

**SUPREME COURT OF NIGERIA**  
TUESDAY 14TH MAY, 1996. SC. 112/1992  
**CORAM:- A. B. WALI, I. L. KUTIGI, M. E. OGUNDARE,**  
**U. MOHAMMED, S. U. ONU, JJSC**

ONWE ONU & 2 OTHERS ..... PLAINTIFFS/  
(For themselves, for and on behalf of the people APPELLANTS  
of Umuogudu, Osha, Ngbo, Ishielu Local  
Government Area)

AND

OKE AGU & OTHERS ..... FIRST SET OF  
(For themselves, and on behalf of DEFENDANTS/  
the people of Amaezegba excluding Okposi RESPONDENTS  
kindred, Obilagu quarter, Nkalaha, Ishielu  
Local Government)

AND

MICHAEL EZE & OTHERS ..... SECOND SET OF  
(For themselves, for and on behalf of the DEFENDANTS/  
Okposi Kindred, Obilagu quarter, Amaezegba RESPONDENTS  
Village Nkalaha, Ishielu Local Government Area)

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***EVIDENCE*** - Admission - Land dispute - Where what was admitted was  
neither claimed nor proved - The admission goes to no issue.

***LAND LAW*** - Possession - Whether from the records plaintiff's evidence of  
acts of possession - Was accepted by the trial court.

***LAND LAW*** - Identity of the land - Where defendants' traverse rendered  
extent of the claim uncertain - the claim will fail.

***LAND LA W*** - Title - Where plaintiff fails to claim title to a particular area  
of land - Whether defendants' admission per se - Is enough to grant success  
to plaintiffs.

***LAND LAW*** - Declaration of title - Before it is granted - Need to ascertain  
definite and precise boundaries of the land.

***PLEADINGS*** - Traverse - Whether tendering plans different from that of  
plaintiffs - Means failure to traverse the claims.

### ***FACTS***

The plaintiffs/appellants filed an action against the 1<sup>st</sup> set of defendants/respondents claiming joint ownership of the land in dispute and of the money paid by Nigerian Cement Company (Nigercem) to the defendants for use of the land. The 2nd set of defendants/respondents were later joined in the suit by the court's order. The plaintiffs relied on traditional history and acts of ownership and possession. The defendants denied plaintiffs' claim but admitted joint ownership with the plaintiffs in respect of an area not claimed by the plaintiffs.

The trial court dismissed the plaintiffs' claim but granted them joint ownership in terms of the defendants' admission. Plaintiffs' appeal to the court of Appeal was dismissed and the grant of the admitted portion set aside. Plaintiffs have further appealed to the Supreme Court raising 4 issues.

### ***ISSUES FOR DETERMINATION***

(a) *Where in a land matter the Plaintiff formulated his case on a particular piece of land (cause of action) would it be proper traverse for the defendant to base his defence on a different piece of land?*

(b) *Was the court below right on hearing the appeal to make find-off act in respect of matters on which issues were not joined by the parties either in the trial court or on appeal?* Etc, see p. 906

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

### ***Headings - Traverse***

1. I say straight away that it is not correct to say as contended by Learned Counsel for the Plaintiffs that the two Sets of Defendants did not answer or traverse Plaintiffs' claims merely because the two Sets of Defendants prepared and tendered in evidence their own different plans of the area of land in dispute. (p. 908 G)

### ***Identity of the land***

2. There were therefore Three different plans before the court. No effort was made in the court of trial to show that the three different plans (Exhibits A, D & N) relate to one and same piece of land. Equally too, no effort was made to produce a composite plan from these three plans to effectively determine which exact area of land was in dispute and which was not. Certainly, plaintiffs' Counsel was right when he said that the plaintiffs have the right to formulate their claim, but where as in this case the defendants' traverse have the effect of rendering the quantum, size and extent of the

claim uncertain and at large, then ultimately the claim will fail. It is therefore not correct to say that the Court of Appeal found that the parties were claiming different lands. (p. 909 H)

### ***Declaration of title***

3. I think the Court of Appeal was right. All that is being said above simply put, is that Exhibits A & D do not represent the same land mass. Certainly, they are not of the same size even though they both have Nigercem Factory located in them. It is settled law that before a declaration of title to land is decreed, the land to which it relates must be ascertained with certainty. In other words, definite and precise boundaries of the land claimed must be clear and unambiguous. Clearly therefore the Defendants did not base their defence or traverse on a different piece of land from the one claimed by the Plaintiffs. Issue (1) therefore fails. (p. 910 D)

### ***When admission goes to no issue***

4. There was no evidence as I said that Exhibits A & D represented the same land mass. Their boundaries are not the same or even similar. So that although the 1st Set of Defendants admitted in their pleadings that the portion verged blue in their Exhibit D is owned jointly by the parties, they virtually admitted nothing because the Plaintiffs never made such a claim and there was no evidence anywhere on record that the area verged blue in Exhibit D also formed part of Exhibit A. (p. 911 G)

### ***Failure to claim title to a particular area***

5. A party cannot in law be awarded what he/she does not claim. In addition being a declaratory relief which is subject to the discretion of the court, the Plaintiffs ought to have led evidence thereon and not merely rely on the admission by the 1st set of Defendants in their pleadings. It is certainly not correct as contended by the Plaintiffs that the Court of Appeal made findings of facts in respect of matters on which the parties did not join issues as explained above. The Court of Appeal I believe, properly set aside the award in respect of the area verged blue in Exhibit D, simply I should say because the Plaintiffs did not claim any area verged blue as explained above and because the learned trial judge having properly dismissed the Plaintiffs' case in respect of the entire area claimed by them and verged red in Exhibit A, that should have ended the matter. So the Court of Appeal simply corrected the error made by the trial court which erroneously made the award. Issues (b) & (c) therefore fail. (p. 912 E)

***Plaintiffs' evidence of possession - Whether accepted***

6. There is no doubt that the learned trial judge in the passage of his judgment referred to above said the Plaintiffs and the Defendants have some scattered farms within that land in dispute and that there are some scattered farms/huts of the Plaintiffs within the area acquired by Nigercem. But he proceeded in the judgment on pages 136-137 thus - *"This however is no conclusive proof that they (meaning Plaintiffs) are joint owners and I do not think that non-payment of rent is in itself proof of ownership ..... it seems to me that they were merely squatters like the Ezza at Umuhali."* It is therefore doubtless that the learned trial judge rejected evidence of acts of possession by the Plaintiffs. The finding was affirmed by the court Appeal. I have no reason to interfere. (p 913 F)

**NOTABLE POINT OF INTEREST****KUTIGI JSC*****1. Land not acquired under the Land Acquisition Act - Effect***

It ought to be noted that area of land on which Nigercem operates was not even acquired under the Public Lands Acquisition Act. The land was only leased to them by the Defendants and on which they pay rent to the Defendants. The case of CARDOSO v. DANIEL & ORS (supra) relied upon by the Plaintiffs would therefore not apply. (p. 913 H)

**REPRESENTATION**

Dr. M. E. Ajogwu with Miss V. C. Ajogwu for Plaintiffs.

