were the defendants, claiming as follows:-

“(1) N1,000.00 general damages for trespass in that the defendants on or about the 7th of January, 1977, without leave or licence of the plaintiffs broke into and entered IDONI POLO (ORUBOKOKIRI) situate at Okrika Island which parcel of land is in the peaceable possession of the plaintiffs and commenced a concrete block building.

(2) A perpetual Injunction to restrain the defendants their servants and or agents from committing further acts of trespass on the said “Idoni Polo” land.”

Pleadings were ordered in the suit and were duly settled, filed and exchanged.

At the subsequent trial, the plaintiffs testified on their own behalf and called witnesses. They also tendered certified true copy of the record of proceedings in the Okrika Native Court Suit No. 175/58 with the appeal therefrom to the Degema Magistrate’s Court. This is Exhibit A. The High Court appeal proceedings in respect of the suit was tendered as Exhibit B. The defendants also testified in their own defence and called witnesses.

At the conclusion of hearing, the learned trial Judge in a reserved judgment delivered on the 2nd day of October, 1984 found for the plaintiffs and awarded them N500.00 damages for trespass together with perpetual injunction restraining the defendants, their servants and agents from any further acts of trespass on the land in dispute.

Being dissatisfied with this judgment, the defendants appealed to the Court of Appeal, Enugu Division, which in a unanimous decision dis-

missed the appeal on the 30th day of April, 1986 and affirmed the judgment of the trial court.

The defendants have now further appealed to this court against the said decision of the Court of Appeal. I shall hereinafter refer to the plaintiffs and the defendants in this judgment as the respondents and the appellants respectively.

The piece or parcel of land in dispute is known as and called “*Idoni Polo*” by the respondents and “*Orubokokiri*” by the appellants. It is more particularly delineated in the respondents’ Survey Plan No. TJR 126 LD tendered at the hearing as Exhibit F. The appellants’ Survey Plan was also tendered as Exhibit G. On the pleadings, there is no dispute between the parties as to the identity of the said land in dispute.

Following what seemed to be a family chieftaincy dispute involving the parties or a split in what was apparently one chieftaincy ruling house into two factions, members of the Oruboko family of the appellants, for themselves and on behalf of the Oruboko family of Okrika, as plaintiffs, instituted a civil suit against members of the Ikalile family of the respondents for a declaration of title to the land in dispute at the Okrika Native Court in suit No. 175/58. Judgment was entered in the said suit in favour of the plaintiffs’ Oruboko family for title to the land. The defendants of Ikalile family, because of their long possession and occupation of the land in dispute, were granted right of occupancy in respect thereof.

It is pertinent to point out that both sides to the present dispute pleaded and relied on the decision in the said suit which, on appeal, was upheld by the Magistrate’s and the High Court respectively. These judgments were tendered as Exhibits A and B respectively in the present proceedings.

Paragraphs 3, 4 and 6 of the respondent’s Statement of Claim aver as follows:-

“3. *The land in dispute called “IDONI POLO” by the plaintiffs but called “ORUBOKOKIRI” by the defendants situate at Okrika Island is particularly delineated and verged PINK in Survey Plan No. TJR 126LD prepared by Mr. Theophilus John, a Licensed Surveyor and filed with the plaintiffs’ Statement of Claim.*

4. *The land in dispute is bounded on the North, North-East and North West by land belonging to BIPIALAKA and TOMONIARO families in Okrika. On the East by portions of land belonging to WAKAMA TOM-QUIN and OPUCHUKU families in Okrika. On the South by land belonging to ALAWARI and OPUDUBAYA families and South-West by land belonging to OBA family, all of Okrika.*

6. *In 1958 members of the defendants’ family and those of the plain-*

*tiffs family litigated on this land in dispute in Okrika Native Court Suit No. 175/58. The said case went on appeal to the Magistrate's Court in Suit No. D/10A/1958 and further to the High Court in Suit No. P/40A/59. In all, the lower Court's decision, that is awarding title to the defendants' family and granting right of occupancy to the plaintiffs' family the plaintiffs will rely on the aforesaid judgment at the trial."*

