

**SUPREME COURT OF NIGERIA**  
18TH APRIL, 1997. SC. 250/1990  
**CORAM:- A. B. WALL, E. O. OGWUEGBU, S. U. ONU,**  
**Y. O. ADIO, A. I. IGUH, JJSC**

CHIEF M. O. A. AGBAISI & 3 ORS ..... PLAINTIFFS/APPELLANTS  
AND  
E. EBIKOREFE & 6 ORS ..... DEFENDANTS/RESPONDENTS

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**APPEALS** - Issue - That deals on semantics - And does not derogate from the concurrent findings of fact - Will not ground interference.

**EVIDENCE** - Document - Not tendered as exhibit - Being a plan that was amended - Contained in the case file - Whether the court can make use of it.

**JUDGMENTS** - Issues - Where the trial court adverted its attention to all properly raised issues - Its decision cannot be upset.

**JUDGMENTS** - Statutory period of 3 months - Within which to deliver judgment - Was complied with by the trial court - In spite of contention that it was delivered 91 days after final address.

**LAND LAW** - Survey plan - Allegation that the Court of Appeal relied on the wrong survey plan - Is not correct.

**LAND LAW** - Survey plan - That was not tendered as exhibit - Referred to by the lower court - Fair hearing was not denied thereby.

**LAND LAW** - Possession - Previous proceedings Exhibit "D" - Was rightly treated by the lower courts - As evidence of acts of possession.

**LAND LAW** - Possession - Finding that all the land in boundary to the one in dispute - Belong to the respondents - SS. 46 & 146 Evidence Act were rightly applied.

**FACTS**

The present appeal emanated from six separate suits consolidated into a single suit before the Warri High Court. The communities, families or villages to which the parties belong sued or were sued in representative and or personal capacities in respect of the land in dispute. Appellants were alleged

to have crossed the stream separating the two communities and commenced massive destruction of respondents' economic trees with a view to selling the land to strangers. Respondents reported the matter to the council of elders of Agbassa community in Warri to which the parties belong.

Appellants refused to quit the land in spite the elders' counsel to that effect. The respondents filed various suits claiming title, damages for trespass and perpetual injunction. Appellants in turn sued the respondents making similar claims. The trial court found against the appellants. Their appeal to the Court of Appeal was dismissed save that the lower set aside that part of the judgment that granted entitlement to a certificate of occupancy to the respondents in suits wherein they made no such claim. Being aggrieved, appellants have further appealed to the Supreme Court raising 11 prolix issues but the Court preferred the 6 issues raised by the respondents.

#### **ISSUES FOR DETERMINATION**

*1. Whether the Court of Appeal was right in confirming and affirming the judgment of the trial court based on the evaluation of the evidence before that court?*

*2. Whether the Court of Appeal was right when it looked at the document (Plan) in the case file on (sic before) it?*

*(b) Whether the judgment of the court of trial can be sustained without the comments on the Plan?                      Etc, see P. 777*

#### **HELD** (Unanimously dismissing the appeal per lead judgment of **ONU JSC**) **Trial Court adverted to all properly raised issues**

1. I have carefully considered the submission of learned counsel for both sides both orally and in their briefs and I take the firm view that the court below was right in holding that the trial court adverted its attention to all the issues properly raised before it made its findings of fact. To this end, the court below held, rightly in my view, thus:

*"I am satisfied and so find that the weight of evidence is solidly in favour of the respondents, and the decision of the trial Judge in their favour cannot be upset on this ground."*

The above conclusions of the court below, I must point out, were supported by the evidence on record which is overwhelming. (p. 779 B)

#### **Allegation that the wrong survey plan was relied on**

2. Let me say straight away that there is hardly any substance in these complaints. First, it is incorrect to say that the court below referred to or made use of a Plan prepared by late Surveyor, Obianwu from the court's file as erroneously stated by the appellants. It is clear from the above-quoted passage that

the Plan the learned Justice looked at is the Plan prepared by P.W.1 surveyor Chukwurah and not the one prepared by Surveyor Obianwu. (p. 780 G)

**Document - Not tendered as exhibit**

3. The next logical question is whether he has a right to look at the document in the file which was not tendered as an exhibit. My answer to this question is in the affirmative. The next pertinent question is: if it were a Plan that was amended as contended by the appellants, can the court look at it and make use of it? My answer is that it can as this Court did in its recent decision in Salami & ors. v. Oke (1987) 5 NWLR (Part. 63) 1 at 9; (1987) 2 N.S.C.C. 1167 at 1173 (p. 781 C)

**Survey plan - That was not tendered**

4. The distinguishing feature in the instant appeal, is that the plan was referred to merely to highlight the falsity in the appellants' case especially as rendered in the conflicting evidence of P.W.1 to the effect that there were (or were no) buildings on the land in dispute. Thus, I take the firm view that the said plan did not affect the decision of the court below. As in the instant case it appears to me clear that the trial was conducted according to all the legal rules formulated to ensure that justice is done to the parties within the meaning of Section 33(1) of the 1979 Constitution, I can see no breach of the fair hearing provision contained in that section. (p. 782 B)

**Previous proceedings Exhibit "D"**

5. From the foregoing I take the view that trial court and the court below were undoubtedly right in treating Exhibit "D" as evidence of acts of possession. (p. 783 B)

**Statutory period of 3 months**

6. I agree with submission of the respondents that the judgment of the trial court was delivered within the statutory period, namely three months from the time final addresses were made to the time judgment was delivered. Final address, it has been demonstrated, took place 29/4/82 - See page 641 of the Record whereas judgment was delivered on 23/7/82 i.e. within 3 months. See pages 652 and 682 of the Record. It does not therefore amount to a nullity. (p. 783 F)

**SS. 46 & 146 Evidence Act were rightly applied**

7. From the above extract, I am satisfied that the learned trial Judge having found as a fact that all the land in boundary with and adjacent to the land in

dispute belong to the respondents, the upholding by the court below of the trial court's decision wherein that court rightly applied the provisions of s. 46 of the Evidence Act became imperative and compelling. The applicability of these sections to the instant case can neither be doubted nor faulted. (p.784 E)

**B Issue - That deals on semantics**

8. It is a question of semantics which does neither damage nor derogate from the concurrent findings of fact by the two courts below. In the absence of the two decisions being shown to be perverse or causing a miscarriage of justice, this court will be slow to interfere therewith. (p. 786 A)

