

SUPREME COURT OF NIGERIA
TUESDAY 28TH MAY, 1996. SC. 216/1990
CORAM:- M. L. UWAI, M. E. OGUNDARE,
E. O. OGWUEGBU, S. U. ONU, Y. O. ADIO, JJSC

N. O. OGUNBIYI APPELLANT

AND
ABDULKADIR ISHOLA RESPONDENT

APPEALS - *Grounds of appeal - Where the issue upon which a ground is predicated- Was never part of the lower court's decision- Whether that ground is proper.*

APPEALS - *Grounds of appeal - Where a ground deals with an issue that was not raised in the lower courts - Whether that ground is competent.*

APPEALS - *Consideration of the grounds of appeal - By the Court of Appeal in affirming trial court's decision - Whether inadequate - As to warrant alteration of the concurrent findings.*

LAND LAW - *Trespass - Where appellant sued for damages for trespass - He should aver and prove physical or constructive possession - In order to succeed.*

FACTS

The plaintiff/appellant filed an action against the defendant/respondent claiming damages for trespass and injunction in respect of the and in dispute, before the Kwara State High Court. The appellant claimed to have bought the land/house from one Mrs. Bolaji Husu who issued him with a receipt, Exhibit 1. Apart from Exhibit 1, the appellant had no conveyance or any other agreement to support the purchase. His witnesses were not able to say how and when he came to be owner of the land. No reason was given for not calling appellant's vendor, Mrs. Husu, who was still alive.

The respondent denied the appellant's claim and gave evidence of how the land became his own, tracing his title to the original owner of the land. The trial Court dismissed the appellant's case at the close of the trial. Appellant's appeal to the Court of Appeal was also dismissed. Being dissatisfied, he has further appealed to the Supreme Court raising 4 issues.

ISSUES FOR DETERMINATION

1. Did grounds 2, 3, 4. 5 and 6 canvassed at the Court of Appeal

raise substantial issues of law or were they omnibus in nature.

2. Did the lumping of the 5 grounds of appeal under one fell swoop occasion substantial injustice to the appellant's appeal to the Court of Appeal. Etc., see p. 942

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

Ground that is not predicated upon lower court's decision

1. A careful perusal of the judgment of the court below from pages 126 - 131 of the Record discloses that the first ground of appeal set out above is not a proper ground of appeal in that the issue upon which it is predicated was never part of the decision of the court below. Thus, what learned counsel for the respondent, rightly in my opinion, refers to as "in essence being omnibus," is at best what could be described as obiter observation on the method by which the appellant formulated his ground of appeal before that court. Ground 1 therefore constitutes neither a decision nor a reason for final decision that provides the launching pad for the attack contained in the ground. (p. 946 G)

Ground that deals with an issue not raised in the lower court

2. In respect of ground 2 the conclusion one can but arrive at is that, it too, is incompetent in as much as this court would not entertain a ground of appeal such as it is being an issue that was not raised in the lower courts. The appellant in his address at the trial court as well as both in his grounds of appeal and the brief before the court below vide pages 84, 99-103, and 109-110 respectively of the Record never raised the issue of the respondent's case supporting the appellant's at the trial court. Thus, the point cannot be raised in this court for the first time as no leave of this court has been obtained. It is now firmly settled through, many decided cases that no point that has not been taken and argued in the court below will be allowed in the G Supreme Court. (p. 947 F)

Consideration of the grounds of appeal

3. I am of the view in the instant case, that the court below gave adequate consideration to all the grounds of appeal filed before it. The court below having therefore considered the case and found no merit in all the grounds of appeal as filed, rightly, in my judgment, dismissed the appeal. The concurrent findings of fact by the two lower courts ought not to be lightly disturbed unless the appellant can show special circumstances, either that there was a miscarriage of justice or a serious violation of some principles

of law or procedure i.e. error in substantive or procedural law. (p. 948 B)

Where appellant sued for damages for trespass

4. The appellant having sued for damages for trespass, the law requires him to aver and prove that he is either in physical or constructive possession and that the defendant infringed that possessory right. The appellant having failed to show title by any of the five methods approved by the Supreme court in *Idundun v. Okumaeba* (1976) 10 S.C. 227 at 246-250, should not expect the trial court and the court below to have given him judgment. (p. 949 G)