J. A. Nduaguba for 1st Set of Defendants

B. M. Wifa for 2nd set of Defendants

**CASES REFERRED TO**

Kwadzo v. Adjei 10 WACA 274

Arade v. Asanlu (1980) 5 - 7 SC. 78

Ike v. Ugboaja (1993) 9 KLR 62

Tewogbade v. Obadina (1994) 7 KLR 1

Kodilinye v. Odu 2 W.A.C.A. 336

Hello v. Eweka (1981) 1 S.C. 101

Adesanya v. Otuewu (1993) 1 KLR 142

**STATUTE & RULES REFERRED**

Court of Appeal Rules O. 3 r. 23

Court of Appeal Act s. 16

**LEAD JUDGMENT BY KUTIGI JSC**

The plaintiffs, in paragraph 17 of their Amended Statement of Claim, claimed jointly and severally against the defendants as follows:-

B      “(a) A declaration that the plaintiffs and defendants are entitled as joint owners or co-owners under their native law and custom to all that piece or parcel of land called “Egu Ojo” and more particularly delineated on Plan No. E/GA1367/73 (12605) filed or tendered in this suit by the plaintiffs and described therein as Ngbo and Nkalaha Land (or farmland) and verged red.

C      (b) A declaration that the plaintiffs are entitled to share from all the money paid or to be paid by the Nigerian Cement Company Limited for the use and occupation of a portion of the said Egu Ojo land more particularly delineated on Plan No. E/GA1367/73 (12605).

D      (c) Against the seventh defendant only, an account of all the moneys received from the Nigerian Cement Company Limited for the use and occupation of a portion of the said Egu Ojo land more particularly delineated on Plan No. E/GA1367/73 (12605) and the payment of the plaintiffs’ share to them.

E      The plaintiffs are natives of Umuogodo-Osha Ngbo and have sued for themselves and on behalf of the people of Umuogodo-Osha. The suit was originally against the 1st to 5th defendants (hereinafter called the 1st set of defendants) for themselves and on behalf of Amaezegba Community. By order of the High Court the 6th to 8th defendants (hereinafter called the 2nd set of defendants) were joined for themselves and as representing the people of Okposi kindred, Obilogu quarters. The land the subject matter of this suit and over which joint ownership is claimed is called “Egu Ojo” by the plaintiffs, and verged red in their plan Exhibit A. The 1st set of defendants called it *“Agu Ufo-o” in their statement of defence and verged yellow in their plan Exhibit D. A small southern portion of it shown and verged blue was pleaded and conceded to be jointly owned by the plaintiffs and the defendants. The 2nd set of defendants on the other hand call it “Agu Okposi”.* It is verged pink in their plan Exhibit N. The plaintiffs based the declarations sought by them on traditional history as pleaded in paras. 5, 6, 7, 8 & 9 of the Amended Statement of Claim. They read as follows:-

H      *“5. The said land in dispute is being used in common or jointly from time immemorial between the people of Umuogudu Osha, Ngbo, the plaintiffs, on the one hand, and the people of Amaezegba, Nkalaha, the defendants, on the other hand.*

*6. Traditional history shows that the defendants ancestors originated from Umuogudu Osha, Ngbo, they were people who committed cer*

tain offence against natives of their quarters and in order to flee from justice ran towards the outskirts of Ehu Amufu; the plaintiffs' ancestors when tired of pursuit of the offenders would then abandon it saying "Nkaa lara Eha" in Ibo meaning leave this for Eha, and Nkalaha derives its name from "Nkaa lara Eha".

7. In time beyond memory the offspring of the fugitive offenders looked on the people of Umuogudu-Osha as their brothers and vice versa and as both communities increased and multiplied they spread into the said land in dispute where they built living houses and farmed at random.

8. From then on the two communities have continued to regard themselves as co-owners of the said land such was their spirit of friendliness and/or brotherliness that they inter-married, ate together, never killed each other, and most important of all, never bothered to recognise a division by creating a boundary; in fact, when in/or about 1949, the then Divisional Officer for the area, Mr. O.P. Gunning set out to curb inter-village land dispute by creating permanent boundaries between them, the representatives of the plaintiffs and defendants villages declined to have a boundary demarcated for them.

9. Under the native law and custom of all the communities in Ishielu Division it is regarded as a mark of friendly and brotherly relationship for two communities to exist or co-exist without having a common boundary and under the aforesaid native law and custom where two communities live together peacefully on the same land without a boundary they are regarded as co-owners of the said land."

The two sets of defendants deny this history. While the 1st set of defendants contended that the land in dispute belongs to the entire Amaezegba community and that there is nothing like Okposi kindred in Amaezegba, the 2nd set of defendants claim that they are of Okposi kindred in Amaezegba and that the land belongs exclusively to them.

In a reserved judgment the learned trial Judge after a consideration and evaluation of the entire evidence led before him concluded on pages 139-140 of the record thus:-

"In conclusion I desire to summarise as follows. The 1st and 2nd set of defendants belong to Amaezegba Community of Nkalaha. Throughout the period of negotiation for the acquisition of the land in dispute they had acted and operated as one autonomous unit to wit the Amaezegba community. Compensation and surface rents paid by Nigercem were collected by them as one unit. They lived and farmed together within the land in dispute as joint owners. Although there are some scattered forms of the plaintiffs within the land in dispute, on the totality of the evidence I am of

*the considered view that the plaintiffs evidence on traditional history and acts of ownership and possession do not contain sufficient material to entitle them to a decree of joint ownership to the entire area verged red in their plan Exhibit 'A', that is to say the land in dispute. But there is an admission by the defendants regarding the area verged blue in Exhibit 'D'. This in my view establishes joint ownership of the area verged blue by the plaintiffs and the defendants. That being so, this Court declares and orders as follows:-*

*1. That the plaintiffs and the defendants within the limits of the Land Use Decree are jointly entitled to a customary right of occupancy of the piece of parcel of land which is verged blue in Plan L/D410 and admitted in evidence case as Exhibit 'D'.*

*2. Plaintiffs' claim to the entire land called Aguoja by the plaintiffs and verged red in Plan No. E/GA1367/73 and admitted as Exhibit 'A' excepting the area verged blue in Exhibit 'D' is hereby dismissed.*

*3. Plaintiffs claim for declaration that the plaintiffs are entitled to share from all the money paid or to be paid by Nigercem for the use and occupation of a portion of the land in dispute in this case and claim for an account against the 7th defendant are dismissed."*

Dissatisfied with the judgment of the High Court the plaintiffs appealed to the Court of Appeal. In a unanimous judgment the Court of Appeal dismissed the appeal with the exception of the declaration made by the High Court in respect of the area verged blue in the Plan Exhibit D which was set aside (See Order No.1 of the High Court above).

