

SUPREME COURT OF NIGERIA9TH JULY, 1996. SC. 148/1991**CORAM:- S. M. A. BELGORE, A. B. WALL, E. O. OGWUEGBU,
S. U. ONU, A. I. IGUH, JJSC**

EZEKIEL NKA & TWO ORS. PLAINTIFFS/RESPONDENTS
 (For themselves and as representatives of the
 people of Amaikpa, Nsogwu in Uniunze)

AND

JOSEPH ONWU & 11 ORS. DEFENDANTS/APPELLANTS
 (For themselves and as representatives of the
 people of Ndikpa, Ugwulano in Umunze)

APPEALS - Findings of trial court - Supported by evidence and affirmed by
 Court of Appeal - Supreme Court will not interfere except perverse.

ARBITRATION - Award of arbitrators - Where parties submitted to and
 accepted arbitrators' award - Whether appellants who were not parties
 thereto - Can attack the award.

ARBITRATION - Customary law - Award of arbitrators - In Exhibits C and
 D - Was that respondents are owners of the land in dispute.

ARBITRATION - Decision of arbitrators - Binds parties thereto - And court
 will enforce it in appropriate cases.

ARBITRATION - Decision of arbitrators - Accepted by parties to it - Is
 effective and enforceable - As decision of a court of law.

DAMAGES - Award of damages - In action for trespass to land - Court not to
 simply award damages - It has to give reason - How it arrived at reasonable
 damages.

DAMAGES - Award of damages - Damages awarded by trial Judge - Is not
 nominal but general damages.

ESTOPPEL - Same subject matter - Whether Exhibits C and D as pleaded -
 Relate to same parties, cause and subject matter.

ESTOPPEL - Plea of estoppel - Where validly set up by respondents - Whether

appellants are estopped.

ESTOPPEL - Doctrine of standing by - A party who stands by without objection - While another deals contrary to his right in a property - Cannot afterward complain.

ESTOPPEL - Doctrine of estoppel - Arises where a party is not allowed - To say that an assertion he had made is untrue.

JUDGMENTS - Reversal - Justification for reversing a court - On amount of damages awarded.

FACTS

The plaintiffs/respondents instituted the action leading to this appeal in the High Court of Anambra State in the Awka Judicial Division claiming against the defendants/appellants - (a) A declaration that they are entitled to customary right of occupancy over the land in dispute, (b) N20,000.00 damages for trespass (c) Perpetual injunction restraining the appellants from interfering with the respondents rights in the said land. Headings were ordered and the case proceeded to trial. At the trial, both parties who relied on traditional history, testified and called witnesses on their behalf. The respondents who pleaded estoppel, tendered records of proceedings of customary arbitration "Exhibits C and D" in support of their claim

At the conclusion of hearing, the learned trial judge found for the respondents and awarded N5,000.00 damages against the appellants. Dissatisfied with the decision of the trial court, the appellants appealed to the Court of Appeal, Enugu Division, which dismissed the appeal, affirmed the judgment of the trial court, but reduced the damages awarded to N1,500.00. The appellants have further appealed to the Supreme Court on grounds of appeal out of which 5 questions for determination were distilled.

ISSUES FOR DETERMINATION

"1. Whether the Plaintiffs/Respondents in their pleadings and evidence relied on Exhibit C to show that the Defendants/Appellants once admitted that the land in dispute belonged to the Ndiabos?

2. Did the Plaintiffs/Respondents successfully raise the plea of estoppel by conduct having regard to their pleadings and the evidence in support? Etc, see p. 1358

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

Estoppel - Same subject matter

1. It seems to me plain that Exhibits C and D, as pleaded, clearly relate to the same parties, to the same cause of action and to the same piece or pared of land. Both decisions are in respect of arbitration proceedings between the present plaintiffs/respondents of Amaikpa and the people of Ndiabu under customary law. It is also pleaded that both parties duly submitted themselves to these arbitrations. (p. 1360 G)

Where parties submitted to arbitrators' award

2. There is clear evidence on the face of Exhibit D that the parties thereto duly submitted their dispute to the second arbitral body under the chairmanship of Igwe M.N. Ugochukwu, that the second arbitration was by way of review of the decision of the first arbitral body, that no objection was raised against the participation of either the said Igwe Ugochukwu or, indeed any other member of the second arbitration exercise and that the parties concerned accepted the unanimous decisions of the body which affirmed the ownership of the land in dispute by the respondents. This evidence was accepted by the trial court. Of particular note, however, is the fact that there is no suggestion that the appellants were claimants or parties to these arbitrations. The parties to the arbitration proceedings were the Amaikpa and the Ndiabo people. These parties to the arbitration accepted the decision and award of the arbitrators. None of the parties has impugned or is impugning the said award by Igwe Ugochukwu and his advisers. In my view, the appellants who were no parties to the proceedings may not now seek to attack an award they were no parties to but mere witnesses (p. 1361 D)

Land in dispute awarded to respondents

3. It cannot be disputed that the land which was the subject matter of customary arbitrations, Exhibits C and D, was awarded to the respondents as the owners thereof. While, however, the respondents claim that the land is the same as the land in dispute in the present case, the appellants contend that the land over which they admittedly testified for the Ndiabos at the arbitration is entirely different from the land now in dispute. (p. 1363 G)

Findings of trial court

4. The Court of Appeal, quite rightly in my view, then opined that from a close perusal of Exhibit C, the case was fought, not by the nominal parties on record

but by the people of Amaikpa and Ndiabo. The decision in Exhibit D is clear. This is that the land arbitrated upon is the exclusive property of the respondents. The above findings of the trial court as affirmed by the court below are fully supported by evidence before the court. They have neither been shown to be perverse nor patently erroneous and I can find no reason to interfere with them. (p. 1365 F)

Decision of arbitrators binds parties thereto

5. The law is well settled that where disputes or matters in difference between two or more parties are by consent of the disputants submitted to a domestic forum, inclusive of arbitrators or a body of persons who may be invested with judicial authority to hear and determine such disputes and matters for investigation in accordance with customary law and general usages, and a decision is duly given, it is as conclusive and unimpeachable (unless and until set aside on any of the recognized grounds) as the decision of any constituted court of the land. Such a decision is consequently binding on the parties and the courts in appropriate cases will enforce it. (p. 1366 D)

Decision of arbitrators effective and enforceable

6. The parties in Exhibits C and D willingly submitted themselves to the arbitrations of Nzuko Obu Igba and Chief M.N. Ugochukwu, the Igwe of Umunze with his traditional advisers. It is in evidence that these bodies are invested under customary law and usages with judicial functions. The decision in Exhibit D in particular, was accepted by the parties and no attempt was made by either side thereto to impugn the same. In my view, the decision therein handed down which awarded title of the land in dispute to the respondents is as effective and enforceable as any other decision of a court of law. (p. 1366 F)

Appellants are estopped

7. I agree entirely with the above observations of the court below. The appellants in Exhibits C and D testified that the land in dispute belonged to the Ndiabo people. At no time in the course of the proceedings did they claim the land for themselves as their property. In the circumstance, they are estopped from asserting that the land in dispute now belonged to them from time immemorial. This plea of estoppel having been validly set up by the respondents against the appellants, the Court of Appeal was right in upholding the judgment of the trial court and dismissing the appellants appeal. (p. 1367 E)

Doctrine of standing by

8. The law is settled that if a party having a right stands by and sees another dealing with the property in a manner inconsistent with that right, and makes no objection while the affair is in progress, he cannot afterwards complain. So, too, a person who knowingly stands by during litigation concerning the title to the land in which he claims ownership to or an interest in. In circumstances in which he might reasonably be expected to apply to be joined as a party to establish his claim may find himself bound by the judgment in the suit even though he was not a party to the suit in which the judgment was given. (p. 1368 A)