NOTABLE POINT OF INTEREST

OGUNDARE JSC

1. Whether defence evidence supports appellant's claim

On issues 3 and 4, the Appellant has failed to indicate the evidence for the defence which, he claims, supports his case. I have gone through the case presented by the defendant and I can find no evidence led for defence that could be said to be in favour of Plaintiff's case. The Plaintiff claims he bought the property in dispute from one Mrs. Bolaji Husu but pleaded and led no evidence as to how his vendor came to own the land in dispute. Thus he failed to trace his root of title to the original owner of the land. (p. 951 E)

REPRESENTATION

Oluwole M. O. Esq. for the appellant

Lambo J. Akanbi Esq. for the respondent

CASES REFERRED TO

Osinupebi v. Saibu (1982)7 S.C. 104

N.I.P.C. Ltd v. Thompson Organisation Ltd. (1969)1 All N.L.R. 138

Ejiofodomi v. Okonkwo (1982)11 S.C. 74 at 248

Dweye v. Iyomahan (1983)8 S.C. 76

Are v. Ipaye (1990)2 N.W.L.R. (Part 132)298 at 317

Enang v. Adu (1981) 11-12 S.C. 25 at 42

Ojomu v. Ajao (1983)9 S.C. 22 at 53

Adeshoye v. Shiwoniku 14 W.A.C.A. 347

Bamgboye v. Olusoga (1996) 4 KLR 655

STATUTE REFERRED TO

Evidence Act ss. 135(1) & (2), 136(1), 137(1).

LEAD JUDGMENT BY ONU JSC

The Kwara State High Court presided over by Fabiyi, J., on 11th July, 1986 dismissed the appellant's claim against the respondent. The appellant, then plaintiff had in his writ of summons, later elaborated in paragraph 10 of his amended statement of claim, sought the following reliefs against the respondent, then defendant as follows:-

- "(i) N1,600 special damages and N3,400 general damages for trespass.*
- (ii) An order of this honourable court mandating the defendant to remove the building the defendant is setting up on the plaintiffs said land at 53 Ibrahim Taiwo Road, Ilorin; and*
- (iii) A perpetual injunction prohibiting the defendant, his servants and/or agents from committing further acts of trespass on the plaintiff's aforesaid land."*

After pleadings were ordered, filed and exchanged, the case went to trial. Its dismissal in a well considered judgment by the learned trial Judge was followed by an appeal by the appellant, who was aggrieved to the Court of Appeal sitting in Kaduna (Coram: Aikawa, J.C.A., of blessed memory; Ogundare and Akpabio, JJ.C.A.) where he also lost. The appellant has now further appealed to this Court against the concurrent findings of fact by the two courts below premised on two grounds of appeal.

Briefs of argument were eventually exchanged by the parties in accordance with the rules of court. The appellant in his brief submitted four issues as arising for determination namely:

1. Did grounds 2, 3, 4, 5 and 6 canvassed at the Court of Appeal raise substantial issues of law or were they omnibus in nature.
2. Did the lumping of the 5 grounds of appeal under one fell swoop occasion substantial injustice to the appellant's appeal to the Court of Appeal.
3. Could the trial High Court validly ignore the evidence of the defendant's witnesses which supported the plaintiff/appellant's case.
4. Was it right of the Court of Appeal to have ignored the said supporting evidence and confirm the High Court decision.

The respondent on the other hand, submitted the following two issues for determination:

1. Whether the 2 grounds of appeal before this court are competent in law and practice.
2. Whether on the totality of the whole case, the appellant has proved his case but denied judgment.