Aggrieved by the decision of the Court of Appeal the plaintiffs have further appealed to this Court. The parties in compliance with the Rules of Court filed and exchanged briefs of argument. These were adopted and relied upon at the hearing where oral submissions were also made.

Dr. Ajogwu, learned counsel for the plaintiffs in his brief formulated the following issues for determination.

(a) Where in a land matter the plaintiff formulated his case on a particular piece of land (cause of action) would it be proper traverse for the defendant to base his evidence on a different piece of land?

(b) Was the Court below right on hearing the appeal to make findings of fact in respect of matters on which issues were not joined by the parties either in the trial court or on appeal?

(c) Was the court below right to set aside the order of the trial court declaring the area verged blue in Exhibit 'D' communally owned and yet hold that the defendants evidence based on Exhibit 'D' and challenging ownership of Exhibit 'A' went to any (sic) issue?

(d) Was the court below right in dismissing a claim to compensation because a claim to ownership was not proved inspite of the accepted proof of possession both in pleadings and in the trial court?

Issue (a)

Learned counsel said it is trite law that it is always the plaintiff who, feeling aggrieved goes to court and formulate his case and that it is the formulated case or cause of action that a court looks into. That when a plaintiff formulates his case as he is entitled to do, any one not affected or not in conflict with the formulated case, is not a proper defendant in the matter. Counsel referred to the lead judgment of the Court of Appeal wherein it is stated on page 232 thus:-

*“The land verged red in the said plaintiffs plan and that verged yellow in the 1st set of defendants’ plan cannot at all be said to represent the same piece of land mass.”*

and submitted that since there was no finding of fact that the particular land upon which the claim of the plaintiffs was based was non-existent or fictitious, then the defendants’ plan of another land should not have been accepted as a proper traverse of the plaintiffs’ claims as contained in para. 17 of their statement of claim. He referred to Order 23 rules 4-19 of the High Court Rules Cap. 61 Laws of Eastern Nigeria and submitted that under the rules a defendant is not allowed to formulate a different case from that of the plaintiff unless he is doing so by way of counterclaim or set-off. That a defendant must traverse the plaintiff’s claim as neatly and precisely as possible. When the Court of Appeal therefore found as it did that the claim of the plaintiffs with respect to the area declared to be in dispute was not answered by the defendants, the Court should have found for the plaintiffs because the claim remains unchallenged. He said the Court of Appeal was in error when it dismissed the appeal and upheld the judgment of the High Court based on unanswered claim and formulation of a different case by the defendants as opposed to the case of the plaintiffs. A number of authorities were cited including: Nigerian Housing Development Society Ltd. & Anor v. Yaya Mumuni (1977) 2 SC 57; Re Adeniji (1972) 1 All NLR (Pt.1) 298; A.C.B. v. Attorney-General (Northern Nigeria) (1967) NMLR 231.

It was further submitted that the Court of Appeal having discovered the anomaly in the pleadings of the parties ought to have ordered a retrial only instead of affirming the decision of the trial court which was based on inconsistent pleadings and evidence. That if Exhibits D & N did



not represent the land claimed (as per Exhibit A), any evidence led in support of rights over land in those Exhibits went to no issue. The following cases were cited in support:- Nigerian Fishing Co. v. W.N.H.C. (1969) NMLR 164; George v. Dominion Flour Mills (1963) 1 SCNLR 47; (1963) 1 All NLR 71; Ogboda v. Adulugba (1971) 1 All NLR 68.

Responding, Mr. Nduagubu learned counsel for the 1st set of defendants said although it is conceded that it is the plaintiffs' case, the defendants have to meet and traverse, the 1st set of defendants herein had done just that because the land claimed by plaintiffs in Exhibit A and the area shown by the 1st set of defendants in their Exhibit 'D' all relate to the land in and around the area covered by the operation of the Nigerian Cement Company Limited, Nkalagu. That the two plans showed the site of the Nigerian Cement Company and that while the plaintiffs call the land in dispute Egu-Ojo, the 1st set of defendants call it Agu-Ufo-o. He said what the 1st set of defendants did was to contest the accuracy of the plaintiffs Plan Exh. A by producing and tendering their own Plan Exh. D. He said neither of the lower courts made any finding to the effect that the parties had different lands in minds. The Court of Appeal was therefore right to have dismissed plaintiffs appeal.

Mr. Wifa, learned counsel for the 2nd set of defendants also made submissions which were not entirely different from the ones made by Mr. Nduagubu above. He said the defendants did not formulate a different cause of action from that of the plaintiffs. He Said the parties all knew that the land in dispute is "in and around" the area where the Nigerian Cement Company was occupying and operating, and that while the plaintiffs produced their Plan Exh.A, the two sets of defendants produced their own plans Exhibits D and N respectively. The parties also call the land in dispute by different names and these plans did not cover the same piece of land. He referred to the 2nd set of defendant's statement of defence and to the case of Makanjuola v. Balogun (1989) 3 NWLR (Pt.108) 192.

I say straightaway that it is not correct to say as contended by learned counsel for the plaintiffs that the two sets of defendants did not answer or traverse plaintiffs claims merely because the two sets of defendants prepared and tendered in evidence their own different plans of the area of land in dispute. All the three plans herein (Exhibits A, D & N respectively for the plaintiffs, 1st set of defendants and the 2nd set of defendants), clearly showed the location of the Nigerian Cement Company. In other words all the parties know that the land in dispute is "in and around" the location of the Nigerian Cement Company.