When does estoppel arise

9. An estoppel may arise where a party such as the appellant in the present case, is not allowed to say that a certain statement of fact or assertion he had made is untrue, whether in reality it is true or not. I fully endorse the observation of the court below that in the context of this case, the appellants were precluded from asserting or proving that the land in dispute belonged to them since they had previously represented in another proceedings that the land belonged to the Ndiabos who lost their claim of title to the land to the respondents. (p. 1368 D)

Reversing a court's award of damages

10. In order to justify reversing the court on the question of the amount of damages, it will generally be necessary that the appellate court should be convinced either that - (1) the court acted upon some wrong principle of law or (2) that the amount awarded was too extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. (p. 1368 H)

Court to give reason how it arrived at damages awarded

11. The law is well settled that it is not enough for the court to simply award damages in an action for trespass to land without giving any reason as to how it arrived at what amounted to reasonable damage. (p. 1369 F)

Damages awarded by trial judge

12. I think the award of damages made by the trial court was certainly not by way of nominal damages but as general damages, in view, particularly of the destruction by the appellants of the respondents' diverse economic tree and crops which the learned trial Judge specifically took into consideration in his award. The court below, however, reduced the award of damages made to the

respondents to N1,500.00. There is no cross-appeal by the respondents against this reduction of the trial court's award. In my view, I cannot hold that the said award of N1,500,00 made to the respondents by the court below is either so extremely high or so very small as to make it in my judgment, an entirely erroneous estimate of the damage to which the respondents are entitled. Accordingly, I have no option than to uphold the award and I must therefore resolve issue 5 against the appellants. (p. 1370A) B

NOTABLE POINTS OF INTEREST

IGUH JSC

1. Estoppel defined C

Estoppel has been defined as a liability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to the disability. (p. 1366 H)

2. Courts to keep up with times and economic trend in the country D

In my view, the courts, are entitled to keep up with the times and economic trend in the country, and in particular, with the prevailing decline in the purchasing power of the naira over the past few years. (p. 1369 C)

OGWUEGBUJSC E

3. A person's conduct may amount to estoppel

A person who merely stood aloof rather than join in a dispute affecting his rights may also find that his conduct amounts to estoppel. The defendants did more than standing by in the customary arbitration. They neither took over the case nor joined the people of Ndiabo to fight the battle. Rather, they testified that the parcel of land which is the same as that in dispute in the present proceedings belonged to the people of Ndiabo. They therefore incurred a liability whereby they are precluded from alleging or proving in the present proceedings that the fact is otherwise than it had been made to appear by the matter giving rise to the disability. (p. 1372 B) F G

REPRESENTATION

Philip Umeadi (Jr.) Esq. for the appellants

G.E. Ezeuko S.A.N. with J. O. Okeke Esq. for the respondents. H

CASES REFERRED TO

Okene v. Nwoke (1991) 8 N.W.L.R. (Part 209) 317 at 347 A-B

Ofomata v. Anoka (1974) 4 E.C.S.L.R. 251

Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Part 67) 718

Chikwendu v. Mbamali (1980) 3-4 S.C. 31 at 75
 Woluchem v. Gudi (1981) 5 S.C. 291 at 320.
 Lateju v. Iyanda (1959) F.S.C. 257 at 259;
 Kaiyaoja v. Egunia (1974) 12 S.C. 55
 Ziks Press Ltd. v. Ikoku (1951) 13 W.A.C.A. 188

B Idahosa v. Oronsaye (1959) 4 F.S.C. 166
 Ununna v. Okwuraiwe (1978) 6-7 S.C. 1

BOOK REFERRED TO

Halshury Laws of England, 4th Edition. Vol. 16 Article 1501.

C

LEAD JUDGMENT BY IGUH JSC

This is an appeal against the decision of the Court of Appeal, Enugu Division, delivered on the 8th day of December, 1989, dismissing the appellants' appeal in a dispute concerning land situate at Nsogwu village, Umunze town D in the Anambra State of Nigeria. The said land is more particularly delineated and shown verged red in the plaintiffs' Survey Plan No. NIS/AN 1595/82 tendered at the hearing as Exhibit B.

The plaintiffs, for themselves and as representative of the people of Amaikpa family of Nsogwu village, Umunze, Orumba Local Government Area E Anambra State had in the Amawbial Awka Judicial Division of the High Court of Justice, Anambra State instituted an action against the defendants for themselves and as representatives of the people of Ndikpa family of Ugwulano Village Umunze claiming as follows-

F *"(a) A declaration that the plaintiffs are entitled to the customary right of occupancy of "UHUAGBA" land situate at Umunze in Orumba (formerly Aguata) Local Government Area within jurisdiction of the Honourable Court.*

(b) N20,000. 00 (Twenty thousand naira) being damages for trespass upon the land in dispute.

G *(c) A perpetual injunction to restrain the defendants, their servants or agents from further entering or in any way interfering with the plaintiffs' possession and use of the said "UHUAGBA" land."*

Pleadings were ordered in the suit and were duly settled, filed and exchanged with the same amended by various orders of Court.

H At the subsequent trial, both parties testified on their own behalf and called witnesses. The plaintiffs, in the main, relied on traditional history, numerous acts of ownership and possession over the land in dispute, arbitration under customary law and estoppel by conduct in proof of their title to the land claimed. Their case is that the land in dispute known as Uhuagba or

Uhuowerre had belonged to them from time immemorial, having inherited the same from their great ancestor, Agba through Successive ancestors. They pleaded various acts of possession and ownership over the land in dispute such as farming the land, planting and reaping the fruits of economic trees thereon without let or hindrance from anyone and warding off trespassers therefrom. B

The plaintiffs claimed that following a dispute in 1966 over the said land between themselves and the defendants' relations of Ndiabo family, both parties submitted themselves to arbitration by Umunze elders called "NZUKO OBU IGBA" under Umunze customary law. The proceedings of this arbitration Exhibit C, were inconclusive and did not therefore restore peace to the parties. C Consequently, both parties in 1979 submitted themselves to a further arbitration under Customary law by Chief M. N. Ugochukwu the traditional ruler or Igwe of Umunze. This second arbitration which is Exhibit D ended in the award of the land in dispute to the plaintiffs. They stressed that the parties to this customary arbitration accepted the said decision and award in good faith and at no time D impugned the same on any ground whatever.

The plaintiffs further claimed that when the case between them and the defendants' relations of Ndiabo in respect of the land *in* dispute was submitted to arbitration under Customary law as aforementioned, the defendants appeared before the arbitral body and testified that the land in dispute belonged E to the people of Ndiabo but made no claims on their own behalf. They averred that it was as a result of the defendants trespass on the land in dispute *in* 1979, 1980 and 1981 that this action was filed.

The defendants, on the other hand, claimed that the land in dispute had also been their property from time immemorial and that they inherited the same from their grandfather Nwozoigbo. They, too, testified that as owners F thereof, they exercised various acts of possession thereon such as farming the land, reaping the economic trees thereon and letting in residential and farming tenants on the land without any interruption from whatever quarter. The defendants admitted the customary arbitrations of 1966 and 1971 but averred G that these were not in respect of the land in dispute. In particular, they accused Chief M. N. Ugochukwu of bias in the 1971 arbitration decision and claimed that he was a relation of the plaintiffs.

At the conclusion of hearing, the learned trial Judge, Obiesie, J., after an exhaustive review of the evidence found for the plaintiffs on the 21st H September, 1987.

Dissatisfied with this decision of the trial court, the defendants lodged an appeal against the same to the Court of Appeal, Enugu Division which in a

unanimous decision dismissed the appeal on the 8th December, 1989 and affirmed the decision of the trial court. It however reduced the award of N5,000.00 general damages to the plaintiffs against the defendants to N1,500.00.

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

Four grounds of appeal were filed by the appellants against the said decision of the Court of Appeal. I do not find it necessary to reproduce them C in this judgment. It suffices to state that the parties, pursuant to the rules of this court, filed and exchanged their written briefs of argument.