The brief facts of this case are relevant for a necessary insight

thereto. They are that appellant bought a land/house from one Mrs. Bolaji Husu at No. 53. Oyo Bye Pass (now Taiwo Road) Ilorin in 1963 and that the said Mrs. Bolaji Husu issued him with a receipt title "Iwe Eri" and later tendered in the trial court as Exhibit 1. Apart from Exhibit 1, the appellant had no conveyance or any other agreement to witness the sale. That notwithstanding, he called witnesses, none of whom was able to say how and when he came to be owner of the land/house. For instance, the appellant's vendor, Mrs. Bolaji Husu, though said to be alive at the time the court took evidence from witnesses was not herself called and no reason whatsoever was given for the failure. B

The respondent on the other hand pleaded and gave evidence that No. 53 Taiwo Road originally belonged to his family (Bijoro family) which derived their title from Balogun Fulani of Ilorin. That during the Second World War in 1940, the land was let to Ibos who were mending shoes for soldiers. That the Ibos later put up four bedrooms mud house on the land, the roof of which were removed when they left before the end of the War. That the land was apportioned to him wherein he was farming before he left for Ghana after the War. In 1970, when he returned from Ghana, he met the land intact as he left it. At the trial, he called boundarymen who testified to his title. C D

At the hearing of this appeal on 4th March, 1996 learned counsel for both sides adopted their briefs of argument and urged upon us to allow and dismiss the appeal respectively. E

Before embarking on the consideration of the issues, I wish first of all to touch on three matters of vital importance and on which this Court has harped and admonished that they ought no longer to be repeatedly done. The first has to do with proliferation of issues. In a case such as the one in hand where only two grounds were filed, the formulation of more issues than there are grounds without some strong reason ought to be discouraged. Thus, this court has decided in *Attorney General of Bendel State v. Aideyan* (1989) 4 NWLR (Pt. 118) 646; *Buraimoh v. Bamgbose* (1989) 3 NWLR (Pt 109) 352 and *Utih v. Onoyivwe* (1991) 1 NWLR (Pt. 166) 166 at 214 and several others, that it is wrong for counsel to formulate issues for determination in excess of the grounds of appeal filed and that except in special cases where the grounds of appeal so dictate, it is undesirable to formulate more than an issue in respect of each ground of appeal. Secondly, it has been decided by this court in *Chinweze v. Masi* (1989) 1 NWLR (Pt. 97) 254 that in framing issues for determination the proper procedure is to argue issues and show how they relate to the grounds. Of the four issues distilled from the two grounds of appeal in the instant case, F G H

issue 3 stands out poignantly as the most unrelated to any of the grounds of appeal. It ought not then to be allowed to stand for being incompetent. The matter does not end there. Again, in relation to issue 3, the grouse therein attacks the judgment of the High Court to wit: whether that court could validly ignore the evidence of the respondent's witnesses which supported appellant's case. As the Constitution of the Federal Republic of Nigeria, 1979 does not make statutory provisions for appeals to lie directly from the High Court to the Supreme Court, this issue is incompetent. See *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt.67) 718; *Western Steel Works Ltd. v. Iron & Steel Workers Union of Nigeria* (1987) 1 NWLR (Pt.49) 284; *Osinupei v. Saibu* (1982) 7 SC 104 and *Idiaka v. Erisi* (1988) 2 NWLR (Pt. 78) 563, The issue is accordingly struck out.

In my consideration of this appeal I intend to stick to the appellant's three remaining issues even though had they been better formulated two issues only, in my view, would have been enough to dispose of it.

Now to the argument of the issues. Arguing issue No. 1, learned counsel for the appellant submitted that ground 2 raised substantial issues of law which deserved a serious consideration. The holding, he stressed, is contrary to the pleadings, the learned trial Judge having ignored paragraphs 1, 2, 6, 7 and 9 of the amended statement of claim at pages 40-41 of the record, it is then contended that it being now settled law that a decision contrary to the pleadings cannot stand, an appellate court is under a duty to set same aside. Likewise, it is maintained, whether the term "land" includes a building is a matter of law which ought to have been considered. As those issues are in no way omnibus, it argued, the decision of the court below has occasioned a miscarriage of justice.

In relation to Ground 3, it is contended that the trial court at page 100 of the record wrongly raised the issue of receipts contrary to the pleadings and that as long as the appellant's dilapidated house existed on the land, the appellant had effective possession.

Ground 4, it is submitted, also raised substantial issues relating to the appellant's pleading and the effect of Exhibit I evidencing the appellant's purchase from Mrs. Bolaji Husu. Those issues are substantial issues of law and they deserved to be considered, moreso that they are not omnibus in anyway.

In relation to ground 5, it is submitted that it raised an issue of settled law which deserved to be sustained and the court below ought to have set aside the trial High Court's decision on that score.