The plaintiffs in their Amended Statement of Claim pleaded in para. 3 as follows:-

*“4. The piece of land which is the subject matter of this action is known as and called “Egu Ojo” more particularly delineated on Plan No. E/ GN1367/73 (12695) filed or tendered by the plaintiffs in this suit and described as Ngbo and Akalaha Land (or Farm Land) in the said plan and verged red.”* B

The 1st set of defendants in paras. 10 & 11 of their Statement of Defence also averred:-

*“10. The defendants deny emphatically paragraphs 4 and 5 of the statement of claim and will at the trial put plaintiffs to strict proof of each and every allegation of the facts thereof.* C

*11. In further answer to paragraph 4 of the Statement of Claim the defendants say that the land in dispute is that shown and verged yellow in plan No. L/D 410 prepared by Mr. P.O. Anosike Licensed Surveyor. The said land is known as and called Agu-Ufo-o which is more particularly described and delineated in the Plan No. L/D 410 filed with this defence. The defendants hereby plead this plan and the features therein.”* D

As for the 2nd set of defendants it was also pleaded in para. 2 of their Statement of Defence as follows:-

*“2. The 6th to 8th defendants deny paragraph 4 of the Statement of Claim and will at the trial put the plaintiffs to the strictest proof thereof. Further the land in dispute, to be shown in a plan to be filed by the 6th to 8th defendants is known and called ‘Agu Okposi’, which has been the communal property of Okposi kindred, which they have enjoyed from time immemorial without let or hindrance from anyone including the plaintiffs and the 1-5th defendants predecessors-in-title. The 6th to 8th defendants aver that the said land in dispute is part of the land on which Nigercem Nkalagu carries on quarry site including the land housing tile estate of Nigercem up to and beyond the water works. Further the 6th to 8th defendants will rely on all features, configuration etc. on the said plan.”* E F G

So as I said above, although, the parties all knew that the area in dispute is “in and around” the location of Nigerian Cement Company, the size, quantum and extent of the area of land in dispute was from the beginning in dispute. Issues were therefore joined and each party produced and tendered its own plan. There were therefore three different plans before the court. No effort was made in the court of trial to show that the three different plans (Exhibits A, D & N) relate to one and same piece of land. Equally too, no effort was made to produce a composite plan from these three plans to effectively determine which exact area of land was in dispute H

and which was not. Certainly, plaintiffs counsel was right when he said that the plaintiffs have the right to formulate their claim, but where as in this case the defendants' traverse have the effect of rendering the quantum, size and extent of the claim uncertain and at large, then ultimately the claim will fail. It is therefore not correct to say that the Court of Appeal found that the parties were claiming different lands. It did not. What the Court of Appeal said on page 232 of the record (Per Uwaifo, J.C.A.) reads thus:-

*"The plaintiffs' said plan shows the area in dispute as verged red. There is no part of it verged blue. The plan filed by the first set of defendants is No. L/D 410 (Exhibit D) and shows the land which they named 'Agu-Ufo-o' therein, verged yellow. A small portion of it is verged blue with indication that it is commonly owned by Nkalaha and Ngbo and contains scattered houses by Nkalaha and Ngbo." The land verged red in the said plaintiffs' plan and that verged yellow in the first set of defendants plan cannot at all be said to represent the same land mass. What appears to indicate a common meeting point is the location of the Nigercem Factory."*

I think the Court of Appeal was right. All that is being said above simply put, is that Exhibits A & D do not represent the same land mass. Certainly, they are not of the same size even though they both have Nigercem Factory located in them. It is settled law that before a declaration of title to land is decreed, the land to which it relates must be ascertained with certainty. In other words, definite and precise boundaries of the land claimed must be clear and unambiguous. (See: for example Kwadzo v. Adjei (1944) 10 WACA 274; Arabe v. Asanlu (1980) 5-7 SC 78.

Clearly therefore the defendants did not base their defence or traverse on a different piece of land from the one claimed by the plaintiffs. Issue (1) therefore fails.

Issues (b) & (c)

It was contended by the counsel for the plaintiffs that the 1st set of defendants having admitted joint ownership of the southern portion verged blue in their plan, Exhibit D, that portion of land ceased to be an issue and that it was properly awarded to the plaintiffs by the trial court. He said the Court of Appeal was wrong when it observed that the Exhibits A & D did not represent the same land mass. That in their pleadings and evidence in open court the parties accepted that Exhibits A, D and N represented the land in dispute and treated them as such. The court must give effect to the intention of the parties. He said the Court of Appeal had no duty to evolve issues for the parties which were not raised on the pleadings. The following cases were cited:-

Adebisi v. Oke (1967) NMLR 64;  
 Orizu v. Anyaegbunam (1975) 5 SC21;  
 Olubode v. Oyesina (1977) 2 SC 79.

On behalf of the 1st set of defendants it was submitted that the plaintiffs only sought for a declaration of joint ownership with the defendants of the land shown in their Plan, Exhibit A, and that they never claimed the area verged blue in Exhibit D. Exhibit A did not show any area verged blue and the plaintiffs offered no evidence thereon. That the trial court was wrong to have awarded to the plaintiffs an area of land not claimed by them. The Court of Appeal was therefore right in setting aside the declaration in respect of the area verged blue in Exhibit D. He said although the 1st set of defendants admitted in their pleadings and evidence that the blue portion in Exhibit D is communally owned with the plaintiffs without any evidence from the plaintiffs, it is settled law that a court will not grant a declaration on a mere admission on the pleadings but on the evidence led. A number of cases were cited including:-

Ekpenyong & Ors v. Nyong & Ors. (1975) 2 SC 71;  
 Nneji v. Chukwu (1988) 3 NWLR (pt.81) 184;  
 Bello v. Eweka (1981) 1 SC 101.

He said although the Court of Appeal in setting aside the award made by the trial court properly invoked the provisions of Order 3 rule 23 of the Rules of that court, it could equally have taken advantage of section 16 of the Court of Appeal Act to achieve the same result.

Also on behalf of the 2nd set of defendants it was contended that the plaintiffs in their Exhibit A did not claim any portion verged blue as in Exhibit D. The plaintiffs did not also claim the area in their claims before the court. The trial court was therefore wrong to have awarded what the plaintiffs did not claim. That the Court of Appeal was right in setting aside the award made by the trial court. A number of cases were cited.

In my consideration of issue (a) above I did say that in my view the parties clearly joined issue on their plans Exhibits A, D & N as shown by the relevant paragraphs of the pleadings above. I also said the plaintiffs failed to reconcile the three plans either by a composite plan or by oral evidence. The plaintiffs claimed the area verged red in Exhibit A. There is no portion verged blue in Exhibit A. There was no evidence as I said that Exhibits A & D represented the same land mass. Their boundaries are not the same or even similar. So that although the 1st set of defendants admitted in their pleading that the portion verged blue in their Exhibit D is owned jointly by the parties, they virtually admitted nothing because the plaintiffs never made such a claim and there was no evidence anywhere on record

that the area verged blue in Exhibit D also formed part of Exhibit A.

