

SUPREME COURT OF NIGERIA
2ND APRIL, 1996. SC. 264/1990
CORAM:- S. M. A. BELGORE, I. L. KUTIGI,
M. E. OGUNDARE, U. MOHAMMED, S. U. ONU, JJSC.

IGUEDO DIELI & 5 ORS

(For themselves and on behalf DEFENDANTS/
of the people of DAGAMA IKEM NANDO) APPELLANTS

AND

OSAKWE IWUNO & 2 ORS

For themselves and on behalf of the PLAINTIFFS/
people of AMAEGWENE AND RESPONDENTS
ACHALAOGWU sections of
Akamanato Village, NANDO)

APPEALS - Abuse of Court's process - Whether advancing the same argument in Supreme Court - As was in the lower court - Would make an appeal an abuse of Court's process.

APPEALS - Concurrent findings of fact - Appeal against concurrent findings of fact - Is not an abuse of Court's process.

APPEALS - Right of Appeal - Exercise of constitutional right of appeal - Is not an abuse of Court's process.

EVIDENCE - Burden of proof- Whether plaintiffs proved their case - On the totality of evidence adduced and accepted at the trial.

LAND LAW - Non urban land - Land Use Act - Whether showing that land is an extensive farm land - Justifies inference that the land is in non urban area - Under the land Use Act.

LOCUS IN QUO - Visit to Locus in quo - Whether a judge can truly be said to have resisted visit to locus - Where there is no application to that effect.

FACTS

The Plaintiffs/Respondents sued the Defendants/ Appellants claiming in their further Amended statement of claim: A declaration that they are entitled to certificate of occupancy of the land in dispute, damages for

trespass and perpetual injunction restraining the Defendants from entering the land. The case proceeded to trial during which the plaintiffs by a motion on notice applied to the court to visit the locus in quo. The motion which was opposed by the defendants was withdrawn by the plaintiffs and struck out by the court.

At the conclusion of the trial, the trial Judge who found in favour of and entered judgment for the plaintiffs made pronouncements about his unwillingness to visit the locus in quo. Being dissatisfied, the defendants appealed to the Court of Appeal, Enugu Division. Their appeal was dismissed. The defendants have further appealed to the Supreme Court raising 4 questions for determination out of 7 grounds of appeal. To the 7 grounds, the respondent raised a preliminary objection. The Supreme Court dismissed the preliminary objection and decided the appeal on 2 out of the issues raised.

ISSUES FOR DETERMINATION:

Whether the learned trial judge was right in law to decline a visit to the locus in quo for personal reasons?

Whether the Plaintiffs/Respondents proved a right in law to a Declaration for a statutory or a customary right of occupancy?"

HELD (Unanimously dismissing the preliminary objection and appeal per lead judgment of **OGUNDARE JSC**)

Abuse of the process of the court

1. The fact that the same arguments have been advanced in the two courts would not make the appeal in this Court an abuse of the process of the Court. Having read the Appellants' Briefs in the Court of Appeal and in this Court, I am of the view that the Defendants/Appellants are seeking to persuade this court to come to a different conclusion on the same issues as raised in the Court below. That cannot be an abuse of the process of the court. (p. 548 H)

Concurrent findings of fact

2. I agree with learned counsel for the Plaintiffs/Respondents that this appeal now before us questions the correctness of concurrent findings of fact made by the two courts below. This appeal was brought with the leave of this Court. This Court must have satisfied, itself that there are arguable issues to be decided before granting leave. In my respectful view the fact that an appeal is against concurrent findings of fact does not, without more, make it an abuse of the process of the court. After all there is no law which says that the concurrent findings of fact of two courts below cannot

be set aside or disturbed by this Court. The practice is that this Court would not reverse or disturb such concurrent findings unless they are shown to be perverse or that they are not supported by the pleadings and the evidence, appellant seeks to challenge such findings, it is recognized that he has an uphill, but not impossible, task. (p. 549 B)