The five issues distilled from the appellants' grounds of appeal set out on their behalf for the determination of this court are as follows-

"1. Whether the Plaintiffs/Respondents in their pleadings and evidence D relied on Exhibit C to show that the Defendants/Appellants once admitted that the land in dispute belonged to the Ndiabos?

"2. Did the Plaintiffs/Respondents successfully raise the plea of estoppel by conduct having regard to their pleadings and the evidence in support?

"3. Were the preconditions necessary for the operation of the plea of E estoppel by standing by established by the Plaintiffs/Respondents?

"4. Whether the decision of Chief Ugochukwu contained in Exhibit D was given in violation of the rules of natural justice; and if so whether it can support a plea of estoppel.

"5. Whether the sum of N1,500.00 awarded as nominal damages is not F manifestly excessive."

The respondents, on the other hand, submitted that bearing in mind the main complaint which pervaded the appellants' grounds of appeal, only two issues call for determination in this appeal. These, they contended, are as follows-

G "(a) Whether or not the Court of Appeal was right in holding, as the trial court did, that the Appellants are estopped from raising any claim in respect of the land in dispute, having earlier testified that the land did not belong to them.

"(b) Was the award of N1,500.00 general damages by the lower court excessive.

H A close study of the above sets of issues clearly discloses that issues formulated on behalf of the appellants are more all embracing fully cover the issues identified in the respondents' brief for the resolution of this Court. I shall in this judgment, therefore, adopt the set of issues formulated in the appellants' brief for my consideration of this appeal.

At the oral hearing of this appeal before us, both learned counsel for the parties adopted their respective briefs of argument and proffered additional arguments in amplification thereof.

Learned counsel for the appellants, Mr. Philip Umeadi (Jnr.) Stressed that the issue of estoppel by conduct relied upon by the respondents arose out of Exhibits C and D as pleaded in paragraphs 9 and 10 of the amended Statement of Claim. He conceded that both parties to Exhibit C, to wit, the present plaintiffs of Amaikpa of the one part and the people of Ndiabo of the other part voluntarily submitted their dispute to arbitration but claim that the Ndiabo people refused to be bound by the decision of the Nzuko Obu Igba arbitral body. He claimed, at all events, that what was pleaded in Exhibit C is the decision of the arbitration and not the proceedings. Citing the decision in Okene and others v. Nwoke and others (1991) 8 N.W.L.R. (Part 209) 317 at 347 A-B learned Counsel submitted that it is only when both parties to a Customary arbitration accepted the award of the arbitral body that it becomes binding. He also argued, relying on the decision in Boniface Ofomata and Another v. Fabian Anoka and Another (1974) 4 E.C.S.L.R. 251, that the decision having been based on oath swearing, was not final and could not operate as an estoppel. He concluded by stating that Exhibit C was not a binding decision under customary law and cannot support a plea of estoppel. So too, Counsel argued, is Exhibit D, in respect of which, he claimed, none of the parties submitted the dispute to Chief Ugochukwu for arbitration. He submitted that there is no evidence that the parties signified their acceptance of the decision. In his view, there was in fact no customary arbitration by the said Chief Ugochukwu. He argued that Chief Ugocukwu was a relation of the respondents and that his decision must therefore be biased. He submitted that Exhibit D is incapable of creating an estoppel against the appellants.

For his own part, learned Counsel for the respondents, Mr. G.E.G. Ezeuko, S.A.N. drew attention to the fact that the appellant testified for the people of Ndiabo in Exhibit C which was duly pleaded in paragraph 9 of the amended Statement of Claim. He argued that the material question is whether the land arbitrated upon in Exhibits C and D and the land in dispute in the present suit are both the same. He submitted that both courts below held that the identity of the two pieces of land is the same. He stressed that the appellants, having earlier testified that the land in dispute belonged to the people of Ndiabo, are now estopped from asserting that the same land now belongs to them when their claim is based on traditional history and not on acquisition from the Ndiabo

people. He therefore urged the court to dismiss this appeal as lacking in substance.

A close study of issues 1, 2, 3 and 4 as formulated in the appellants' brief of argument discloses that they revolve on Exhibits C and D; whether the respondents in their pleadings and evidence relied on them to show that the appellants once admitted that the land in dispute belonged to the people of Ndiabo; whether the respondents successfully raised the plea of estoppel by B conduct having regard to their pleadings and evidence and whether the decision in Exhibit D was given in violation of the rules of natural justice. I will therefore consider the four issues together.

I think it is convenient at this stage to set out paragraphs 9 and 10 of the respondents' amended Statement of Claim. These aver as follows-

C "9. In 1966 the land in dispute as well as other lands of the Plaintiffs became a subject of dispute between the Plaintiffs and Defendants relations of Ndiabo family of Ugwulano, Umunze. The parties submitted themselves to the arbitration of Umunze elders called "NZUKO OBU IGBA" under Umunze Customary Law. The decision of the said body which was recorded did not D restore peace to the parties. The recorded decision of the elders dated 28/5/67 will be founded upon.

"10. In 1971 the parties to the dispute submitted themselves to the arbitration by Chief M.N. Ugochukwu, the Igwe of Umunze who settled the dispute between the Plaintiffs and the Defendants' relations of Ndiabo. By the E decision of the said Igwe M. N. Ugochukwu the land now in dispute was awarded to the Plaintiffs with a proviso that one Mathias Ndukwe should continue to live within the area verged YELLOW until he vacates the said area after which the area reverts to the Plaintiffs. When the case between the Plaintiffs and Ndiabo people in respect of the land in dispute was before Chief F M. N. Ugochukwu, the present Defendants appeared to testify in favour of Ndiabo people but made no claims on their own behalf. The Plaintiffs will found on the findings and decision of the arbitration by Chief M.N. Ugochukwu and dated the 20th of February, 1971 which fixed the boundary between the Plaintiffs and Ndiabo people at OHIA AGBA as shown on the Plaintiffs' plan."

G It seems to me plain that Exhibits C and D, as pleaded, clearly relate to the same parties to the same cause of action and to the same piece or parcel of land. Both decisions are in respect of arbitration proceedings between the present plaintiffs/respondents of Amaikpa and the people of Ndiabo under customary law. It is also pleaded that both parties duly submitted themselves H to these arbitrations. The first is by the Nzuko Obu Igba arbitral body in 1966 per Exhibit C. It was suggested by the appellants' learned counsel that what was

pleaded and tendered in respect of the first arbitration was the decision only. An examination of the record however shows that what was tendered without

objection was the proceedings of the arbitration, Exhibit C.

The decision in Exhibit C was described as inconclusive. This is because, although the verdict was in favour of the plaintiffs for title to the land in dispute by an overwhelming majority of 23 as against 8 of the sitting members, it was subject to the swearing of an oath. On the appointed day, the plaintiffs' presented their seven representatives to swear to the prescribed oath but the B Ndiabo people refused insisting on swearing to the oath themselves. Under the circumstance, peace continued to elude the parties.

Consequently, the parties in 1971 submitted themselves to a second arbitration under customary law. This was by Chief M. N. Ugochukwu, the Abilikete of Umunze and the Igwe of Orumba with his traditional advisers. The C proceeding, findings and the decision in this second customary arbitration were tendered before the trial court by consent as Exhibit D.

There is clear evidence on the face of Exhibit D that the parties thereto duly submitted their dispute to the second arbitral body under the chairmanship of Igwe M. N. Ugochukwu, that the second arbitration was by way of review D of the decision of the first arbitral body, that no objection was raised against the participation of either the said Igwe Ugochukwu or, indeed, any other member of the second arbitration exercise and that the parties concerned accepted the unanimous decisions of the body which affirmed the ownership E of the land in dispute by the respondents. This evidence was accepted by the trial court. Of particular note, however, is the fact that there is no suggestion that the appellants were claimants or parties in these arbitrations. The parties F to the arbitration proceedings were the Amaikpa and the Ndiabo people. These parties to the arbitration accepted the decision and award of the arbitrators. None of the parties has impugned or is impugning the said award by Igwe F Ugochukwu and his advisers. In view, the appellants who were no Parties to the proceedings may not now seek to attack an award they were no Parties to but mere witnesses.