In reply thereto, the appellants in paragraphs 3, 5 and 7 answered as follows:-

The defendants admit paragraph 3 of the statement of claim. The land in dispute is called Orubokokiri (Kiri meaning "Land") and not Idoni Polo (Polo meaning "Compound") in Okrika language (as Kiri and Polo) are not interchangeable or identical hereinafter referred to as the land in dispute is situate at Egwemobiri and is more particularly delineated and verged Red in survey plan No. SI 175/77 dated 1/11/77 and prepared by J. Olufemi Olugbemi Licensed Surveyor and filed with this Statement of Defence and will be relied upon at the trial.

5. The defendants admit the boundaries as averred in paragraph 4 of the Statement of Claim which is as shown in plan No. SI 175/77 filed with this Statement of Claim except that Bipialaka is of Okujagu House of Egweme Biri Opuchuku House is also of Egweme Biri in Okrika.

7. The defendants admit paragraph 6 of the Statement of Claim except that the judgment in the Okrika Native Suit No. 175/58 was that title of ownership of the land in dispute was granted to members of the defendants' family while the plaintiffs whose members having buildings at the time of the summons were allowed mere occupancy and that the plaintiffs should no longer allow any piece or parcel of land to applicants or do any work on it without the express permission of the defendants' family. This judgment will be relied upon at the trial."

It therefore seems to me crystal clear from the above pleadings that the land litigated upon in Exhibit A is precisely the same piece or parcel of land which is the subject matter of the present action. In other words, the land over which the defendants in the said Suit No. 175/58, that is to say, members of the Ikalile family were granted right of occupancy in 1958 is the same piece or parcel of land as shown in Exhibits F and G in the present suit. As earlier indicated, the judgment of the learned trial Judge in favour of the respondents was affirmed by the court below hence this appeal.

Two grounds of appeal were filed by the appellants with the leave of this court. These are as follows:-

*"1. The learned justices of the Court of Appeal erred in law in*

*failing to hold that the learned trial judge was wrong to treat Exhibit A as proceedings which were contested by the defendants therein on behalf of the Okuru Ikalile family of Okrika when there was absolutely nothing in the said Exhibit to suggest that the defendants defended the action therein otherwise than in their personal capacities.*

2. Having regard to the fact that the action was brought in a representative capacity on behalf of their family by the plaintiffs, the learned justices of the Court of Appeal erred in law in failing to pronounce that they had no locus standi to prosecute this action having regard to the averment contained in paragraph 15 of their Statement of Claim.”

#### Particulars of Error

By the averment in paragraph 15 of the Statement of Claim, it was clear that the plaintiffs’ family were neither in possession of the disputed land in respect of which judgment was delivered in their favour nor entitled to possession”

Pursuant to the rules of this court, the parties through their respective counsel, filed and exchanged their written briefs of argument. In the appellants’ brief, the following issues are set out as arising for determination in this appeal, namely -

“1. Whether the defendants in Exhibit A defended the action therein in a representative capacity on behalf of the respondents’ family. Such that the respondents could take the benefit of the judgment therein; and

2. Whether the respondents had the locus standi to prosecute the action herein and obtain the judgment they obtained.”

The respondents for their part, adopted the issues as formulated by the appellants save that they did not accept that the issue of locus standi is to be determined solely by reference to paragraph 15 of the Statement of Claim.

At the hearing of the appeal, learned counsel for the appellants. Mr. E. O. Sofunde S.A.N. proffered additional arguments in further elucidation of the submissions contained in his written brief.

The appellants’ complaint on the first issue is that although the plaintiffs in Exhibit A expressly sued in a representative capacity for themselves and on behalf of the Oruboko family of Okrika, the defendants therein were only sued personally and not as the representatives of their family. He conceded, relying on the decisions in Ikpong and others v. Edoho & Another (1978) 2 LRN 29 at p. 35-36 and Ibero and Another v. Ume-Ohana (1993) 2 NWLR (Pt. 277) 510 at p. 521, that where a case conducted in a native court is pleaded and tendered in a superior court of record as constituting res judicata, the superior court is entitled to examine the proceedings to determine the real parties and what the dispute is all about. He contended however that there is



nothing in Exhibit A which indicates that the defendants therein defended the suit in a representative capacity. It is this conclusion of the trial court, as affirmed by the Court of Appeal, that Exhibit A was defended in a representative capacity, that the appellants challenge in this appeal. Their contention is that Exhibit A cannot inure to the respondents' benefit as the defendants in Exhibit A are not the same as the respondents herein.