Right of appeal

3. It is not in dispute that the defendants in the present case, by filing this appeal are exercising their undoubted constitutional right of appeal given them by section 213(3) of the Constitution and their exercise of that right in the circumstances of this case does not, in my respectful view, amount to an abuse of the process of the court. Subsequently I find no substance whatsoever in the preliminary objection, notice of which I hereby dismiss. (p. 549 H)

Visit to locus in quo

4. There is no substance whatsoever in this contention of the defendants. As has been shown above, when the plaintiffs applied by motion for an inspection of the land in dispute, they opposed it. Plaintiffs' counsel subsequently withdrew the application. I do not see what the defendants can complain about. To me, the learned trial judge obviously was not all that correct when he said he resisted the invitation to visit the land in dispute. The truth is, there was no such invitation; the application by the plaintiffs was withdrawn. He gave no ruling on any other application, if any else, as to why he would not carry out the inspection. I agree entirely with the three Reasons given by the court below for the rejection of this issue when it was raised in that court. In my respectful view as the learned judge was never invited to visit the land in dispute, it would not be right to say that he declined a visit. Question (2), therefore, does not arise. (p. 555 A)

Inference that land is in non urban area

5. On their showing the land in dispute is an extensive farm land. It certainly will not be in an urban area. Being an agricultural land, the then trial judge was right to infer that it is in a non-urban area. In any event, this was never an issue at the trial. Under the Land Use Act it is only the Governor of a State (now Military Administrator) that can grant a statutory right of occupancy and it is in respect of land whether or not in an urban area. (p. 555 E)

Burden of proof

6. On the totality of the evidence adduced at the trial and accepted by the

learned trial judge, whose findings of fact were affirmed by the court below, I am satisfied that the plaintiffs proved their case to entitle them to the declaration sought by them. In conclusion I see no merit whatsoever in this and I hereby dismiss it. (p. 555 G)

B REPRESENTATION

M. A. Apampa, for the Defendants/ Appellants
G. U. E. Peter-Okoye (Mrs.) for the Plaintiffs/Respondents

CASES REFERRED TO

Adeyemi v. The State (1991) 1 NWLR 679, 695E
C Saraki v. Kotoye (1992) 9 NWLR 156 188A - 189G

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1979, s. 213(3)
Land Use Act, 1978, s.5(1) and s.6(1)
D

LEAD JUDGMENT BY OGUNDARE JSC

The plaintiffs (who are now respondents), for themselves and on behalf of the people of Amaegwene and Achaleogwu sections of Akamanato village in Nando sued the defendants (who are now appellants) claiming as per paragraph 9 of their further amended statement of claim:-

“1. Declaration that the plaintiffs are the persons entitled to apply for statutory or customary certificate of occupancy in respect of piece and parcel of land known as and called Ajo Agu within Agu Omele shown pink F in plaintiffs plan situate and lying at Akamanato Nando town in Otuocho Local Government Area within the court's jurisdiction.

2. N2,000.00 damages for trespass.

3. Perpetual injunction restraining the defendants, their agents or servants from entering into this land either to farm or to build or indeed to do anything whatsoever which will be inconsistent with the rights of the plaintiffs people without their consent.
G

The defendants, that is, appellants, were sued as representing themselves and the people of Dagama. Pleadings having been filed and exchanged, amended and further amended, the case proceeded to trial before Awogu, J. (as he then was). At the conclusion of trial the learned H Judge found for the plaintiffs and entered judgment in their favour and declared them to be entitled to a customary right of occupancy in respect of the land in dispute. He awarded them N100.00 general damages for trespass and ordered perpetual injunction against the defendants in respect of the said land.

Being dissatisfied with that judgment the defendants appealed to the Court of Appeal (Enugu Division) on a number of grounds. The appeal failed and was dismissed. They have now, with leave of this Court, further appealed upon seven grounds of appeal. Written briefs of argument have been filed and exchanged, pursuant to the Rules of this Court.