C

**NOTABLE POINTS OF INTEREST**

**ONUJSC**

*1. Issues to fall within the scope of grounds of appeal*

It has been decided in a long line of cases by this Court that issues should be formulated in general practical terms and tailored to the real issues in controversy in such a way that they must of necessity be limited by, circumscribed and fall within the scope of the grounds of appeal. See Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (Part 135) 688 at 714 A-B; (p. 777 F)

E

*2. Purpose of issues for determination*

Firstly, all the eleven issues rather than serving or facilitating the quest for accuracy, clarity and brevity are prolix, tautologous, argumentative statements, commentaries and narratives from the judgment of the court below. The law has been restated times without number that the purpose of issues for determination is to enable the parties narrow the issues in the grounds of appeal filed in the interest of accuracy, clarity and brevity. (p. 778 A)

**IGUHJSC**

*3. Title is not to be awarded to a party that did not claim title*

With profound respect, the learned trial judge was in gross error to have awarded title to the land in dispute to the respondents whose only claims before the court were in trespass and injunction but not in declaration of title. Without doubt, whenever an action for trespass to land is coupled with a claim for an injunction, the title of the parties is automatically put in issue. See Akintola v. Lasupo (1991) 3 N.W.L.R. (Part 180) 508 at 515. This does not however mean that the plaintiff, in such an action is entitled to an award of title to the land in dispute without a specific relief for title before the court. The clear statement of the law is that a court must not grant to a party a relief

which he has not specifically sought or which is more than he has claimed.  
(p. 789 A)

### **REPRESENTATION**

Chief E. L. Akpofure, with , R. C. Osivwemu Esq for the Appellants  
Chief B. B. E. Idigbe, with I. G. Akporehe Esq. for the Respondents

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### **CASES REFERRED TO**

Nwosu v. Imo State Environmental Sanitation authority (1990) 2 NWLR (Part 135) 688 at 714 A-B

Momodu v. Momodu (1991) 1 NWLR (Part 169) 608

C

Okon v. The State (1995) 1 NWLR (part 372) 382

Onwumere v. The State (1991) 4 NWLR (part 186) 428

Agbetoba v. Lagos State Executive Council (1991) 4 NWLR (Part 188) 664

Ada v. Uku (1997) 5 FCA 218 at 227

Salami v. Oke (1987) 5 NWLR (Part 63) 1 at 9

D

Owonyin v. Omotosho (1961) All N.L.R. (Part 11) 304

Aseimo v. Amos (1975) 2 S.C. 57

Effiom v. The State (1995) 1 NWLR (Part 373) 507

Onowan v. Iserhien (1976) 9 - 10 SC 95

Ayisa v. Akanji (1995) 7 N.W.L.R. (Pt. 406) 129

E

Olurotimi v. Igb (1993) 8 N.W.L.R. (Part 311) 257 at 271

Emegwara v. Nwaimo 14 W.A.C.A. 347 at 348

### **STATUTES REFERRED TO**

Evidence Act ss. 46, 146

F

Constitution of Nigeria 1979 ss. 33(1), 258 (1)

### **LEAD JUDGMENT BY ONU JSC**

This appeal which relates to land disputes originated from the Warri High Court of the Warri Judicial Division, of the defunct Mid-Western State of Nigeria but later of the defunct Bendel (and now Delta) State. It composed of six separate suits which by the order of the trial High Court and by the consent of the parties thereto dated 20th May, 1976, were consolidated into a single suit. The suits consolidated were Nos. W/75/74, W./10/75, W/103/75, W/104/75, W/147/75 and W/160/75 in which the communities, families, villages, etc. to which the parties belong, sued or were sued in a representative and/or personal capacities. In the order of consolidation, the plaintiffs in two of the aforementioned actions vide W/147/75 and W/160/75, who were alone in claiming the entire land in dispute were designated as "plaintiffs" whilst the

others, vide W/75/74, W/10/75, W/103/75 and W/104/75 were designated "defendants".

In the somewhat chequered history of the consolidated suits giving rise to the appeal herein, the filing of pleadings began in December, 1975 and ended after hearing commenced in December, 1979. In the interval, the Plaintiffs (hereinafter referred to as Appellants) amended their Statement of Claim in Suit No. W/147/75 whilst the Defendants (in the rest of this judgment referred to as Respondents) further amended their amended Statement of Claim in Suits W/75/74 and W/10/75. There was an earlier hearing before Aluyi, J. which had commenced in December, 1977 but was aborted in March, 1978 after a few witnesses had been taken. The 2nd Appellant who himself testified in support of their (Plaintiffs') case called altogether fifteen witnesses whilst the Respondents called ten witnesses including the two Defendants (Respondents herein). In a well considered judgment Eluaka, J. on 23rd July, 1982 found against the Appellants and in favour of the Respondents by making the following findings of fact:

(1) *That Exhibit C, the plan filed by the defendants is a more accurate plan, and preferred by the court to Exhibit "A," (Plaintiffs' plan).*

(2) *That there are no ruins of Agbaisi Village on the land in dispute. This is confirmed by the Surveyors called by both sides.*

(3) *That there being a conflict in traditional evidence he would have recourse to other acts on the land in dispute.*

(4) *Contrary to the pleadings of the plaintiffs and their evidence in Court, there are no buildings in existence, at least soon after pleadings were ordered on the parcels of land (in dispute) verged purple, yellow and deep blue.*

(5) *That the defendants' version about buildings on the land is to be preferred to plaintiffs.*

(6) *That the defendants' story as to what transpired following their report of plaintiffs' "trespass" on the land to the Agbassa Chiefs is believed as against plaintiffs.' Chief Agaga's failure to participate in any of the consolidated suits confirms this*

(7) *That Ugborikoko village and other lands of the defendants are more adjacent to the land in dispute.*

(8) *That the conflict in the evidence of P.W. 1 - Plaintiffs' Surveyor, particularly on the presence (or absence) of buildings on various parts of the land in dispute cannot be treated as a mere slip of the memory, as submitted by plaintiffs' counsel.*

(9) *That P.W. 2 - George Poko is "very unreliable and not a witness of truth."*

*(10) That the submission of Plaintiffs' counsel that land is not owned communally in Uvwie Clan except with regard to the area where masquerades perform, is not acceptable to the Court, which is of the view that there is no such firm and unequivocal custom.*