B Learned respondents' counsel, Professor A. B. Kasunmu S.A.N. in his reply stressed that the said first issue was canvassed by the appellants in both the trial court and at the Court of Appeal but was resolved in favour of the respondents. He argued that although the three defendants in Exhibit A were not expressly sued in a representative capacity, they clearly defended C the action for themselves and as representing the Okuru Ikalile family of Okrika. In this regard, he made reference to various portions of Exhibit A and the findings of the trial Judge on Exhibit A, which findings were affirmed by the Court below. He then contended that the defendants in Exhibit A, who are D members of the present plaintiffs' Okuru Ikalile family of Okrika, defended the suit Exhibit A, in a representative capacity for and on behalf of the said Okuru Ikalile family. He therefore submitted that Exhibit A inured to the respondents' benefit in the present action.

E There can be no doubt that a resolution of the first issue under consideration rests entirely on a close examination and study of Exhibit A. It is however, desirable for a better appreciation of this issue to make a cursory reference to the history of the dispute between the appellants' family of Oruboko and the respondents' Okuru Ikalile family as found in Exhibit A.

In this regard, the Okrika Native Court observed as follows:-

F *'The true position as found by court from the evidence adduced was that Ikalile on arrival at Okrika from Andoni, was taken over by Oruboko who also settled him on his land now in dispute at Egwemebiri, and he Ikalile became a member of his house, and did things in common with the other members of the Oruboko house Earlier on in its judgment, the court had stated that the original founder and owner of the land in dispute was the G plaintiffs' ancestor Oruboko in whose "War canoe house the Andoni stranger, Ikalile, came at one time and merged himself'.*

The judgment of court went on -

H *"(It was) recently when the lust for chieftaincy brought dispute between late Agba and No. 1 defendant, that the house was divided, into two factions, one side creating a new house in the name of the Andoni stranger, Ikalile, and the other retaining the name of the original founder, Oruboko "* (Words in brackets supplied)

A close study of Exhibit A clearly reveals that the dispute between the parties in that suit, was more of a chieftaincy dispute than a land matter.

The learned trial Judge in the present suit did recognise, quite rightly in my view, this material fact. I will later on in this judgment say more on this aspect of the dispute in Exhibit A. Turning now to the first issue for determination, I think it ought to be conceded that the claim before the Okrika Native Court in Exhibit A was between three named plaintiffs, to wit, Chief Mark Oruboko, Solomon D. Oruboko and Benson Oruboko and six defendants, namely, Chief James Okuru Ikalile, Thompson Inikoka, Bumo Amgbara, Eneme Ikpuku, Sesimama Okuru and Wokoma Okuru. B

The parties were merely listed in the claim without any indication against their names as to whether they sued or were being sued in representative capacities. C

The plaintiffs' claim however was framed as follows-

*"The plaintiffs claim on behalf of themselves and as representing the Oruboko family of Okrika is for a declaration of title of ownership of a piece of land known and called "Oruboko Kiri" situate in Ogweme Biri in Okrika Island."* (Italics supplied for emphasis) D

Although the plaintiffs therein were not stated against their names as prosecuting the action in a representative capacity, this was not a matter of any great moment. This is because the main body of their claim clearly indicated that they were prosecuting the action in a representative capacity for themselves and on behalf of the Oruboko family of Okrika. E