The plaintiffs as respondents filed a notice of preliminary objection. The objection is to the effect that the *“appeal is an abuse of the process of this Honourable Court and therefore, ought to be dismissed”*. The grounds for the objection are stated in the notice as follows:-

“1. That the appellant brief of argument is in pari materia with out any modifications whatsoever with his brief of argument filed and argued at the Court of Appeal.

2. That the issues raised for determination and argued in the Court of Appeal were wholly dismissed there by a unanimous judgment of that Court.

3. That the same issues and argument have now been raised without any modification whatsoever before this Honourable court.

4. That this appeal is against concurrent findings of fact by the 2 lower courts.”

We decided to take arguments both on the preliminary objection and on the appeal and reserved our ruling on the preliminary objection to be embodied in the judgment on the appeal.

Mrs. Peter-Okoye learned counsel for the plaintiffs/respondents in moving her notice of preliminary objection relied on the grounds as contained in the notice. She observed that the appellants brief before this Court is substantially the same as that before the Court of Appeal and that the brief does not attack the judgment of the court below but rather that of the trial court. She cited *Adeyemi & Ors. v. The State* (1991) 1 NWLR (pt.170) 679, 695 in support of her submission that the step taken was erroneous. Learned counsel further observed that the present appeal is against concurrent findings of fact by the two courts below and it has not been shown that there are exceptional circumstances to justify this Court in interfering with those findings. Therefore, learned counsel submitted the appeal amounted to an abuse of the process of court. She referred to *Saraki v. Kotoye* (1992) 9 NWLR (Pt.264) 156 188A-189A as to what amounts to an abuse of the process of court.

Mr. Apampa learned counsel for the defendants/appellants appeared to have some difficulties in replying to the submissions on the preliminary objection. While submitting that the court below was wrong in saying that the defendants relied on three grounds of appeal as against thirteen; he

however, conceded that in the appellants brief in that court, the four issues set out were considered by that court. He submitted that the appeal before us was in order.

On the appeal itself, learned counsel adopted and relied on the appellants brief and reply brief.

B Mrs. Peter-Okoye arguing the main appeal, also adopted and relied on the respondents brief.

I have set out earlier in this judgment the grounds for the preliminary objection raised by the plaintiffs/respondents. The plaintiffs contend that because the appellants brief filed in this appeal is substantially the same with the one filed by the defendants in the Court of Appeal, therefore, this appeal should be dismissed as being an abuse of the process of the Court. I regret I find this contention not a valid ground for declaring the appeal an abuse of the process of court. The case of Adeyemi v. The State (supra) relied upon is just not apposite. In that case no brief was filed on behalf of the appellant in the Supreme Court and when the appeal came up for hearing, learned counsel for the appellant announced that he was adopting the brief filed and used in the Court of Appeal. Olatawura, J.S.C. delivering the lead judgment of this Court in that case observed at pages 695 E-F of the report as follows:-

E *“The learned counsel for the 4th appellant Dr. Ometan has introduced a procedure unknown to the Rules of the Supreme Court by adopting the brief filed and used in the court below and to rely on it. There is no provision for that in our Rules. A separate brief is filed in the Court of Appeal and the Supreme Court. Brief filed in the Court of Appeal is based on the case presented in the High Court. The brief filed in this Court is in respect of the appeal argued and decided by the Court of Appeal. It is permissible, where applicable, to make the same submissions made before the lower court in this Court. This will be embodied in the brief filed in the Supreme Court. Not only are we going to read a brief not relevant to matters before us but also to pronounce on an issue already decided upon by the lower court and which is not made an issue in this Court.”*
G (Underlining is mine)

In the present appeal, a brief was filed to which the plaintiffs filed a respondents brief and the defendants replied by filing a reply brief. It may be that the same arguments advanced in the court below are now being canvassed in this Court the issues for determination in the two appeals are the same the course adopted in this Court by the defendants/appellant is tacitly approved of by this Court in Adeyemi v. The State (supra). The fact

that the same arguments have been advanced in the two courts would not make the appeal in this Court an abuse of the process of the Court. Having read the appellants briefs in the Court of Appeal and in this Court, I am of the view that the defendants/appellants are seeking to persuade this Court to come to a different conclusion on the same issues as raised in the Court below. That cannot be an abuse of the process of the court.