Ground 6, it is contended, raised the point that the decision of the High Court was contrary to sacrosanct and inviolate rules of pleadings.

The whole purpose of grounds of appeal, it is further argued, is to give notice to the Respondent of the errors complained of. See *N.I.P.C. Ltd. v. Thompson Organisation Ltd. & Ors.* (1969) 1 All NLR 138. In other words, grounds of appeal must address the ratio decidendi, the reason or principle of the decision at the court below. It is therefore trite law, it is maintained, that a ground of appeal of a party will be proper in law only when such ground is on the finding of the court; not just any statement (obiter) in a judgment; and not just when such statement does not form part of the ratio decidendi of the court and appeal on same. B

For purposes of clarity and emphasis, I deem it pertinent to set out hereunder the six grounds of appeal (bereft of their particulars) which are alleged to have been canvassed in the court below as omnibus as follows:- C

1. The judgment is against the weight of evidence.

2. The learned trial judge erred and misdirected himself in law and in fact when he said:

"For all intents and purposes at best Exhibit 1 will only give the Plaintiff an equitable title over plot no, 53 Ibrahim Taiwo Road, Ilorin if at all it was fact that the said land was sold by Mrs. Husu to the Plaintiff. No plot number was reflected in Exhibit 1. D

Refer to Elegbede v. Savage and others (1951) 20 NLR page 9. Griffin v. Talabi (sic) 12 WACA 371 Judgment delivered on 18/11/48. The Plaintiff did not aver in his statement of claim that he was in possession of the said plot. A close look at Exhibit 1 shows that the transaction related to land and not house. This was accepted by the Plaintiff under cross-examination. The same Plaintiff used land and house interchangeably in his evidence in chief. The Plaintiff bought land and not house if it was a fact that he had the said transaction with Mrs. Husu. To my mind if it was house that Mrs. Bolaji Husu sold to the Plaintiff it would have been as stated expressly." E F

3. The learned trial Judge erred and misdirected himself in law and on the facts when he said:

"It is doubtful whether the plaintiff actually had his Ibo tenants between 1963 - 66. If it was a fact that he had these Ibo tenants, receipts for 15s. (N1.50) rents paid should have been tendered. As from 1966 when the war broke out to 1983, the plaintiff was clearly not in effective possession. I have said earlier that exh. 1 does not convey any legal title to the plaintiff. Refer to Nureni Carpenter and another v. Bello (1970) 2 All NLR page 138 at 144. G H

The possession of the land by the plaintiff must be a present possessory one. See John Will v. J.A.G. Will 5 NLR 76. Plaintiffs possession must be an effective one. See Nureni Carpenter's Case supra at page 145. The

plaintiff was clearly not a present possessory title by his conduct between 1966-83? Even the so called dilapidated house was demolished for about 3 months according to the defendant before the plaintiff knew about it."

4. The learned trial Judge erred and misdirected himself in fact and in law when he said:

B (3) "Should my view above be wrong and the plaintiff is found to have a possessory title, although not pleaded by him, it has been stated that long possession can only be used to defeat a claim for declaration of title and damages for trespass against the true owners. Refer to *Mogaji v. Cadbury (Nig.) Ltd.* (1985) 2 NWLR (Pt. 7) 393 at 396. The defendant was conferred with title by Balogun Fulani. Long possession does not confer title on a party where another traces his title to the true owners unless such possession is of such a nature as to oust the title of the true owner by acquiescence. Refer to *Mogaji's* case *supra* at page 395. See also the case of *Thomas v. Holder* (1946) 12 WACA 78 and *Da Costa v. Ikomi* (1968) 1 All NLR 394. The defendant did not acquiesce in any respect. As said earlier, possession of the plaintiff is in doubt. How much more if we talk of a present possessory title and an effective one."

5. The learned trial Judge erred and misdirected himself in law when he said:

E 4. "The plaintiff who gained his title from Mrs. Husu failed to show how Mrs. Husu got vested with title. Mrs. Husu was not called as a witness. J. O. Daniel who introduced the plaintiff to Mrs. Husu was not called as a witness. Since there was no conveyance, the plaintiff was duty bound to call them. Failure to call these vital witnesses was not explained out to the Court and such was fatal to the plaintiff's case"

F 6. The learned trial Judge erred and misdirected himself in law in holding:

G "In passing I should state that the plaintiff who in 1963 was a pharmacist ought to know the importance of entering into an agreement more especially on a transaction relating to land. He said he bought the land from Mrs. Husu whom he knew came from Lagos. The plaintiff should have been on his guard and allow the Ilorin Local government at least to know about the transaction."