Turning now to the evidence, P.W.3 Vincent Alla-eboh who came from Ndikpa family with the appellants testified for the respondents as G follows-

"I am from Umukonu family in Ndikpa I am related to Ndikpa,, the defendants. I know the land in dispute between the Amaikpa and NdikpaThe land belongs to Amaikpa, the plaintiff. I have a common boundary with Amaikpa people.....When there was a dispute as to the land in dispute between Amaikpa and Ndiabo, Ndikpa people were aware of it. At the material time, we people of Ndikpa never claimed the land ourselves. Ndikpa people do not own the land in dispute but is owned by the Amaikpa people." H

There was next the evidence of the 1st plaintiff/respondent, Ezekiel Nka who testified as follows-

"In 1966 Ndiabo started claiming the land in dispute. It was when we reported the matter to elders called Nzuko Obu Igba under Umunze Customary Law. These elders settle land disputes in our town. The elders settled the matter but not completely. After settling the matter they ordered that both parties should swear to an oath. This decision was written. Michael Nwafor was the Secretary. After the matter was reduced to writing they gave us a copy and Ndiabo a copy as well. The chairman was one Ekweogu. This is the proceedings given to me. Proceedings tendered by consent and marked Exh. C. The dispute was between us and Ndiabo. Now we dispute the land with Ndikpa. Ndiabo and Ndikpa are related. At the time of the dispute Ndikpa people knew when the matter was before the elders called Nzuko Obu Igba. One person who came as a witness for Ndiabo people is in this case now. The witness is called Izumolu Maduka. He is in this court. Izumwolu Maduka identified in court as the 9th defendant."

Of the second arbitration, the witness stated thus-

"I remember the year 1971. Something happened between us and Ndiabo people. It was the time the whole Umunze people went to the chief's palace and the parties submitted the matter for arbitration. The chief is called Chief M. Ugochukwu, Igwe of Umunze. The matter was finally settled in Igwe's palace. Amaikpa and Ndiabo people agreed with the settlement as decided by the Igwe and his cabinet. The present defendants knew when the matter was settled and were among the members that resolved the matter. Ndikpa people at that time never stated that they owned any land there. After the settlement Ohia or, Ofia Agbu formed the boundary between the people of Amikpa and Ndiabo. The settlement by Igwe Ugochukwu and his entire cabinet was reduced to writing. After the arbitration a copy of the decision was given to us and another to Ndiabo people. Copy of the decision tendered by consent and marked Exhibit D."

It is pertinent to point out that it does not appear to be dispute as pleaded in paragraph 9 of the respondents' amended Statement of Claim that the appellants appeared before the customary arbitration body as per Exhibit C and testified for the people of Ndiabo to the effect that the land in dispute belonged to the Ndiabos and not to the respondents. In answer to paragraph 9 of the said amended Statement of Claim, the respondents stated as follows-

"In answer to paragraph 9 of the amended statement of claim, it is true that the plaintiff's on or about 1966 had some land dispute with Ndiabo family of Ugwulano-Umunze who are relations of the defendants, but it never

concerned the defendants' portion of Uhuowerre, which may conveniently herein be referred to as Uhuowerre-Ndikpa, verged pink in defendants' survey plan aforesaid."

They however stressed in paragraph 10 of their second further amended Statement of Defence that the said dispute did not concern their portion of Uhuowerre land. Indeed the 4th defendant, Thaddeus Onyelisahu, B during his cross-examination testified thus-

"I heard that Azuko Obi Ikpa arbitrated on the dispute between Ndiabo and Amaikpa in respect of a piece and parcel of land. I was present when Ndikpa people gave evidence for Ndiabo..... They were convinced that the land belonged to Ndiabo. The land in question belongs to Ndikpa. The land arbitrated upon by Nzuko Obu Ikpa for which his people gave evidence belongs to Ndiabo....."

There is also the evidence of D.W.3, the 9th defendant, Izumolu Maduka of the appellants' family who with others testified in the arbitration proceedings in favour of the people of Ndiabo. Said he during his cross-examination-

"I gave evidence in favour of Ndiabo at Obi Igba. It was at the time Ndiabo and Amaikpa were disputing over land. I was at Obi Igba during the hearing of the case..... I am from Ndikpa giving evidence for Ndiabo..... The arbitrators visited the land in dispute, I went with them..... The land in question then belongs to Ndiabo. I went to give evidence that it belongs to their case, we have come back to claim the same land. The land in dispute now is different from the land then in dispute..... I know Chief S. I. Onyido. He is from Ndikpa and well known....."

It cannot be disputed that the land which was the subject matter of customary arbitrations, Exhibit C and D, was awarded to the respondents claim that the land is the same as the land in dispute in the present case, the appellants contend that the land over which they admittedly testified for the Ndiabos at the arbitration is entirely different from the land now in dispute. The next issue must be what the findings of the learned trial judge and the court below are with regard to these various issues placed before the court.

In this regard, the learned trial judge after a painstaking evaluation of

the evidence found in respect of Exhibits C and D as follows-

"Although Ukeje and Okeke appear to be parties in Exh. C, a thorough study of the evidence revealed that it was a contest between Amaikpa and

Ndiabo. The matter was subsequently submitted to Chief M.N. Ugochukwu, the Abalikete of Umunze and the Igwe of Orumba for final determination. His decision embodied in Exh. D read inter alia as follows-

B “That Ndiabo people should hands off all the area claimed and counterclaim by Okeke Agba of Ndiabo and Ukeje of Amaikpa, for Amaikpa people to own and possess”.

On whether the land arbitrated upon as per Exhibits C and D is the same as the land in dispute in the present case, he stated-

C “On the totality of evidence and examination of Exhibits B, G, C & D, it has been established to my utmost satisfaction and Exhibits C & D relate to UHUGBA land which is the same piece of land now subject to litigation.

A little later in this judgment, the learned trial judge further observed-

D “Unfortunately, I have to state that the defendants and most of their witnesses denied any relationship between the land in dispute and the one in Exhibits C & D which is contrary to findings already made. On this the truth especially Sylvester Onyido D.W.7 who played a great part in resolving the issue of this particular land when it was referred to Chief M.Ugochukwu for settlement. His rule in Exhibit D can be inferred by the following extract in the said Exhibit which is put thus:

F “I think the Akapoho of Umunze – you like traditional heads of this town. I thank all of you leaders in Umunze like Messrs. S. I. Onyido and R. I.Onyejeaka who have been striving that tensions are quelled in the interest of this town.”

The said witness D.W.7 as earlier stated (supra) thanked the Chief. This same person has now made a round about turn to deny the great role he earlier played.”

G On whether the decision in Exhibit D was accepted by the parties concerned, the trial court observed-

“This decision was accepted by all the parties as indicated in paragraph 29 of the said Exhibit worded as follows-

H “After this decision was delivered by Chief M.N. Ugochukwu, Mr. S.I.Onyido, one of the leaders in Umunze rose to thank the Chief and the audience of their support and co-operation. He emphasized that the decision

which was delivered by the chief was unanimous and that they will strive to abide by it.” S.I.Onyido is incidentally D.W.7”.

I think it relevant to add that the said D.W.7, S.I.Onyido, on the evidence of the

The Court of Appeal affirmed the above findings of the trial court as established. On the issue of Exhibits C and D, the Court of Appeal examined the pleadings of the parties and commented-

"Having regard to the averments from the parties' pleadings reproduced above, it would seem that there was no issue joined as to whether there had been previous dispute between the plaintiffs and Ndiabo people and that the present defendants had in that dispute testified that the land belonged to the Ndiabos. All that remained to be resolved by evidence was whether or not the land previously in dispute between the plaintiffs and the Ndiabos is the one currently in dispute between plaintiffs and the defendants."