I agree with learned counsel for the plaintiffs/respondents that this appeal now before us questions the correctness of concurrent findings of fact made by the two courts below. This appeal was brought with the leave of this court. This Court must have satisfied itself that there are arguable issues to be decided before granting leave. In my respectful view the fact that an appeal is against concurrent findings of fact does not without more, make it an abuse of the process of the court. Afterall there is no law which says that the concurrent findings of fact of two courts below cannot be set aside or disturbed by this Court.

The practice is that this Court would not reverse or disturb such concurrent findings unless they are shown to be perverse or that they are not supported by the pleadings and the evidence. Where an appellant seeks to challenge such findings, it is recognised that he has an uphill, but not impossible, task. The case of Saraki v. Kotoye (supra) cited to us by learned counsel for the plaintiffs/respondents does not help them either. There, Karibi-Whyte, J.S.C. delivering the judgment of this Court (Full Court) restated the principle at page 189G thus:

"I have quoted the above passage to illustrate the general principle that a proper exercise of a constitutional right of appeal, as was done in the instant case, which was not intended to harass, irritate, annoy or interfere with the course of justice, but aims at protecting the rights in the litigation of the party exercising the constitutional right cannot in my respectful view be regarded as reckless or frivolous, so as to constitute an abuse of the judicial process."

This Court, per Karibi- Whyte, J.S.C. approved the statement of law made by the Court of Appeal in Saraki v. Kotoye (1991) 8 NWLR (Pt. 211) 638, 647 to the effect:-

"The Court process could be said to be abused where there is no iota of law supporting it. In other words, the court process is premised or founded on frivolity or recklessness."

It is not in dispute that the defendants in the present case, by filing this appeal are exercising their undoubted constitutional right of appeal given them by section 213(3) of the Constitution and their exercise of that right in the circumstances of this case does not, in my respectful view,

amount to an abuse of the process of the court.

Subsequently, I find no substance whatsoever in the preliminary objection, notice of which I hereby dismiss.

I now come to the main appeal itself. This appeal when it came before this Court on the 13th day of June, 1994 was struck out on the ground that all the grounds of appeal filed did not raise issues which were properly raised in the Court of Appeal and there was no application to raise issues not raised in the lower court. This court held that the appeal was incompetent and struck it out. A subsequent application brought by the defendants to rescind that order and to restore the appeal was granted and the appeal was restored on the Cause List on 29th January, 1995.

The notice of appeal to the Court of Appeal contained 10 grounds of appeal. When the appeal was before that court the defendants as appellants, sought and obtained leave to argue 3 additional grounds numbered 11-13. On the basis of the 13 grounds of appeal the defendants in their appellants brief set out the following questions as arising for determination:

- (i) Whether the plaintiffs had any locus standi to sue in respect of family land already partitioned?
- (ii) Whether the learned trial Judge was right in law to decline a visit to the locus in quo for personal reasons?
- (iii) Whether the plaintiffs proved the extent and identity of the land in dispute?
- (iv) Whether the plaintiffs proved a right in law to a Declaration for a statutory or a customary right of occupancy?

These 4 questions were covered by some of the 13 grounds of appeal. The plaintiffs, as respondents, in their own brief adopted the 4 questions. In the lead judgment of Uwaifo, J.C.A. (with whom were Katsina-Alu and Oguntade, J.J.C.A.) the following occurs:-

"The defendants originally filed ten grounds of appeal. These were later amended by substituting them with three grounds of appeal which read as follows:-

1. *The learned trial Judge erred in law in admitting in evidence documents which were un-pleaded viz Exhibit 'K' and 'K1' in spite of objection from counsel to the defendants.*
2. *The learned trial Judge erred in law in awarding judgment in favour of the plaintiffs when they had no locus standi to sue in respect of family land already partitioned.*
3. *The learned trial Judge erred in law in decreeing judgment in favour of the plaintiffs when they failed to prove the extent and identity of the land in dispute."*

This statement is obviously inaccurate. If the matter rests there and is made a ground of appeal in this Court, there would have been no hesitation by me in allowing the appeal and remitting the matter to the court below for a consideration of the appeal on grounds not considered by it. But the matter does not rest there.