H A careful perusal of the judgment of the court below from pages 126-131 of the Record discloses that the first ground of appeal set out above is not a proper ground of appeal in that the issue upon which it is predicated was never part of the decision of the court below. Thus what learned counsel for the respondent, rightly in my opinion refers to as "in essence being omnibus" is at best what could be described as obiter obser

vation on \the method by which the appellant formulated his ground of appeal before that court. Ground 1 therefore constitutes neither a decision nor a reason for final decision that provides the launching pad for the attack contained in the ground. Indeed, the reasons for the decision of the Court below are well set out at page 128, lines 4-14 and pages 130 and 131 of the Record. In Babalola v. The State (1989); (1989) 4 WNLR 12 B 270 SCNJ, 127; Oputa, JSC stated the principle of law succinctly at page 152 as follows:-

“An appeal presupposes the existence of some decision appealed against. In the absence of such a decision on a point there cannot possibly be an appeal against what had not been decided against a party (See Oredoyin & Ors. v. Arowolo & Ors. (1989) 4 NWLR (Pt.114) 172. Learned C Counsel for Appellants should be well advised (sic) to know that they can only urge on appeal points arising from a decision of a trial court on an issue submitted to it for determination,”

Accordingly, ground one of the appeal grounds is incompetent and ought not to have stood. See Nwadike v. Ibekwe (1987) 4 NWLR (Pt.67) D 718. See also Alhaji Dahiru Saude v. Alhaji Haliru Abdullahi (1989) SCNJ. 216 at 251; (1999) 4 NWLR (Pt. 116) 387 at 431 where Oputa, J.SC. made the following observation:-

“It is also to be observed that an appeal is usually against a ratio not normally against an obiter except in cases where the obiter is so closely E linked with the ratio as to be deemed to have radically influenced the latter. But even there, the appeal is against the ratio.”

Be it noted that where a party has not appealed against a finding of the trial court or the Court of Appeal, he cannot be heard to question that finding on appeal. See Ijale v. Leventis & Co. Ltd. (1959) SCNLR 255; F (1959) 4 FS.C 108, the essence of an appeal being to have an opportunity to have one’s suit re-examined before a higher or independent panel with a view to convincing such a panel in its favour.

In respect of ground 2 the conclusion one can but arrive at is that, it too, is incompetent in as much as this court would not entertain a ground G of appeal such as it is, being an issue that was not raised in the lower courts. The appellant in his address at the trial court as well as both in his grounds of appeal and the brief before the court below vide pages 84, 99-103, and 109 - 110 respectively of the Record, never raised the issue of the respondent’s case supporting the appellant’s at the trial court. Thus, the point cannot be raised in this court for the first time as no leave of this court H has been obtained. It is now firmly settled through many decided cases that no point that has not been taken and argued in the court below will be allowed in the Supreme Court. See Ejiofodoomi v. Okonkwo (1982) 11 SC 74 at 248;

John Dweye v. Joseph Iyomahan & 3 ors; (1983) 2 SCNLR 135; (1983) 8 SC 76 and Udza Uor v. Paul Loko (1988) 2 NWLR (Pt. 77) 430; (1985) 5 SCNJ 16 at 21-23 where Obaseki, JSC had this to say:

"In appeals to this Court an Appellant cannot as of right raise new points which were not taken before the courts or courts below without leave of this court. See Order 6 Rule 5 (1) Rules of the Supreme Court 1985. He must seek the leave of this court and satisfy this court on the facts and the law that he is entitled to the leave before this court can exercise its discretion in his favour. The paramount consideration being the interest of justice"

Thus, the cases of Kimdey v. Gov. of Gongola State & Ors. (1988) 5 SCNJ 28; (1988) 2 NWLR (Pt. 77) 445; Adeyeye v. Ajiboye & Ors. (1987) 7 SCNJ. 1 at 13; (1987) 3 NWLR (Pt. 61) 432; Niger Construction Ltd. v. Chief A. O. Okugbemi (1987) 11 - 12 SCNJ. 133; (1987) 4 NWLR (Pt.67) 787 and Chief R. B. Buraimoh v. Chief Maliki Esa & Ors. (1990) 2 NWLR (Pt. 133) 406; (1990) 4 SCNJ. 1, cited to us by the appellant in his brief, are irrelevant.

