

SUPREME COURT OF NIGERIA
17TH JANUARY, 1997. SC.99/1990
CORAM:- S. M. A. BELGRORE, I. L. KUTIGI, M. E.
OGUNDARE, Y. O. ADIO, A. I. IGUH, JJSC.

CHIEF OSIGWE EGBO & 16 ORS. DEFENDANTS/APPELLANTS
(For and on behalf of themselves and as
representing the people of Okutukutu and
Etege Villages.)

AND

CHIEF TITUS AGBARA & 4 ORS PLAINTIFFS/RESPONDENTS
(For and on behalf of themselves and as
representing the people of Opolo Village.)

APPEALS - Delay in proceedings - Before the trial court - Will not per se warrant appellate court's interference

COURTS - Jurisdiction of a high court judge - There being only one state high court for Rivers State - Whether a judge lacks jurisdiction - To continue hearing of same case in another judicial division.

LAND LAW - Title - Traditional evidence - Whether respondents evidence of tradition - Was rightly accepted as conclusive.

PRACTICE & PROCEDURE - Delay in hearing - Whether seven years gap between hearing and judgment - Is a condemnable inordinate delay.

PRACTICE & PROCEDURE - Delay - Though found to be inordinate - Did not lead to any miscarriage of justice - As issue of credibility and demeanour of witnesses did not arise

PRACTICE & PROCEDURE - Irregularity - In the transfer of a case - Will Not nullify the entire proceedings - In all cases.

PRACTICE & PROCEDURE - Transfer of a case - By one high court Judge to another judge - Whether erroneous use of the word "referred" - Can make the transfer invalid.

FACTS

Before the High Court of Rivers State, the plaintiffs/respondents filed an action against the defendants/appellants claiming declaration of title, damages for trespass and perpetual injunction in respect of the land in dispute. Both parties relied on continuous possession and traditional evidence.

The trial judge commenced hearing of the suit at Ahoada Judicial Division and concluded it at Port Harcourt Judicial Division following a transfer by the succeeding judge. In effecting the transfer the Word “referred” was used erroneously. There were seven years lapse between the commencement of hearing and delivery of judgment. The trial judge found in favour of the plaintiffs.

The defendants appealed to the Court of Appeal contending that the transfer to Port Harcourt Division was improper thereby removing jurisdiction from the trial judge. The lower court dismissed the appeal. Defendants have further appealed to Supreme Court raising 6 issues.

ISSUES FOR DETERMINATION

“4.1. *Is the remark of Dappa, J. on the 1st December, 1978, to wit,*

“The case is therefore referred to Mr. Justice J. D. Manuel” an Order of Transfer within the contemplation of section 46(1) of the High Court Law? (See para. 2.2 (vi) (Supra).

4.2. If it is not, has there not been a clear breach of the statutory provisions relating to transfer of causes in the High Court from one Judge to another and from one Judicial Division to another? Etc, see p. 7

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

Transfer of cases

1. It is plain to me from the said proceedings that following an application made to Dappa, J. by the plaintiffs in the suit, the learned Judge transferred the case to Dagogo-Manuel, J. before whom it was part-heard for conclusion of hearing in his new Judicial Division. No doubt, Dappa, J. in transferring the case to Dagogo-Manuel, J. erroneously employed the word “referred” instead of “transferred”. I am however in complete agreement with Mr. Ofodile that the highest that may be said of this slip, if I may say with due respect, is, that the learned Judge unwittingly got himself entangled in a linguistic flaw which however, occasioned no miscarriage of justice, and must, therefore, be discounted. It seems to me indisputable from his directive and/or orders of the 1st December, 1978 that Dappa, J. clearly transferred the case to Dagogo-Manuel, J. of the Port Harcourt Judicial Division for the continuation and

completion of hearing. This exercise he had ample powers to perform. (p. 14A)

Irregularity - In the transfer of a case

2. In my view, whether or not the transfer is under seal is a mere procedural or administrative matter which may not ipso facto invalidate the order of transfer, itself. In this regard, it ought to be remembered that it is not every irregularity that automatically nullifies an entire proceedings, particularly where the irregularity did not in any way materially affect the merits of the case, or occasion a miscarriage of justice or where, in any case, it is much too late in the day for a party to complain about such irregularity. In the present case, even if the transfer order in issue is irregular by the mere fact that it was not under seal, and I do not so hold, the irregularity neither materially affected the merits of the case nor engendered any miscarriage of justice. Besides the appellants were at all times represented by counsel throughout the trial period of seven years but registered no protest to the transfer of the suit from Ahoada to Port Harcourt Judicial Division. In my view, the appellants cannot now be heard, having acquiesced in and fully participated in the proceedings to judgment, to complain against the said order of transfer. (p. 14 D)

Jurisdiction of a high court judge

3. However there being only one High Court for that state with jurisdiction through the state, I cannot accept that Dagogo-Manuel, J. who at all material times was a Judge of that state had no jurisdiction to continue the hearing of a case validly filed in that State and the hearing of which he commenced in one Judicial Division of the State and concluded in another Judicial Division of the same State. A Judge of a State High Court having jurisdiction to sit in one of the Judicial Divisions of that State does not lose the Jurisdiction to sit and adjudicate on matter by the mere fact of his transfer to another Judicial Division of the same state. I also agree that issues of Judicial Divisions, transfer orders and like matters being strictly administrative, do not go to jurisdiction. Accordingly issues 1 to 4 must be resolved against the appellants. (p. 15 G)

Seven years gap between hearing and judgment

4. Turning now to the present case, it cannot be disputed that the incredible period of seven years it took from the commencement of the taking of evidence to the delivery of judgment amounted to inordinate delay of the most condemnable, scandalous and inexplicable nature. This court has times without number warned in the strongest possible terms against

failure by trial courts to deliver their judgments within a reasonable time, and at all events, within three months of final addresses when the impression made on them by the witnesses are still fresh and present in their mind and have not become dimmed or vague by the passage of time. (p. 17 H)

B
Delay per se will not warrant appellate court's interference
 5. It therefore seems to me that delay, per se, is not sufficient reason for the interference with the judgment of a trial court. For the complaint to succeed, it has to be further established that the delay occasioned a miscarriage of justice
 C in that the trial Judge did not take a proper advantage of having seen or heard the witnesses testify or that he had lost his impressions of the trial due to such inordinate delay. (p. 19 B)

Delay - Did not lead to miscarriage of justice
 D 6. It is clear to me that the learned trial Judge in upholding the traditional history of the respondents as against that of the appellants did not concern himself with the demeanour or credibility of the parties or their witnesses. In the circumstance, I am unable to hold that the issue of inordinate delay in the determination of the suit is of any relevance in the appeal. Here again, the
 E demeanour or credibility of the parties of their witnesses hardly featured in this conclusion and I entertain no doubt that the decision of the learned trial Judge on the issue is fully justified by sound and cogent reasons with no bearing whatever with the delay complained of. In the circumstance, issues 5 and 6 must again be resolved against the appellants. (p. 22F &23E)