The learned Justice of Appeal considered the first ground and struck it out as being incompetent; there has been no appeal against that decision. He then went on in his judgment:

"In spite of my striking out ground 1, the questions for determination raised by the defendants/appellants are, in my opinion, sufficiently related to the remaining two grounds of appeal. The questions read as follows:-

"(i) Whether the plaintiffs had any locus standi to sue in respect of family land already partitioned?

(ii) Whether the learned trial Judge was right in law to decline a visit to the locus in quo for personal reasons?

(iii) Whether the plaintiffs proved the extent and identity of the land in dispute?

(iv) Whether the plaintiffs proved a right in law "to a declaration for a statutory or a customary right of occupancy"?"

The plaintiffs/respondents also raised questions for determination. They are substantially like those formulated by the appellants."

The four questions set out in the brief were considered and pronounced upon. In the end the appeal was dismissed.

The defendants, being dissatisfied, sought and obtained the leave of this Court to appeal against the judgment of the Court below on the following 7 grounds:

"1. Their Lordships of the Court of Appeal erred in law in affirming the judgment of the trial court and accepting the trial court's findings on the merger of lands between Amaegwene and Achalaogwu, there was no spectre of evidence whatsoever as to when the purported merger occurred and who witnessed the same.

2. Their Lordships of the Court of Appeal erred in law in affirming the judgment of the trial Court when the Survey Plan tendered by the respondents (Exhibit J.) showed no features of the purported partition of lands inherited from Nando, or of the merger of the lands or Achalaogwu and Amaegwene indicating the boundaries of their inheritances upon the alleged partition.

3. Their Lordships of the Court of Appeal erred in law in holding that there is certainly no requirement either by custom or in law that a partition of family land must be backed by a survey plan.

4. *Their Lordships of the Court of Appeal erred in law in affirming the judgment of the trial Court when there was no evidence adduced thereat of Igbo custom anywhere in Igbo-land, affirming a joint user or merger of lands upon a partition as was the respondents case in the trial court.*

B 5. *Their Lordships of the Court of Appeal erred in law with respect in asserting that it was not necessary for a party seeking a declaration of title to prove the exact location of a piece of land whether urban or non-urban when the provisions of the Land Use Act of 1978 are to the contrary.*

C 6. *Their Lordships of the Court of Appeal, with respect erred in law in upholding the trial judge's refusal to visit the locus-in-quo on the ground that the appellants objected thereto when the gravamen of the complaint was that the trial Judge's refusal to visit was for a personal reason viz, a bias because a visit to the locus would, truly in the trial judge's words have led "..... to (the) inspection of features*
D *settled and unsettled in the litigation over the last 30 years. (sic.)"*

7. Judgment against the weight of evidence and set out in their own brief the following four questions as arising for determination:

E *"(i) Whether the plaintiffs/respondents proved any act of partition of Nando's land and whether they had any locus standi to sue in respect of family land already partitioned?*

(ii) Whether the learned trial Judge was right in law to decline a visit to the locus in quo for personal reasons?

(iii) Whether the plaintiffs/respondents proved the extent and identity of the land in dispute?

F *(iv) Whether the plaintiffs/respondents proved a right in law to a declaration for a statutory or a customary right of occupancy?"*

G In the course of the argument on the preliminary objection raised by the plaintiffs the attention of learned counsel for the defendants was drawn to his grounds of appeal. He conceded it that some of the grounds raised issues not raised in the court below and that no leave of this Court had been sought nor obtained to raise these issues. I have myself examined the grounds of appeal. Grounds (1)-(4) above raise the issue of merger of the portions of land inherited by the Achalaogwu and Amaegwene sub-branches of the Nando family. This issue was not one of the questions put before the court below
H and as no leave has been sought nor obtained to raise such issues before this court, all the four grounds are hereby struck out. The issue of locus standi though raised in the court below is not covered

by any ground of appeal before us. In consequence question (1) as formulated in the appellants brief does not arise for consideration in this case. Arguments proffered on it will not, therefore, be countenanced.