The learned trial Judge had in fact on page 133 of the record held as follows:

B      *"The evidence is in my view scanty and unsatisfactory. There is a complete lack of evidence as to the character and quality of the original occupation..."*

*I find also that there is conflict in the traditional history of the land in question. The evidence is inconclusive and worthless."*

C      So the plaintiffs lost their claim to the area verged red in Exhibit A, because the traditional history which they relied upon to prove their claim was found to be scanty and unsatisfactory amongst others. It was after the above findings that the trial court erroneously in my view proceeded to award to the plaintiffs an area verged blue in Exhibit D which is nowhere to be found in Exhibit A. The Court of Appeal was therefore right when it said:

D      *"It is only left for me to say that the claim of the plaintiffs as formulated by them in respect of each relief sought fails as they did not succeed in proving their case. Under Order 3 rule 23 of the Rules of this court 1981 it is appropriate to set aside the declaration made by the trial Judge as to the area verged blue in the plan (Exhibit D) filed by the 1st set*  
 E *of defendants as it was unwarranted by the claim before the court and inappropriate in all the circumstances of the case."*

F      A party cannot in law be awarded what he/she does not claim (See: Ekpenyong & Ors. v. Nyong (supra). In addition being a declaratory relief which is subject to the discretion of the court, the plaintiffs ought to have led evidence thereon and not merely rely on the admission by the 1st set of defendants in their pleadings (See Bello v. Eweka (supra).

G      It is certainly not correct as contended by the plaintiffs that the Court of Appeal made findings of facts in respect of matters on which the parties did not join issues as explained above. The Court of Appeal I believe, properly set aside the award in respect of the area verged blue in Exhibit D, simply I should say because the plaintiffs did not claim any area verged blue as explained above and because the learned trial Judge having properly dismissed the plaintiffs case in respect of the entire area claimed by them and verged red in Exhibit A, that should have ended the matter.  
 H      So the Court of Appeal simply corrected the error made by the trial court which erroneously made the award. Issues (b) & (c) therefore fail.

Issue (d)

Here the plaintiffs contended that the learned trial Judge having observed on page 136 of the judgment that:-

*"I think it is clear from the pleadings and the evidence that there are some scattered farms of the plaintiffs and the defendants within the land in dispute. It is equally clear from the evidence that there are some scattered farms/huts of the plaintiffs within the area acquired by Nigercem",*

they (plaintiffs) have proved that they were in possession which entitled them to their claim for compensation. That the principle in a claim for compensation for acquisition of land under Section 10 of Public Lands Acquisition Act is to establish possession or sufficient interest in the land. He cited the case of Paul Cardoso v. John Bankole Daniel & Ors. (1986) 2 NWLR (Pt.20) 1.

He said although the Court of Appeal accepted that there was evidence of possession on the part of the plaintiffs, it failed to make mention of their claim for compensation.

The 1st set of defendants on the other hand submitted that the trial court nowhere found the plaintiffs to be in possession of the land in dispute. That the plaintiffs were found by the lower courts to be merely squatters over the area of land in dispute and consequently; the question of sharing any land rent or compensation with the defendants did not arise.

The 2nd set of defendants also submitted that the trial court found and the Court of Appeal affirmed, that the plaintiffs were squatters on parts of the land in dispute. The plaintiffs had therefore failed to show acts of possession and enjoyment of the land in dispute to entitle them to any share of compensation. That the concurrent finding which is not perverse should not be disturbed. He referred to the cases of Onwuka v. Ediala (1989) 1 NWLR (Pt.96) 182; Adeleke v. Aserifa (1990) 1 NWLR (Pt.136) 94. Okonkwo v. Okolo (1988) 2 NWLR (Pt.79) 662.

I think it is a serious misconception on the part of the plaintiffs counsel to say that the lower courts accepted or found that there was proof of possession by the plaintiffs of the land they claimed. There is no doubt that the learned trial Judge in the passage of his judgment referred to above said the plaintiffs and the defendants have some scattered farms within the land in dispute and that there are some scattered farms/huts of the plaintiffs within the area acquired by Nigercem.

But he proceeded in the judgment on pages 136-137 thus:-

*"This however is no conclusive proof that they (meaning plaintiffs) are joint owners and I do not think that non-payment of rent is in itself proof of ownership ..... It seems to me that they were merely squatters like the Ezzas at Umuhali."*

It is therefore doubtless that the learned trial Judge rejected evidence of acts of possession by the plaintiffs. The finding was affirmed by the Court of Appeal. I have no reason to interfere. It ought to be noted that

area of land on which Nigercem operates was not even acquired under the Public Land Acquisition Act. The land was only leased to them by the defendants and on which they pay rent to the defendants. The case of B Cardoso v. Daniel & Ors (supra) relied upon by the plaintiffs would therefore not apply. Issue (d) also fails.

All the issues having been resolved against the plaintiffs, this appeal must fail. It is accordingly dismissed with N 1,000.00 costs to each set of defendants.

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### WALI JSC

I have had the privilege of seeing in draft the lead judgment of my learned brother Kutigi, J.S.C, and I agree with the reasons he gave for dismissing the appeal.

D As found by the learned trial Judge, the traditional evidence adduced and relied upon by the appellant fell short of what is required to prove their claim of joint interest with the two sets of respondents in the land in dispute. This finding was affirmed by the Court of Appeal in the lead judgment of Uwaifo, J.C.A. wherein he stated:-

E *"both on the traditional history and evidence of possession or ownership, the plaintiffs case was rejected quite justifiably in my view ..... The plaintiffs have not succeeded in showing acts of possession and enjoyment of the land in dispute or a portion of it."*

F I have no reason to disagree with the above findings and conclusions of both the trial court and the Court of Appeal. See: Ike v. Ugboaja (1993) 6NWLR (Pt.30 1) 539 and Tewogbade v. Obadina (1994) 4 NWLR (Pt.338) 326.

On issues (a) and (b) formulated by the appellants in their brief, learned counsel in his brief agreed that the identity of the land in dispute is not in dispute as he said:-

G *"Both in their pleadings and in evidence in the open court, the parties - plaintiffs and defendants accepted that the Exhibits "A", "D" and "N" represented the land in dispute and treated them as such. With humility, it is the parties who should know more about the area involved - both physically and in paper (drawn plans). The features of the land in dispute are familiar to the parties. With all these advantages over the learned Justices of the lower Court, the parties took the three Exhibits as representing the same piece of land. I humbly submit that the knowledge and intentions of the parties ought to be given effect and preferred."*

The crux of the appellants complaint under these issues seems to

be that the respondents did not join issues with the appellants on issues raised in the Amended Statement of Claim but proceeded to set up their defence to the action on different parcels or pieces of land. This cannot be true.