F
Title - Traditional evidence
 7. In the present case, the parties for their root of title pleaded both traditional evidence and acts of long possession and enjoyment of the land in dispute. The respondents' evidence of tradition was accepted by the trial court as
 G conclusive. This is clearly sufficient finding on the part of the trial court to sustain its judgment in favour of the respondents for title to the land in dispute. (p. 23 A)

NOTABLE POINTS OF INTEREST
 H IGUHJSC

1. Justice delayed is justice denied
 This is because trial courts must at all times bear in mind that human recollections being what they are, may loose their strength with the passage of time and that justice delayed is as bad as justice denied and may even, under

certain circumstances, be worse. The inordinate delay of seven years which this case was subjected to from the commencement of the hearing of the evidence in the trial court to the delivery of judgment is, in my view, totally inexcusable, unwarranted, unjustifiable and, if I may say with respect, almost amounted to a reckless action on the part of all concerned. Trial courts are once again admonished in the strongest possible terms against undue and/or inordinate delay in the determination of suits once the actual hearing of such suits has commenced. (p. 18 C)

ADIO JSC

2. Allegation of delay - Need to be specific

In short, a party raising as a ground for attacking the findings of fact of the trial court on the ground that there was a prolonged or undue delay in the trial of the case must show the specific finding or findings of fact which could be faulted as a result of the delay. (p. 25 E)

REPRESENTATION

B. A. M. Fashanu Esq. for the appellants
Emeka Ofodile Esq. for the respondents

CASES REFERRED

Emendimaya v. Okorji (1987) 18 N.S.C.C. (Part 11) 747

Ukpai v. Okoro (1983) 11 S.C 231

Anyah v. African Newspapers of Nigeria Ltd. (1992) 6 N.W.L.R. (Part 247) 319 at 334

Faghenro v. Orogun (1993) 3 N.W.L.R. (Part 284) 662 at 675

Ezeoke v. Nwagbo (1988) 1 N.W.L.R. (Part 72) 616 at 626

Eboh v. Akpotu (1968) 1 All N.L.R. 220 at 224 and 225

Kossen Nig. Ltd. v. Savannah Bank of Nig. Ltd. (1995) 9 N.W.L.R. (Part 420) 439 at 451-452

Aliyu v. M. N. Ibrahim (1992) 7 N.W.L.R. (Part 253) 361 at 370.

Ariori v. Elemo (1983) 1 S.C. 13 at 24

Ekeri v. Kinisede (1976) 9 and 10 S.C. 61

Lawal v. Chief Dawodu (1972) All N.L.R. 707

Anyanwu v. Mbara (1992) 5 N.W.L.R. (Part 242) 386 at 399

STATUTES REFERRED TO

Constitution of Nigeria 1979 ss. 234, 236, 33, 258

High Court Law (Cap. 61 Laws of Eastern Nigeria 1963) ss. 46, 47

LEAD.JUDGMENT BY IGUHSJC

In the Port Harcourt Judicial Division of the High Court of Justice of the former Rivers State of Nigeria, the plaintiffs, who are now respondents, for themselves and as representing the people of Opolo Village, caused a writ of summons to issue against the defendants, now appellants, for themselves and as representing the people of Okutukutu and Etegwe villages, claiming as follows:-

“(i) A declaration of title of ownership of the piece or parcel of land known as “Kaliema” and “Okobede” situate at Opolo Village Yenagoa in Brass Division in the Rivers State of Nigeria, whose value is five pounds C .(N5).

(ii) 3500 pounds general damages for trespass in that the defendants wrongfully entered upon the plaintiffs’ land and planted crops as well as damaging some plaintiffs property on the said land.

(iii) A perpetual injunction restraining the defendants, their servants or agents from entering on or in any manner whatsoever, committing any further trespass on the said piece or parcel of land.”

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

At the subsequent trial, both parties testified on their own behalf and called witnesses. The pieces or parcels of land in dispute are known as and called Kaliama and Okebede by the plaintiffs and Kaliama and Okoria by the defendants. The identities of the said pieces of land, on the unchallenged finding of the trial court, as affirmed by the court below, are not in dispute. Said the learned trial Judge:-

“The plaintiffs call the lands in dispute “Kaliama” and “Okebede” while the defendants give the names as “Kaliama” and “Okoria” but considering the plans filed by the parties and the evidence of the boundaries of these pieces of lands, I am satisfied that the identity of each piece of land is well known by both parties and the difference in name only cannot be of any consequence indisproving the knowledge of that identity.”

Both parties, for their root of title, relied, firstly on acts of long continuous possession and enjoyment of the land in dispute and, secondly, on traditional evidence. Each side claimed to be the original owners of the land from time immemorial. They claimed that their respective named ancestors were the first persons to acquire and occupy the land by deforestation in accordance with their customary law.

At the conclusion of hearing, the learned trial Judge, Dagogo-Manuel, J. after a careful review of the evidence on the 17th day of June, 1985 found for the plaintiffs and decreed as follows:

“In consequence, I exercise my discretion in favour of the members of Opolo villages and declare in their favour a customary right of occupancy over the disputed lands, namely, Kaliama and Okobede or Okoria. These areas are pink in the plan marked Exhibit “A” and are within the larger area, verged green in Exhibit “A”. I also award them N200 as general damages for trespass and order an injunction against the members of Okutukutu and Etegwé villages from committing any further acts of trespass on those lands.”

Dissatisfied with the decision of the trial court, the defendants lodged an appeal against the same to the Court of Appeal, Enugu Division which in an unanimous judgment on the 20th day of April, 1988 dismissed the appeal and affirmed the decision of the trial court, On the contention of the defendants that the learned trial Judge had no jurisdiction to continue with the trial of the suit which he had commenced at the Ahoada Judicial Division and concluded at the Port Harcourt Judicial Division without an order of transfer from the hand of the Chief Judge of the High Court of the Rivers State, the court below resolved the matter as follows:- ,

“The learned trial Judge had jurisdiction to continue the trial of the suit when he was transferred from Ahoada Judicial Division to Port Harcourt Judicial Division by virtue of the combined effect of sections 234 and 236 of the Constitution of the Federal Republic of Nigeria in that there is only one High Court in the Rivers State”.

Aggrieved by this decision of the Court of Appeal, the defendants 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.

The six issues identified on behalf of the appellants, which this court is called upon to determine are as follows:-

“4.1. Is the remark of Dappa, J. on the 1st December, 1978, to wit,

“The case is therefore referred to Mr. Justice J.D. Manuel” an order of transfer within the contemplation of Section 46(1) of the High Court Law? (See para. 2.2.(vi) (supra).