On Exhibit C, the court below stated-

"Exhibit C was not tendered to show that the defendants/appellants were parties to the previous dispute. It was tendered only to show that the defendants/appellants and once admitted that the land in dispute belongs to the Ndiabo."

It went on-

"The question is – Did the defendants as a group testify in favour of the Ndiabos that the land in dispute belongs to the Ndiabo people"

And it answered thus-

"On the evidence, there is no dispute that the defendants had testified before the arbitration in Exhibit C that the land then in dispute belonged to Ndiabos. They admitted that fact in the present proceedings."

The Court of Appeal, quite rightly in my view, then opined that from a close perusal of Exhibit C, the case was fought, not by the nominal parties on record but the people of Amaikpa and Ndiabo.

The decision in Exhibit D is clear. This is that the land arbitrated upon is the exclusive property of the respondents. The Court of Appeal in accepting that this land in dispute in Exhibit C & D is the same as the land in issue in the present case stated as follows-

"It is clear that the lower court had considered the features of the land in dispute between plaintiffs and the Ndiabos with those in exhibits B and G and then related these features to the evidence given by P.W. 1 and P.W. 3 before concluding that the land in dispute between the plaintiffs and the Ndiabos and that in dispute in the present case is one and the same. I think the lower court adopted the correct approach. There was certainly evidence before the trial court upon which it could have come to the conclusion that the land previously in dispute and that in the current case is the same. It is not for me to substitute my views of the evidence for those of the trial

judge..... *I therefore hold that the finding of the lower court that the same land in dispute between plaintiffs and the Ndiabos is the one in dispute in the current case was correctly made”.*

The above findings of the trial court as affirmed by the court below are fully supported by evidence before the court. They have neither been showed
 B to be perverse nor patently erroneous and I can find no reason to interfere with them. See Enane v. Adu (1981) 11-12 S.C. 24 at 42. Nwadike v. Ibekwe (1897) 4 N.W.L.R (Part 97) 718, Igwego v. Ezeugo (1992) 6 N.W.L.R. (Part 249) 561 at 576, Chikwendu v. Mbamali (1980) 3-4 S.C 31 at 715. Woluchem v. Gudi (1981) 5 S.C.291 at 320 etc. I will now
 C examine the questions of standing by and estoppel by conduct which have arisen from the issues under consideration against the background of the above established facts.

The law is well settled that where disputes or matters in difference between two or more parties are by consent of the disputants submitted to a
 D domestic forum, inclusive of arbitrators or a body of persons who may be invested with judicial authority to hear and determine such disputes and matters for investigation in accordance or a body of persons who may be invested with judicial authority to hear and determine such disputes and usages, and a
 E court of the land. Such a decision is consequently binding on the parties and the court in appropriate cases will enforce it. See Joseph Larbi v. Opanin Kwasi 13 W.A.C.A 81, Opanin Kwasis v. Joseph Larbi 13 W.A.C.A 76, Anjaku v. Nnamani 14 W.A.C.A. 357 at 359 etc.

The parties in Exhibits C and D willingly submitted themselves to
 F the arbitrations of Nzuko Obu Igba and Chief M.N.Ugochukwu, the Igwe of Umunze with the traditional advisers. It is in evidence that these bodies are invested under customary law and usages with judicial functions the attempt was made by either side thereto to impugn the same. In my view,
 G the decision therein handed down which awarded title of the land in dispute to the respondents is as effective and enforceable as any other decision of a court of law.

Estoppel has been defined as a liability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has
 H been made to appear by the matter giving rise to the disability. See Halsbury’s Laws of England, 4th Edition, Vol. 16 Article 1501. The appellants, as I have

already mentioned, were not parties to Exhibits C and D. They, however, not only knew when the land in dispute was being fought as between the

respondents and the Ndiabos per Exhibits C and D, they appeared as witnesses for the Ndiabo people and testified that the land in dispute belonged to the Ndiabos. They made no claim whatever for themselves in respect of the land.

In this regard, the court below observed thus –

“It was undisputed in the lower court that the present defendants had asserted before the arbitral body in the dispute between the plaintiffs and the Ndiabos that the land in dispute then belonged to Ndiabos. Can the defendants now be allowed to turn round and claim the same land as their own?” B

It then answered -

“In the context of this case, the successful plea of estoppel by the plaintiffs means in effect that the defendants were precluded from asserting or proving that the land in dispute belonged to them since they had previously represented that the land belonged to the Ndiabos who had admittedly lost to the plaintiffs. It follows therefore that the defendants’ situation, by calling evidence of traditional history and acts of possession and or ownership was hopeless. It is like gathering water in a sieve. All the evidence called was weightless. And this is as against the plaintiffs who called evidence of their acts of possession and ownership and in whose favour a member of the defendants’ family (i. e. P. W.3) testified.” C D

I agree entirely with the above observations of the court below, the appellants in Exhibits C and D testified that the land in dispute belonged to the Ndiabo people. At no time in the course of the proceedings did they claim the land for themselves as their property. In the circumstance, they are estopped from asserting that the land in dispute now belonged to them from time immemorial. This plea of estoppel having been validly set up by the respondents against the appellants, the Court of Appeal was right in upholding the judgment of the trial court and dismissing the appellants appeal. E F

On the issue of standing by, it is established that when the issue of title to the land in dispute was being investigated and adjudicated upon by the Nzuko Obu Igba and Igwe M.N. Ugochukwu with his traditional adviser, the appellants were not only aware of the proceedings going on, not only stood by and made no claim to the land, they had in fact appeared before the arbitral body as witnesses and testified that the land in dispute was the property of the Ndiabo people. The question is whether they can now turn round to claim the same land as their property from time immemorial. G H

The law is settled that if a party having a right stands by and sees

another dealing with the property in a manner inconsistent with that right, and makes no objection while the affair is in progress, he cannot afterwards complain. See Leeds (Duke) v. Amherst (Lord) 16 L.J. Ch. 5. So, too, a person who knowingly stands by during litigation concerning the title to the land in which he claims ownership to or an interest in, in circumstances in which he might reasonably be expected to apply to be joined as a party to establish his claim may find himself bound by the judgment in the suit even though he was not a party to the suit in which the judgment was given. See Lateju v. Iyanda (1959) F.S.C. 257 at 259. Alhaja Sabalemotu Kaiyaoja and others v. Egunla (1974) 12 S.C. 55. The appellants during the arbitration proceedings failed to join in the dispute to assert their interest to the land in dispute. On the contrary, they testified that the land belonged to the Ndiabos.

An estoppel may arise where a party such as the appellant in the present case, is not allowed to say that a certain statement of fact or assertion he had made is untrue, whether in reality it is true or not. I fully endorse the observation of the court below that in the context of this case, the appellants were precluded from asserting or proving that the land in dispute belonged to them since they had previously represented in another proceedings that the land belonged to the Ndiabos who lost their claim of title to the land to the respondents. I must for all the reasons I have stated above resolve issues 1, 2, 3 and 4 in favour of the respondents.

The 5th issue questions whether the sum of N I ,500.00 awarded to the respondents by the Court of Appeal as general damages is not excessive. The Court of Appeal had on the 8th December, 1989 reduced the award of N5000.00 made by the trial court to the respondents as general damages for trespass to N1,500.00. The respondents in giving evidence in respect of the damages they suffered from the appellants' trespass had testified thus –

"In 1979 the defendant entered the land and destroyed crops on our land as well as economic trees. These are cassava, pumpkin, okro and economic trees like palm trees, palm fruits. We took the defendants to Aguata Magistrates Court. I now want the court to restrain the defendants from entering our land, ask them to pay us N20,000. 00 as damages and declare the land as our own. "

In order to justify reversing the court on the question of the amount of damages, it will generally be necessary that the appellate court should be convinced either that –

(1) the court acted upon some wrong principle of law or

(2) that the amount awarded was too extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of

the damage to which the plaintiff is entitled.