On the law, the following findings were made:

*(a) That section 45 Evidence Act is applicable to this case in favour of the defendants who own most of the land adjacent to the land in dispute.*

*(b) That following the conflict in traditional evidence, and examination of acts of the parties in recent years in respect of the land, tends to strengthen defendants' traditional evidence.*

*(c) That Exhibit "D" refers to Oshoro land in respect of which therefore the Onokuta family have successfully defendant their ownership thereof."*

For a better and clearer appreciation of the facts of this case, it is perhaps necessary to state then albeit briefly, as follows:-

The appellants are members of Igbudu/Abassa community in Warri while the respondents are members of the Ugborikoko Village community in Uvwie Clan. A stream called Ugboqboro or Ugborikoko is the natural boundary separating the two communities from each other, the fact of which was not in dispute. The appellants who have their houses and farm crops on their Warri side of the stream and the respondents their houses, crops and fishing ponds on their Ugborikoko side of the stream were alleged as having sometime in 1973/74 to have crossed the stream to Ugborikoko side and commenced massive destruction of the respondents' economic trees with a view to selling the land, ownership of which they laid claim, to strangers to build on. As the appellants first descended on the land from the swamp portion belonging to the respondent's community, the latter protested in vain. Instead, appellants activities increased in tempo, leading the respondents to lodge a report of their acts of trespass to the council of elders of Agbassa community in Warri to which the appellants also belong.

One Chief Agaga was the head of the appellants' (Agbaisi) family at the time. When the council of elders of Agbassa community went to inspect the land in its quest to bring settlement, Chief Agaga informed the delegates that the land on the Ugborikoko side where the appellants had descended and operating did not belong to his (Agbaisi) family and that he did not authorize the appellants to go thereon. When the appellants refused to quit the land, the respondents sued them claiming title, damages for trespass and perpetual injunction. It is suit No. W/75/74 involving the area verged blue in Plan No. MWC/577/78 (Exhibit "A"). After the appellants were served with writ of summons in W/75/74, they extended their wanton acts of trespass to other parcels of land belonging to Onokuta, Adjomo and Onoriakpo families, all of

Ugborikoko community. Each of the three families sued the appellants claiming damages for trespass and order of perpetual injunction culminating in cases No. W/10/75, W/103/75 and W/104/75 respectively.

The appellants in turn thereafter sued the respondents in two separate cases, claiming declaration of title, damages for trespass and injunction in respect of all the parcels of land involved in all the four cases instituted by the respondents against the appellants. The appellants prepared a composite Plan (later tendered as Exhibit "A") which covered not only the four parcels of land in suits W/75/74, W/10/75, W/103/75 and W/104/75 but also a portion of their (appellants') own land on Igbudu/Agbassa side of Ugboogboro or Ugborikoko stream to which the respondents laid on claim. The respondents' Plan in the consolidated cases is Exhibit 'C'.

It is the six cases enumerated above that were consolidated and which the trial court, for convenience and ease of disposal, designated the appellants as the plaintiffs and the respondents as the defendants.

The Appellants being aggrieved by the decision of the trial court, appealed to the Court of Appeal, Benin Division (hereinafter referred to as the court below). That court on 30th January, 1989 allowed the Appellants' appeal in part, to wit: that part of the trial court's judgment that awarded the Respondents a declaration of entitlement to a certificate of occupancy in respect of suits Nos. W/10/75, W/103/75 and W/104/75 which was accordingly set aside. Otherwise, the appellants' appeal was dismissed with costs assessed at N1,000 payable to the Respondents.

The Appellants being further aggrieved, have by their Notice of Appeal dated 20th April, 1989 containing nine grounds in all, appealed to this court. The Notice of appeal was by leave of Court later substituted by another containing the same number of grounds. Parties to this appeal have in consequence of the appeal filed exchanged Briefs of argument in accordance with the rules of this Court.

The questions identified by the Appellants as arising for determination in this appeal are:-

*(1) whether the Court of Appeal like the trial court was right in refusing to award declaration of title and injunction to the appellants in respect of the land as contained in Exhibit "A" since the respondents in their claim, pleadings, evidence and address of their Counsel conceded that that parcel of land belong exclusively to the appellants and therefore did not join issues with the appellants as to that piece of land - the land being ascertainable and known to all the parties. (Ground 4 of the Grounds of Appeal). See*

*(1) Okechukwu v. Okafor (1961) 1 All NLR. 685*



(2) *Okon Owon v. Eto Udom* 12 WACA 77

(3) *Sogunle v. Akerele* (1967) N.W.L.R. 58

(4) *Arabe v. Asanlu* (1980) 5-7 S.C. 86 - See ground 1.

(2) Whether the justices of the Court of Appeal acted rightly in failing to order a retrial of the case in the Court below by another Judge having regard to the observation, findings and conclusions by the Court of Appeal on appellants' complaints touching evaluation, appraisal and findings, non-consideration of evidence of material witnesses and vital issues of family ownership of land wrong approach to Exhibits 'A', 'C' and 'D.' All reflected at page 23, 26 and 30 of the judgment of Court of Appeal (issue No. 2 relating to ground 1, 5 and 6 of original grounds). C

(3) Whether the learned Justices of the Court of Appeal erred in law when they *suo motu* without the consent of the parties recovered from the case filed from the Court below and utilized and relied on a former Survey Plan (not Exhibit 'A') which was not tendered in evidence by either party although was earlier filed by the appellants with their original statement of Claim before the pleadings were amended and a new Plan was filed and tendered as Exhibit 'A' and whether the Court of Appeal erred in law when the Justices relied substantially on this Plan in dismissing the appellants' appeal. D

(4) Whether the Court of Appeal did not act erroneously in law E when it failed to advert its mind to the point that by introducing, utilizing and considering the inadmissible survey Plan and reevaluating the evidence on the basis of their Plan without the appellants having or being given the opportunity to address the Court of Appeal as to the admissibility of the Plan and impropriety of the procedure. That the Court of Appeal F thereby caused grave miscarriage of justice to the appellants appeal by denying the appellants the opportunity of being heard, fair hearing and appellants' right under s. 33(1) of the 1979 Constitution.

(5) Whether the Justices of the Court of appeal did not admit expressly of by implication prejudicial inadmissible evidence i.e. the strange G survey Plan mentioned above and which affected very substantially the judgment of the Court of appeal and thereby caused to the appellants grave miscarriage of justice.