4.2. If it is not, has there not been a clear breach of the statutory provisions relating to transfer of causes in the High Court from one Judge to another and from one Judicial Division to another?

4.3. Is there on the record any evidence of an order (whether drawn-up , or not) of transfer of the case by the Chief Judge of the State or of any Judge from the Ahoada Judicial Division to the Port Harcourt Judicial Division or to another Judge under Section 47 or section 46 of the High

Court Law?

4.4. *If the answer to Issue 2 is, Yes and to Issue 3 if No' is there on the record any evidence of knowledge by the appellant of irregularity which disqualifies him from having the proceedings set aside?*

4.5. *Were the fundamental human rights of the appellants to fair hearing entrenched in section 33 of the Constitution of the Federal Republic of Nigeria, 1979 not breached:*

(a) *in the manner and circumstances surrounding the continuation of the case part-heard in Ahoada at Port Harcourt;*

(b) *the delay or time lapse between the taking of witnesses and between the commencement of trial and judgment?*

4.6. *If the answer to issue 4.5. above is in the positive, are the appellants not entitled to have the proceedings and judgment set aside?"*

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

D " 2.0 *I Whether the provisions of Sections 46 and 47 High Court Law (Cap 61 Laws of Eastern Nigeria) have been breached, the consequence of which would be that the final judgment of Manuel J. becomes a nullity?*

E 2.02. *Whether Sections 46 and 47 of the High Court Law are merely directory/procedural or mandatory, breach of which would render subsequent proceedings a nullity?*

2.03 *Whether Dagogo-Manuel J. had jurisdiction after his transfer to Port Harcourt (and therefore competent) to hear the suit up to final judgment?*

F 2.04. *Whether the plaintiffs/respondents are in breach of defendants/appellant's fundamental rights to fair hearing - Section 33(1) 1979 Constitution of the Federal Republic of Nigeria?"*

G I have closely examined the issues set out in the respective briefs of the parties and it is plain that the four issues identified in the respondents brief are sufficiently encompassed by the issues raised in the appellants brief. I shall, therefore, adopt in this judgment, the set of issues formulated in the appellants brief for my consideration of this appeal.

H At the oral hearing of the appeal, both learned counsel for the parties proffered additional arguments in amplification of the submissions contained in their respective written briefs of arguments.

Learned counsel for the appellants, B.A.M. Fashanu, Esq. in his submissions with regard to issues 1-4, criticised the procedure adopted by Dappa, J. sitting at the Ahoada Judicial Division by "referring" and not "transferring" the part-heard suit to Dagogo-Manuel, J. at the Port Harcourt Judicial

Division for conclusion of hearing. It is his view that in the absence of a formal drawn up order of transfer, there would be no effective or valid transfer of the suit from the Ahoada Judicial Division to Dagogo-Manuel, J. at the Port Harcourt Judicial Division. He contended, citing sections 46 and 47 of the High Court Law, Cap. 61, Laws of Eastern Nigeria, 1963 applicable to the then Rivers State of Nigeria, that the said order of Dappa, J. “referring” the suit to Dagogo-Manuel, J. at the Port Harcourt Judicial Division is irregular and a nullity.

On issues 5 and 6, learned counsel drew attention to section 33(1) of the Constitution of the Federal Republic of Nigeria, 1979 which makes provision for a right to fair hearing within a reasonable time. He argued that there was an undue and inordinate delay between the commencement of the taking of evidence and the delivery of judgment in the suit. He explained that the hearing of evidence in the case commenced on the 15th June 1978 but that judgment was only delivered in the suit on the 17th June, 1985. He contended that this period of seven years constituted such an unreasonable delay that it must ipso facto vitiate the entire proceedings. He referred to the decision in Ezekiel Emenimaya & ors. v. Okpara Okorji & Ors. (1987) 3 NWLR (Pt.59) 6; (1987) 18 NSCC (Pt.11) 747 where the lapse in time between the taking of the evidence of the first witness in the case and the delivery of judgment was only two years and four months and yet this court remitted the case back for retrial on the ground that the delay was unreasonable and in breach of the constitutional provision of fair hearing. Learned counsel submitted that in the face of the undue delay of seven years, the trial Judge would have lost all his impressions of the witnesses and the advantages of hearing and seeing them. He stressed that this would also have militated against his arriving at the right decision in the suit. He urged the court to allow this appeal and to order a retrial of the case.

Learned counsel for the respondents, Emeka Ofodile, Esq. in his reply argued that sections 46(1) and (2) of the said High Court Law empowered Dappa, J. to transfer this suit from the Ahoada Judicial Division to Dagogo-Manuel, J. then of the Port Harcourt Judicial Division of the High Court of the Rivers State. He argued that the powers conferred under Section 46 of the High Court Law are totally independent of those conferred under section 47 of that Law. He pointed out that the provisions under those two sections of the law relate to the procedural aspect of the hearing of cases. They are thus concerned with the administrative functions of the court. He referred to sections 234 and 236 of the Constitution of the Federal Republic of Nigeria, 1979 and to the decision of this court in S.O. Ukpai v. V.O. Okoro & On. (1983) 11 SC 231; (1983) 2 CNLR 380 and argued that there is only one High Court of Rivers

State. He submitted that a Judge of a Judicial Division of a State High Court does not lose jurisdiction to adjudicate on a suit by virtue of his transfer to another Judicial Division of the same State. At all events, he contended that the appellants at no time complained about the transfer of the suit from Ahoada to Port Harcourt Judicial Division. Citing the decision in *B Lasisi Aranda & Ors. v. Salami Ajani & Ors.* (1989) 3 NWLR (Pt.111) 511 at 545 E-G learned counsel argued that having fully participated in the proceedings to judgment, the appellants cannot now be heard to assert that the trial is irregular because of alleged absence of a formal order of transfer.

C On the issue of whether the appellants right to fair hearing was not breached due to the prolonged time lapses between the commencement of the taking of evidence and the delivery of judgment in the suit, Mr. Ofodile argued that a case of breach of section 33(1) of the 1979 Constitution was not made out. He looked forward to the day when suits could be determined within a few months of taking out the writ of summons but stressed the need for the determination of cases, particularly land cases, on their merits. He argued, citing the decision in *Anyah v. African Newspapers of Nigeria Ltd.* (1992) 6 NWLR (Pt. 247) 319 at 334, that the discretion whether or not to order a retrial was that of the Court of Appeal and unless this court comes to the conclusion that the exercise is manifestly wrong, it may not interfere. He finally referred to the case of *Emenimaya & Ors. v. Okorji & Ors.* supra relied on by the appellants and explained that it is an authority for the proposition that a judgment must be delivered within three months of final addresses unlike in the present case where judgment was delivered within one month of the addresses of learned counsel. He urged the court to dismiss the appeal.