It cannot be over emphasized that in dealing with matters from native courts or tribunals, appellate courts must not be unduly strict or rigid with regard to matters of procedure in those courts as the whole object of such trials is that the real dispute between the parties are fairly adjudicated upon in the best interest of justice. See *Dinsey v. Ossei* (1939) 5 WACA. 177. Accordingly the form of an action in a native tribunal must not be stressed so long as the issues involved are clear and decisions on such issues must not be disturbed by the appellate courts without very clear proof that they are wrong. See *Kwamin Akyin v. Essie Egymah* (1936) 3 WACA 65, *Solomon Jonah v. Kojo Owu* (1973) 3 WACA 170 at 171. *Chukwunta v. Chukwu* (1953) 14WACA 341 and *Ajayi v. Aina* 16 NLR 67. This is because there were no rules governing proceedings before the native courts and on appeal therefrom and as long as those courts acted in good faith, listened fairly to both sides and gave fair opportunity to the parties to present their case and to correct or contradict any relevant evidence prejudicial to their view, they cannot be accused of offending against the rules of natural justice. See *Queen. v. Lt. governor, Eastern Region, Ex parte Chiagbana* (1957) 2 F.S.C. 46 (1957) SCNLR 9H. F G H

So too, the technical procedural rules of English Law or of our courts

of law will certainly not apply to cases brought under customary law before a native court or tribunal. In trials in native courts, there was no necessity to observe the strict or technical rules of pleadings and practice as are required in the High Court or the Magistrate's Court. See Chike Ogo v Adiba Ogo (1964)NMLR 117.

B The position may be generally summarised in the postulation that since pleadings were not filed in the native courts and technicalities had no place with their adjudication of cases, the appellate courts have consistently, and quite rightly, held that -

(1) It is not the form of an action but the substance of the claim in a native court that is the dominant factor.

C (2) Proceedings in a native tribunal have to be scrutinised to ascertain the subject matter of the case and the issues raised therein and

(3) It is permissible to look at the claim, findings of fact and even evidence given in a native court to ascertain what the real issues are.

D See Olujinle v. Adeagbo (1988) 2 NWLR (Pt. 75) 238 at 251. Chief Awara Osu v. Ibor Igiri (1988) 1 NWLR (Pt. 69) 221, Ajao v. Alao (1986) 5 NWLR (Pt. 45) 802 at p. 822, Mate Nono Pertetter Okuma v. Tsutsu 10 WACA 89, Ikpong and others v. Edoho and Another (1978) 2 LRN 29 (1978) 6-7 S.C. 221 at p. 35-36 and Ibero & Another v. Ume-Ohana (1993) 2 NWLR (Pt. 277) 510 at 521. With the above guidelines in view, I will now examine Exhibit A closely to determine whether the defendants therein defended the suit in a representative capacity for and on behalf of the Okuru Ikalile family of Okrika.

E It must firstly be observed that the above issue was canvassed by the appellants in both the trial court and the Court of Appeal but was resolved in favour of the respondents. In concluding his, findings on the issue, the learned trial Judge stated as follows:-

F *"In the present case I am satisfied from the record of proceedings in Exhibits A and B (as I have endeavoured above to show) that the plaintiffs in that case sued as representatives of Oruboko House and the 1st, 5th and 6th defendants were sued, and they defended the action, as representing the Ikalile descendants or family, even though that family may have been a sub-unit of the main Oruboko House at that time; and that the 3rd, 4th and 5th defendants had been sued jointly with them as persons to whom the Ikalile family had apportioned land."*

G A little later in his judgment, the learned trial Judge, by way of emphasis, restated thus:-

H *I have already come to a finding that the case in Exhibit A was one fought in a representative capacity as between descendants of Ikalile.*

*The Court of Appeal in dealing with this aspect of the case commented:*

*Although there is no specific finding that the defendants defended in a representative capacity, the substance of the evidence and the judgment was that they defended as descendants of Ikalile their ancestor. From this evidence, which the trial Court accepted, it is clear that it was Oruboko who made a grant of the area in dispute to Ikalile. The effect of this grant of Oruboko Kiri land by Oruboko - the defendants' ancestor to Ikalile - the plaintiffs' ancestor is that the plaintiffs enjoy a perpetual right in the land. Josiah Aghenghen & Ors. V. Chief Maduku Waghoreghor & Ors. (1974) 1 All NLR 1 at p. 87. This accords with the decision of the Okrika Native Court which gave possession to the plaintiffs and title to the defendants."*

I have given a most careful consideration to the above findings of the two courts below and respectfully endorse them as sound and well founded.