On the identity of the land in dispute, the parties are ad idem on its identity. The parties knew the land they were litigating on. The appellants claim was in respect of where Nigerian Cement Company was occupying. Both Exhibits A, D and N, the survey plans filed by the appellants, the 1st and 2nd sets of respondents respectively referred to and showed the land occupied by the Nigerian Cement Company and which is the land in dispute. See: *Makanjuola v. Balogun* (1989) 3 NWLR (Pt.108) 177. It is therefore a mere misconception for the appellants to argue that the respondents based their defence on a totally different piece of land.

Both the 1st and 2nd sets of respondents traversed in their respective pleadings, the allegation of facts raised in the appellants Amended Statement of Claim as regards the joint ownership and possession of the land in dispute. See for example paragraphs 4(f) and (g), 21, 24, 26 and 28 of the 1st set of Respondent's Amended Statement of Defence which provide thus:-

*"(f) In further answer to paragraph 3(b) of the statement of claim the defendants aver that since 1965 when the plaintiffs started to claim that they the plaintiffs own the disputed land in common with the defendants the whole of Amaezegba village Nkalaha have fought against the claims of the plaintiffs as one community as the land in dispute is the communal property of the whole Amaezegba and not the property of any one quarter and/or kindred in Amaezegba.*

*(g) As the owners in possession the entire community of Amaezeagba Nkalaha claimed and received all the compensation for economic trees, such as Akparata Iroko, Ojolofo felled on the land by the Nigerian Cement Company Limited."*

XXXXXX

*"21. In further answer to paragraph 10 of the statement of claim the defendants say that they are the exclusive owners in possession of all the land shown and verged yellow in plan No. L/D 410 filed with this defence and as the owners in possession they the defendants have allowed tenants to farm on the land, farmed and founded homes thereon and made use of the same in various ways in assertion of their ownership and possession from time immemorial. The plaintiffs did not own any land in Nkalaha, and in particular the plaintiffs do not own whether alone or jointly with defendants any portion of the land shown and verged yellow in plan*



No. L/D 410.”

X X X X X X X X X

“24. In further answer to paragraph 11 of the statement of claim the defendants say that many of the plaintiffs people were squatters on the defendants land just as the Ezzas and others were squatters on Umuhuali Ezillo and Nkalaha land and when the Nigerian Cement Company limited entered the portion of the land in dispute the Company paid compensation to the defendants for all the economic trees destroyed by the Company. No compensation was paid to the plaintiffs for any economic trees.”

X X X X X X X X X

“26. The defendants deny paragraph 13 of the statement of claim and say that the Nigerian Cement Company Limited has always continued to pay into the Divisional Treasury Ishielu in favour of the defendants the total annual surface rent in respect of the portion of the defendants land within the Company’s Mining lease No. 9804 as agreed between the government and the company and/or as required by law.”

X X X X X X X X X

“28. The defendants deny vehemently that the plaintiffs have any right over the defendants portion of land in the Nigerian Cement Company Mining lease No. 9804 as alleged in paragraph 15 of the statement of claim.”

and paragraphs 13, 16 and 17 of the Amended Statement of Defence of 2nd set of respondents to wit:-

“13. The 2nd set of defendants deny paragraph 10 of the statement of claim and will at the trial put the plaintiffs to the strictest proof thereof. Further and in answer to the said paragraph, the 2nd set of defendants aver that they own alone and exclusively the shrines called Ora Stream, All Shrine, water ponds and economic trees on the land in dispute, enjoy the same undisturbed by anyone including the plaintiffs and the 2nd defendants predecessors-in-title, 2nd set of defendants have no common market nor common playing ground with plaintiffs but have a common market with the 1st set of defendants called Orié Nkalaha market, which market is not situate in the land in dispute.”

X X X X X X X X X

“16. The 2nd set of defendants deny paragraph 13 of the statement of claim and will at the trial put the plaintiffs to the strictest proof thereof. Further the 2nd set of defendants averred that the plaintiffs not having any interest on the land in dispute is not entitled and is never paid any money by reason of Nigercem operations on the land in dispute.”

“17. The 2nd set of defendants admit part of paragraph 14 of the statement of claim to the extent that the persons mentioned therein may be affected by the quarry operations of Nigercem but add that the area in

*dispute on which Nigercem factory stands on does not fall within the plaintiffs area."*

In my view the few paragraphs of the 1st and 2nd sets of respondents contained sufficient traverse of the appellants claim of joint ownership and possession of the land in dispute with the 1st and the 2nd sets of respondents. On the issue of the portion of land granted to the appellants by the trial court for which they did not claim in the Amended Statement of claim, I entirely agree and adopt the observation of Uwaifo, J.C.A., in the lead judgment where he said:-

*"The land verged red in the said plaintiffs plan and that verged yellow in the first set of defendants plan cannot be said to represent the same land mass. What appears to indicate a common meeting point is the location of the Nigercem factory. In his judgment the trial Judge in effect dismissed the claim of the plaintiffs. But he proceeded to award them an area they did not ask for and not contained in their plan nor can be identified with or on it. It is the piece of land verged blue in the first set of defendants plan. (Exhibit D)."*

The learned Justice then concluded:-

*"It was wrong for the trial Judge to grant any declaration in favour of the plaintiffs in respect of that area verged blue as I have made clear .... Under Order 3 rule 23 of the Rules of this Court, 1981, it is appropriate to set aside the declaration made by the trial Judge as to the area verged blue in the plan (Exhibit D) filed by the first set of defendants as it was unwarranted by the claim before the court and inappropriate in all the circumstances of the case."*

The appellants did not claim the portion of land verged blue in Exhibit D, as it was never made an issue in the appellants pleading. The trial court was therefore patently wrong in making a declaration for the appellants on a matter not pleaded by them. See: Adesanya v. Otuewu (1993) 1 NWLR (Pt.270) 414; Kalio v. Daniel Kalio (1975) 2 SC 15 and IBWA v. Kennedy Trans (Nig.) Ltd. (1993) 7 NWLR (Pt.304) 238.

It is for these and the more detailed reasons contained in the lead judgment of Kutigi, J.S.C., that I also hereby dismiss the appeal. The judgment of the Court of Appeal is hereby affirmed with N1,000.00 costs to each set of respondents.