I think it is pertinent for a better appreciation of the issue that have arisen in this case to set out, in considerable detail, the course of the proceedings at the trial which has formed the basis of the appellants complaints in this appeal. After pleadings were duly settled, hearing of the case commenced before Dagogo Manuel, J. then sitting at the Ahoada Judicial Division of the High Court of the former Rivers State on the 15th June, 1978, on which date the 3rd plaintiff gave evidence. His testimony continued on the 16th June, 1978 and his cross examination and re-examination were concluded on the 11th July, 1978, on which date the case was adjourned to the 30th August, 1978 for continuation of hearing. ON the 30th August, 1978 both counsel were absent in court whereupon the case was adjourned to the 1st December, 1978. In the meantime, Dagogo-Manuel, J. was transferred to the Port Harcourt Judicial Division. Consequently, the matter came up before Dappa, J. at the Ahoada

Judicial Division on the 1st December, 1978 on which date the record of proceedings reads thus:-

"Counsel for the parties are both absent. I understand from the plaintiffs that they have closed their case and their solicitor has written, suggesting the hearing being continued by the same judge who heard the plaintiff's case. This case is therefore, referred to Mr. Justice J.D. Manuel B who is now in Port Harcourt High Court.

Senior Registrar to send the file to him in Port Harcourt."

Accordingly, the case came up before Dagogo-Manuel, J. in Port Harcourt on the 22nd January, 23rd April and the 23rd July, 1979. The learned trial Judge had on the 23rd April, 1979 noted in his record of proceedings as C follows:-

"Court:- This is a Yenagoa matter and has been pending since 1972. It was part heard before me in Ahoada and therefore had to be sent here for completion. The trial has not continued since January this year because counsel for the plaintiffs Mr. Nunieh has not appeared in court to D lead further evidence. The records show his continued absence with the consequence of an unnecessary delay in the conclusion of this action. He is again absent today even though he and counsel on the other side had agreed to the continuation for today.

Under these circumstances an adjournment becomes inevitable but E the defendants will be compensated by way of costs.

Adjourned 23rd, 25th, 26th and 27th July. 1979 for continuation as suggested by Ibim and accepted by Chief Gabriel- Whyte."

N50 costs against the plaintiffs."

On the 25th July, 1979. Dagogo-Manuel. J. continued with the hear- F ing of the evidence of P.W. 1 which was concluded on that date. The case was adjourned to the 13th September, 1979 on which date there was no court interpreter to translate the evidence from Ijaw to the English language for the benefit of the court. The case suffered further adjournments on the 17th December. 1979. 30th April and 22nd October, 1980. G

On the 9th and 20th January. 1981. P.W. 2. P.W. 3. and P.W. 4 testified before the court and the case was adjourned to the 13th March. 1981 for continuation of hearing. For reasons which are not apparent on the record. the case next came up for hearing on the 31st March. 1982, a year afterwards when P.W. 5 and P.W. 6 testified. On the 19th October. 1982 the evidence of P.W. 7 H was taken whereupon the plaintiff's case was closed - a period of four and a half years from the date their case was opened.

The defendants opened their defence on the 21st April 1983 when their star witness, the 4th defendant. testified. His evidence continued on the

22nd April, 1983 when it was adjourned to the 27th May 1983. Again for reasons not apparent on the record of proceedings. his testimony did not continue until the 29th March 1984. a year afterwards, on which date his examination-in-chief, cross examination and re-examination were concluded.

The case next came up for hearing another year thereafter on the 20th B March 1985 on which date DW 1 and DW2 testified and were cross-examined. OW 3 and OW 4 testified on the 7th and 9th May, 1985 respectively, whereupon the defendants case was closed. The addresses of learned counsel were taken on the 15th and 17th May, 1985 and judgment in the suit was delivered on the 17th June, 1985. Without doubt the proceeding C which was filed since the 19th April 1972 underwent a chequered history. It cannot be in dispute that the case was subjected to the most severe of undue delay, having been pending for seven years between the commencement of the taking of evidence on the 15th June. 1978 and the delivery of judgment on the 17th June, 1985. I will now examine the D issues for determination in this appeal.

Issues numbers 1. 2. 3 and 4 directly concern the question whether the continuation of the hearing of the case by Dagogo-Manuel, J. at the Port Harcourt Judicial Division after he had been transferred out of the Ahoada Judicial Division to the Port Harcourt Judicial Division is such an irregularity E in the circumstances of the matter to vitiate the proceedings. The appellants, in this regard are not contending that Dagogo-Manuel, J. was, by law, incapable or forbidden from continuing the hearing of the suit he commenced its hearing from one Judicial Division, to wit, the Ahoada Judicial Division in his new Judicial Division, namely, the Port Harcourt Judicial Division. Their F quarrel is that in the absence of a formal drawn-up order under seal by the Hon. Chief Judge of the Rivers State effectively transferring the suit to Dagogo-Manuel, J. for completion of hearing at the Port Harcourt Judicial Division, the learned trial Judge must be without jurisdiction to continue with the hearing of the suit in his new Judicial Division. They G argued that the procedure adopted by Dappa, J. by "referring" and not "transferring" the suit to Dagogo-Manuel, J. is not in accordance with the law but must be treated as a nullity.

I think it ought to be observed that although this action was instituted in the Port Harcourt Judicial Division of the High Court of Rivers State, H the entire length and breath of the former Rivers State of Nigeria at the time of the institution of the action up to the 31st December, 1976 consisted of only one Judicial Division, namely. the Port Harcourt Judicial Division. It was by Order made on the 23rd day of December, 1976 and published in the Rivers State Gazette No.3, Volume 9 of the 20th January, 1977 (RSLN No.2 of 1977)

that the Rivers State was, for administrative purposes, divided into four Judicial Divisions that is to say. Port Harcourt, Ahoada, Sori and Degema Judicial Divisions with effect from the 1st January. 1977. I will now examine the relevant provisions of sections 46 and 47 of the High Court Law (Cap. 61, Laws of Eastern Nigeria. 1963) which, at all material times, were applicable to the Rivers State of Nigeria.

Sections 46(1) and 47(1) of the said High Court Law provide as follows:-

“46(1) A Judge may by order under his hand and the seal of the court at any time or at any stage of the proceedings before final judgment and either with or without application from any of the parties thereto transfer any cause or matter before him to a Magistrate’s Court or to a Judge in the same or any other Judicial Division.

(2)

47(1) The Chief Judge may by Order under his hand and the seal of the court or at any time or stage of the proceedings before final judgment and either with or without application from any of the parties thereto, transfer any cause or matter before a Judge to any other Judge.