Alternatively, it is pertinent to stress that although desirable the court is not compelled in law to treat and give its decision on every ground of appeal one by one or in separate and numbered paragraphs as learned counsel for the appellant would have us do here. Indeed, the court can formulate issues suo motu where the issues formulated by the parties would not serve the interest of justice.

I am of the view in the instant case that the court below gave adequate consideration to all the grounds of appeal filed before it. For, while ground one is no doubt omnibus in that it assails the weight of evidence, ground 2 revolves on the weight or purport of Exhibit 1 tendered and admitted in evidence at the trial. The court below considered these fully at pages 127 and 130 of the Record. Grounds 3, 4, 5 and 6 extracts of which are quoted in extenso from the judgment of the court below, substantially revolve on weight of evidence as well as given full treatment at pages 128 and 131 of the Record. With regard to the issues formulated by the appellant, even though verbose, were, in my view, substantially examined by the court below. The court below having therefore considered the case and found no merit in all the grounds of appeal as filed, rightly, in my judgment, dismissed the appeal. The concurrent findings of fact by the two lower courts ought not to be lightly disturbed unless the appellant can show special circumstances, either that there was a miscarriage of justice or a serious violation of some principles of law or procedure i.e. error in substantive or procedural law. See Alhaji K.O.S. Are & Anor. v. Raji Ipaye & Ors. (1990) 2 NWLR (Pt.132) 298 at 317, Enang v. Adu (1981) 11-12 SC 25 at 42;

Lokoyi v. Olojo, (1983) 2 SCNLR 127; (1983) 8 SC 61 at 63 and Ojomu v. Ajao; (1983) 2 SCNLR 156 (1983) 9 SC 22 at 53.

The issue is accordingly resolved against the appellant.

It may be pertinent next to consider issues 2 and 4 together. The appellant's grouse put together are whether the lumping of the live grounds of appeal under one fell swoop occasioned substantial injustice to the appellant's appeal to the Court below and whether it was right of that court to have ignored the supporting evidence by confirming the High Court decision.

In answer to those issues it will suffice it to say firstly, that appellant's case was predicated on Exhibit 1, which for purposes of clarity reads:

"This is to certify that I, Mrs. Bolaji Husu who lives at Ajanaku Street sold our land at Oyo Bye Pass to N. O. Ogunbiyi for three hundred pounds (300) Mr. Ogunbiyi paid me the said sum and I accepted.

Regrettably, Exhibit 1 did not state on its face the location of the plot of land which was sold. Nor was the evidence of boundarymen called to ascertain its location. While no law compels the appellant to call Mrs. Bolaji Husu (his vendor) as witness but only requires him to call every material witness if he desires to be awarded judgment vide section 134(1) and (2) (now Sections 135 (1) and (2) and section 136(1) (now Section 137(1) of the Evidence Act) both of which provide as follows:

"135(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person,"

"137(1) In civil cases the burden of first proving the existence or nonexistence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings."

The appellant having sued for damages for trespass, the law requires him to aver and prove that he is either in physical or constructive possession and that the defendant infringed that possessory right. See Amakor v. Obiefuna (1974) 3 SC 67; Atunrase v. Sunmola (1985) 1 NWLR (Pt.1) 105; Adesnoye v. Shiwoniku (1952) 14 WACA 86; Olagbemiro v. Ajagungbade III (1990) 3 NWLR (Pt. 136) 37 at 55 and 65 and Fahunmi v. Agbe (1985) 1 NWLR (Pt. 2) 299; (1985) 3 SC 99, The appellant having failed to show title by any of the five methods approved by the Supreme Court in Idundun v. Okumagha (1976) 9-10 SC 227 at 246-250 should not

expect the trial court and the court below to have given him judgment. Besides, the appellant has not shown that these concurrent findings of fact by the two lower courts are perverse. In *Chief Adenigba Afolayan v. Oba Joshua Ogunrinde & Ors*, (1990) 1 NWLR (Pt.127) 369, Obaseki, JSC stated the law clearly at page 385 that -

"This court has said repeatedly that it will not interfere with or set aside and reverse concurrent findings of fact which have not been proved to be perverse or arrived at in violation of some principles of law or procedure."

