

SUPREME COURT OF NIGERIA
7TH MAY, 1996. SC 46/1991
CORAM:- A. B. WALI, I. L. KUTIGI, M. E. OGUNDARE,
E. O. OGWUEGBU, A. I. IGUH, JJSC.

OJEIFO EIGBEJALE PLAINTIFF/APPELLANT

AND
EBHOMIENLE OKE & 6 OTHERS DEFENDANTS/RESPONDENTS
(For themselves and on behalf
of the People of Ujabhole)

APPEALS - Finding of fact - Made by the trial court - Whether the Court of Appeal rightly interfered therewith.

APPEALS - Findings of fact - Sole reason for reversing them - Whether tenable - Seeing that a plaintiff is entitled to rely on favourable defence evidence

COURTS - Issue not raised - By either of the parties from their grounds of appeal - Whether property raised and resolved by the lower court.

EVIDENCE - Evaluation of evidence - Where justifiably done by the trial court - Whether appellate court should substitute its own views.

JUDGMENTS - Issue in question - Where resolved in favour of a party - Whether the Court is duty bound to enter judgment for that party.

LAND LAW - Title - Burden of proof - Whether to be extended to the area of land - That is not in dispute.

LAND LAW - Title - Exclusive possession - Where appellant relied on and proved traditional evidence - Whether he is entitled to succeed - Without proving exclusive possession and acts of ownership not relied upon.

LAND LAW - Possession - Whether evidence of possession was given by the plaintiff - And determined by the trial court.

PRACTICE & PROCEDURE - Pleadings - Fact that was sufficiently pleaded by the plaintiff - Court of Appeal's view that the issue was not pleaded is misconceived.

FACTS

The plaintiff/appellant before the High Court Ekpoma, claimed against the defendants/respondents entitlement to grant of a statutory Right of Occupancy, damages for trespass and perpetual injunction in respect of the land in dispute. The plaintiff relied on traditional evidence in proving his claim that his ancestor was the first person who deforested and acquired the land in dispute. The defendants denied the plaintiffs claim and averred that plaintiff's ancestor was their customary tenant. Defendants' evidence however, supported aspects of the plaintiffs claim.

The trial judge found in favour of the plaintiff. Defendants' appeal to the Court of Appeal was allowed as that court reversed findings of fact made by the trial court and substituted its own views. Being aggrieved, the plaintiff has now appealed to the Supreme Court raising four issues.

ISSUES FOR DETERMINATION

"(1) Were the learned justices of the Court of Appeal right to reverse the findings of the learned trial judge that the moat marked the boundary between plaintiff's and defendants' land?"

(2) Were the learned justices of the Court of Appeal right in putting on the plaintiff the burden of proving not only the disputed boundary of the land but the boundaries of the entire land of plaintiff including areas not in dispute? Etc., see p. 840

HELD (Unanimously allowing the appeal per lead judgment of **IGUH JSC**)

Judgments - Issue in question

1. It seems to me that the issue in question having been resolved in favour of the appellant, the learned trial Judge was in duty bound to enter judgment, as he did, in favour of the appellant in respect of his title to the land in dispute. This is for the simple reason that the said land fell within the appellant's side of the boundary in issue between the parties. (p. 843 C)

Courts - Issue not raised

2. With profound respect to the Court of Appeal, it was a gross error in law on its part to pose the question whether the said moat was pleaded as the boundary between the parties and to reverse the judgment of the trial court on that basis. This is because the issue did not arise and was never part of the respondents' case before the court below that the appellant did not plead the moat as his boundary. This court has warned time without number against decisions of court being founded on any ground in respect of which it has neither received argument from or on behalf of the litigants

before them, nor even raised by or for the parties or either of them. Courts of law must limit themselves to the issues raised by the parties as to act otherwise might well result in denial to one or the other of the parties of the right to fair hearing. In the same vein, an appellate court can only hear and decide on issues properly raised from the grounds of appeal filed before it. There can be no doubt that the court below was in clear error to have raised the issue covered by the question it posed for itself and to have resolved the Appeal on that basis. (p. 843 H)

Fact that was sufficiently pleaded by the plaintiff

3. It would seem to me, again with respect, that the Court of Appeal was in grave error and misdirected itself in its consideration of the pleadings filed in the cause. This is because some of the paragraphs of the pleadings already set out earlier on in this judgment, particularly paragraph 10 of the statement of claim clearly disclosed that the appellant specifically pleaded the moat as the boundary of his village land. There is also the appellant's survey plan, Exhibit A. The said plan was specifically pleaded in the appellant's statement of claim and showed the moat in issue as the boundary between the land of the two villages. Such survey plan which was specifically pleaded in the plaintiff/appellant's statement of claim cannot be seriously argued as not forming part of the appellant's pleadings. The position would of course be different if the appellant's survey plan was itself not pleaded, in which case, it would not have been open to the court to act on it. In my view, the moat in issue was sufficiently pleaded as forming the boundary between the lands of both villages. Both parties recognized and canvassed this issue in the two courts below and I must, with respect, dismiss the view of the Court of Appeal that the moat was neither pleaded in the appellant's pleadings nor was it an issue before the court as totally incorrect and misconceived. (p. 844 E)

Evaluation of evidence

4. It is beyond argument that the evaluation of evidence and the ascription of probative value to such evidence are the primary functions of the court of trial which saw, heard and duly assessed the witnesses. Where such a court of trial had justifiably evaluated the evidence, it is not the business of the Court of Appeal to substitute its own views for those of the trial court. (p. 845 A)

Finding of fact - Whether rightly interfered with

5. In the present case, no acceptable circumstances have been established

to warrant any interference by the Court of Appeal with the finding of fact of the learned trial Judge to the effect that the moat is the boundary between the parties. In the circumstance and in view of all my observations above, issue number one must be answered in the negative. (p. 845 E)

B
Title - Burden of proof

6. Issue on the question of ownership was joined by both parties only in respect of the land in dispute verged pink on the plan Exhibit A and not in respect of the entire Udomi land. Besides, the land in dispute is situate on the plaintiffs own side of the boundary between the parties as found by the trial court. Additionally the declaration as to the appellant's entitlement to the grant of statutory right of occupancy to the said land was expressly tied to the area in dispute verged pink on the appellant's survey plan, Exhibit A. In these circumstances, I think, with respect, that the Court of Appeal was in error to impose on the appellant the additional burden of proving title to the entire Udomi Village land on which issue was not joined. In my view, die trial court was quite right to enter judgment in favour of the appellant in respect of the area in dispute verged pink on the survey plan, Exhibit A. Accordingly, issue number two must be answered in the negative. (p.847 A)