(2)

(3)

(4)

It seems to me clear that under Section 46(1) of the said High Court Law, there is ample jurisdiction in a Judge of the High Court of the Rivers State at any time or at any stage of a proceeding before final judgment and with or without application from any of the parties, by order, under his hand and the seal of the court, to transfer a cause or matter before him to a Magistrate’s Court or to a Judge in the same or any other Judicial Division. There is a similar power in the Chief Judge under section 47(1) of the said Law to transfer any cause or matter before a Judge to any other Judge. In other words, the power to transfer a case from one Judge to another Judge whether in the same or in any other Judicial Division is vested in both the Chief Judge and a Judge of the relevant State. See: *Faghenro & Ors. v. Orogun & Ors.* (1993) 3 NWLR (Pt.284) 662 at 675. There can be no doubt, however, that the above provisions of the law which relate to the sitting and distribution of the business of the court are mainly concerned with administrative and procedural matters and no more. The first question for consideration must be whether Dappa, J. effectively transferred the suit from the Ahoada Judicial Division to Dagogo-Manuel, J. for completion of hearing at the Port Harcourt Judicial Division. I will examine this question from two view points.

In the first place, the proceedings of the 1st December, 1978 before Dappa, J., sitting at the Ahoada Judicial Division, have already been set out above. **It is plain to me from the said proceedings that following an application made to Dappa, J. by the plaintiffs in the suit, the learned Judge transferred the case to Dagogo Manuel, J. before whom it was part-heard for conclusion of hearing in his new Judicial Division. No doubt, Dappa, J. in transferring the case to Dagogo-Manuel. J. erroneously employed the word “referred” instead of “transferred”. I am however in complete agreement with Mr. Ofodile that the highest that may be said of this slip, if I may say with due respect, is, that the learned Judge unwittingly got himself entangled in a linguistic flaw which however, occasioned no miscarriage of justice, and must therefore, be discountenanced.** See: Jude Ezeoke & Ors. v. Moses Nwagho & Anor (1988) 1 NWLR (Pt.72) 616 at 626. **It seems to me indisputable from his directives and/or orders of the 1st December, 1978 that Dappa. J. clearly transferred the case to Dagogo-Manuel, J. of the Port Harcourt Judicial Division for the continuation and completion of hearing. This exercise he had ample powers to perform.**

In my view, whether or not the transfer is under seal is a mere procedural or administrative matter which may not ipso facto invalidate the order of transfer itself. In this regard, it ought to be remembered that it is not every irregularity that automatically nullifies an entire proceeding, particularly where the irregularity did not in any way materially affect the merits of the case, or occasion a miscarriage of justice or where, in any case, it is much too late in the day for a party to complain about such irregularity. See: Chief Okumagha Ehoh & Ors. v. Akpotu (1968) 1 All NLR 220 at 224 and 225; Anyaehu Ojieghe & Ors. v. Gabriel Okwaranyia & Ors. (1962) 2 SCNLR 358; (1962) 1 All NLR 605 at 608; Kossen (Nig.) Ltd. & Anor v. Savannah Bank o{Nig. Ltd. (1995) 9 NWLR (Pt.420) 439 at 451-452. **In the present case, even if the transfer order in issue is irregular by the mere fact that it was not under seal and I do not so hold the irregularity neither materially affected the merits of the case nor engendered any miscarriage of justice. Besides the appellants were at all material times represented by counsel throughout the trial period of seven years but registered no protest to the transfer of the suit from Ahoada to Port Harcourt Judicial Division. In my view, the appellants cannot now be heard, having acquiesced in and fully participated in the proceedings to judgment, to complain against the said order of transfer.**

The second aspect of the question under consideration concerns

whether the learned trial Judge Dagogo-Manuel, J. had jurisdiction after his transfer to Port Harcourt to continue with the hearing of the case in his new judicial division. In this regard, attention must be drawn to sections 234 and 236(1) of the Constitution of the Federal Republic of Nigeria. 1979. These provide as follows:-

“234(1) *There shall be a High Court for each State of the Federa- B*
tion.

(2) *The High Court of a State shall consist of -*

(a) *a Chief Judge of the High Court of the State; and*

(b) *such number of Judges of the High Court as may be prescribed by a Law of the House of Assembly of the State” C*

“S236(1) *Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person”.* D

The constitution therefore established one single High Court for each State of the Federation, including the Rivers State of Nigeria with equal common and unlimited jurisdiction to commence, continue and conclude any case validly brought before it. See: S.O. Ukpai v. U.O. Okoro & Ors. (1983) 2 SCNLR 380; (1983) 11 SC 231 at 264. Accordingly, there is no more than that one High Court for each State of the Federation. See also Merchants Bank of Africa v. Owoniboye Tech. Services Ltd. (1994) 8 NWLR (Pt.365) 705 at 715- F 716.

There are however the provisions of section 41 of the said High Court Law and Order 7 of the High Court Rules which “for the more convenient despatch of business” confer power on the Governor to divide the State into Judicial Divisions whereupon the Chief Judge may direct one or more G judges to sit in each such Division. As already pointed out, the Rivers State was so divided. **However, there being only one High Court for that State with jurisdiction throughout the State, I cannot accept that Dagogo-Manuel, J. who at all material times was a Judge of that State had no jurisdiction to continue the hearing of a case validly filed in that State and the hearing of which he commenced in one Judicial Division of the State and concluded in another Judicial Division of the same State.** See to M.S. Aliyu v. M.N. Ibrahim & Ors. (1992) 7 NWLR (Pt.253) 361 at 370. **A Judge of a State High Court having jurisdiction to sit in one of H**

the Judicial Divisions of that State does not lose the jurisdiction to sit and adjudicate on a matter by the mere fact of his transfer to another Judicial Division of the same State. I also agree that issues of Judicial Divisions, transfer order and like matters being strictly administrative, do not go to jurisdiction. Accordingly, issues I to 4 B must be resolved against the appellants.

Turning now to issues 5 and 6, the complaint of the appellants is that the inordinate delay of seven years between the commencement of the actual hearing of the case and the delivery of judgment constituted such an unreasonable period that the learned trial Judge was not in a position to appreciate the issues involved in the case in a proper focus or remember his own impressions of the witnesses. They argued that the said inordinate delay would have blurred the memory of the trial Judge and militated against his coming to a right decision in the case. They submitted that the emphasis here is that the delay would have blurred the learned trial Judge's memory and that once this possibility existed, the judgment must be set aside. They relied heavily on the provisions of Section 33(1) of the 1979 Constitution which guarantee, as a fundamental right of every individual, entitlement "*to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality*".

The terms, "fair hearing" and "within a reasonable time" are not defined in the 1979 Constitution but they have received judicial interpretation. And so in *R. Ariori & Ors. v. Muraimo Elemo & Ors.* (1983) 1 SCNLR 1; (1983) 1 SC 13 at 24 Obaseki, J.S.C. observed as follows:-

"Fair hearing, therefore, must mean a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties to the cause "reasonable time" must mean the period of time which, in the search for justice, does not wear out the parties and their witnesses and which is required to ensure that justice is not only done but appears to reasonable persons to be done."