See Ziks Press Ltd. v. Ikolu (1951) 13 W.A.C.A. 188. Idahosa v. Oronsaye (1959) 4 F.S.C. 166. Bala v. Bankole (1986) 3 N.W.L.R. (Part 27) 141. Onaga v. Micho and Co. (1961) 1 All N.L.R. 338. Ijebu Ode Local Government v. Balogun and Co. Ltd. (1991) 1 N.W.L.R. (Part 166) 136 etc. No doubt, a trespass of a technical nature only, can, at best, attract nominal or minimal damages. See Umunna and others v. Okwuraiwe (1978) 6-7 S.C. 1 where this court reduced an award of N3,000.00 awarded by the trial court by way of nominal damages to N200.00. This award was however made in the year 1978 almost 20 years ago and it is a matter of notoriety which I must take judicial notice of that the naira was then virtually at par in value with the pound sterling and very much stronger than the United States dollar. Today, the story is very different. In my view, the courts, are entitled to keep up with the times and economic trend in the country, and in particular with the prevailing decline in the purchasing power of the naira over the past few years. See L. O. Ejisum v. M. Ajao and others (1975) 1 N.W.L.R. 4 at 7. Amos Adenaike v. Muibi Osoba and Another (1980) Ogun S.L.R. 8 at 25, Or. O. O. Kalu and Another v. Or. S. Mbuko (1988) 3 N.W.L.R. (Part 80) 86 etc.

At all events, the respondents both in their pleadings and evidence before the trial court claimed the infraction of their legal rights by the appellants. These consisted of the breaking and entry into the land in dispute by the appellants and the destruction of the respondents' economic trees and crops including palm trees, palm fruits, cassava, pumpkin and okro growing on the land. No special damage was either pleaded or claimed by the respondents. It is equally plain that the respondents' claim was founded on general damages and not on nominal damages.

The law is well settled that it is not enough for the court to simply award damages in an action for trespass to land without giving any reason as to how it arrived at what amounted to reasonable damage. See Umunna and others v. Okwuraiwe and others supra. In the present case, the trial court in assessing what amounted to reasonable damage reasoned thus-

"Turning to the other arms of the claim, the defendants never denied trespassing on the land in dispute but assert that they entered the land, as of right. See paragraphs 11, 12, 13 of the amended Statement of Claim and paragraphs 12, 13, 14 and 15 of the 2nd Further Amended Statement of defence. In assessing the amount of damages plaintiffs are entitled to, one has to consider the historical nature of the case and the attitude of defendants as seen

from evidence given in respect of economic trees and crops damaged N20,000 (Twenty thousand naira) is claimed but from what I have stated above, the sum of N5,000.00 will be adequate for plaintiffs."

1370 Nka v. Onwu (1996) 7 KLR Iguh JSC

I think the award of damages made by the trial court was certainly not by way of nominal damages but as general damages, in view, particularly of the destruction by the appellants of the respondents' diverse economic tree and crops which the learned trial Judge specifically took into consideration in his award.

- The court below, however, reduced the award of damages made to the respondents to N1,500.00. There is no cross-appeal by the respondents against this reduction of the trial court's award. In my view, I cannot hold that the said award of N1,500.00 made to the respondents by the court below is either so extremely high or so very small as to make it in my judgment, an entirely erroneous estimate of the damage to which the respondents are entitled. Accordingly, I have no option than to uphold the award and I must therefore resolve issue 5 against the appellants.

- All the issues having been resolved against the appellants. This appeal accordingly fails and it is hereby dismissed. The judgment of the court below is hereby affirmed and there will be costs to the respondents against the appellants which I fix it N1000.00.

BELGOREJSC

- I agree that this appeal has no merit. The appellant's case was based at the trial Court on facts and these facts were resolved not in their favour. The Court of Appeal found no compelling reasons to disturb the findings. In this Court no reasons substantial enough to interfere with these concurrent findings have been advanced. As there is no cross-appeal against the reduction of damages this Court has not been thus called upon to interfere either. I agree with my learned brother Iguh, J.S.C. that this appeal must fail. I also dismiss this appeal with N1,000.00 costs to the respondents against the appellants.

WALIJSC

- I have had the advantage of reading before now, the lead judgment of my learned brother Iguh JSC and I agree with the reasons he gave therein for dismissing the appeal.

My learned brother has thoroughly dealt with all issues, on law and fact, and I have nothing more useful to contribute.

- For these same reasons, I also hereby dismiss this appeal and adopt the consequential orders contained in the lead judgment that of costs inclusive.

OGWUEGBUJSC

I am in agreement with the judgment just delivered by my learned brother Iguh, J.S.C. a draft of which I had the advantage of reading. I am also of the view that the appeal should fail.

On the issue whether the plaintiffs successfully raised the plea of estoppel by conduct and whether the preconditions necessary for the operation of the plea of estoppel by standing by were established by the plaintiffs, I would refer to paragraphs 9 and 10 of the amended statement of claim.

I will answer the two questions in the affirmative for the following reasons:

1. The evidence of P.W.3, Vincent Allaebob who hails from Nkpa Ugwulano Umunze (the defendants' family) was that the defendants were very much aware of the arbitration between the plaintiffs and the people of Ndiabo and that the defendants never claimed the land the subject of the arbitration as their own. C
2. The first plaintiff stated that one Izunwoh Maduka (the 9th defendant) testified during the arbitration proceedings to the effect that the land then in dispute belonged to Ndiabo people. D
3. The 4th defendant in his own evidence stated that one Obinam of Ndikpa (defendants' family) gave evidence during the customary arbitration and stated that the land the subject matter of the arbitration belonged to the people of Ndiabo. E
4. The 9th defendant who is D.W.3 in the present proceedings admitted that he testified in support of Ndiabo people during the arbitration.
5. The learned trial judge found as a fact that Exhibits "B", "G", "C" and "D" relate to the same parcel of land namely, UHUA land which was the subject of the arbitration between the plaintiffs and the Ndiabos as well as the subject of this appeal. F

The plea of estoppel was found by the trial judge to be validly raised and established by the plaintiffs against the defendants. The Court of Appeal rightly affirmed the judgment of the learned trial judge which gave judgment for the plaintiffs in terms of their claim. It concluded as follows:

"In the context of this case the successful plea of estoppel by the Plaintiffs means in effect that the Defendants were precluded from asserting that the land in dispute belonged to them since they had previously represented that the land belonged to Ndiabos who had admittedly lost to the plaintiffs. It follows therefore that the Defendants (sic) situation by calling evidence of traditional history and acts of possession or ownership was hopeless. It is like gathering water in a sieve. "

A person who merely stood aloof rather than join in a dispute affecting

his rights may also find that his conduct amounts to estoppel. The defendants did more than standing by in the customary arbitration. They neither took over the case nor joined the people of Ndiabo to fight the battle. Rather, they testified that the parcel of land which is the same as that in dispute in the present proceedings belonged to the people of Ndiabo.

B They therefore incurred a liability whereby they are precluded from alleging or proving in the present proceedings that the fact is otherwise than it had been made to appear by the matter giving rise to the disability. See Odua Bsiaka & Ors. v. Obiasogwu & Ors. 14 W.A.C.A. 178.

C The doctrine of estoppel is well known and recognized by the courts of law. See also Roden v. London Small Anns Co. 46 L.J.Q.B.D. 213 and Nana Ofori Atta II v. Nana Abu Bonsra II (1957) 3 W.L.R. 830.

The defendants are therefore estopped by conduct and not by resjudicate from stating the contrary of that which they had previously asserted. See Obodo & Ors. v. Ogha & ors. (1987) 2 N.W.L.R. (Pt. 54) D 1 at 15.

I am satisfied that there was no justification, on any known principle, on which the court below could have reversed the decision of the trial judge.