E
7. Title - Exclusive possession

In my view, the traditional evidence led by the appellant at the trial was substantially corroborated by the respondents and was rightly accepted by the learned trial Judge. I also agree that by the acceptance of this traditional evidence, the learned trial Judge rightly resolved the issue of title to the land in dispute in favour of the appellant. With profound respect, I cannot accept the finding of the court below that the learned trial Judge ought not to have entered judgment for the appellant in the absence of proof by the said appellant of his exclusive possession of the land in dispute. This is because the appellant in proof of his title pleaded and relied on traditional evidence and not acts of ownership and possession, numerous and positive enough to lead to the inference that he is the exclusive owner of the land. (p. 849 E)

8. Whether evidence of possession was given by the plaintiff

H The Court of Appeal could not therefore be right in its assertion that the learned trial Judge did not decide the question of possession or that the plaintiff failed to give evidence of possession in respect of the land in dispute which is part and parcel of Udomi village. The Court of Appeal was unable to fault the above findings of fact of the trial court. In my view, the

court below, was with respect, in gross error to have embarked on a re-evaluation exercise of the evidence on record and substituting its views for those of the trial court and thereby interfered with the said findings of the trial court without any satisfactory reason for so doing. (p. 850 C)

9. Findings of fact sole reason for reversing them

With very great respect to the Court of Appeal, the sole reason advanced for reversing the said findings of the trial court seems to me totally untenable and misconceived as the evidence of D.W. 2, apart from that of the appellant and the respondents' admissions in the pleadings already referred to, fully justified the findings of the learned trial Judge. D.W.2, in particular, had in his evidence testified as follows - "*Ujabhole was founded by Ogholo. The last of the eight villages to be founded in Uwessian is Udomi and it was founded by Oghaloa.*" In the face of the above evidence, it seems to me beyond argument that the learned trial Judge was right when he held that the evidence of D.W. 2 supported the appellant's case to the effect that Oghaloa founded udomi. It cannot also be disputed that the appellant is entitled in law to rely on the evidence of the defence which supported his case. (p. 851 G)

NOTABLE POINTS OF INTEREST

IGUH JSC

1. Acquisition of land under Ishan customary law

On the state of the pleadings, it seems to me clear that both parties are in agreement that under Ishan customary law, land may be acquired inter alia by deforestation. Pursuant to this Ishan custom, the first person who defrosted a virgin land became the founder and owner of such piece or parcel of land. It is also not disputed that upon the death of such an owner, his successor, on the performance of his burial ceremonies, acquired the deceased's property, including his land by inheritance. (p. 837 B)

2. Identity of the land in dispute - Law relating thereto

No doubt, the law is well settled by a long string of authorities that the onus of proof lies on the plaintiff who seeks a declaration of title to land to establish with certainty and precision the area of land to which his claim relates. Where, however, the land in dispute is so clear that it leaves neither the defendant nor the court in any doubt as to the specific area claimed in the sense that from the plaintiff's description thereof, a surveyor can produce a plan showing accurately the land in dispute, the plaintiff will be deemed to have discharged the onus on him to prove the specific area he

claims. So, too, where the land in dispute is certain and clear and there is no difficulty whatever in identifying its precise extent and boundaries, a declaration of title may be made even without it being based on or tied to a survey plan. (p. 846 A)

B **3. Title may be proved in different ways**

I think it ought to be stressed that it is not in every claim of declaration of title to land that a claimant is in duty bound to establish exclusive possession thereof. Five different ways have been laid down by which a claimant may establish proof of title to a piece or parcel of land. See *Idundun v. Okumagba* (1976) 9-10 S.C. 227 at 246. It is not now open to argument that a claimant may prove his title to a piece or parcel of land by satisfactory traditional history or evidence alone and he needs not, in this regard, supplement this with any evidence of exclusive possession. (p. 847 D)

D **4. When traditional evidence will sustain a claim to title**

Accordingly where a trial court has properly evaluated and accepted the traditional evidence of a plaintiff in a declaration of title to land action, this will be enough to sustain the claim. It will not be necessary in such circumstance for the court to look further for any evidence of acts of ownership or possession, numerous and positive enough to lead to the inference that the plaintiff is the exclusive owner of such land before the declaration is granted. Acts of ownership and possession by the plaintiff in respect of such a claim founded on traditional history only become material where the traditional evidence proffered by the parties is inconclusive or conflicting and it therefore becomes necessary to test such traditional histories adduced by reference to recent facts or acts of ownership and possession established by evidence. (p. 848 A)

REPRESENTATION

G T. J. O. Okpoko, S.A.N. with A. O. Deworitse Esq. for the Appellant
 Chief C. O. Ihensekhien, S.A.N. with M .O. Igbotalo Esq. and E. A. Ihensekhien Esq. for the Respondents

CASES REFERRED TO

H Chief Ebba v. Chief Ogoto (1984) 4 S.C. 84 at 112
 Olusanya v. Olusanya (1983) 3 SC. 41 at 56-57
 Metalimpex v. A.G. Leventis & Co Ltd (1976) 2 S.C. 91
 Akinloye v. Eyiola (1968) N.M.L.R. 92 at 95
 Enang v. Adu (1981) 11-12 S.C. 25 at 39

Woluchem v Gudi (1981) 5 S.C. 291 at 320

Ezeokeke v. Uga (1962) 1 All N.L.R. 482

Imah v. Okogbe (1994) 1 KLR 151

Kojo 11 v. Bonsie (1957) 1 W.L.R. 1223 at 1227

Nwagbogu v. Chief Ibeziako (1972) 1 All N.L.R. 200

Oduaran v. Asaroh (1972) 1 All N.L.R. (Part 2) 137

B

LEAD JUDGMENT BY IGUH JSC

In the Ekpoma Judicial Division of the High Court of Justice of the former Bendel State of Nigeria, the plaintiff, who is now the appellant, caused a writ of summons to issue against the defendants, who herein are the respondents, claiming, as subsequently amended as follow:-

C

"1. A declaration that the plaintiff is entitled to the grant of a Statutory right of occupancy to that piece or parcel of his farm land and rubber plantation lying and being situate at Udomi Village, Uwessan in Irrua clan, Okpebho Local Government Area of Bendel State of Nigeria which said piece or parcel of farm land and rubber plantation are more properly delineated in pink in plaintiff's survey plan no. WE 4095 which is filed with this Statement of Claim.

D

2. N10,000.00 being general damages for defendants provocative acts of trespass and maliciously and wantonly destroying plaintiffs mature rubber trees and other economic crops.

E

3. A perpetual injunction restraining the defendants, their servants and/or agents from further acts of trespass on the said plaintiff's farm land and rubber plantation."