(6) Whether the Court of Appeal did not err in law in failing to set aside the judgment of the trial court and awarding in favour of the appellants all the reliefs claimed in suits Nos. W/147/75 and W/160/75, having regard to the appellants' successful attack on various aspects of the judgment of the trial court and the errors of practice, procedure and law committed by the trial Judge as revealed in the judgment of the Court of Appeal with H

particular reference to Exhibits 'A', 'B', 'C' and 'D' their Agbaisi's Village conceded and unchallenged ownership of Agbassa side of the land claimed by the appellants (grounds 3, 7 and 9).

(7) Whether the Court of Appeal appreciated the error by the learned trial Judge as to the lands covered by Exhibit 'B' i.e. the land leased to Aero Contractors by wrongly treating that land as communal property whereas it was leased by three families and by further wrongly regarding that land as part of the land in dispute in the six consolidated cases. And whether the trial Judge rightly applied section 145 and 45 of the Evidence Act, in favour of the respondents with regard to Exhibit 'B' vis-a-vis the land in dispute.

(8) Whether the trial Judge having accepted that the plaintiffs/appellants maintained as an issue the Uvwie Clan land is customarily and traditionally owned by different families and never by community treated fully and meticulously by way of appraisal and evaluation the evidence led (sic) on this crucial issue before he simply discarded consideration of the latter by the following statement "I am unable to hold that this is a strict rule and that categories of exceptions are not closed." And whether the Justices of the Court of Appeal acted rightly when they failed to set aside the judgment on this basis.

(9) Whether the Justices of the Court of Appeal acted rightly when in their lead judgment they reframed the above-named passage of the judgment of the trial Judge deleted the word NOT by putting it in bracket and altering the meaning and intention of the trial Judge with regards to the system of customary ownership of land.

(10) Whether the Court of Appeal did not err in law when the Justices failed to take up suo motu the issue of lack of jurisdiction and declare the judgment a nullity when it was clear from the record that the judgment was delivered after the expiration of 90 days contrary to section 258 (1) of the Constitution of the Federal republic of Nigeria 1979.

(ii) Whether the Court of Appeal did not err in law and on the facts when it was clear from the judgment of the trial court that the trial Judge did not distinctly, separately and meticulously evaluate and appraise at all the respective evidence of the 3rd 13th witnesses before they simply brushed aside the important evidence of the respective witnesses as being untrue and unreliable; although in the same judgment he relied on and accepted the evidence of some of these witnesses in other aspect. And whether the Court of Appeal acted rightly when they ignored the system of blowing hot and cold adopted by the trial Judge in his judgment and consequently dismissed. The plaintiffs/appellants' appeal in its entirety.

The six issues formulated at the instance of the respondents for our determination are as follows:-

1. *Whether the Court of Appeal was right in confirming and affirming the judgment of the trial court based on the evaluation of the evidence before that court?*

2. *Whether the Court of Appeal was right when it looked at the document (Plan) in the case file on (sic before) it?*

(b) *Whether the judgment of the court of trial can be sustained without the comments on the Plan?*

3. *Whether the Court of Appeal was right in confirming the decision of the trial court that Exhibit "D" (previous proceedings and judgment in W/ 7A/1972) was admissible as evidence of possession?*

4. *Whether the judgment of the trial court was delivered outside the statutory period and if so whether it resulted in substantial miscarriage of justice.*

5. *Whether the Court of Appeal is justified in upholding the decision of the trial court which refused or failed to give judgment for the appellants in respect of the land on Igbudu/Agbassa, Warri side of Ugbogboro steam to which the respondents laid no claim?*

6. *Whether the Court of Appeal was right in holding that the trial Court correctly applied section 45 of Evidence Act to the facts of the case?*

In approaching the consideration of this appeal, the hearing of which took place on 28th January, 1997, I am constrained to observe.

(i) that the appellants in their Notice of Appeal dated the 13th day of April, 1989 and filed on 24th April, 1989 attacked the decision of the court below on nine grounds. However, in formulating issues for the determination of this Court in their Brief of Argument, the appellants have set out a proliferation of issues amounting to eleven in all. This, to say the least, is neither an acceptable method of Brief writing nor procedurally a correct approach. It has been decided in a long line of cases by this Court that issues should be formulated in general practical terms and tailored to the real issues in controversy in such a way that they must of necessity be limited by, circumscribed and fall within the scope of the grounds of appeal. See Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (Part 135) 688 at 714 A-B; Adelaja Fanoiki & anor. (1990) 2 NWLR (Part 131) 137 at 148 E; Momodu v. Momodu (1991) 1 NWLR (Part 169) 608 and Onifade v. Olayiwola (1990) 7 NWLR. 130 at 157 to mention but a few.

(ii) In the instant case on appeal, the eleven issues submitted for our determination which are in excess of the nine grounds filed by the appellants as expression of their grievance, do not present a mirror of the principle stated

above, Thus, I express a preference for the respondent's six issues rather than stick to the eleven somewhat discordant issues proffered by the appellants albeit that they (appellants) herein are the aggrieved party. My reasons for taking this stand are not far to seek as I shall now endeavour to demonstrate.

Firstly, all the eleven issues rather than serving or facilitating the B quest for accuracy, clarity and brevity are prolix, tautologous, argumentative statements, commentaries and narratives from the judgment of the court below. The law has been restated times without number that the purpose of issues for determination is to enable the parties narrow the issues in the grounds of appeal filed in the interest of accuracy, clarity and brevity. See C Okon v. The State (1995) 1 NWLR (Part 372) 382; Idise v. Williams Intl. Ltd. (1995) 1 NWLR (Part 370) 142. Furthermore, there is a need for issues for determination to arise out of and be limited to the grounds of appeal filed. (See Onwumere v. The State (1991) 4 NWLR (Part 186) 428; Oje v. Babalola (1991) 4 NWLR (Part 185) 265 and Agbetoba v. Lagos State Executive Council (1991) D 4 NWLR (Part 188) 664.

Secondly, there has been a proliferation of issues in the instant case. This Court discourages proliferation. See Ogbuanyinya v. Okudo (No. 2) (1990) 4 NWLR (Part 146) 1551 at 556 and Nwobosi v. A.C.B. (1995) 6 NWLR (Part 404) 658. In the instant case the issues formulated far outstrip the grounds. E This is wrong. The six issues formulated are more succinct and rhyme with the nine grounds of appeal.