E For this and ether reasons stated by Iguh, J.S.C. with which I am in full agreement, the appeal is hereby dismissed and the judgment of the court below is hereby affirmed. I abide by all the orders contained in the said judgment of my learned brother Iguh, J.S.C.

F **ONUJSC**

I have had the privilege of a preview of the judgment of my learned .brother Iguh, J.S.C just read and with it I am in entire agreement that the appeal fails. I too dismiss it for lack of merit.

G My learned brother has, in his judgment, very meticulously reviewed and assessed the facts as well as the law applicable thereto that I only need to add the following words of mine in elaboration.

The five issues which the appellants have submitted arise for this

court's determination are:-

H 1. Whether the Plaintiffs/Respondents in their pleadings and evidence relied on Exhibit C to show that the Defendants/Appellants once admitted that the land in dispute belonged to the Ndiabos?

2. Did the Plaintiffs/Respondents successfully raise the plea of estoppel by conduct having regard to their pleadings and the evidence in support?

3. Were the preconditions necessary for the operation of the plea of estoppel by standing by established by the Plaintiffs/Respondents?

4. Whether the decision of Chief Ugochukwu contained in Exhibit D was given in violation of the rules of natural justice and if so whether it can support a plea of estoppel?

5. Whether the sum of N 1 ,500.00 awarded as nominal damages is not manifestly excessive.

In considering the first issue, to which I am of the firm view the second, third and fourth issues are ancillary, it is pertinent firstly to refer to paragraphs 9 and 10 of the plaintiffs' /respondents' Amended Statement of Claim which the Defendants/Appellants traversed in part by joining issues in the 2nd Further Amended Statement of Defence in paragraphs 9 and 10 (a), (b), (c) (i), (ii) and (iii) thus:

"9. In 1966 the land in dispute as well as other lands of the Plaintiffs became a subject of dispute between the Plaintiffs and Defendants relations of Ndiabo family of Ugwulano, Umunze. The parties submitted themselves to the arbitrators of Umunze elders called "NZUKO OBU IGBA" under Umunze Customary law. The decision of the said body which was recorded did not restore peace to the parties. The recorded decision of the elders dated 28/5/ 67 will be founded upon.

10. In 1971 the parties to the dispute submitted themselves to the arbitration by Chief M. N. Ugochukwu the Igwe of Umunze who settled the dispute between the Plaintiffs and the Defendants' relations of Ndiabo. By the decision of the said Igwe M. N. Ugochukwu the land now in dispute was awarded to the Plaintiffs with a proviso that one Mathias Ndukwe should continue to live within the area verged YELLOW until he vacates the said area after which the area reverts to the Plaintiffs. When the case between the Plaintiffs and Ndiabo people in respect of the land in dispute was before Chief J. M. N. Ugochukwu the present Defendant (sic) appeared to testify in favour of Ndiabo people but made no claims on their behalf. The Plaintiffs will found on the findings and decision of the arbitration by Chief M. N. Ugochukwu and dated the 20th of February, 1971 which fixed the boundary between the Plaintiffs and Ndiabo people at OHIA AGBA as shown on the plaintiffs' plan."

Evidence was led at the hearing to establish all that was pleaded in these paragraphs by the Plaintiffs/Respondents (hereinafter referred to as Respondents and the Defendants/Appellants (hereinafter referred to as Appellants) in support of their respective cases. The learned trial Judge on the totality of the evidence adduced found the case of the Respondents proved and so gave them judgment. The Court of Appeal (hereinafter referred to shortly as the court below) dismissed the Appellants' appeal. There are therefore concurrent

findings of facts by the two courts below.

Since it was palpably shown that in an earlier dispute between the Respondents and the Appellants' relations Ndiabo, the Appellants testified for the Ndiabos but did not claim the land to belong to themselves before the arbitral body that in 1966 and 1971 found in the Respondents favour, they (Appellants) cannot now be heard to say in the present dispute between them and the Respondents in relation to the same piece of land that it had been their (Appellants') property from time immemorial. Thus, although the earlier arbitration proceedings (Exhibit 'C') respecting the same parcel of land were shown to be inconclusive, the latter proceedings before Chief M. N. Ugochukwu (Exhibit 'D') were shown to have ended in favour of the Respondents pleadings and evidence led thereon which the Appellants denied). It is now too late in my judgment for the Appellants on their own to establish or maintain their claim of ownership to the land now in dispute they having not joined issues with the Respondents in the case between the Ndiabos and the Respondents and regarding which the trial court found them Appellants to be trespassers when they came upon it in 1979, 1980 and 1981. Accordingly, I am satisfied with the view taken by the trial court regarding Exhibit 'C' inter alia, that-

"On the totality of evidence and examination of Exhibit B, G, C, & D it has been established to my utmost satisfaction that Exhibits C & D relate to the UMUA GBA land which is the same piece of land now subject to litigation."

Much later in his judgment the learned trial Judge held, quite rightly in my view, that-

"Unfortunately, I have to state that the defendants, and most of their witnesses denied any relationship between the land in dispute and the one in Exhibits C & D which is. contrary to findings already made. On this issue, I find that the defendants and their witnesses are not prepared to tell the truth especially Sylvester Onyido D. W. 7 who played a great part in resolving the issue of this particular land when it was referred to Chief M. Ugochukwu for settlement. His role in Exhibit D can be inferred by the following extract in the said Exhibit which is put thus:

"I thank the Akakpolu of Umunze – you are the traditional heads of this town. I thank all of you leaders in Umunze Like Messrs. S. I. Onyido and R. I. Onyejiaka who have been striving that tensions are quelled in the interest of this town"

In confirming the above findings of fact (though not without reversing the decision on the traditional evidence led) the court below held, inter alia, as follows:-

“Having regard to the averments from parties’ pleadings reproduced above, it would seem that there was no issue joined as to whether there has been previous dispute between the appellants and Ndiabo people and that the present defendants had in that dispute testified that the land belonged to the Ndiabos. All that remained to be resolved by evidence was whether or not the land previously in dispute between the plaintiffs and the Ndiabos is the one currently in dispute between plaintiffs and the defendants.” B

Commenting further about Exhibits ‘C’ and ‘D’ in its judgment, the court below held inter alia that-

“The plaintiffs tendered as Exhibits ‘C’ and ‘D’ respectively the proceedings before the native arbitration and the decision of Igwe Ugochukwu. It was the contention of the appellants that the decision in Exhibit ‘C’ was inconclusive since the parties were asked to swear to an oath. The appellants are further contending that exhibit ‘D’ was inadmissible because the maker Chief M. N. Ugochukwu was not called as a witness. But I think that the appellants are mistaken. Exhibit ‘C’ was not tendered to show that the defendants/appellants were parties to the previous dispute. It was tendered only to show that the defendants/appellants had once admitted that the Land in dispute belongs to the Ndiabo. Exhibit ‘D’ was no more than an attempt to show the decision of a second arbitration by Chief Ugochukwu. The question is - Did the defendants as a group testify in favour of the Ndiabo that the land in dispute belonged to the Ndiabos?” C D E

On the evidence, there is no dispute that the defendants had testified before the arbitration in exhibit ‘C’ that the land then in dispute belonged to Ndiabos. They admitted that fact in the present proceedings. It was contended however that the previous dispute between Okeke Abaa and Ukeje was personal as distinct from a representative dispute. The lower court at page 118 of the record expressed its views on the point thus: F

“In the examination of cases of this native embodies (sic) in Exhibits C and D, the courts must look at the substance rather than form and not the way the claim was drafted. See Olumo v. Isutus 10 W.A.C.A Udofia v. Afia 6 W.A.C.A. 216 at p. 218. On procedure, they should not be strict in so far both parties were given opportunity to put across their case. See also comments of Aniagolu, J.S. C. in Ikpang v. Edoho 2 L.R. N. 29 pp. 35/36.” G H