A little later in his judgment, the learned Justice of the Supreme Court added:

The reasonable time for the consideration and delivery by the Court of the judgment depends only on the time an active, healthy and mentally alert Judge takes to read and consider the evidence and write his judgment with full and complete consciousness of all the impressions of witnesses at the trial. A period of time which dims or loses the memory of impressions of its witnesses is certainly too long and is unreasonable. Where the period of time

dims or loses the memory of impressions of witnesses, it occasions a miscarriage of justice, contravenes the fair trial provisions of our Constitution and vitiates the whole proceedings.”

The above are clearly very apt and accurate definitions of the phrases in issue which with respect. I totally endorse. Whether a period of time is therefore reasonable must be considered as entirely relative, depending on the individual and peculiar circumstances of each and every case. It concerns a period of time, having regard to the complexity of the case, the number of witnesses called, the prolix nature of the evidence etc within which a trial Judge can properly articulate the evidence adduced before him, making full use of his advantage in having seen and observed the demeneanour and credibility of the witnesses who testified before him. Any period of time beyond that limit must be regarded as entirely unreasonable and capable of occasioning a miscarriage of justice.

In this regard, it cannot be over emphasised that the taking of evidence in a suit must, as far as possible, be continuous and not punctuated by very long periods of adjournments and/or long intervals between the reception of the evidence of witnesses in the proceedings. This will ensure that the case receives fair hearing and is concluded with the minimum of delay and certainly within a reasonable time. It will also ensure that the case is determined at a time when the impressions made on the trial Judge by the witnesses are still fresh and present in his mind and have not become dimmed or vague by the passage of time. Where there has been an inordinate delay between the commencement of the taking of evidence and the judgment in the suit, an appellate court may, in an appropriate case, interfere with and set aside any judgment given after such a delay. Such appropriate cases may include proceedings in which from their peculiar circumstances, the appellate court is satisfied that the trial Judges had lost his impressions of the trial or much of the advantage which he might otherwise be supposed to have derived from seeing and hearing the witnesses and assessing their credibility. See: Ekeri & Ors v. Edo Kimisede & Ors. (1976) 9 and 10 SC 61 and Awobiyi & Sons v. Igbalaiye Brothers (1965) 1 All NLR 163 at 166; Chief Yakubu Kakarah v. Chief Okere Imonikhe (1974) 4 SC 151; Akinmolarinle & Ors. v. Abigail Yeyebinu & Anor (1975) 1 NMLR 45 and Chief Justus Uduedo Akpor v. Oduhogu Iguoriguo & Ors (1978) 2 SC 115. See too section 258 of the 1979 Constitution.

Turning now to the present case, it cannot be disputed that the incredible period of seven years it took from the commencement of the taking of evidence to the delivery of judgment amounted to inordinate delay of the most condemnable scandalous and inexplicable nature. This court has times

without number warned in the strongest possible terms against failure by trial courts to deliver their judgments within a reasonable time. and at all events. within three months of final addresses when the impression made on them by the witnesses are still fresh and present in their mind and have not become dimmed or vague by the passage of time. See: too section 258(1) of the B 1979 Constitution, *Dominic Ifezue v. Livinus Mbadugba & Anor* (1984) 1 SCNLR 427; (1984) 5 SC79; *Chief Harold Sodipo v. Lemminkainen & Anor* (1985) 2 NWLR (Pt. 8) 547; (1985) 7 SC 492; *Anyaoke v. Dr. F. Adi & Ors.* (1985) 1 NWLR (Pt.2) 342 etc. We have on several occasions in the past, also expressed the disapproval of this court in the exhibition on the part of trial courts of such C inordinate and inexcusable delay in the determination of cases once they commence the hearing of evidence in such matters. This is because trial courts must at all times bear in mind that human recollections being what they are may lose their strength with the passage of time and that justice delayed is as bad as justice denied and may even, under certain circumstances be worse. D See: *Lawal v. Chief Yakubu Dawodu & Anor* (1972) 1 All NLR 270 per Coker. J.S.C. The inordinate delay of seven years which this case was subjected to from the commencement of the hearing of evidence in the trial court to the delivery of judgment is, in my view, totally inexcusable, unwarranted, unjustifiable and if I may say with respect, almost amounted E to a reckless action on the part of all concerned. Trial courts are once again admonished in the strongest possible terms against undue and/or inordinate delay in the determination of suits once the actual hearing of such suits has commenced.

Learned counsel for the appellants in the present case has submitted F that once inordinate delay in the determination of a suit is established, that must ipso facto nullify the proceedings. He argued that what matters is whether the delay has been established and that once this is done, the proceedings must be nullified and an order of retrial made.

With profound respect, I cannot accept that once delay is estab- G lished, an appeal becomes liable to be allowed and an order of retrial made. No doubt, undue delay and/or long intervals between the reception of the evidence of witnesses in the proceedings and the delivery of judgment therein can ipso facto raise before an appellate court a strong presumption that the trial court could not have made good use of its advantage of seeing and H observing the demeanour of the witnesses who testified before it. The matter however does not go any higher than that. I must be pointed out that the said presumption that attaches to proof of inordinate delay is neither a presumption of law nor is it irrebutable. In an appropriate case, the presumption may be rebutted in which case the delay complained of would not have occasioned

any miscarriage of justice and must consequently be regarded as inconsequential.

In a case, for instance, which is entirely documentary or rests mainly on the interpretation of some documents without the demeanour or credibility of witnesses coming into play, delay cannot be any matter of great moment. So, too, where credibility of witnesses is not involved, delay may not be material. **It therefore seems to me that delay, per se is not sufficient reason for the interference with the judgment of a trial court. For the complaint to succeed, it has to be further established that the delay occasioned a miscarriage of justice in that the trial Judge did not take a proper advantage of having seen or heard the witnesses testify or that he had lost his impressions of the trial due to such inordinate delay.** See: Chief Justus Uduedo Akpor v. Iguriguu & Ors. (supra) at page 128 where this Court Per Idigbe, J.S.C. stated the law as follows:-

“While undue delay and/or long intervals between the reception of the evidence of witnesses in proceedings and the delivery of judgment therein (hereinafter referred to as a “lapse”) can ipso facto raise, before an appellate tribunal, a strong presumption that the court of trial could not have made good use of its advantage in seeing and observing the demeanour of the witnesses who testified before it. It does not however follow that in every case where such a lapse has occurred, the appellate tribunal must necessarily set aside the decision of that court (i.e. the court of trial). If for instance, the decision in such a case does not rest entirely or mainly on reliance, by the trial court on the value placed on the witnesses who testified before it as a result of its impression of the an appellate tribunal ought not to set aside that decision”. (italics supplied for emphasis)

It is therefore not in every case where inordinate delay is established that the appellate court must necessarily set aside the decision of the trial court. An appellant, to succeed, must go further to show, from the record of proceedings, that the trial Judge had lost his impressions of the trial or had not taken a proper advantage of having seen or heard the witnesses testify or as a result of the delay complained of.