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

F

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

It is desirable at this stage to set out paragraphs 8, 9, 10, 12 and 14 of the plaintiff's statement of claim. These are as follows:-

G

"8. The area known as Uwessan in Irrua Clan is made up of eight component villages viz: Unogbo, Ujabhole, Udomi, Ihilulu, Idumaghodo, Afuda, Idumozza and Ohe. All the villages are Ishan people. Although the villages together are jointly known as Uwessan under Irrua Clan, each and every village has its own land and clearly demarcated boundaries. One village throughout their history has never been a tenant of the other, although one individual can move from one village land to become a tenant of another village.

H

9. In Ishan Native Law and Custom the method of acquisition of

land is by deforestation. This is to say that the first person to deforest a parcel of land becomes the owner.

10. One Oghaloa who is a great great grand father of the plaintiff was the founder of Udomi village in Uwessan. He deforested the entire area now known as Udomi farm land. As a result of inter tribal wars and the scramble for land in those days, he made a town wall or moat around his own village. The remains of the town wall or moat is clearly shown on the survey plan filed in the suit.

11.

12. That by reason of his deforestation of a large area of land including the land in dispute verged "Pink" in the Survey Plan filed with the Statement of Claim, which said deforestation is the Customary incidence of acquiring title to land in Ishan the said Oghaloa thus became the owner and in full possession of all the land he deforested including the land in dispute.

13.....

14. In Ishan Native Law and Custom and/or in Udomi Native law and custom when the first surviving son of any person has performed the burial ceremonies of his father, he thereafter steps into the shoes of his father and inherits all his properties."

In answer thereto, the defendants in paragraphs 1, 3, 4, 17 and 24 of their Statement of Defence replied thus-

"1. The defendants admit paragraphs 1, 2, 3, 4, 9 and 14 of the Statement of Claim but add that while the 3rd defendant is the Odionwele of Ujabhole, the 4th defendant holds the traditional title of the Iyasele of Irrua, though he is a native of Ujabhole and lives there.

.....

3. The defendants admit paragraph 8 of the Statement of Claim but in further answer to the said paragraph, the defendants aver that Ujabhole is the oldest village in Uwessan in that it was the first village to be founded in Uwessan. It is followed by Unogbo, Afuda, Ibihiolulu, Imumogholo, Idumoza, Ohe and Udomi which is the youngest village in that it was the last village to be founded in Uwessan years after Ujabhole was founded.

4. The defendants admit paragraph 10 of the Statement of Claim to the extent that Oghalua was the founder of Udomi except as above, the defendants deny same but put the plaintiff to the strictest proof thereof.

.....

17. Under Ishan native law and custom which is applicable to Ujabhole, the first person to deforest a virgin forest becomes the owner of the land. Other methods of owning land include inheritance, gift and/or

purchase.

.....
 24. *The boundary separating the land given to Oghalua to settle from that of Ujabhole is clearly shown in blue in the survey plan filed with the defendant's Statement of Defence. There was no time Udomi was walled round, neither was a moat constructed round the village.*" B

On the state of the pleadings, it seems to me clear that both parties are in agreement that under Ishan customary law, land may be acquired inter alia by deforestation. Pursuant to this Ishan custom, the first person who deforested a virgin land became the founder and owner of such piece or parcel of land. It is also not disputed that upon the death of such an owner, his successor, on the performance of his burial ceremonies, acquired the deceased's property, including his land by inheritance. C

There are further admissions by the defendants that Uwessan in Irrua clan consisted of eight villages, to wit - Unogbo, Ujabhole, Udomi, Ihbiolulu, Idumoghodo, Afuda, Idumoza and Ohe; with the boundaries of each village clearly demarcated. No village had ever been a tenant of the other. The parties are also agreed that the plaintiff's ancestor, Oghalua, was the founder of Udomi, although the defendants denied that a moat was constructed around the plaintiff's village, Udomi, to form its boundary with the neighbouring villages. According to the defendants, it was a foot path and not a moat that was the boundary between the land of the plaintiff of Udomi and the defendants of Ujabhole. D E

The plaintiffs case is that it was one Oghalua, the great grand father of the plaintiff that first deforested and became the founder of Udomi village in Uwessan. The land in dispute is said be only a portion of the entire land deforested by Oghalua. By devolution in unbroken chain from father to first son as testified to by the plaintiff, the land of Udomi village, including the land in dispute, devolved on the plaintiff by inheritance under Ishan customary law. F

The defendants, for their part, claimed that the land in dispute is part of their Ujabhole village land and not the land of Udomi village. Their case is that it was one Ogholo, the ancestor of the 3rd and 7th defendants that first deforested the entire land of Ujabhole village which included the land in dispute. He thus became the founder and owner of the entire Ujabhole village land. By devolution through the said Ogholo and his descendants, the said land of Ujabhole village remained in the possession and ownership of the people of Ujabhole who made grants of parts thereof to tenants for farming purposes. They claimed that it was during the reign of one Ominogun that he gave Oghalua the land in dispute which is part of Ujabhole's deforested land to settle on. This land given to Oghalua later developed into the H

population now known as Udomi village. Oghaloa, according to the defendants, became a customary tenant of Ujabhole people.

The learned trial Judge, Edokpayi, J., after an exhaustive review of the evidence at the conclusion of hearing found for the plaintiff and decreed as follows:-

B “Both on the preponderance of evidence and on the balance of probabilities of the evidence adduced before me in this suit, I prefer the case for the plaintiff to that of the defence and I hold that the plaintiff has established his claim in this action. I therefore declare that the plaintiff is entitled to the grant of a Statutory Right of Occupancy to that area of land
C verged pink in Survey plan No. WE 4095 dated 29th December, 1986 (Exhibit “A” in this case) which piece of land situate at Udomi, Uwessan Irrua in the Okpebho Local Government Area of Bendel State of Nigeria. I award to the plaintiff as general damages for trespass on the plaintiff’s land and the destruction of his crops the sum of one thousand Naira against the
D defendants in favour of the plaintiff.

The defendants, their servants and/or agents are hereby perpetually restrained from any further acts of trespass on the parcel of land verged pink in Exhibit “A”.

This was on the 23rd of May, 1986.

E Being dissatisfied with this judgment of the trial court, the defendants appealed to the Court of Appeal, Benin City Division, which in an unanimous decision, allowed the appeal on the 4th May, 1990 and set aside the judgment and orders of the trial court.

Aggrieved by this decision of the Court of Appeal, the plaintiff has
F now appealed to this court. I shall hereinafter refer to the plaintiff and the defendants in this judgment as the appellant and the respondents respectively.