These said, I shall now proceed to consider the six issues seriatim though bearing in mind the interplay between the appellants' issues and the six respondents' issues herein argued.

F At the hearing of the appeal on 28th January, 1997 learned counsel for both sides adopted and expatiated on their respective Briefs.

#### ISSUE 1

Arguing this issue which is similar to appellants' issue 1, Learned Counsel for the appellants, Chief Akpofure submitted that they led sufficient G evidence that ought to have entitled them to judgment in respect of the portion of land on the Warri-Sapele road coming from Ugbogboro to Ugborikoko steam. After referring us to the evidence of P.W. 1 at page 455 of the Record and paragraphs 3, 4, 5 and 11 of the Amended Statement of Defence in Suit W/ 147/175 at pages 257 and 258 to 260 of the record wherein the respondents H among others, denied the appellants' pleading in paragraph 2 of their Statement of Claim as well as their (appellants') contention that the land in dispute is situated in Igudu in Warri Division but that rather it is situate squarely within Uvwie Clan in Western Urhobo Division, the respondents demonstrated in paragraph 11 thereof how their ancestors whose genealogy they gave,

came to found or settle on the land collectively known as Ugbogboro, lying within the neighbourhood of Ugborikoko village; adding that such land including Onoriakpo, Edjejewor, Onokuta and Adjomo constituted land partly owned communally and others by other families to the exclusion of the appellants whose land is to the west in Warri Division. After learned counsel in answer to this court's question whether there was any specific concession B made by the respondents of any land and in answer sought to explain this from the respondents Survey Plan (Exhibit C), however, conceded that he had nothing to urge on this issue.

**I have carefully considered the submission of learned counsel for both sides both orally and in their briefs and I take the firm view that the court below was right in holding that the trial court adverted its attention to all the issues properly raised before it made its findings of fact. To this end, the court below held, rightly in my view, thus:**

*"I am satisfied and so find that the weight of evidence is solidly in favour of the respondents, and the decision of the trial Judge in their favour D cannot be upset on this ground."*

The Court went on:

*"But the question to be answered is this: did he advert his mind to all the issues properly raised before him and did he make such findings on them? It is the duty of the trial judge to make such findings. I would hold E that he has on balance so done. He reviewed all the evidence led, and proceeded to make findings of fact on the case. It cannot be a basis for setting aside his judgment that he did not consider the evidence of all the witnesses one by one. He disbelieved 3rd-13th PWs and gave his main reasons for so doing."*

**The above conclusions of the court below, I must point out, were supported by the evidence on record which is overwhelming** for the following reasons.

(i) *The trial judge found as a fact from the evidence of PW1, the appellants' surveyor and DW3, respondents' surveyor that there was no Agbaisi Village in the area verged purple in Exhibit 'a' as contended by the G appellants. Both surveyors said that there were no ruins of houses in the area as postulated by the appellants.*

(ii) *Contrary to the pleadings and evidence led by the appellants there were no buildings in existence in the area Verged purple, yellow and deep blue (land in dispute) at least at the time the respondents challenged H the appellants accusing them of trespassing on their land.*

(iii) *That the persons who were parading the land when PW11, PW14, and others were building on the land in dispute were thugs appellants planted on the land.*

(iv) *That PW2, George Poko, a member of the respondents' community who testified that the land in dispute verged yellow in Exhibit "C" belongs to the appellants was held not to be a witness of truth and he is regarded as unreliable. This witness it was who admitted he leased the very land to Dr. Akpojaro in the name of Onoriakpo family. He also admitted under cross-examination having had a misunderstanding with the Ugborikoko community.*

(v) *That the respondents' story as to what transpired when a delegation of agbassa chiefs inspected the land in dispute was accepted by the court as true. This include the statement of Chief Agaga, the then head of C Agbaisi family who said the land in dispute did not belong to his family and that he did not authorize the appellants to cross the Ugbochoro stream to Ugborikoko side to cut down the respondents' trees.*

(vi) *That there is no firm and unequivocal custom in Uvwie that the land is not owned communally. The court is unable to hold that that is a D strict rule.*

(vii) *That Ugborikoko village and all other lands adjacent to the land in dispute belong to the respondents.*

(viii) *That "Oshoro" land in Exhibit 'D' is the same as the land in dispute in W/10/75.*

E From the foregoing, each of which was adequately supported by the evidence on record, the court below in my opinion, is justified in coming to the conclusion that the learned trial judge adverted his mind to all the material issues that were properly raised in the case before he dismissed the appellants' claims and upheld the respondents' in W/75/74, W/10/75, W/103/75 and F W/104/75. This issue is accordingly resolved against the appellants.

## ISSUE 2

This issue in which the complaint is whether the court below was right when it looked at the document (Plan) in the case file and commented on it as well as to whether the judgment of the trial court can be sustained without G the comments on the Plan. This in essence corresponds with appellants' issues 2, 3 and 4, 5, 6, 7, 8 and 11. The penultimate grouse borne by the appellants among others, is that their rights under section 33(1) of the Constitution of the Federal Republic of Nigeria, 1979 had been breached.

**Let me say straight away that there is hardly any substance in these H complaints. First, it is incorrect to say that the court below referred to or made use of a Plan prepared by late Surveyor, Obianwu from the court's file as erroneously stated by the appellants.** This is what the learned Justice who wrote the lead judgment (Omo, J.C.A. as he then was) said:

*"It may not be irrelevant to observe that the original plan made by*

P.W. 1 in connection with the earlier suits Nos. W/75/74, W/10/75, W/103/75 and W/104/75, were made sometime in 1976 before appellants pleadings were filed. That plan would have as its outer perimeter the area edged blue in Exhibit "A". Within that whole area there are, per Exhibit "A," only 2<sup>1/2</sup> structures at the South-Western most tip of that area! It is only later that the amended plan (Exhibit "A") with a larger perimeter (sic) edged green B brought in many houses towards the South-Western most tip of it too."