I think that the lower court was correct in its approach. A close perusal of exhibit ‘C’ shows that the case had been fought between the people of Amaikpa and Ndiabo even if the direct nominal parties were Okeke Abaa and Ukeje.” (Underlining for emphasis)

Throwing more light on Exhibit 'C', the court below held among other things as follows:-

B *"The extracts reported above from Exhibit 'C' are obviously vague and difficult to understand. But I must approach the matter with understanding and a desire to discover the truth. From these extracts it is clear that some of the features of the land in dispute between the plaintiffs and the Ndiabos were the land of Umuobidike, Oko stream, Ihite land, Aghomiri, the road leading to Ndiabo, and the place where Mathias Ndukwe and Ogbonna Onyegbunna lived. When these features are lined up with exhibits 'B' and 'G' a clearer picture emerges.*

C *The features are Umuobidike land and Umuochioma land to be found on the North-West of exhibits 'B' and G. Ihite land is on the North East and South-East of exhibit 'B' and 'G'. The place where Mathias Ndukwe lived is depicted and marked yellow in both exhibits 'B' and 'G'. The road leading to Ndiabo begins from the southern most parts of exhibits 'B' and 'G'. Ohia Agha D which according to the plaintiffs in paragraph 10 of the amended statement of claim represents the boundary created by the arbitration of Ugochukwu in its decision between the plaintiffs and the Ndiabos is on the south part of exhibit 'B'.*

E *The case made at the trial by the plaintiffs is that the land previously in dispute between them and the Ndiabos extends from Ohia Agha in the south upwards to share boundaries with Umuobidike on the North-West and north respectively. The defendants on the other hand contended that the land previously in dispute is that verged green to the north in exhibit 'G'.*

F *Now at the trial the defendants' witnesses were agreed that Mathias Ndukwe lived on the land in dispute between the plaintiffs and the Ndiabos. Strangely however the defendant's plan exhibit 'G' depicts the building Mathias Ndukwe as being outside the land previously in dispute between the plaintiffs and Ndiabos. Further Aghomiri which was a feature of the land G previously in dispute between the plaintiffs and Ndiabos is far away from the land verged green in exhibit 'G' as the one previously in dispute between the plaintiffs and the Ndiabos.*

H *The position then is that quite apart from the oral testimony coming from PW1 of Ndiabo family and PW3 of the defendants' family, the trial court had before it helpful features of the land previously in dispute which were to help it decide whether the land previously in dispute between the plaintiff and the Ndiabos is the same as the one currently in dispute. How did the trial court approach the matter?"*

After further quoting in extension from the judgement of the trial court

and how that court approached the matter, the court below continued thus:

“It is clear that the lower court had considered the features of the land in dispute between plaintiffs and the Ndiabos with those in Exhibits and P.W.3 before concluding that the land in dispute between plaintiffs ‘B’ and ‘G’ and then related these features to the evidence given by P.W.1 and P.W.3 before concluding that the land in dispute between plaintiffs and Ndiabos and that the dispute in the present case is one and the same. I think the lower court adopted the correct approach. There was certainly evidence before the (sic) previously in dispute in the current case is the same.”

(Underlining is also mine for emphasis).

After re-iterating the proposition of law as decided in *Ekpere v. Usilo* (1978)6-7 S.C. 187 at 198 and *Akinloye & anor. v. Eyiola & Ors.* (1968) N.M.L.R. 92 at 93 that it is not province of an appellate court to substitute its views of the evidence for those of the trial judge, the court below much later in its judgement further observed.

“In the instant case the representatives of the two parties who were involved in the previous dispute i.e. P.W. and 1st plaintiff both testified that the same land previously in dispute between the plaintiffs and Ndiabos is the one now in dispute. In the previous case the land was described as Uhuagba and as in this one, PW3, a member of the defendants’ family longed to the plaintiffs. The defendants themselves agreed that P.W.1 and P.W.3 were persons who should know a lot about the land in dispute. And more importantly the features of the land previously in dispute before the arbitrators all suggest that the plaintiffs’ version was the more probable I therefore hold that the finding of the lower court that the same land in dispute between the plaintiffs and the Ndiabos is the one in dispute in the current case was correctly made”

Finally, the court below in coming to the inevitable conclusion that the equitable principles of standing-by and estoppel by conduct therefore had sway said:

“I observed earlier that the defendants were not parties to the previous arbitration so, where does the finding that the land previously in dispute and the current one is the same land lead us? This brings into play the equitable principles of standing by and estoppel by conduct. It was undisputed in the lower court that the present defendants had asserted before the arbitral body in the dispute then that the land belonged to Ndiabos. Can the defendants now be allowed to turn round and claim the same land as their own! It is noteworthy that the defendants through their witnesses in the lower court testified that the land previously in dispute between the plaintiffs and the Ndiabos did not

belong to them.....” (Underlining above is mine for further emphasis)

The net result of all I have been saying is that the decisions of the two courts below, extracts of which I have set out above constitute concurrent findings of fact by them which unless shown to have breached any known rule of law or procedure or that the same amounted to a miscarriage of justice or is perverse, ought not to be interfered with or disturbed. See Western Steel Works v. Iron & Steel Workers Union (1987) 1 NWLR (Part. 49) 284; Akinanya v. U.B.A. (Nig.) Ltd. (1986) 4 NWLR (Part. 35) 273; Otogbolu v. Okeluwa (1981) 6-7 S.C. 99; Sobakin v. The State (1981) 5 S.C. 75 and Kale v. Coker (1982) 12 S.C. 252, to mention but a few. Issue one is accordingly answered in the affirmative.

ISSUE NOS. 2, 3 and 4.

Issues 2 and 3 being ancillary to issue 1 are themselves respectively answered in the positive while issue 4 which although is also ancillary to Issue 1, is answered in the negative

ISSUE NO. 5

Issue No. 5 complains of the nominal damages of N 1,500.00 awarded by the court below to the Respondents being excessive when it remembered that the learned trial Judge awarded N5,000.00 as nominal damages to the Respondents and that the court below reduced the same N1,500.00, the appellants’ complain can only be meaningful if they show that the award is arbitrary, in which case, the Court of Appeal and is duty-bound to intervene to set it aside or reduce it (see S.W. Ubani-Ukoma v. G.E. Licol (1962) 1 ANLR 150; Bashiru Bakare v. Allfred Jalkh (1969) 1 N.M.L.R. 262; Yesufu Maduga v. Hamza Kofar Bai 1 NWLR (Part 62) 635 or that it is either excessive or erroneous (see Fagbemi (1978) 3 S.C. 209) or further still that there has been an exercise of discretion in the award. (See Umunnay v. Okuraiwe (1978) 3 S.C. 1). In all these instances and more, an appeal court will not disturb award of damages of a court of trial unless it is convinced that the trial court acted on a wrong principle of law or if the amount awarded is neither high nor low that there was an entirely erroneous estimate of damages. See Zik’s Press Ltd. v. Ikoiku (1951) 13 W.A.C.A. 188; Oduro v. Davis (1952) 14 W.A.C.A. 46 and Onaga & ors. v. Micho & Co. (1961) 1 ALL NLR 324. In the latter case, the Court of Appeal refused to reduce the award. But in Agaba v. Otobusin (1961) 1 ALL N.L.R. 299, and Idahosa & anor. v. Oronsaye (1959) 4 F.S.C. 166, the amount awarded by the trial court was reduced while in His Highness Uyo I v. Felix Egware (1974) 6 SC 103 at 108 and Ijebu-Ode local Government v. Balon (1991) 1 NWLR (Part 166) 136, the amount

awarded were increased as entirely erroneous estimates.

In the instant case, I see no reason to interfere with the award of N1,500.00 where acts of trespass committed were shown to have been flagrantly perpetrated by the Appellants in 1979, 1980 and 1981.

For these reasons and the more elaborate ones set out in the lead judgment of my learned brother Iguh, J.S.C. I too, dismiss this appeal and abide by the consequential orders inclusive of costs awarded therein.

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