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

G 1. The learned Justices of the Court of Appeal misdirected themselves in law when they held:

H *“I therefore agree with the contention of the appellants that as the moat was nowhere pleaded or made an issue as to the boundary of the land in dispute between the parties, the learned trial Judge should have rejected the evidence led in that regard. It being settled law that evidence led which is not pleaded goes to no issue. See Shaibu v. Bakare (1984) 12 S.C. (1987) 187 at 219; N.I.P.C. v. Thompson Organisation (1969) 1 NMLR 99. And as the learned trial judge cannot also set up an issue not pleaded by the parties, finding that the land in dispute is bounded by the moat, must also beheld to have been based on a wrong premise.”*

2. The learned Justices of the Court of Appeal misdirected themselves in law when they held:

"With due respect to the learned trial Judge, he had the duty to decide the question of possession of the disputed land as it became an issue having regard to the pleadings and evidence led at the trial. Vide Odutola v. Aileru (1985) 1 NWLR (Pt. 1) page 92; Akibu v. Opaleye (1974) 11 S.C. 189 at 203, (1978) 1 S.C. 37 at 51, Ogbachie v. Onochie (1988) 1 NWLR 370 (Pt. 70) 385. In conclusion, having regard to the abundant evidence of the appellant's proven acts of possession of large area of land in dispute, and in the face of the failure of the respondent to lead any evidence to the contrary, I am inclined to hold that the learned trial Judge should not have upheld the claim of the respondent."

The learned Justices of the Court of Appeal misdirected themselves in law when they held:

"I do however consider that this is a proper case in which an appeal court ought to intervene in respect of the findings of the trial court. In this connection, the conclusion of the learned trial Judge with regard to the evidence of "traditional history is clearly wrong as he based his conclusion upon the evidence of 2nd D. W. which is totally at variance with that of the respondent."

4. The learned Justices of the Court of Appeal erred in law in reversing the judgment of the learned trial Judge given in favour of the appellant when:

(a) By the pleadings the fact that Udomi Village as one of the 8 villages in Uwessan Irrua Ishan was founded by first deforestation by the ancestor of the appellant and that the village was not tenant of any other village was not in issue.

(b) The only issue to wit the correct boundary between the respective villages of the parties was clearly resolved in favour of the appellants by the learned trial Judge.

(c) The learned Justices of the court of Appeal wrongly took the view that appellant did not plead the MOAT as his village boundary when by paragraph 10 of the statement of claim this was pleaded.

5. The learned Justices of the Court of Appeal misdirected themselves in law when they held:

"It follows then that the respondent cannot seek refuge under the contention that as the appellants claim to the ownership of the land in dispute is rooted to another person, it was not necessary for the respondent to disprove the claim of the appellants that they have also been in posses

sion and had exercised rights of ownership over the disputed land. As they have not disputed the acts of ownership claimed by their pleadings and the evidence led at the trial, it seems to me that the contentions of the appellants have merit."

B 6. The learned Justices of the Court of Appeal misdirected themselves in law when they held:

"It is thus clear from the pleadings quoted above, that the respondent is laying claim to the entire area of land described as Udomi farm land or Udomi village, and not a part thereof. Therefore, in order to succeed, the respondent has the onus of establishing the claim in respect of the whole area of the land on evidence which would satisfy the court on a balance of probabilities."

The parties pursuant to the rules, of this court, filed and exchanged their written briefs of argument. In the appellant's brief the following four issues are set out as arising for determination in this appeal, namely -

D *"(1) Were the learned Justices of the Court of Appeal right to reverse the finding of the learned trial Judge that the moat marked the boundary between plaintiff's and defendants land?"*

(2) Were the learned Justices of the Court of Appeal right in putting on the plaintiff the burden of proving not only the disputed boundary of the land but all the boundaries of the entire land of plaintiff including areas not in dispute?

(3) Were the learned Justices of the Court of Appeal right in their views that in this case, defendant's acts of possession defeated the appellants claim to title?

F (4) Had the learned Justices of the Court of Appeal justifiable legal basis for reversing the finding of fact made by the learned trial Judge in this case on the traditional evidence adduced before him?

The respondents, on the other hand, submitted three issues in their brief of argument as arising for determination in this appeal. These are:-

G *"1. Whether the Justices of the Court of Appeal were right in reversing the decision of the trial Judge in respect of the traditional histories and acts of possession relied upon by the parties in this appeal.*

2. Whether the Justices of the Court of Appeal were right in their approach as to how the learned trial Judge should have resolved the contradictory, inconclusive and conflicting traditional histories in this appeal by reference to acts of possession.

H *3. Whether it was necessary to prove with definitive certainty the boundaries of the land mass over which the appellant sought, entitlement to a statutory right of occupancy in accordance with the decision of the*

Court of Appeal.

Upon a close examination of the two sets of issues identified in the respective briefs of the parties, it is clear to me that the three issues raised in the respondents brief are adequately covered by the four issues formulated in the appellant's brief which I find sufficiently comprehensive for the determination of this appeal. I shall therefore base my judgment on the appellant's issues for my consideration of this appeal. B

At the hearing of the appeal before us, learned counsel for the appellant, T. J. O. Okpoko Esq., S.A.N. adopted his brief filed on behalf of the appellant and proffered oral argument in amplification of the written submissions therein contained. He submitted that the two broad questions before the court in the appeal are, firstly, what constitutes the boundary between the parties, that is to say, the two communities of Udomi and Ujabhole and, secondly, whether the trial court's acceptance of the evidence of traditional history as testified to by the appellant is justifiable or otherwise faulty. He submitted that the two legs under which the Court of Appeal interfered with the judgment of the trial court were both faulty and he urged the court to allow the appeal. C D

Learned respondents counsel, Chief Ihensekhien, SAN for his own part, similarly adopted the respondents brief of argument and made oral submissions in elucidation thereof. He stressed, in particular, that the appellant's case is that of one man claiming against a community. He claimed that the respondents have many houses on the land in dispute. He urged the court to dismiss the appeal. E

Mr. Okpoko, S.A.N. in his brief reply submitted that the appellant's case is not that of an individual against a community. He contended that it is a case of first acquisition by deforestation by the plaintiff's great grand father and devolution of Udomi land, including the land in dispute, to the said plaintiff through his ancestors in unbroken succession in accordance with customary law. From the evidence, the appellant is the tenth person to own Udomi village in succession since it was founded by Oghaloa. F G

The first question is clearly related to the first issue. This poses the question whether the Court of Appeal was right to reverse the finding of the learned trial Judge that a moat marked the boundary between the appellant's and the respondents land. Wherefore the appellant pleaded in paragraph 10 of his statement of claim that a moat was constructed around Udomi village in protection of and as the boundary thereof as shown in the plan, Exhibit A, the respondents averred in paragraph 24 of their statement of defence that no moat was constructed round Udomi village. The respondents claimed that the boundary separating the land given to Oghaloa to H

settle from the land of Ujabhole is a footpath as shown in their plan, Exhibit E.