**It is clear from the above-quoted passage that the Plan the learned Justice looked at is the Plan prepared by P.W.1 surveyor Chukwurah and not the one prepared by Surveyor Obianwu.**

The next logical question is whether he has a right to look at the document in the file which was not tendered as an exhibit. My answer to this question is in the affirmative. See Ada v. Uku (1977) 5 FCA. 218 at 227; Ogbuanyinya v. Okudo & Ors. (1979) 3 L.R.N. 318 at 324 and Ladunni v. Kukoyi (1972) All N.L.R. (Part 1) 133. The next pertinent question is: if it were a Plan that was amended as contended by the appellants, can the court look at it and make use of it? My answer is that it can as this Court did in its recent decision in Salami & ors. v. Oke (1987) 5 NWLR (Part. 63) 1 at 9; (1987) 2 N.S.C.C. 1167 at 1173 where KAWU, J.S.C. quoted with approval the views taken by the Court of Appeal, Ibadan Division (Uche Omo, J.C.A as he then was and Dosunmu and Omololu-Thomas, JJ.C.A.) as follows:- E

*"I might as well deal with the related argument about the statement of Defence that was later amended by another statement of Defence. It was contended that the trial judge has no right to refer to the Statement of Defence since it has been amended. This is not correct. Because it was amended does not mean it was expunged, or struck out, and no longer part of the proceedings. The trial court (Appeal Court) cannot shut its eyes against it, although it cannot consider it as the basis of the defence in the action."* F

In his contribution to the above reasoning of KAWU, J.S.C. OBASEKI, J.S.C. had this to say:

*"It is enough to say that the learned trial Judge did not use the original statement of defence as the bases of his judgment, and the use he made of it was to highlight the important issues raised in the amended statement of defence."* G

See the earlier decision of this Court of Owonyin v. Omotosho (1961) All N.L.R. (Part 11) 304; (1961) 2 N.S.C.C. 179 at 184 in which the plaintiff sued for H

*"A declaration that the land belongs to the plaintiff's family and the defendants' family according to native law and custom."*

Later he (plaintiff) amended the claim with leave of court to read that

he was asking for a declaration that the land belonged to his family only. In his lead judgment Bairamian F. J. said:

*"I have looked at the evidence for the defendant, and it is my view that it supports the plaintiff's case as originally presented in his statement of claim that the land belongs to both families."*

B In Owonyin's Case (supra) as can be seen, not only did the appeal court refer to the amended statement of claim but it also made use of it to the extent that the case presented by the plaintiff was in keeping with the original claim that was amended and not in support of the new amended statement of claim. **The distinguishing feature in the instant appeal, is that the plan was referred to merely to highlight the falsity in the appellants' case especially as rendered in the conflicting evidence of P.W.1 to the effect that there were (or were no) buildings on the land in dispute.** This accounts for the categorical pronouncement of the learned Justices of the court below when they held:

*"I fail to see how the trial judge could have considered their evidence along with the conflicting evidence of PW1, which left no room for doubt. The deduction made from the evidence of PW1 as to the existence (or absence) of buildings on the land in dispute at the time of survey is unassailable."*

Thus, I take the firm view that the said plan did not affect the decision of the court below. As in the instant case it appears to me clear that the trial was conducted according to all the legal rules formulated to ensure that justice is done to the parties within the meaning of Section 33(1) of the 1979 Constitution, I can see no breach of the fair hearing provision contained in that section. See Ntukidem v. Oko (1986) 5 NWLR (Part 45) 909 and Nwokoro v. Onuma (1990) 3 NWLR (Part 136) 22 at 33. The issue is answered in the positive.

### ISSUE 3

The appellants quarrel with the judgment of the court below in this issue is whether that court was right in confirming the decision of the trial court that Exhibit "D" (previous proceedings and judgment in W/7A/1972) was admissible as evidence. To this end they (appellants) have contended at page 10 (ii) of their Brief that:

*"The Court of Appeal also allowed the plaintiffs/appellants' appeal against the findings and opinion of the learned trial judge who held that exhibit "D" establish (sic) title of the family to that particular land; ...."*

With profound respect, what is contained in the above extract can be nothing near the truth. The court below confirmed the findings and the legal propositions expressed by the trial court when it held, inter alia, that

*"The answer to these objections is however much simpler. It is, that*



*the trial court did not treat Exhibit "D" as constituting res judicata. It regarded it, and so stated, as evidence of acts of ownership. This he was in my view entitled to do having regard to especially the fact that the name of the land is the same Oshoro, the plaintiffs in both suits are the same Onokuta family of Ugborikoko. They testified that it is the same land in dispute and the trial court believed their evidence."*

**From the foregoing I take the view that trial court and the court below were undoubtedly right in treating Exhibit "D" as evidence of acts of possession.**

Thus, in Ajuwa v. Odili (1985) 2 NWLR (Part 9) 710 at 712 this Court held in an analogous situation that

*"A previous judgment, as in Exhibit "E" although not binding on the plaintiff as estoppel per rem judicata strengthens the case of the defence to establish acts of possession in their favour. (James Oluba v. Chief Sillo (1973) 1 S.C. 37 at 55-56) followed."*

See also Chief Dokubo A Aseimo & ors. v. Chief Anthony Amos & ors. (1975) 2 S.C. 57 and Okechukwu & ors. v. Okafor & ors. (1961) All N.L.R. 685 at 690. D

The appellants' contention here lacks merit and as there has been, in my view, no miscarriage of justice this issue is therefore resolved against them.

#### ISSUE 4

This issue which tallies with appellants' issue 10, queries whether the judgment of the trial court was delivered outside the statutory period and if so whether it results in substantial miscarriage of justice. It is concomitant with the respondents' issue 4. The submission here is that it is clear from the judgment of the trial court and from the record of proceedings that judgment in this case was delivered ninety-one (91) days after the address of counsel. This, it is contended, is contrary to Section 258(1) of the 1979 Constitution. The judgment itself it is therefore argued, is a nullity and that the appeal before the Court below was incompetent.

**I agree with submission of the respondents that the judgment of the trial court was delivered within the statutory period, namely three months from the time final addresses were made to the time judgment was delivered. Final address, it has been demonstrated, took place 29/4/82 - See page 641 of the Record whereas judgment was delivered on 23/7/82 i.e. within 3 months. See pages 652 and 682 of the Record. It does not therefore amount to a nullity.** See Awoyale v. Joshua Ogunbiyi (1985) 2 NWLR (Part 10) 861; Ifezue v. Mbadugha (1984) 1 SCNLR. 427; Effiom v. The State (1995) i NWLR (Part 373) 507 and the yet-to-be reported case of this Court No. SC. 230/1994 delivered on 7th March, 1997, Lawani Adesokan & ors. v. Prince Michael Oyetunji & ors.