In the first place, the land in dispute in Exhibit A was on the application of both parties inspected by the Okrika Native Court members on the 31st July, 1958. A full report of the court's inspection notes is contained in the record of proceedings, Exhibit A. In so far as they concerned the defendants, the said notes read as follows:-

*"Inspection Notes: The land in dispute has been inspected by court... There are 11 houses on the land... the defendants claimed the 11 houses to be their own..."*

*The defendants also showed Chief Okuru tomb and a spot where another member of their family was buried and they dug out on the surface of the land, some clay pots, old manilla and bronze foot ring which they called "Idoni Agba" alias Andoni Juju . The defendants call it (meaning the land in dispute) Ikalile - Kiri"*

Commenting on the above inspection notes, the trial court observed as follows:-

*"These notes do not appear to me as recordings of description of parcels of land occupied by several and respective individual houses as subject matters in dispute, but rather of an expanse of land occupied by houses and trees and tombs and ancient relics such as manillas and bronze foot rings."*

I need hardly add that a close examination of these inspection notes must leave one in no doubt that the defendants therein were projecting their defence not in their personal capacities but as members of and representatives of Okuru Ikalile family. Their defence was not based on their personal rights over the land in dispute. On the contrary, it was based entirely on the communal rights of their Okuru Ikalile family of which the 1st, 5th and 6th defendants therein were members and the 2nd, 3rd and 4th defendants claimed

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their interest over the land through the 1st, 5th and 6th defendants and their  
people of Okuru Ikalile family. Family shrines, houses, tombs and jujus were  
relied on by the defence in no mistakeable term to the effect that the defence  
claim did not relate to individual ownership but to that of a class, namely, the  
Okuru Ikalile family of Okrika. I agree with both courts below that although  
representation was not expressed on the summons, a study of the proceed-  
ings confirm that Exhibit A was fought in a representative capacity by the  
defendants therein.

In the second place it is the finding of the trial court as affirmed by  
the court below that the real dispute between the parties in Exhibit A, although  
couched as a land dispute, was truly a chieftaincy dispute between the present  
defendants' Oruboko family of the one part and the present plaintiffs' Okuru  
Ikalile family of the other part. Said the learned trial Judge -

*"from the evidence in the case itself the dispute appears to have  
been sparked off by, and fought as, a chieftaincy matter. Infact paragraph 6  
of the Statement of defence confirms this, for it was so pleaded by the defen-  
dants here who are of Oruboko House. The defendants in that case appear to  
have been claiming to be of a Chieftaincy House (IKALILE HOUSE) which  
was distinct from the Oruboko House (the House of the plaintiffs in Exhibit  
A), and the Oruboko House would not hear of it and countered by claiming  
back the land which their ancestor had allowed the ancestor of the defen-  
dants in that suit to settle on. The quarrel appears to have come first before  
some Okrika Chiefs."*

This, here again gives further support to the findings of the courts  
below that Exhibit A was fought by both parties in a representative capacity as  
it seems clear that no personal interest of the named parties featured through-  
out the proceedings.

Reference must also be made to the judgment of the Native Court in  
Exhibit A, which concluded and decreed as follows:-

*"The plaintiffs are therefore entitled to declaration of title of own-  
ership to the piece of land known and called Oruboko Kiri in Okrika and  
because of long occupation and relation existing between the two parties,  
the defendants are entitled to right of occupancy on the land but defendants  
should no longer allot any piece of the land to applicants or do any work on  
it without the express permission of the plaintiffs - Oruboko family."*

Commenting on this judgment of the Okrika Native Court in Exhibit  
A, the learned trial Judge observed:-

*"The rights of "long occupation" referred to in this judgment and  
the history of the dispute as given in evidence must be taken as referring to*

the acts of the ancestor of the two families, namely Oruboko and Ikalile, and not to the parties who appeared in Court in the case. It was an inter-family or intra-family dispute.