See also *Incar (Nigeria) Ltd, v. Adegboye* (1985) 2 NWLR. (Pt. 8) 455; *Adimora v. Ajufo* (1988) 3 NWLR (Pt. 80) 1; *Atolagbe v. Shorun* (1985) 1 NWLR (Pt. 2) 360; *Nzekwu v. Nzekwu* (1989) 2 NWLR (Pt. 104) 373 at 396 and *Alade v. Alemuloke* (1988) 1 NWLR (Pt. 69) 207 at 212. The appellant, in my firm view, failed woefully to discharge the burden of proving that these decisions are perverse or arrived at in violation of some principle of law or procedure as to persuade me to interfere with those concurrent findings. I am also of the view that the court below was justified to have ignored any purported supporting evidence by confirming the decision of the trial court. Issues 2 and 4 are accordingly answered in the negative and positive respectively.

In the result, this appeal fails and it is accordingly dismissed with N1,000 costs to the respondent.

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother Onu, J.S.C. I agree that the appeal has no merit and that it should be dismissed, I accordingly hereby dismiss the appeal with N1,000,00 costs to the Respondent.

OGUNDARE JSC

I have had an advantage of a preview of the judgment of my learned brother Onu, JSC just read I agree with him that this appeal is totally lacking in merit I have no hesitation whatsoever in dismissing it.

The Appellant in his brief set out the following four issues as calling for determination in this appeal to wit:

"1. Did grounds 2, 3, 4, 5 and 6 canvassed at the Court of Appeal raise substantial issues of Law or were they omnibus in nature.

2. Did the lumping of the 5 grounds of appeal under one fall-

swoop occasion substantial injustice to the appellant's appeal to the Court of Appeal.

3. *Could the trial High Court validly ignore the evidence of the defendant's witnesses which supported the Plaintiff/Appellant's case.*

4. *Was it right of the Court of Appeal to have ignored the said supporting evidence and confirm the High Court decision."* B

I have read the grounds of appeal canvassed in the Court below. Ogundere, JCA in his lead judgment (with which the other Justices agreed) commented on the grounds as follows:

"The main issue in the appeal as formulated by the respondent is whether the plaintiff proved his case, all the grounds of appeal, in essence, being omnibus." C

It is this comment which the Appellant has attacked in issues 1 and 2 above. I think the attack is misplaced. All the grounds of appeal canvassed in the Court below did no more than question some aspects of findings and comments of the learned trial Judge. All the complaints raised in grounds (2) to (6) before that court could have equally been raised under ground (1) which is that *"the judgment is against the weight of evidence."* D The comment of the learned Justice of the Court of Appeal is apt in the circumstance.

On issues 3 and 4, the Appellant has failed to indicate the evidence for the defence which, he claims, supports his case. I have gone through the case presented by the defendant and I can find no evidence led for the defence that could be said to be in favour of Plaintiff's case. The Plaintiff claims he bought the property in dispute from one Mrs. Bolaji Husu but pleaded and led no evidence as to how his vendor came to own the land in dispute. Thus he failed to trace his root of title to the original owner of the land. The learned trial Judge made an observation in his judgment to this effect when he said:

"The Plaintiff who gained his title from Mrs. Husu failed to show how Mrs. Husu got vested with title. Mrs. Husu was not called as a witness. J. O. Daniel who introduced the plaintiff to Mrs. Husu was not called as a witness. Since there was no conveyance, the plaintiff was duty bound to call them. Failure to call these vital witnesses was not explained out to the court and such was fatal to the plaintiff's case." G

In the circumstance, it could not be said that he has established his title to the property in dispute - See *Mogaji v. Cadbury (Nig.) Ltd.* (1985) 2 NWLR (Pt. 7) 393, 431; *Elias v. Omo-Bare* (1982) 5 SC. 25, 58; *Ogunleye v. Oni* (1990) 2 NWLR (Pt. 135) 745, 782 - 783; *Bamgboye v. Olusoga* SC.214/1993 judgment delivered on 16/4/96, per Ogundare JSC. (as yet unreported). H