In the present case, learned counsel for the appellants was unable to refer us, from the records, to how the learned trial Judge lost his impressions of the proceedings or how he failed to take a proper advantage of having seen or heard the witnesses as a result of the delay complained of. I have myself studied the record of proceedings together with the judgment of the learned trial Judge and confess that I can find nothing whatever to show that the learned trial Judge had at any time lost control of the trial or that he had not taken a proper advantage of his having seen or heard the witnesses that

testified before the court. I must now examine the areas upon which the learned trial Judge founded his judgment in order to determine whether the undue delay complained of is, for any other reason, such as will warrant the interference by this court with the judgment appealed against which confirmed the said judgment of the trial court.

B A close study of the judgment of the learned trial Judge clearly reveals that each of the parties based their claim to ownership of the land in dispute by virtue of:-

(i) Acts of long possession and enjoyment of the land in dispute and,

C (ii) Evidence of tradition.

The defendants/appellants also pleaded a number of court judgments in support of their plea of estoppel against the plaintiffs/respondents.

The learned trial Judge, in his judgment, painstakingly considered the various court proceedings and judgments, Exhibits B, F, G, H and J tendered by the appellants in support of their plea of estoppel. In dealing with these judgments. The learned trial Judge stated:-

“Exhibit “B” is in respect of Suit No. 450/60 in the District Court of Epie/Atisa between Biogbolo family as plaintiffs and Okutukutu and Etegwe villages as defendants. The claim was in respect of trespass to land. The members of the village of Opolo were not parties to the suit which was in respect of land called “Okoria”. This case went on appeal to the Degema Magistrate Court but the dismissal of the claim by the District Court was not disturbed.

Exhibit “F” is summons for a declaration of title to “Okoria” land in which Okutukutu and Etegwe villages are plaintiffs and Job Kolokolo Berebia of Agudama was defendant. The Opolo villages are not parties to the suit.

Exhibit “G” is a personal action against one Friday Ekah for giving false evidence in a land suit between Agudama as plaintiffs and Okutukutu and Etegwe as defendants. Again Opolo villagers are not parties to the suit.

Exhibit “H” is a confessional statement by one Miller Okoko of the plaintiffs village that he was caught stealing in the fishery lake of Okutukutu/ Etegwe and paid 7. The statement is silent on the name of the land having the fishery lake.

H Exhibit “J” is a criminal charge of two counts alleging that the persons charged forcibly entered on land called “*Okoria Oguruguru and also cleared and planted crop on the land. Quite apart from the fact that the result of a criminal proceeding cannot be used to prove a civil claim, the charge does not disclose to what village the accused persons belong. This is,*

however, not necessary as the charges are personal against the accused persons and there cannot be any vicarious liability in crime.”

In the end, the court held that the respondents not being parties to any of the proceedings relied upon by the appellants could not be bound by them. It further held that there was no evidence or proof that the respondents were aware of those proceedings. Accordingly the court found that the issue of B estoppel did not arise and that the respondents were entitled to pursue their claim over the land in dispute.

It is plain to me that the decision of the learned trial Judge on the issue of estoppel rested entirely on the judgments tendered at the hearing and had nothing whatever to do with the demean our or credibility of any wit- C nesses. It was an issue which was determined on the interpretation of the judgments tendered in respect of which any charge of inordinate delay must be irrelevant and subject to dismissal as groundless and totally miscon- ceived.

On the claims by the parties to ownership of the land in dispute D based on traditional history, the learned trial Judge appeared to be fully aware of the well established principle of law that it is not sufficient for a party who relies, for proof of title to land, on tradition, to merely plead that he and his predecessors in title had owned and possessed the land from time immemorial. Such a party is bound to plead and prove the E following facts, namely:-

- (1) Who founded the land;
- (2) How the founder founded the land; and
- (3) The particulars of the Intervening owners through whom he F claims.

See Akinloye v. Eyiola (1968) NMLR 92: Olujinle v. Adeagbo (1988) 2 NWLR (Pt.75) 238: Adejumo v. Avantegbe (1989) 3 NWLR (Pt.110) 417: Anmnwu v. Mbara (1992) 5 NWLR (Pt.242) 386 at 399. On a close study of the traditional history presented by the parties, the learned trial Judge had no difficulty in accepting that of the respondents as established and G dismissing that of the appellants as unsubstantiated. The trial Judge based his rejection of the appellants traditional history on the ground that they were unable to disclose or establish the names or particulars of the suc- cessive holders or owners through whom they claimed the land. This is as against the evidence of tradition as presented by the respondents in H which they furnished the full particulars of the intervening owners of the land through whom they claimed. The learned trial Judge after a close analysis of the traditional evidence, produced by both parties observed as follows:-

“Also, the defendants claim that it was their ancestor who founded the lands many centuries ago. If that was so, one would expect them to be able to disclose the names of the successive holders in title of the lands after their ancestors but neither in their pleadings nor oral evidence were the names of such persons disclosed. The plaintiffs, on their part disclosed such B successive holders in title up to the 4th plaintiff who is the present head of the village.”

He concluded thus:-

“On my consideration of the whole evidence I find that the members of Opolo village have led evidence of tradition which is more cogent and C credible than that led by the Okutukutu and Etegwe villages “

Where as, in the present case, there is a conflict in the traditional history of the parties in respect of their owners-hip of the land in dispute, it is long established that the demean our of witnesses hardly comes into play in determining the truth of the matter. This is because it must be recognised that D in the course of transmission from generation to generation of the traditional history, mistakes may occur without any dishonest motives whatever. See Kojo v. Bonsie (1957) 1 WLR 1223 (PC). In this case, their Lordships of Her Majesty’s Privy Council commented:-

“Witnesses of the utmost veracity may speak honestly but erroneous E as to what took place a hundred or more years ago. Where there is a conflict of traditional history, one side or the other must be mistaken, yet both may be honest in their belief. In such a case demeanour is of little guide to the truth.....”

See too: Ogbeide Aikhoionbare & Ors. v. Uricken Omoregie & Ors. F (1976) 12 SC 11 at 16-17; Alhaji B.A. Thanni & Anor v. Sahalemotu Saihu & Ors. (1977) 2 SC 89 at 110 etc.

It is clear to me that the learned trial Judge in upholding the traditional history of the respondents as against that of the appellants did not concern himself with the demeanour or credibil- G ity of the parties or their witnesses. In the circumstance, I am unable to hold that the issue of inordinate delay in the determination of the suit is of any relevance in the appeal.