ISSUE 5

This issue is related to appellants' issue No. 6, wherein the appellants' complaint is whether the court below is right in holding that the trial court properly applied Sections 145 and 45 (now sections 146 and 46) of the Evidence Act, Cap. 112 Laws of the Federation 1990 correctly to the facts of the case. It further queries whether the court below appreciated the error made by the learned trial Judge as to the land covered by Exhibit "B" i.e. the land leased to Aero Contractors by wrongly treating that land as communal property whereas it was owned by three families and by further wrongly regarding that land as part of the land in dispute in the six consolidated cases.

In considering this issue, I need only refer in answer what the court below, rightly in my view, said when it held as follows:-

*"I do not agree with him (appellants' counsel) that the learned trial judge "misconceived the correct and true meaning" of those sections of the Evidence Act. Before applying them, he made findings of fact on the challenged evidence as to the ownership of the piece of land bordering the land in dispute. He found them to belong to the respondents, and to be within "a stone throw" of their village. Having so found there was nothing to prevent him having recourse to provisions of section 45 (now 46) of the Evidence Act. If of course he is found to be wrong in his findings, and I do not so hold, then his reliance on section 45 (section 46) can be correctly adjudged misconceived."*

**From the above extract, I am satisfied that the learned trial Judge having found as a fact that all the land in boundary with and adjacent to the land in dispute belong to the respondents, the upholding by the court below of the trial court's decision wherein that court rightly applied the provisions of section 45 (now Section 46) of the Evidence Act, became imperative and compelling.** See also Okechukwu v. Okafor (supra). The two sections under reference pertinently provide as follows-

*"46. Act of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so situated or connected therewith by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land" and,*

*"146. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."*

**The applicability of these sections to the instant case can neither be doubted nor faulted.**

My answer to the issue is accordingly in the affirmative.

#### ISSUE 6

This is related to appellants' issues 8 and 9. It is the appellants' contention here that when the learned trial Judge held, among other things that

"I am unable to hold that this is a strict rule and that categories of B exceptions are not closed."

He meant and the statement literally means, that the categories of exceptions to the rule are not closed. Furthermore, it is argued, apart from Afieke land, all lands in Uvwie are owned by different families, not by the community. It is further submitted on appellants' behalf that the statement of the learned trial C Judge is fully supported by

(a) *the evidence of the appellants and their witnesses on the point as to family ownership of land in Uvwie*

(b) *by admission in evidence by some of the respondents' witnesses including D.W. 4, D.W.5 and D.W. 6 (i.e. Chief Egere) who was 80 years old. D The High Court, Warri's decision on the point is E. Eletie & ors. v. Buleke. Suit No. W/28/63.*

It is finally submitted that where the age-long established and accepted customary law does not conflict with the provisions of any written law or any subsisting judgment of any competent court vide Eletie v. Buleke (supra) and E it is not inconsistent with equity and good conscience, it shall be presumed to be and is accepted as correct and binding until the contrary is proved.

The submission of learned counsel for the appellants, with due respect, is a complete negation and utter misconception of what the learned trial Judge said and which was confirmed by the court below. The learned trial F Judge had held inter alia:

*"Another issue raised by the plaintiff is that land is not owned communally in Uvwie clan to which the parties belong. They listed one exception i.e. the land at Effurun where the community show their masquerade. Many authorities were cited. I am unable to hold that this is a strict G rule and that categories of exceptions are not closed."*

As can be seen (i) the appellants' contention is clearly to the effect that land is not owned communally in Uvwie clan contrary to the preponderance of evidence adduced by the respondents.

(ii) that the categories of exceptions to this concept of Community H ownership of land is not closed and there could exist more than the exception of where they (respondents) showed their masquerades and,

(iii) that the pronouncement (literally) of the learned Justices of the court below set out above and confirmatory of the opinion expressed earlier

by the learned trial judge, amounts to one and the same thing. **It is a question of semantics which does neither damage nor derogate from the concurrent findings of fact by the two courts below. In the absence of the two decisions being shown to be perverse or causing a miscarriage of justice, this court will be slow to interfere therewith.**

B            The result of all I have been saying is that this appeal lacks merit and is accordingly dismissed by me with N1,000 costs to the respondents.

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### WALI JSC

C            I have had a preview of the lead judgment of my learned brother Onu, J.S.C. and I agree with his reasoning and conclusion for dismissing the appeal.

              There are unassailable findings of fact and law in the trial court's judgment which were relied upon by the Court of Appeal in arriving at its decision. The appeal lacks merit and I dismiss it. See Lucy Onowan & Anor.

D v. Iserhien (1976) 9 - 10 SC 95 and Idundun v. Okumagba (1976) NMLR 100.

              I abide by the order of costs made in the lead judgment.

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### OGWUEGBU JSC

E            I had the advantage of reading in draft the judgment just delivered by my learned brother Onu, J.S.C and I agree with him that the appeal should be dismissed.

              One of the complaints of the appellants is that the learned trial judge erred in law when he applied the provisions of sections 45 and 145 of the Evidence Act and came to the decision that the defendants were the owners of the land and were in exclusive possession of the particular areas shown in Exhibit "C". The learned trial judge considered the issue in his judgment as follows:

G            *"Possession and user of land adjacent to the land in dispute: According to the evidence before us and having regard to the plan Exhibit "C" filed by the defendants which I accept as being more accurate (sic) the land in dispute is surrounded by the land of the defendants on one side, and by Ugbogboro stream on the opposite side and by defendants' land towards the North-West the land leased to Ejukolemu by Adjomo and Onoriakfor families of the defendants. It there (sic) looks odd that the defendants should own land which they gave to Aero-Contractors inside plaintiffs' land. The Ugborikoko village is a stone throw away from the land in dispute. .... Having therefore regard to section 145 of the Evidence Act the only inference is that the defendants own the land adjacent."*

The above passage of the judgment of the learned trial judge dealt with ownership of adjoining lands to the land in dispute. Section 45 of the Evidence act (now section 46 Cap. 116 Laws of the Federation of Nigeria, 1990) provides that:

*"Acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so situated or connected therewith by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land."*

With the above finding of the learned trial judge, section 46 of the Evidence Act comes in aid of the defendants/respondents to defeat the claim of ownership of the plaintiffs/appellants. The court below was right when it said that reliance on section 145 of the Evidence act by the learned trial judge was a clerical error or oversight and that he intended section 45 of the said Act. I agree with the court below that the learned trial judge did not misconceived the correct and true meaning of those sections of the Evidence Act.