It seems to me clear that issue was joined on whether or not the boundary between the two separate but adjoining villages was moat as claimed by the appellant but denied by the respondents. It is equally clear that a resolution of the issue would go a long way in determining which of the two villages that owns the land in dispute. If the said moat is conclusively established to be the boundary between the two villages, then, of course, the land in dispute must naturally be owned by the village on whose side it is situated.

I think it ought to be stressed that both learned counsel for the parties as well as the trial court appeared to have been in no doubt on this issue joined in the pleadings in respect of the boundary between the two villages. Learned appellant's counsel in his submission before the trial court submitted as follows:-

"That the issue for determination in this suit is as to what forms the boundary between Udomi and Ujabhole. That the plaintiff's case is that the moat forms the boundary between the two villages."

Similarly, before the Court of Appeal learned respondents counsel in attacking the judgment of the trial court complained in ground 15 of his grounds of appeal as follows -

"15. The learned trial Judge misdirected himself and so did not appreciate that what was really involved in this case is a boundary dispute."

(Underlining supplied for emphasis).

The point was argued in paragraph 3.03 of the respondents brief of argument before the said Court of Appeal where they contended as follows-

"The respondent's (meaning the present appellant) claimed that the moat is the boundary between the land of the parties and that the land in dispute is east of the moat..... while the appellants (meaning the present respondents) stated, that the land in dispute is in Ujabhole land and that the moat is not the boundary. It was incumbent on the learned trial Judge to resolve this issue as central to the dispute but this he failed to do."

(words in brackets and underlining supplied for clarity and emphasis)

Both parties were therefore ad idem on the issue joined by them on the pleadings in the matter on whether or not the moat testified to and indicated on the appellant's plan Exhibit A was the boundary between the two villages concerned.

The learned trial Judge after a thorough consideration of the issue, resolved the same as follows -

"I do not agree with the 2nd D. W. or the defence that the foot path and not the moat is the boundary between Ujabhole and Udomi. The foot path given in evidence as the boundary by the 2nd D.W. is not the boundary. The boundary is the moat as given in evidence by the plaintiff 1st PW, 1st D.W. and Exhibits A and E." B

A little later in his judgment, the learned trial Judge concluded -

"From the evidence of the plaintiff, 1st, 6th PWs and 1st D.W. whom I believe and Exhibits A and E, on the issue of boundary between Ujabhole and Udomi, I hold that the moat and not the foot path is the boundary between Udomi and Ujabhole." C

It seems to me that the issue in question having been resolved in favour of the appellant, the learned trial Judge was duty bound to enter judgment, as he did in favour of the appellant in respect of his title to the land in dispute. This is for the simple reason that the said land fell within the appellant's side of the boundary in issue between the parties. The next question is whether the court below had any legal justification to interfere with the above finding of fact of the trial court. D

As already indicated, the respondents before the court below, argued that the learned trial Judge failed to make any finding on whether the moat constituted the boundary between the parties. The Court of Appeal, quite rightly, resolved the issue against the respondents holding as follows - E

"With the above findings, I must reject the contention of the appellants that the learned trial Judge did not resolve the issue as to whether the moat is the boundary of the land between the parties."

The court however went further to pose the question - F

"But the question then is whether that finding is in accordance with the pleadings of the respondent with regard to the boundaries of his land."

and arrived at the conclusion that-

..... as the moat was no where pleaded or made an issue as to the boundary of the land in dispute between the parties, the learned trial Judge should have rejected the evidence led in that regard." G

It was on the basis of this conclusion that the Court of Appeal reversed the finding of the learned trial Judge that the moat constituted the boundary between the land of the parties.

In the first place, and with profound respect to the Court of Appeal, it was a gross error in law on its part to pose the question whether the said moat was pleaded as the boundary between the parties and to reverse the judgment of the trial court on that basis. This is because the issue did not arise and was never part of the respondents case before the court below H

that the appellant did not plead the moat as his boundary. This court has warned time without number against decisions of court being founded on any ground in respect of which it has neither received argument from or on behalf of the litigants before them, nor even raised by or for the parties or either of them. See Shitta-Bey v. Federal Public Service Commission (1981) 1 S.C. 40, Saude v. Abdullahi (1989) 7 S.C.N.J. 216 at 229; (1989) 4 NWLR (Pt.116) 387; Chief Ebba v. Chief Ogodo and Another (1984) 4 S.C. 84 at 112; Florence Olusanya v. Olufemi Olusanya (1983) 3 S.C. 41 at 56-57; (1983) 1 SCNLR 134 etc. Courts of law must limit themselves to the issues raised by the parties as to act otherwise might well result in denial to one or the other of the parties of the right to fair hearing. See Metalimpex v. A. G. Leventis and Co. Ltd (1976) 2 S.C. 91; Kalio v. Kalio (1975) 2 S.C. 15; George v. Dominion Flour Mills Ltd. (1963) 1 S.C.N.J. 242; (1963) 1 SCNLR 117; Oniah v. Onyia (1989) 1 NWLR (Pt.99) 514; Alhaji Ogunlowo v. Prince Ogundare (1993) 7 NWLR (Pt.307) 610 at 624. In the same vein, an appellate court can only hear and decide on issues properly raised from the grounds of appeal filed before it. See too Management Enterprises v. Otusanya (1987) 2 NWLR (Pt.55) 179; Momodu v. Momoh (1991) 1 NWLR (Pt.169) 608 at 620-621. There can be no doubt that the court below was in clear error to have raised the issue covered by the question it posed for itself and to have resolved the appeal on that basis.

In the second place, it would seem to me, again with respect, that the Court of Appeal was in grave error and misdirected itself in its consideration of the pleadings filed in the cause. This is because some of the paragraphs of the pleadings already set out earlier on in this judgment, particularly paragraph 10 of the statement of claim clearly disclosed that the appellant specifically pleaded the moat as the boundary of his village land. There is also the appellant's survey plan, Exhibit A. The said plan was specifically pleaded in the appellant's statement of claim and showed the moat in issues as the boundary between the land of the two villages. Such survey plan which was specifically pleaded in the plaintiff/appellant's statement of claim cannot be seriously argued as not forming part of the appellant's pleadings. The position would of course be different if the appellant's survey plan was itself not pleaded, in which case, it would not have been open to the court to act on it.

In my view, the moat in issue was sufficiently pleaded as forming the boundary between the land of both villages. Both parties recognised and canvassed this issue in the two courts below and I must, with respect, dismiss the view of the Court of Appeal that the moat was neither pleaded in the appellant's pleadings nor was it an issue before the court as totally

incorrect and misconceived.