### OGUNDARE JSC

I have had an advantage of a preview of the judgment of my learned brother Kutigi, J.S.C. just delivered. I agree with him that there is no merit in this appeal. I too dismiss it with costs as assessed by him

**MOHAMMED JSC**

I have had the privilege of reading the judgment of my learned brother Kutigi, J.S.C., and I agree with him that this appeal ought to be dismissed. I have nothing more to add. The appeal is dismissed. I abide by all the consequential orders made in the lead judgment.

**ONU JSC**

I have been privileged to have preview of the judgment of my learned brother Kutigi, J.S.C. just delivered, a draft of which was made available to me and I am in full agreement with him that the appeal lacks merit and must perforce fail.

I however wish to add a few words of mine in expatiation as follows:

The appellants herein, who were plaintiffs in the trial court and who reside at the interior part of Abakaliki in present day Enugu State, had brought the action leading to the appeal herein some five years after the Nigeria Cement Company (Nigercem) had started paying compensation to the respondents, then defendants, claiming that the land in dispute (contained on a survey plan - Exhibit 'A') to which they were claiming declaration to joint customary right of occupancy, joint right to compensation and injunction, was subject matter of payment of compensation since it was communally owned.

The trial court upon declaring the appellants as squatters to the area of the land in dispute attracting surface rent and as co-owners only in respect of the area not attracting surface rent, dismissed their case; whereupon they (appellants) appealed to the Court of Appeal which after a careful consideration of the case, dismissed the appeal for declaration of title to the entire land including the portion verged Blue as well as declaration respecting right of compensation based on possession.

Upon a further appeal to this court, the appellants have distilled four issues from the three grounds of appeal filed for our determination, to wit:

(a) Where in a land matter the plaintiff formulates his case on a particular piece of land (cause of action) would it be proper traverse for the defendant to base his defence on a different piece of land.

(b) Was the Court below on hearing the appeal to make findings of fact in respect of matters on which issues were not joined by the parties either in the trial court or on appeal.

(c) Was the Court below right to set aside the order of the trial Court declaring the area verged blue in Exhibit "D" communally owned and yet hold that the defendants evidence based on Exhibit "D" and challenging ownership of Exhibit "A" went to any (sic) issue.

(d) Was the Court below right in dismissing a claim to ownership not proved inspite of the accepted proof of possession both in pleadings and in the trial court.

As issues (a), (b) and (c) are, in my view, inter-related or overlap, I intend to consider them together and thereafter issue (d) separately as follows:-

Issues (a), (b) and (e):

It is trite law, submitted by the appellants, that it is always the plaintiff who, feeling aggrieved, goes to court and formulates his case known as the cause of action and that it is this formulated case or cause of action that invokes the judicial powers of the court and vests it with jurisdiction to look into "*matters between persons*". In other words, the plaintiff's civil rights and obligations fall to be determined in relation to the civil rights and obligations of the defendants over that same subject matter. In the case in hand, in proving their case, the appellants (as plaintiffs) tendered their plan (Exhibit 'A') while the 1st set of defendants/respondents contested the accuracy of Exhibit 'A' and tendered their own plan vide Exhibit 'D'. It is common ground that the land in dispute as well as the area are well known to the parties. While Exhibits 'A' and 'D' clearly depict the Nigerian Cement Company Limited, Nkalagu which the appellants called Egu Ojo, the 1st set of respondents called it Agu-Ufo-o, while the 2nd set of respondents called it Agu Okposi. Thus, I am left in no doubt that right from the start of the case and throughout the evidence led by the parties, they were talking about the same piece of land. Such that the 1st set of respondents did not at any time lead evidence about another parcel of land and both the trial court and the Court of Appeal (hereinafter referred to as the Court below) did not so pronounce in their judgments. The amended statement of defence of the 1st set of respondents therefore clearly traversed all the facts pleaded by the appellants as laid down in *Lewis and Peat (Nigeria) Limited v. Akhimien* (1976) 1 All NLR (Pt.1) 460. The learned trial Judge's decision to award joint ownership of, the small portion verged blue on Exhibit D to the appellants whereas what they claimed was for a declaration of communal ownership with the 1st and 2nd sets of respondents of the land shown in their plan Exhibit A; a share in the land rent paid by the Nigerian Cement Company Limited, Nkalagu and an account from the 7th respondent without the area verged blue in Exhibit 'D'. It is noteworthy that

Exhibit 'A' did not even show the area verged blue in the 1st set of respondents plan, (Exhibit 'D') nor did they offer any evidence about it. The trial court merely gave the (appellants) title over a portion of land based on mere admission of the 1st respondents. The learned trial Judge ought not to have awarded the appellants that portion verged blue in Exhibit 'D' it being trite that he cannot properly make a finding in respect of action not before him to bind anybody, just as he could not make an award in respect of an area not claimed in an action for declaration of title. See: Ekwealor v. Obasi (1990) 2 NWLR (Pt.131) 231 at 247. In Ekpenyong & Ors v. Nyong & Ors. (1975) 2 SC 71, this Court held that a court is without the power to award to a claimant that which he did not claim. See: Nneji v. Chukwu (1988) 3 NWLR (Pt.81) 184 and Akinbobola v. PlissonFisko (Nig.) Ltd. (1991) 1 SCNJ 1; (1991) 1 NWLR (Pt.167) 270. It is trite law that an award made by a Court which goes to no issue as formulated and contested by the parties to a suit goes to no issue and an appellate court cannot close its eyes to such an award which ought to and should be set aside.

In the instant case, the court below was therefore right in setting aside the declaration of joint ownership of the portion of land shown verged blue in Exhibit D. See: Sagay v. New Independence Rubber Co. Ltd. (1977) 5 SC 143 at 158-159 where in an analogous situation this court said:

*"We feel that it is not open to the judge to formulate a defence which was not made by a plaintiff as the basis of a judgment for award of special damages."*

See also Adeniji v. Adeniji (1972) 4 SC 10. As this Court (per Obaseki, J.S.C.) also had occasion to point out in Bello v. Eweka (1981) 1 SC 101, *"there is the need for a plaintiff to succeed on the strength of his own case and that a court will not grant a declaration on admission but has to be satisfied on the evidence."*

Thus, a judgment based on an issue not formulated on the pleadings before the court, goes to no issue. Hence, in the case in hand, the court below was therefore right to set aside the award to the plaintiffs/appellants of the portion verged blue in Exhibit 'D'. This is the more so that that court did not deal with any other land except the one in dispute and that the only departure from the land in dispute, if a departure can be so described, was to set aside an award by the trial court which was not claimed nor contested by the parties thereat. In as much as the land verged blue in Exhibit 'D' did not form part of the subject matter of the land in dispute to wit: the land where surface rent is paid by Nigercem and over which the appellants wanted a share but had no claim thereto, and regarding which they (appellants) offered no evidence in the trial court, the court

below was indeed right to set aside a judgment awarding it to them. See: *Ajide Arabe v. Ogbunbiyi Asanlu* (1980) 5-7 SC 78 at 85; the proposition of law is that a court is not Father Christmas or a charitable institution sharing legacy to litigants, deserving or undeserving.