Ground 7 is the omnibus ground. There is no question formulated upon which this ground can be said to be predicated consequently the ground appears to have been abandoned and is hereby struck out. Question (3) is not covered by any of the grounds of appeal; consequently it does not arise for consideration. We are only left with questions (2) and (4) which appear to be covered by grounds (6) and (5) respectively. It is on these two questions that I now seek to decide this appeal.

In view of the nature of the two questions upon which this appeal is now to be determined, I do not consider it necessary to set out the facts as pleaded and adduced in evidence and as found by the learned trial Judge.

Question (2) - Visit to the locus in quo:

In the course of the trial an application was made by the plaintiffs praying the court to inspect the land in dispute *"in relation to the features in the plans"*. The reason for this application was given in paragraph 4 of the affidavit of the 1st plaintiff in support of the application. Paragraph 4 reads:-

"4. That we have been advised by our leading counsel, Chief G.C.M. Onyiuke and we verily believe him to be true that a visit to the land in dispute is very essential in this case, for the following reasons:

(i) to see the position of Dagama Village as related to the land in dispute;

(ii) to see the existence or otherwise of burial ground in the land in dispute and other features like juju shrines etc;

(iii) to see the flow of Uko Stream as well as other streams;

(iv) to see the Amagu settlement of Akanato near the Onyeda Stream.

5. That the defendants do not oppose the visit as their counsel had himself asked the court to do so in the course of this proceedings."

It was also disclosed in paragraph 5 of the said affidavit that counsel for the defendants at an earlier stage of the proceedings had also applied (presumably orally) for a visit to the locus. The 6th defendant swore to a counter-affidavit on behalf of all the defendants in which he deposed as hereunder:

"2. I have been shown the affidavit sworn to by one Osakwe Iwuno in support of an application for inspection of the land in dispute.

3. The features mentioned in paragraph 5 (sic) of the said affidavit in support of the motion are clearly shown on plaintiffs and defendants plans which have been admitted in this case.

4. Paragraph 5 (sic) of the said affidavit is false. I have been

attending court regularly in respect of this case and at no time did the counsel for the defendants/respondents make an application for inspection of the land in dispute.

B *5. At the moment; there are no material conflict in evidence of both sides as to the features on the land in dispute."*

On the application coming up for hearing, it was withdrawn and was accordingly struck out. In the course of his judgment the learned trial Judge had this to say:-

C *"I must add here that I resisted the invitation to visit the land in dispute because I was conscious of the fact that such a visit may well lead to inspection of features settled and unsettled in the litigation over the last 30 years and would have confused the one track minded person that I happen to be."*

D The issue of a visit to the locus in quo was raised in the court below, Uwaifo, J.CA. in his lead judgment after quoting the above passage from the judgment of the trial court observed as follows:-

E *"I do not know how a person given such responsibility to adjudicate over matters and expected to do so with an open mind can justify such a stricture he made about himself. His reason is plainly incomprehensible to me. However, what he appears to have said in effect, no matter how oddly said, was that a visit to the locus in quo would not have been of assistance to him in deciding this case."*

F I subscribe to the above observation. The learned justice of appeal proceeded to consider the arguments on the issue. He resolved the issue against the defendants for the following reasons. (1) That the defendants could not be heard to complain that a visit was not conducted since they opposed by affidavit the plaintiffs application for a visit. Uwaifo, J.CA. observed and I agree with him:

G *"A party who objects to a piece of evidence being admitted in court cannot thereafter complain of its wrong exclusion even if it turns out that the evidence would have helped his case. This accords with basic sense of justice."*

I need say nothing more on that.