Finally, on the first issue, it is beyond argument that the evaluation of evidence and the ascription of probative value to such evidence are the primary functions of the court of trial which saw, heard and duly assessed the witnesses. Where such a court of trial has justifiably evaluated the evidence, it is not the business of the Court of Appeal to substitute its own views for those of the trial court. See *Akinloye and Another v. Eyiola and Others* (1968) NMLR 92 at 95; *Enang v. Adu* (1981) 11 -12 S.C. 25 at 39; *Woluchem v. Gudi* (1981) 5 S.C. 291 at 320. What the Court of Appeal ought to do is to ascertain whether or not there is evidence upon which the trial court acted. Once there is such evidence, the appellate court must not intervene even if such appellate court felt that if the facts were before it, it would not have come to the same decision as the trial court. See *Akpagbue v. Ogu* (1976) 6 S.C. 63; *Odofin v. Ayoola* (1984) 11 S.C. 72; *Amadi v. Nwosu* (1992) 5 NWLR (Pt.241) 273 at 280; *Ogundulu and Others v. Philips and Others* (1973) NMLR 267 etc. An appellate court may only interfere with the findings of fact of a trial court under circumstances such as where the trial court did not properly evaluate the evidence or make a proper use of the opportunity of seeing or hearing the witnesses at the trial or where it has drawn wrong conclusions from accepted evidence or where the finding of the trial court is shown to be wrong or perverse in that it is not supported by evidence before the court *Ojo v. Governor, Oyo State* (1989) 1 NWLR (Pt.95) 1; *Eholor v. Osayande* (1992) 6 NWLR (Pt.249) 524 at 548 etc.

In the present case no acceptable circumstances have been established to warrant any interference by the Court of Appeal with the finding of fact of the learned trial Judge to the effect that the moat is the boundary between the parties. In the circumstance and in view of all my observations above, issue number one must be answered in the negative.

The second issue poses the question whether the Court of Appeal was right in imposing on the appellant the burden of establishing not only the disputed boundary of the land but all the boundaries of the entire land of the plaintiff's village including the areas not in dispute. In this regard, the trial court distinctly resolved the issue of the boundary between the two parties as constituting the moat claimed by the appellant and indicated on the plan, Exhibit A. It is clear from the said Exhibit A to which the trial court tied its findings and judgment that Udomi village land lies east of this established boundary as against Ujabhole village land which is situate west thereof. It is equally clear that the land in dispute is more particularly delineated on the said Exhibit A and is therein verged pink and situate east of the said boundary. Exhibit A was properly proved and received in evidence

before the trial court and no issue as to its accuracy was either raised, suggested or established by the respondents.

No doubt, the law is well settled by a long string of authorities that the onus of proof lies on the plaintiff who seeks a declaration of title to land to establish with certainty and precision the area of land to which his claim relates. See Akinola Baruwa v. Ogunisola (1938) 4 WACA 159; Ezeokeke v. Umunocha Uga and others (1962) SCNLR 199; (1962) 1 All NLR 482; Agbonifo v. Aiwereobo (1988) 1 NWLR (Pt.70) 325; Olusanmi v. Oshasona (1992) 6 NWLR (Pt.245) 22 at 36; Ate Kwadzo v. Robert Adjei 10 WACA 374; Imah v. Okogbe (1993) 9 NWLR (Pt.316) 159 etc. Where, however, the land in dispute is so clear that it leaves neither the defendant nor the court in any doubt as to the specific area claimed in the sense that from the plaintiff's description thereof, a surveyor can produce a plan showing accurately the land in dispute, the plaintiff will be deemed to have discharged the onus on him to prove the specific area he claims. See Ate Kwadzo v. Robert Adjei supra; Ezeudu v. Obiagwu (1986) 2 NWLR (Pt.21) 208 at 220; Rowland Omoregie and others v. Oyiamwonyi Idugiemanye and others (1985) NWLR (Pt.5) 41 at 60 etc. So, too, where the land in dispute is certain and clear and there is no difficulty whatever in identifying its precise extent and boundaries, a declaration of title may be made even without it being based on or tied to a survey plan. See Sokpui v. Agbozo 13 WACA 249; Etiko v. Dikibo (1976) 6 S.C. 97.

In the present case, it is established that one of the main issues in contention between the parties is boundary dispute. The land in dispute is clearly and more particularly delineated and verged pink on the appellant's survey plan, Exhibit A. Indeed, the respondents surveyor D.W.1 confirmed that the parcels of land verged pink on the plans, Exhibits A and E, which represent the land in dispute are exactly the same land. The identity of the land in dispute was therefore not in doubt and did not constitute an issue for trial between the parties. The learned trial Judge so found when he stated as follows -

"It is therefore certain that the identity of the land in dispute is known to the parties in this action. The plaintiff gave evidence of the features and boundaries man (sic) and communities on the land in dispute. The submission of the learned counsel for the defence that the identity of the land in dispute is uncertain or has not been proved with particularity is made weightless by the evidence of the defendants and their witnesses to the effect that they know the land in dispute and that the land in dispute in Exhibits A and E are the same."

Issue on the question of ownership was joined by both parties only in respect of the land in dispute verged pink on the plan Exhibit A and not in respect of the entire Udomi land. Besides, the land in dispute is situate on the plaintiff's own side of the boundary between the parties as found by the trial court. Additionally the declaration as to the appellant's entitlement to the grant of statutory right of occupancy to the said land was expressly tied to the area in dispute verged pink on the appellant's survey plan, Exhibit A. In these circumstances, I think, with respect, that the Court of Appeal was in error to impose on the appellant the additional burden of proving title to the entire Udomi Village land on which issue was not joined. In my view, the trial court was quite right to enter judgment in favour of the appellant in respect of the area in dispute verged pink on the survey plan, Exhibit A. Accordingly, issue number two must be answered in the negative.

The next issue is whether the Court of Appeal was right in holding that the respondents acts of possession on parts of the land in dispute defeated the appellant's claim to title to the land in issue. The Court of Appeal had opined that having regard to the respondent's acts of possession on parts of the land in dispute, it was inclined to hold that the learned trial Judge was in error to have found for the appellant as claimed. I think it ought to be stressed that it is not in every claim of declaration of title to land that a claimant is in duty bound to establish exclusive possession thereof. Five different ways have been laid down by which a claimant may establish proof of title to a piece or parcel of land. See *Idundun v. Okumagba* (1976) 9-10 S.C 227 at 246. It is not now open to argument that a claimant may prove his title to a piece or parcel of land by satisfactory traditional history or evidence alone and he needs not, in this regard, supplement this with any evidence of exclusive possession. See too *Atanda v. Ajani* (1989) 3 NWLR (Pt.111) 511; *Balogun v. Akanji* (1988) 1 N.W.L.R. (Pt.70) 301 etc. In the latter case, Oputa J.S.C succinctly put the matter as follows -

"A careful consideration of the authorities and decided cases amply shows that there is no onus on a plaintiff who claims title by Traditional Evidence and who successfully establishes his title by such evidence to prove further acts of ownership numerous and positive enough to lead to the inference that he is exclusive owner. When a plaintiff has proved his title directly by Traditional Evidence, there will be no need again for an inference to establish that which had been already directly proved. Acts of ownership become material only where the traditional evidence is inconclusive. In the case on appeal where trial court held that the traditional evidence led was conclusive there was no need whatsoever to require further proof. That will be increasing unnecessarily the burden of proof on the

plaintiffs."