This, it would appear, was how the Magistrate himself understood the case, for in the record of his judgment in the appeal to his court appearing at page 60 of Exhibit A he said at line 35 onwards as follows:-

*‘There is ample evidence to the effect that Okuru when he succeeded the head of the plaintiffs and defendants’ family that is when the family was a single unit did so as head of Oruboko family and not as head of Ikalile family.’*

*Furthermore if reference is made to Exhibit B, the record of proceedings in the High Court, it would be seen that both the argument of counsel for the appellants and the judgment are on the basis that the dispute was one between Oruboko family on the one hand and Ikalile on the other; and the nature of title under consideration was that created between Oruboko and Ikalile.’*

I agree entirely with these observations of the learned trial Judge on the interpretation of the above judgment as confirmed by the court below and fully endorse them. The dispute between the parties was clearly an inter-family or intra family dispute and was fought as such. It was not personal to the parties but was prosecuted and defended in a representative capacity between the two families concerned respectively. I therefore entertain no difficulty in holding that the answer to the first must be in the affirmative.

The second issue raises the question of locus standi. The argument of learned Senior Advocate, Mr. Sofunde is that although the respondents pleaded and relied on various acts of trespass, it is clear that the trespass in issue in this case is that alleged in paragraph 15 of the Statement of Claim. He submitted that the allegation of trespass therein is in respect of land made available to one Alfred O. Okuru by the plaintiffs’ family and on which the said Alfred Okuru had built a house. He contended that the respondents not being in possession of the said land had no locus standi to maintain an action in trespass in the present suit.

Learned respondents’ Senior Advocate, Professor Kasunmu, for his own part, argued that having regard to the pleadings and evidence before the court, the contention of the appellants on the issue of locus standi cannot be sustained.

It is an elementary principle of law that trespass is actionable at the suit of the person in possession of land. See *Olagbemiro v. Ajagungbade III* (1990) 3 NWLR (Pt. 136) 37 and *Adebanjo v. Brown* (1990) 3 NWLR (Pt. 141) 661. A reversioner may only sue where the trespass is of a nature which has caused a permanent injury or damage to the reversion. See *Jones v. Llanrwst*

U.D.C. (1911) 1 Ch. 393 and Ekpan and Another v. Uyo and Another (1986) 3 NWLR (Pt. 26) 63 at 77 and 80.

The parties from their pleadings are in agreement as to the precise identity and boundaries of the land in dispute. The respondents' family laid claim to de facto el de jure possession and occupation of the said land in dispute. This claim is fully supported by the judgment of the Okrika Customary Court in Exhibit A. The respondents, having pleaded various acts of trespass committed by the appellants on the land in dispute in paragraphs 10 and 11 of their Statement of Claim averred in paragraphs 14 and 15 thereof as follows:

"14. On or about the 7th of January, 1977 the present defendants without leave or licence of the plaintiffs broke into and entered the land in dispute which is in the peaceable possession of the plaintiffs and started building a concrete block house.

15. Infact the defendants have intentionally built on the plot allocated to one ALFREDO OKURU by the plaintiffs' family and on which' the said ALFRED OKURU have even built a house."

Testifying on the said trespass for and on behalf of the respondents, P.W.3, Amakiri Alfred Okuru stated inter alia as follows:-

"The plaintiffs are of the same House with me. I know the land in dispute.....It is in Idoni Polo. I know the person called Alfred Okuru. He was my father. He is now dead. I know when he died. When he was alive he lived in a house built by him. The house is in Idoni Polo on this land in dispute. The house if fallen, It fell about 3 years ago.....At about three years ago Oruboko House people came to build on the spot of Alferd's house after it had fallen.....When I saw it, I did not do anything. My House people had to sue them to court, and that is this case.

Apart from my father' s house, Ikalile family people's houses are there. Apart from houses, one have coconut, mangoes and other fruit trees there. We buried Okuru himself there. He was Okuru and Ikalile was his G father's name." (Italics supplied for emphasis).