The Court below in setting aside the award made by the trial court over the area verged blue in Exhibit D must have invoked the provisions of Order 3 rule 23 Court of Appeal Rules, 1981, as amended, vis a vis powers conferred upon it by section 16 of the Court of Appeal Act, 1976 to do same. Those provisions give the court below very wide powers as enunciated in the recent case of *Ekpa v. Utong* (1991) 6 NWLR (Pt.197) 258 at 275. In invoking its powers under section 16 of the Court of Appeal Act (ibid), therefore the appellants have no need to seek the assistance of the application of sections 45 and 145 (now sections 46 and 146 respectively) of the Evidence Act, Cap. 112 Laws of the Federation of Nigeria, 1990 to determine title to the land because:-

- (i) The area verged blue was not claimed by the appellants
- (ii) They did not offer any evidence about it.
- (iii) The award to them of that area by the trial Court was based on mere admission by the 1st set of respondents in Exhibit 'D'.
- (iv) It is a very small area compared with the land in dispute.
- (v) It was not shown on the plan filed by the appellants as part of what they were specifically asking for.

Assuming that the court below would like to consider it, it would have been pertinent for it to take into consideration the following points:-

- (a) The area verged blue in Exhibit 'D' is a very small area compared with the land in dispute shown in Exhibits 'A', 'D' and 'N' respectively.
- (b) The trial court acted without jurisdiction in awarding that area to the appellants.
- (c) The 1st and 2nd set of respondents did not join issue with the appellants over that portion.

It is for the above points raised that I consider it apposite here to refer to the decision of this Court in *Nathan Okechukwu v. Frederick Okafor* (1961) 2 SCNLR 369; (1961) All NLR 685 in which the larger and smaller areas of land were in dispute and the parties thereto joined issues on both. This Court held inter alia that since the appellants therein were found to own the larger area, section 45 (now Section 46) of the Evidence Act Cap. 112 (ibid) empowered the court to hold that what is true of the larger area is also true of the smaller area. In the case in hand, the smaller portion verged blue was not disputed at all; no issue was joined on it and the application of section 46 of the Evidence Act (ibid) does not apply at all and the appellants were not declared to own it. Thus, were section 46 of

the Evidence Act (ibid) to apply, the smaller area being given prominence by being marked blue in Exhibit 'D' would merge into the bigger area and pale into insignificance and not vice versa. The 1st set of respondents who were adjudged the owners of the bigger area by the court below will, by the application of section 46 of the Evidence Act (ibid), were it to be applied at all, be deemed to be the owners of the smaller area verged blue in Exhibit' D'. It is for these reasons that I will answer issues (a) and (b) in the negative but issue (c) in the positive.

On appellant's issue (d) which is conterminus with 1st respondents' issue (c), it has been rightly submitted by the 1st set of respondents that appellants were squatters on the land in dispute as indeed pleaded by them in paragraph 24 of their Amended Statement of Defence in which they averred thus:-

*"24. In further answer to paragraph 11 of the statement of claim the defendants land just as the Ezzas and others were squatters on Umuhualle Ezillo and Nkalaha land and when the Nigerian Cement Company entered the portion of the land in dispute, the company paid compensation to the defendants for all the economic trees destroyed by the company. No compensation was paid to the plaintiffs for any economic trees."*

The trial court found as a fact that the appellants were indeed squatters while the court below in a unanimous judgment confirmed the same. What the appellants are claiming as earlier pointed out is joint ownership and a share in the land rent paid by Nigercem to the 1st set of respondents the landowners. It is not money paid by the then Government of Eastern Nigeria for acquiring the land in the early fifties.

The trial court having found the appellants to be squatters over the disputed land, the question of sharing any land rent with the appellants does not arise. This is because on 26/4/65 when the issue of ownership of the land in dispute and land rent came up before one Divisional Officer, B.U. Usen, he referred the parties to the statements made by the representatives of the parties, to wit: the appellants (Ngbos) and the 1st set of respondents (Nkalahas) to the arbitration by O.P. Gunning about 1949, the representative of 1st set of respondents said during the arbitration as follows:-

*"We also have land in common with Ngbo to the South, but have no dispute with them."*

The representative of the appellants thereat made the following statements:

*"We have lived between the Abonye and Uzuru Rivers ever since we were born. In the northern part of the land we were permitted to farm by the Nkalahas, whose land it is, and in the southern part we claim a portion as our own and it is here that we dispute with Ezillo." (Underlining above is for*

*emphasis and comment).*

It is the same Northern part they admitted they were permitted to farm by the 1st set of respondents they were again claiming joint ownership and share in land rent with the 1st set of respondents, a thing they cannot be heard to say. That they are therefore squatters on that portion of land in dispute cannot be denied. The decisions by the lower courts being concurrent findings of fact as regards their being squatters and being unimpeachable in that they are not perverse, this court will be loath to interfere therewith to set them aside. See: *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt.67) 718; *Onwuka v. Ediala* (1989) 1 NWLR (Pt.96) 182; *American Cynamid v. Vitality Pharm Ltd.* (1991) 2 NWLR (Pt.171) 15 at 29. B

It is in the light of the foregoing that I take the firm view that the case of *Paul Cardoso v. John Bankole Daniel & Ors.* (1986) 2 NWLR (Pt.20) 1 upon which the appellants placed reliance is, in my respectful opinion, inapposite, inapplicable and so distinguishable. It ought to be borne in mind that this appeal is not dealing with compulsory acquisition by the Government under section 10 of Public Lands Acquisition Act but with land rent paid by a company to land owners in respect of which a person found to be a squatter, has no interest as against the true owner in this case the position of appellants as squatters as against the true owners of the land in dispute - the 1st set of respondents. The appellants having failed to show any acts of possession, numerous and positive to bring them within the decisions of *Kodilinye v. Mbanefo Odu* (1935) 2 WACA 336 and *Bello v. Eweka* (1981) 1 SC 101, their appeals have no legs upon which to stand. C D E

For these reasons and the fuller ones set out in the lead judgment of my learned brother Kutigi, J.S.C., I too, dismiss this appeal and abide by the consequential orders contained therein. F

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