H (2) That a visit to the land in dispute would not resolve the issue as to which name the land should be called since the parties called it different names; and

(3) that the learned trial Judge decided the case correctly without the advantage of a visit to the locus in quo.

In the appellants brief it is contended that the passage in the judgment of the learned trial Judge already referred to above evidenced bias

in that it showed that the learned trial Judge had a fore-knowledge of the situs and that it was wrong of the court below to waive off this apparent bias. There is no substance whatsoever in this contention of the defendants. As has been shown above, when the plaintiffs applied by motion for an inspection of the land in dispute, they opposed it. Plaintiffs counsel subsequently withdrew the application. I do not see what the defendants B can complain about. To me, the learned trial Judge obviously was not all that correct when he said he resisted the invitation to visit the land in dispute. The truth is, there was no such invitation, the application by the plaintiffs was withdrawn. He gave no ruling on any other application, if any else, as to why he would not carry out the inspection. I agree entirely with C the three reasons given by the court below for the rejection of this issue when it was raised in that court. In my respectful view as the learned Judge was never invited to visit the land in dispute, it would not be right to say that he declined a visit. Question (2), therefore, does not arise.

Question (4):

The first claim of the plaintiffs is for a declaration that they are the D persons entitled to apply for “statutory or customary right of occupancy” in respect of the land in dispute. Evidence led by both sides show that the land is a farm land, the evidence does not show that the land is in an urban area as defined in the Land Use Act. The learned trial Judge granted to the E plaintiffs a customary right of occupancy in respect of the land in dispute. The defendants are now complaining.

The pit of their contention is that there is no evidence as to whether the land is in an urban or a non-urban area of the State. I must admit I do not understand their complaint. On their showing the land in dispute is an F extensive farm land. It certainly will not be in an urban area. Being an agricultural land, the then trial Judge was right to infer that it is in a non-urban area. In any event, this was never an issue at the trial. Under the Land Use Act it is only the Governor of a State (now Military Administra- G tor) that can grant a statutory right of occupancy and it is in respect of land whether or not in an urban area. See: Section 5(1) of the Act. The Local Government is empowered under section 6(1) of the Act to grant custom- H ary right of occupancy in respect of land not in an urban area for agricul- tural and other purposes. On the totality of the evidence adduced at the trial and accepted by the learned trial Judge, whose findings of fact were affirmed by the court below, I am satisfied that the plaintiffs proved their case to entitle them to the declaration sought by them.

In conclusion I see no merit whatsoever in this appeal and I hereby dismiss it. I affirm the judgment of the court below which in turn also affirmed the judgment of the trial court. I award N1,000.00 costs of this

appeal to the plaintiffs/respondents against the defendants/appellants.

BELGORE JSC

On the facts before the trial court the respondents were entitled to the land in dispute as against defendants/appellants. Court of Appeal did not interfere with this cogent decision. I find no substance also in this appeal. As my learned brother, Ogundare, J.S.C., in his judgment dwelt at length with review of the entire evidence relied upon and came to the conclusion that the appeal is devoid of merit. I agree with him in dismissing this appeal. I make the same consequential order as in the judgment Ogundare, J.S.C.

KUTIGI JSC

I read in advance the judgment of my learned brother Ogundare, J.S.C. just delivered. I agree with the conclusions reached by him therein. The preliminary objection and the appeal itself are accordingly dismissed. I endorse the order for costs.

MOHAMMED JSC

I will also dismiss the notice of preliminary objection filed by the respondent and dismiss the main appeal for the reasons given in the lead judgment just read by my learned brother, Ogundare, J.S.C. I have nothing more to add. I also award N1,000.00 costs in favour of the respondents which shall be paid by the appellant.

ONU JSC

I have had the privilege of the preview of the judgment of my learned brother Ogundare, J.S.C. just read.

I entirely agree with the conclusions reached by him that the preliminary objection fails and it is accordingly dismissed by me.

The main appeal being devoid of merit fails. I accordingly dismiss it, affirm the decisions of the two courts below and make the same consequential orders including costs contained in the leading judgment.