The learned trial Judge disposed of this issue of trespass thus -

"I have also stated that I accept that Alfred Okuru had a house; and that this house could have been one of the eleven houses found on the land in dispute when the Native Court went on inspection. I have now come to a finding that the land in dispute in Exhibit A, on which Alfred Okuru's house stood, is the same as the land in dispute here. That being so, entering on that portion of the land where Alfred Okuru's house stood in an adverse manner would be in violation of the rights of possession conferred on the Ikalile

*House by the judgment in Exhibit A over the whole land.*

*Learned Counsel for the defendants Chief Whyte (as he then was) has however contended that the plaintiffs have not shown that they were in possession. That appears not to have taken into consideration the evidence of P.W.1, P.W.2 and P.W.3. They each said the house of Alfred Okuru stood on the land. P. W.3, the daughter of the late Alfred Okuru however said that by the time the defendants entered on the land the house had fallen or broken down.*

*Even if the house had fallen, as long as the Ikalile House as a body was yet in occupation of the land, any entry on any part of it, even if vacant, was a violation of their rights of occupation of that whole area of land which the judgment in Exhibit A gave them. The right given not being conditional cannot be interpreted to be on any condition. In any event the defendants only say that Alfred Okuru never had a house and where they commenced to build was vacant land.*

*Even if it was on vacant piece of land, as long as it was within the bounds of the land in issue in Exhibit A, it would be said to be constructively in the occupation and possession of the Ikalile House. A person can be in possession of a thing only in the manner it can be possessed or held. A piece or parcel of land taken or treated as a single piece can be said to be in the possession of the occupier even if his actual possession is only the physical occupation or use of a part of it. A person who went on to occupy an unused portion of another's vast family land is no less a trespasser than he who went on it and broke down a house standing on the land. For trespass is the breaking of the figurative close of the man in possession of land."*

Concluding, the learned trial Judge stated -

*"It is therefore my finding, taking into consideration all that I have stated above, that the defendants unlawfully trespassed on the land in dispute, which is in the lawful and recognised possession and occupation of the plaintiffs, by entering thereon and commencing a building on the spot where Alfred Okuru, a member of the plaintiffs' House, had a building."*

The above findings were affirmed by the court below. I have myself examined these findings and observations of the trial court critically and confess that I find no reason whatsoever to disturb them.

It cannot be seriously argued that the land in dispute is not in the possession and occupation of the respondents. There is clear evidence that the respondents made available to Alfred Okuru, one of their members, the portion of their communal land upon which he erected his house. The said Alfred Okuru died after the civil war and his said house fell into ruins. There is further evidence which was accepted by the trial court, and affirmed by the



court below, that apart from the ruins of Alfred Okuru's house there were other houses of the respondents' people within the area trespassed upon by the appellants. The respondents' people also had various economic trees and had buried their ancestor, Ikalile, thereon. In my view, the trial court was clearly right when it held that after the house fell into ruins and as long as the Ikalile House, as a family, continued with their possessory right over the land in issue, any unauthorised entry on any part thereof by the appellants was a violation of the respondents' right over the land and was therefore actionable. In my view, issue number two must also be resolved against the appellants.

On the whole, I find no substance in any of the points urged on behalf of the appellants in this court to justify the reversal of the decision of the trial court as affirmed by the Court of Appeal. Consequently this appeal fails and it is accordingly dismissed with N1,000.00 costs to the respondents against the appellants.

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**BELLO CJN**

I had a preview of the lead judgment of my learned brother, Iguh, J.S.C. I entirely agree.

The plaintiffs/respondents' claim against the defendants/appellants was for general damages and trespass into Idoni Polo land. The case was fought on *res judicata*. In 1958, the then plaintiffs of Oruboko family sued the defendants of Okuru therein in the Okrika Native Court, suit No. 175/58, claiming the parcel of land which is the subject matter in dispute in the present case. The Native Court granted declaration of ownership of the land to the plaintiffs therein but its possession to the defendants, therein. The High Court of the former Eastern Region of Nigeria affirmed the decision. The proceedings of the Native Court and the High Court were admitted in evidence as Exhibits A and B respectively at the trial of the present case.