Accordingly, where a trial court has properly evaluated and accepted the traditional evidence of a plaintiff in a declaration of title to land action, this will be enough to sustain the claim. It will not be necessary in such circumstance for the court to look further for any evidence of acts of ownership or possession, numerous and positive enough to lead to the inference that the plaintiff is the exclusive owner of such land before the declaration is granted. Acts of ownership and possession by the plaintiff in respect of such a claim founded on traditional history only become material where the traditional evidence proffered by the parties is inconclusive or conflicting and it therefore becomes necessary to test such traditional histories adduced by reference to recent facts or acts of ownership and possession established by evidence. See *Kojo II v. Bonsie* (1957) 1 WLR 1223 at 1227; *Adisa v. Saibu* (1977) 2 S.C 98 at 110; *Akhiobare v. Omoregie* (1976) 12 S.C. 11 at 27; *Idundun v. Daniel Okumagba*, *supra* etc

The Court of Appeal was however of the view that from the evidence and the pleadings, the parties were relying upon conflicting traditional histories and that the learned trial Judge should have adopted the approach laid down in the case of *Kojo II v. Bonsie*, *supra*. With the greatest respect, I cannot accept that the case of the parties from the pleadings and the evidence before the court was really one of conflicting traditional histories. No doubt, the appellant, from the pleadings claimed that his ancestor, Oghaloo founded Udomi village including the land in dispute by first deforestation thereof and that by devolution, he is now the present owner and successor of his said great grand father to the land in dispute. The respondents, for their own part, claimed that the land in dispute formed part of their Ujabhole village. They contended that it was one Ogholo, the ancestor of the 3rd and 7th respondents who first deforested the entire Ujabhole village land which included the land in dispute and that Oghaloo is their first customary tenant on the land in dispute.

A close examination of the pleadings already set out above discloses it is common ground -

- (1) that under Ishan customary law, virgin land is acquired by first deforestation by a founder;
- (2) that upon the death of such founder, his successor, on performing his burial ceremony, acquires by inheritance the deceased's property including his land;
- (3) that Uwessan is made up of 8 named component villages each with its own land demarcated and that no one single village throughout their history has ever been the tenant of the other;

(4) that Oghaloo, the great grant father of the plaintiff was the founder of Udomi village in Uwessan and

(5) that Udomi had never been tenant of any of the villages in Uwessan.

The appellant, therefore, having pleaded that his ancestor founded Udomi land or village by first deforestation and that he is now the owner by inheritance thereof, the respondents admitted these facts but added in paragraph 23 of their Statement of Defence that it was their ancestor, Ominogun who gave part of their land to Oghaloo to settle on. I agree entirely with the view of the trial court that the respondents, having unequivocally admitted that the appellant's ancestor founded Udomi by deforestation, it is difficult to comprehend how such a founder can now be referred to as a tenant on the land first acquired or founded by himself.

Further to the above admissions of the respondents in their pleadings in support of the appellant's traditional evidence, there is also the evidence of their witnesses, particularly D.W.2 who testified as follows - *"Ujabhole was the first of the eight villages to be founded in Uwessan. Ujabhole was founded by Ogholo. The last of the eight villages to be founded in Uwessan is Udomi and it was founded by Oghaloo."*

The above testimony of D.W.2 who was not treated as a hostile witness fully supported the traditional evidence proffered by the appellant at the trial. In my view, the traditional evidence led by the appellant at the trial was substantially corroborated by the respondents and was rightly accepted by the learned trial Judge. I also agree that by the acceptance of this traditional evidence, the learned trial Judge rightly resolved the issue of title to the land in dispute in favour of the appellant. With profound respect, I cannot accept the finding of the court below that the learned trial Judge ought not to have entered judgment for the appellant in the absence of proof by the said appellant of his exclusive possession of the land in dispute. This is because the appellant in proof of his title pleaded and relied on traditional evidence and not acts of ownership and possession, numerous and positive enough to lead to the inference that he is the exclusive owner of the land.

On the respondents claim that it was their ancestor Ominogun who gave part of their land to Oghaloo to settle on, the learned trial Judge gave the matter a close examination and held thus-

"That Oghaloo and not Ogholo founded Udomi village and that Oghaloo founded Udomi village by deforestation according to Ishan native laws and custom. I do not believe that Ominogun gave the land on which Oghaloo founded Udomi village to Oghaloo."

On the issue of who put the 1st and 2nd respondents' ancestors

on a part of the land in dispute, the learned trial Judge had this to say –

“The substance of the plaintiff’s evidence is that his ancestors as well as himself permitted Oke Ogege to live in Oke Ogege land within the Udomi land now in dispute. I believe him and disbelieve that Oke Ogege was put on the land in dispute by Ominogun or any of the Ujabhole people.”

B On the issue of possession generally, the learned trial Judge came to a definite conclusion as follows:-

“I believe the plaintiff and his witnesses when they testified that the 1st and 2nd defendants entered the plaintiff’s farms on Udomi land and destroyed his crops.”

C The Court of Appeal could not therefore be right in its assertion that the learned trial Judge did not decide the question of possession or that the plaintiff failed to give evidence of possession in respect of the land in dispute which is part and parcel of Udomi village.

D The Court of Appeal was unable to fault the above findings of fact of the trial court. In my view, the court below, was with respect, in gross error to have embarked on a re-evaluation exercise of the evidence on record and substituting its views for those of the trial court and thereby interfered with the said findings of the trial court without any satisfactory reason for so doing. See *Lawal v. Dawodu* (1972) 8-9 S.C. 83 at 114-115; *Balogun v. Agboola* (1974) 10 S.C. 111 at 118-119; *Okpiri v. Jonah* (1961) All NLR 102 at 104-105; (1961) 1 SCNLR 174; *Ebbah v. Ogodo* (1984) 4 S.C. 84 etc. The plaintiff having established his title to the land in dispute by traditional evidence which was clearly conclusive and accepted by the trial court, the court below was in my opinion wrong in holding that the respondents alleged acts of possession defeated the appellant’s title to the land in dispute. In the circumstance, issue number 3 must be answered in the negative.