The defendant on the other hand gave traditional history of how he came to own the land. The learned trial Judge seemed to accept the evidence led by the defence in proof of defendant's title, for in his judgment he observed: *'The defendant was able to trace his title to his great grand father who was conferred with title by Balogun Fulani. Long possession does not confer title on a party where another traces his title to the true owners'*

In the circumstance of this case, therefore, the learned trial Judge was, in my humble view, right to dismiss Plaintiff's claims for damages for trespass and injunction and the court below was right to affirm that decision. I see no justification for disturbing these findings which I too hereby affirm.

This appeal is dismissed by me with costs as assessed in the lead judgment of my learned brother Onu JSC.

OGWUEGBU JSC

I have had the opportunity of reading in draft the judgment just delivered by my learned brother Onu, J.S.C. and I agree that this appeal fails for the reasons given therein.

The plaintiff/appellant claimed from the defendant/respondent special and general damages for trespass, an order of the court mandating the defendant to remove the building he was erecting on the plaintiff's land at 53 Ibrahim Taiwo Road, Ilorin and an order of perpetual injunction restraining the defendant and his agents from further acts of trespass on the said land.

The learned trial judge Fabiyi, J., dismissed the plaintiff's claim. The plaintiff unsuccessfully appealed to the Court of Appeal, Jos Division and has further appealed to this court. The appellant has questioned the observation made by the court below that the main issue in the appeal as formulated by the respondent in that court was whether the plaintiff proved his case as all the grounds of appeal were in essence, omnibus. The appellant's counsel submitted that the court below lumped grounds (2) to (6) of the grounds of appeal with ground (1) which was an omnibus ground. He further submitted that grounds (2), (3), (4), (5) and (6) raised substantial issues of law which were in no way omnibus in nature and should have been separately considered by that court. He contended that the decision of the Court of Appeal therefore occasioned substantial miscarriage of justice.

On a careful reading of grounds (2) to (6) of the grounds of appeal

in the court below, I am left in no doubt that the points raised in those

grounds of appeal were in form and content issues which could have legitimately been canvassed under the umbrella of ground (1), the omnibus ground of appeal. The observation of the court below cannot be said to be misplaced. The attack on the decision of the court on that score is unjustified and the complaint fails.

In dismissing the plaintiff's claim, the learned trial judge held as follows:

"The plaintiff who gained his title from Mrs. Husu failed to show how Mrs. Husu got vested with title. Mrs. Husu was not called as a witness. J.O. Daniel who introduced the plaintiff to Mrs. Husu was not called as a witness. Since there was no conveyance, the plaintiff was duty bound to call them....."

Since the plaintiff rests his case solely on Exhibit 1 and cannot show that he has a present possessory title which can be described as effective, his claim cannot stand."

In affirming the decision of the learned trial judge, the court below observed thus:

"The plaintiff had sued in trespass and injunction, and the defendant had countered with a claim of title to the land. Title to the land was therefore in issue. Kponuglo v. Kodadja (1931) 2 WACA 24, Amakor v. Obiefuna (1974) 3 SC 67,68. The plaintiff tendered no conveyance and no certificate of occupancy which was pleaded to found title. There was also no evidence of the root of title of his vendor. The defendant on the other hand led evidence on traditional history including evidence of boundary men to found his title under customary law;"

The plaintiff was claiming not only damages for trespass but also perpetual injunction. As rightly found by the courts below, the plaintiff put his title in issue and in order to succeed, he must be able to show a better title. This he failed to do. He was also found not to be in possession of the land the subject matter of the dispute. On the other hand, the defendant was able to establish that he had a better right to title to the land. See Ogunde v. Ojomo (1972) 4 SC 105 and Amakor v. Obiefuna (1974) 3 SC 67.

In the circumstances, I will also dismiss the appeal with costs assessed at N1,000.00 to the respondent.

ADIO JSC

I have read, in draft, the judgment just delivered by my learned brother, Onu, J.S.C, and I agree with it. The appeal lacks merit. It fails and accordingly I too dismiss it with N1,000.00 costs to the respondent.