It is not in dispute that the judgment of the Native Court constituted *res judicata* between the named plaintiffs of the Oruboko family therein some of whom are now the defendants/appellants and the defendants of the Okuru Ikalile, some of whom are now the plaintiffs/respondents. It is also not in dispute that the plaintiffs in the Native Court sued in representative capacity for themselves and on behalf of Oruboko family. The question canvassed in the trial of the present case was whether the defendants defended the suit in the Native Court in representative capacity for themselves and on behalf of the Okuru Ikalile family and thereby rendered all the members of the family as beneficiaries of the Native Court judgment. The trial court answered the question in the affirmative and its decision was affirmed by the Court of Appeal. The same question is the main issue for determination in the appeal before us.

It appears the issue was predicated on an apparent absence of any averment in the defence that “*the defendants defended the suit in a representative capacity for themselves and on behalf of the Okuru Ikalile family.*” It is a notorious fact that the rules of pleadings do not operate in Native Courts. It is also trite law that in a case decided by a Native Court the cause of action, the nature of the claim, the subject matter of the suit, the issues canvassed and the decision of the court are to be ascertained not from the form but from the substance of the case upon a proper examination of the entire records of the proceedings of the Court: See Chike Ogo v. Adiba Ogo (1964) NMLR 117, Olujinle v. Adeagbo (1988) 2 NWLR (Pt. 75) 238 at 251 and Ibero & Another v. Ume-Ohana (1993) 2 NWLR (Pt. 277) 510 at 521. B

As has been shown in the judgment of my learned brother, Iguh, J.S.C., the lower courts meticulously examined Exhibit A and concluded that the defendants therein defended the suit in representative capacity for themselves and on behalf of the Okuru Ikalile family. The appellants have not shown any good cause to justify interference with the said conclusion. I also dismiss the appeal with N1,000.00 costs to the respondents. C D

#### BELGORE.JSC

I had the privilege of reading in advance the judgment of my learned brother, Iguh, J.S.C. The Native Courts or Customary Courts, are by their nature cheap Courts that are very close to the grassroots. They are easily accessible because they are not prisoners of cumbersome procedure, and if they have rules of procedure they are merely to be guided by them. The essence of those courts is to dispense justice quickly, efficiently and without miscarriage of justice. Once on the face of their records it is clear that justice has been done, failure of strictly adhering to the procedure will not vitiate the judgment. Chike Ogo v. Adiba Ogo (1964) NMLR 117. In many cases the litigants only appear before these Courts to verbally lodge complaints whereby the Court clerk or anybody who can write will help reduce them to writing. There are instances where the head of a family will appear before a Customary Court and verbally complain in this vein: E F G

“*I have come to ask the Court to tell Mr. A to give back to me the land he and his people forcibly entered into.*”

The entire record of proceedings may disclose that the head of the family was suing in a representative capacity and that Mr. A was also being sued in a representative capacity. The proceedings will not be vitiated once it is clear on the written record what the parties were disputing. The costly and cumbersome technicality of the Common Law if applied to the Customary/ H

Area Courts in civil matters will deal a hard and destructive damage to our general sense of justice.

For the foregoing reasons and reasons well articulated in the judgment of my learned brother Iguh, J.S.C., I also find no merit in this appeal. The concurrent findings of the two lower Courts on Exhibit A cannot be assailed.

B I also dismiss this appeal with N1,000.00 costs to the respondents.

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**MOHAMMED JSC**

I have had the advantage of reading in draft the judgment just read C by my learned brother, Iguh, J.S.C., and I agree with him that the appellants have failed to advance any convincing reason why the concurrent findings of facts made by the two lower courts in favour of the respondents should be disturbed. This appeal is accordingly dismissed. I also award N1,000.00 costs in favour of the respondents.

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**ADIO JSC**

I have had a preview of the judgment read by my learned brother, Iguh, J.S.C. and I entirely agree with it. The appeal fails and I too dismiss it. I E abide by the order for costs.

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