F The fourth and last issue for determination is whether the Court of Appeal had justifiable legal basis for reversing the findings of fact made by the learned trial Judge on the traditional evidence adduced before him. In this regard, it is quite clear that the Court of Appeal correctly stated the principle of law which guides an appellate court in reversing the finding of fact of a trial court. Said the Court of Appeal-

G *“The appraisal of evidence being principally the function of the trial Judge and not that of the appeal court, therefore, an appeal court should not upset such findings unless and except such findings are clearly wrong and perverse.”*

H In other words, an appellate court will not ordinarily interfere with the findings of fact made by a trial court except in certain circumstances such as where the trial court did not make a proper use of the opportunity of seeing

and hearing the witnesses at the trial or where it has drawn wrong conclusions from accepted credible evidence or has taken an erroneous view of the evidence adduced before it or its findings of fact are perverse in the sense that they do not flow from the evidence accepted by it. See Okpiri v. Jonah (1961) All NLR 102 at 104-105; (1961) 1 SCNLR 174; Benmax v. Austin Motor Co. Ltd. (1955) A.C. 370; Maja v. Stocco (1968) 1 All NLR 141 at 149; Woluchem v. Gudi (1981) 5 S.C. 291 at 295- 296 and 326-329 etc. B

After an exhaustive review of the evidence and a meticulous examination of the pleadings, the learned trial Judge in very clear terms held as follows -

"By paragraph 10 of the statement of claim, paragraph 4 the statement of defence, the evidence of the plaintiff and the 2nd D.W., Oghalua founded Udomi village. The evidence of the 2nd D.W. having supported that of the plaintiff, this court is entitled to hold that Oghalua and not Ogholo founded Udomi village by deforestation according to Ishan native laws and custom. I do not believe that Ominogun gave the land on which Oghalua founded Udomi village to Oghalua." C D

The Court of Appeal, however, reversed the said findings holding as follows:-

"Bearing in mind the warning in those cases that the Court of Appeal should refrain from uncalled for adventure with regard to the findings of a trial court, I do however consider that this is a proper case in which an appeal court ought to intervene in respect of the findings of the trial court. In this connection, the conclusion of the learned trial Judge with regard to the evidence of traditional history is clearly wrong as he based his conclusion upon the evidence of 2nd D.W. which is totally at variance with that of the respondent." E F

It is clear that the only reason given by the court below for interfering with the said findings of fact of the learned trial Judge was that they were "clearly wrong" as the trial court based its conclusion upon the evidence of D.W.2 which was "totally at variance" with the case of the appellant. G

With very great respect to the Court of Appeal, the sole reason advanced for reversing the said findings of the trial court seems to me totally untenable and misconceived as the evidence of D.W.2, apart from that of the appellant and the respondents admissions in the pleadings already referred to, fully justified the findings of the learned trial Judge. D.W.2, in particular, had in his evidence testified as follows - H

"Ujabhole was founded by Ogholo. The last of the eight villages to be founded in Uwessan is Udomi and it was founded by Oghalua."

In the face of the above evidence, it seems to me beyond argument that the learned trial Judge was right when he held that the evidence

of D.W.2 supported the appellant's case to the effect that Oghalua founded Udomi. It cannot also be disputed that the appellant is entitled in law to rely on the evidence of the defence which supported his case. See Nwagbogu v. Chief Onoli Ibeziako (1972) 1 All NLR 200; Akinola v. Oluwo; (1962) 1 SCNLR 352; (1962) 1 All NLR 224 at 227; Oduaran v. Asaroh (1972) 1 All NLR (Pt.2) 137 etc. Accordingly, there was no basis for interfering with the findings and judgment of the trial court by the court below. Issue number four must again be resolved in favour of the appellant.

In the final result, this appeal accordingly succeeds and it is hereby allowed. The judgment and orders of the court below are hereby set aside. The decision of the trial court granting the appellant's claims in respect of statutory right of occupancy to the piece or parcel of land verged pink in Exhibit A, damages for trespass and perpetual injunction is hereby restored together with the order for costs therein made. The appellant is entitled to the costs of this appeal in the sum of N1000.00 in this court and N700.00 in the court below.

WALI JSC

I have had the privilege of reading in draft, the lead judgment of my learned brother Iguh, J.S.C. in this appeal. I am in complete agreement with the reasoning and conclusion for allowing the appeal.

For those reasons which I hereby adopt as mine, I also allow this appeal, set aside the decision of the Court of Appeal and in place thereof, restore the judgment of the trial court. The appellant is awarded costs of N1,000.00 in this court and N700.00 in the court below.

KUTIGI JSC

I read in advance the judgment of my learned brother Iguh, J.S.C. just delivered. He has amply covered all the issues canvassed before us and I agree with him as submitted by Mr. Okpoko SAN that the reasons given by the Court of Appeal for reversing the findings and judgment of the trial High Court were clearly unjustified. I will therefore also allow the appeal, set aside the judgment and orders of the Court of Appeal and restore the judgment and orders of the trial High Court. I endorse the order for costs.

OGUNDARE JSC

I have read in draft, the judgment of my learned brother Iguh, J.S.C. just delivered. I agree with the reasoning and conclusion reached by him in the said judgment. I have nothing to add. I, too, allow this appeal, set aside the judgment of the court below and restore the judgment of the trial High Court in favour of the plaintiff on his claims.

I award N1,000.00 costs of this appeal in favour of the plaintiff/appellant.

OGWUEGBU JSC

I have read the judgment of my learned brother Iguh, J.S.C. in this appeal. I entirely agree and for the reasons stated therein that this appeal be allowed.

The learned trial Judge carefully appraised the evidence before he came to the conclusion that the moat and not the foot path is the boundary between Udomi and Ujabhola and that Oghalao and not Ogholo founded Udomi village by deforestation according to Ishan native law and custom.

The court below reversed the above crucial findings of fact made by the learned trial Judge which are based on the pleadings, the evidence and the survey plans tendered by the parties (Exhibits "A" and "E") in this case, the parties joined issue on the land in dispute which is verged pink in their respective survey plans and not on the entire Udomi land (the italics is for emphasis)

The court below concluded in its judgment that the plaintiff is laying claim to the entire Udomi farm land or Udomi village and to succeed, he has the onus of establishing the claim in respect of the whole area.

It is a misdirection on the part of the court below to impose on the plaintiff the burden of proving a claim to the entire Udomi land when only a defined portion of it is in dispute. In this case the plaintiff needed to prove only that boundary which is on the side in dispute. The identity and the area in dispute in the two survey plans are exactly the same and well known to the parties. See *Omoregie v. Idugiemwanye* (1985) 2 NWLR (Pt.5) 41 at 60 and *Okorie & Ors. v. Udom & Ors.* (1960) 5 F.S.C. 162; (1960) SCNLR 326.

The court below had no legal basis for interfering with the clear findings of fact made by the learned trial Judge.

For these and the more detailed reasons set down in the lead judgment of my learned brother Iguh, J.S.C. I allow the appeal. I adopt the consequential orders made in the lead judgment.