For the reasons and the fuller reasons contained in the judgment of my learned brother Onu, J.S.C., I too would dismiss the appeal as having no merit at all. I abide with his orders as to costs.

E

#### ADIO JSC

I have had the benefit of reading, in advance, the judgment just read by my learned brother, Onu, J.S.C., and I agree that this appeal lacks merit. I too dismiss it.

No doubt there was proliferation of issues in the appellants' brief. F Indeed, once it has been observed, as in this case, that the number of issues formulated in a brief of argument is more than the number of grounds of appeal it is most likely that something is wrong with the way the issues have been formulated. It has been emphasized several times that issues for determination in a brief in the appeal court should of necessity be limited by and fall within the scope of the grounds of appeal filed. See Agu v. Ikewibe, (1991) 2 N.W.L.R. (pt. 180) 385, at p. 401; and Ayisa v. Akanji, (1995) 7 N.W.L.R. (Pt. 406) 129.

The learned trial Judge made findings of fact on very vital issues and the findings of fact, which were in favour of the respondents, were supported by the evidence before him. Good reasons were given for his coming to certain conclusions. The court below rightly affirmed the findings and did not interfere with them. Where a trial court properly evaluates the evidence and appraises the facts, it is not the business of an appeal court to substitute its

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own views for the views of the trial court. See Bamgboye v. Olarewaju (1991) 4 N.W.L.R. (pt. 184) 132. Further, an appellate court will interfere and reverse a finding of fact made by the trial court when, in its opinion, the finding is not supported by evidence. See Lengbe v. Imale, (1959) W.R.N.L.R. 325; and Fatunde v. Onwoamanam (1990) 2 N.W.L.R. (Pt. 132) 322. All the findings of B fact made in this case were supported by evidence.

Further, the operation and/or applicability of section 45 (now section 46) and section 145 (now section 146) of the Evidence Act in favour of the respondents strengthened their case. The circumstances were such that the provision of section 45 (now section 46) of the Evidence Act became applicable and the legal implication was that the section raised, in favour of the C respondents, a probability that they were the owners of the land in dispute. As the respondents were found to be in possession of the land in dispute, section 145 (now section 146) of the Evidence Act operated or became applicable in their favour by requiring the appellants, who were contending that D the respondents were not the owners of the land in dispute to prove it.

It is for the foregoing reasons and for the detailed reasons given in the lead judgment of my learned brother, Onu, J.S.C., that I agree that this appeal lacks merit. I too dismiss it with N1000 costs to the respondents.

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E

### IGUHJSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Onu, J.S.C. and I agree entirely that there is no merit in this appeal.

F There is overwhelming evidence on record in support of the findings of fact made by the learned trial Judge in favour of the respondents in the consolidated suits. The evidence of the plaintiffs/appellants was thoroughly discredited at the trial and the learned trial Judge did not hesitate to reject them as unreliable. The trial court was also of the view that section 145 of the G Evidence act was applicable to the case in favour of the defendants/respondents who owned most of the land adjacent to the land in dispute. These findings were, in my view, rightly affirmed by the court below and I can find no reason to interfere with them.

The respondents, as plaintiffs, in the consolidated suits only claimed H damages for trespass and perpetual injunction against the appellants but made no claim in respect of title to the land in dispute. The trial court however, awarded title to the land in dispute to the said respondents. In doing this, the learned trial judge relied on the decision of this court in Okorie and Another v. Udom and others (1960) 5 F.S.C. 162, upholding the submission of learned

counsel for the respondents that the court, even if title was not specifically claimed, could in a case of trespass and injunction consider the issue of title and award the same to the plaintiff, if proved.

With profound respect, the learned trial judge was in gross error to have awarded title to the land in dispute to the respondents whose only claims before the court were in trespass and injunction but not in declaration of title. Without doubt, whenever an action for trespass to land is coupled with a claim for an injunction, the title of the parties is automatically put in issue. See Akintola v. Lasupo (1991) 3 N.W.L.R. (Part 180) 508 at 515. This does not however mean that the plaintiff, in such an action is entitled to an award of title to the land in dispute without a specific relief for title before the court. The clear statement of the law is that a court must not grant to a party a relief which he has not specifically sought or which is more than he has claimed. See Ekpenyong v. Nyong (1975) 2 S.C.71 at 81 -82, Kalio v. Daniel Kalio (1975) 2 S.C. 15 at 17-19, Union Beverages v. Owolabi (1988) 2 N.W.L.R. (PART 68) 128 at 133, Makanjuola v. Balogun (1989) 3 N.W.L.R. (Part 108) 192 at 206, Olurotimi v. Ige (1993) 8 N.W.L.R. (Part 311) 257 at 271 etc. In the same vein, it is not the duty of the court to endeavour by examination of the evidence to conjecture or deduce what ought to be or might be the true nature of a claim and then proceed to make a declaration which the plaintiff has not sought and may not infact desire. It would be improper for the court so to do unless it were prepared to order an amendment of the pleadings in which case it would be necessary to give the defendant an opportunity of what would be an entirely different case. See Emegwara v. Nwaimo 14 W.A.C.A 347 at 348.

In this connection it ought to be stressed that the principle laid down by this court in Okorie and Another v. Udom and others, supra, is that in a claim for trespass and injunction, it is incumbent on the trial Judge to consider the issue of title to the land in dispute or exclusive possession thereof but not that the trial Judge could award title to the land in dispute to the plaintiff where no such relief was claimed. See too Ogunfaolu v. Adegbite (1986) 5 N.W.L.R. (Part 43) 549, Ogungbemi v. Ashamu (1986) 3 N.W.L.R. (Part 27) 161 etc. The trial court was therefore wrong to have awarded title to the land in dispute to the respondents who claimed no such relief before the court. Equally the Court of Appeal was absolutely right to have set aside the said award of title to the land in dispute to the respondents and to have varied the judgment of the trial court in this regard.

On the whole, this appeal is devoid of substance and it is for the above and the more elaborate reasons contained in the leading judgment that I, too, dismiss this appeal. I subscribe to the order for costs therein made.