It is settled law that a party claiming title to land is not bound to plead and prove more than one root of title, to succeed. It is enough if he can prove H only one of the recognised five ways of establishing a case of title to land. See: D. O. Idundun & Ors v. Daniel Okumagba (1976) 9-10 SC 227. If, however, he relies on more than one root of title, he may be said to have done so ex abundanti camela by way of making assurance doubly sure. See: Chief Oyelakin Balogun & Ors. v. Oladosu Akanji & Anor (1988) 1

NWLR (Pt.70) 301 at 321.

In the present case, the parties for their root of title pleaded both traditional evidence and acts of long possession and enjoyment of the land in dispute. The respondents evidence of tradition was accepted by the trial court as conclusive. This is clearly sufficient finding on the part of the trial court to sustain its judgment in favour of the respondents for title to the land in dispute. See: F.M. Alade v. Lawrence Awo (1975) 4 SC 215 at 228; Olujebo of Ijebu v. Osho (1972) 5 SC 143 at 151.

There is next the alternative claim of the parties for ownership of the land in dispute based on acts of long possession and enjoyment thereof. The trial court, after a careful consideration of the alleged acts of possession, found these to be inconclusive said the trial court:-

“On the face of these identical and competing claims, it cannot be said with certainty that these acts were being exercised by a party to raise the inference that such party was exercising dominion over the lands. One therefore has to consider the evidence of tradition in order to determine which of the parties is very much likely to be the owner of the lands but I shall first consider the defence of estoppel raised by the defendants both in their pleadings and oral evidence”.

Here again, the demeanour or credibility of the parties or their witnesses hardly featured in this conclusion and I entertain no doubt that the decision of the learned trial Judge on the issue is fully justified by sound and cogent reasons with no bearing whatsoever with the delay complained of. In the circumstance, issues 5 and 6 must again be resolved against the appellants.

The conclusion I finally reach is that the judgment of the trial court is, without doubt, not based on the credibility and demeanour of the witnesses who testified before it. In my view, the court below was right to have dismissed the appeal against the said decision of the trial court.

On the whole, this appeal is without substance and the same is hereby dismissed with costs to the respondents against the appellants which I assess and fix at N 1,000.00.

BELGORE JSC

This case rests almost entirely on documentary evidence and what learned trial Judge faced. in my opinion, went beyond mere assessment as to demeanour. It is not one of those cases trial Judge could lose track of the impression he formed on the demeanour of the witnesses; all he needed to

decide the case are the documents exhibited and explained at the trial. It is a case different in nature and circumstance from *Ekeri & Ors. v. Kimisede & Ors.* (1976) 9 & 10 SC 61; *Kakarah v. Okere Imohikhe* (1974) 4 SC 151; *Akpor v. Iguoriguo & Ors.* (197R) 2 SC 115. Thus, in a case based on documents and/or interpretation of documents and there is no question of demeanour arising, time element cannot vitiate the trial though it is always desirable to have cases despatched timeously so as not to frustrate the ultimate victory.

In the instant case I find no merit whatsoever in the appeal and for the fuller reasons contained in the lead judgment of my learned brother Iguh, J.S.C.; which I entirely adopt, I also dismiss it with N1,000.00 costs to the respondents.

KUTIGI JSC

I read before now the judgment just delivered by my learned brother D Iguh, J.S.C. He has adequately dealt with all the issues canvassed before us. I agree with him that the appeal lacks merit. I also dismiss it with N1,000.00 costs to the respondents.

OGUNDARE JSC

E I agree entirely with the judgment of my learned brother Iguh, J.S.C. just delivered, a preview of which I had before now. I only need to add that on the question whether Dappa, J. transferred the suit to Dagogo-Manuel, J. in Port Harcourt in the manner required by Section 46(1) of the High Court Law there is nothing on record to show that he did not draw up a formal order F of transfer. It is essentially an administrative action which one would not expect to be reflected on the record of appeal. But the maxim is *Ominia praesumuntur rite et solemniter esse acta donec prohetum in contrarium* (all acts are presumed to have been done rightly and regularly until the contrary is shown) - See: *Davies v. Pratt* 17CB 183, 188, 139 ER 1039 Per Jervis, C.J. The G appellants had the burden to rebut that presumption whereupon the onus would shift on the respondents. See *Marine Investment Co v. Haviside* LR 5 HL 624. To rebut that presumption the appellants should have applied at the Court below for leave to adduce evidence to show that Section 46(1) was not complied with by Dappa, J. This they failed to do. I cannot see how appellants H could succeed on this point after what is contained on the record that Dappa, J. indicated he was transferring (the word used is “referred”) the case to Dagogo-Manuel, J.

I too dismiss this appeal with costs as assessed by my learned brother, Iguh, J.S.C.

ADIO JSC

I have had a preview of the judgment delivered by my learned brother, Iguh, J.S.C., and I agree that the appeal does not succeed. The appeal was primarily based on technical grounds, that is, whether at a certain stage the case was properly transferred by one Judge to another Judge and whether the trial thereof was not vitiated by prolonged or inordinate delay in the hearing and determination of the case by the learned trial Judge.

With reference to the transfer of the case from one Judge to another Judge, the complaint was that instead of using the word “*transfer*” the word that was used was “*refer*” and that no formal order of transfer was drawn up and signed. To say the least, the complaint was too technical and would not in my view, warrant serious consideration. On the question whether there was prolonged or inordinate delay in the hearing and determination of the case and, if so, whether it vitiated the trial, the legal effect depends on the circumstances of each particular case. For example, the trial will be vitiated if the learned trial Judge is no longer in a position to properly articulate the evidence adduced before him and make full use of his advantage in having seen and observed the demeanour and the credibility of the witnesses who testified before him. If that is the case, then the prolonged or undue delay is capable of occasioning a miscarriage of justice and will vitiate the trial. See: Awobiyi & Sons v. Igbalaye & Bros. (1965) All NLR 163. It will be otherwise if the memory of the learned trial Judge has not been blurred or in anyway been adversely affected and no credibility of the witnesses was involved. In short, a party raising as a ground for attacking the findings of fact of the trial court on the ground that there was a prolonged or undue delay in the trial of the case must show the specific finding or findings of fact which could be faulted as a result of the delay. See: Ariori v. Elemo (1983) 1 SCNLR 1; and Chukwu v. The State (1992) 1 NWLR (Pt.217) 255.

It is the duty of courts to aim at doing substantial justice between the parties and not to let that aim be defeated by technicalities. See: Otapo v. Sunmonu (1987) 2 NWLR (Pt.58) 587. Cases should not be decided on the basis of technicalities. They should, wherever possible, be decided on merit. See: NIPOL Ltd. v. Bioku Investment & Property Co. Ltd. (1992) 3 NWLR (Pt.232) 727.

It is for the foregoing reasons and the detailed reasons given in the lead judgment of my learned brother, Iguh, J.S.C., that I agree that the appeal does not succeed. I too dismiss it and abide by the order for costs.

Appeal dismissed