

SUPREME COURT OF NIGERIA
 9TH MAY, 1997. SC. 288/1990
CORAM:-A.B. WALI, I.L. KUTIGI, E. O. OGWUEGBU,
U. MOHAMMED, S. U. ONU, JJSC

HIS HIGHNESS ISAAC BOYI UMUKORO	DEFEN-
DANTS/		
& ORS		
(For themselves and on behalf of		AP-
PELLANTS		
seventy seven Raphia Crop Owners at		
Umunu Island at Ogharefe)		
AND		
1. NIGERIA PORTS AUTHORITY	DEFENDANTS/
2. JULIUS BERGER (NIGERIA) LTD.		RESPONDENTS

ACTIONS - Limitation - Twelve months limitation specified under s. 97 (1) of the Ports Act – Action that was filed after about 3 years – Is Statute barred.

ACTIONS – Competence of action – Failure to give the mandatory statutory notice – Will defeat the plaintiffs’ action.

APPEALS – Issues – That relate to compulsory acquisition of land – And contract to pay compensation – Where not proved – Are incompetent.

LAND LAW- Trespass – Where plaintiffs’ counsel admitted that their claim is for compensation – Issue of trespass is irrelevant.

PLEADINGS – Departure – a party cannot depart from his pleadings – Just as the court cannot depart from the pleaded case.

FACTS

The plaintiffs/appellants claimed the sum of N301,658.90 against the defendants/respondents as the sum of compensation agreed due for the damage of the plaintiffs’ economic trees. The damage was allegedly done during the construction and building of a new Sapele Port Complex about the year 1981. The 1st defendant maintained that the plaintiffs’ land was not part of the land acquired for which compensation had been paid long before the con sanction work started.

The plaintiff action was filed about 3 years after the incident whereas. 97 of the Ports Act specified that action must filed within 12 months. The trial court dismissed the action for being statute barred. Plaintiffs' appeal to the Court of Appeal was also dismissed. Being aggrieved, they have further appealed to the Supreme Court raising several incompetent issues while the main **ISSUE FOR DETERMINATION** is on the applicability or otherwise of section 97(1) & (2) of the Ports Act to this case.

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

Issue of trespass is irrelevant

1. It is abundantly clear therefore that learned Plaintiffs' counsel knew and in fact admitted that their claim was not for trespass but for compensation for compulsory acquisition of land. Claim for trespass is therefore not relevant here now. It never was. (p. 960 G) C

Incompetent issues

2. I am in complete agreement with the Court of Appeal that the Plaintiffs woefully failed to prove that their land was within the land acquired for the port complex. The pleadings of the Plaintiffs also clearly showed that no contract was pleaded and none was proved to have been entered into between the Plaintiffs and the 1st defendant to pay them any compensation. No issue of any contract therefore arises for consideration in the instant case. Needless to say also that there was no issue on the pleadings about the powers of the 1st defendant to construct the new port complex. No declaratory relief was also sought against the defendants. These questions to me therefore are clearly incompetent. (p. 961 E)

Pleading- Departure

3. As I said, a close study of the pleadings makes it clear that the questions of contract or agreement or power to construct new port complex were not raised as issues for determination by the court. It is trite that parties are bound by their pleadings and that evidence which is at variance with the pleadings must be discountenanced as they go to no issue (see EMEGOKWE v. OKADIGBO (1973) 4 FSC 113). It is also trite that it is not open to a party to depart from his pleadings and put up a different case from the one pleaded just as it is not competent for a court of law to depart from the pleaded case to find on that which is never pleaded (see LEMONU v. BALOGUN (1973) 3 SC. 169). No amount of submissions can change the law as it is now. (p. 96 1 G)

Action - Limitation

4. The Writ of Summons on page 1 of the record shows that the action herein was filed only on 27/11/84. which is about three years or more since the Plaintiffs knew of the damage or destruction of their crops. I think section 97(1) of the Ports Act (supra) is quite dear and unambiguous. The imperative nature of the provision is also not in doubt. On these facts, I am in complete agreement with the decisions of the two lower courts (and as rightly conceded by Mr. Eduvie) that the Plaintiffs' suit is statute barred and therefore rightly dismissed. (p.963 B)

Actions - Mandatory statutory notice

5. Again it was in fact not disputed that the Plaintiffs never gave any notice to the 1st defendant herein before instituting the suit. That is also against the mandatory provisions of section 97(2) (supra). The main issue is therefore C resolved against the Plaintiffs. (p. 963 C)

NOTABUE POINT OF INTEREST

KUTIGI JSC

1. Appeals - It is wrong to argue grounds instead of issues

Mr. Eduvie learned counsel for the Plaintiffs as I said above filed seven grounds of appeal. He has in his briefs of argument submitted four issues as arising for determination in the appeal. However, for reasons best known to him he decided to abandon all the issues and argued the grounds of appeal together contrary to the provisions of Order 6 Rule 5(1)(b) Supreme Court Rules. This was exactly what counsel did in his brief in the court below. This is not proper as it is against the Rules of Court, (p. 960 A)

REPRESENTATION

Plaintiffs absent not represented

1st Defendant absent not represented

Alhaji Femi Okunnu SAN with A. A. Osara for the 2nd Defendant

CASES REFERRED TO

Emegokwe v. Okadigbo (1973) 4 FSC113

Lemonu v. Balogun (1973) 3 SC. 169

Corporation v. Bankole (1972) 4 SC. 94 at 101 -103 (1972) All NLR (part 1) 27

Fadare v. A.G. of Oyo State (1982) 4 S.C. 1

Savannah Bank v. Pan Atlantic (1987) 1 NWLR (Part 49) 212

Olarewaju v. Bamigboye (1987) 3 NWLR (Part 60) 353 at 359

Emegokwe v. Okadigbo (1973) 4 S.C. 113

George v. U.B.A. Ltd. (1972) 1 All NLR (Part 2) 347

Great Nigeria Insurance Co. Ltd. v. Lad Group LTD. (1986) 4 NWLR (Part 33)72

Akpapuna v. Nze (1893)3 S.C.N.R. 1

STATUTE A RULES REFERRED TO

Ports Act Cap. 155 vol. VLFN 1958 s. 97(1) & (2)

Supreme Court Rules 0.6 r. 8(6), 0.6 r. 5(1) (6)

LEAD JUDGMENT BY KUTIGI JSC

In the High Court of Justice, Sapele, the plaintiffs claims as stated in paras. 22 & 23 of their Statement of Claim (which superceded the Writ of Summons) read thus:-

“22. Whereof the plaintiffs claim against the defendants jointly and severally is for the sum of N301,658.90 (Three hundred and One thousand, six hundred and fifty-eight naira, ninety kobo) being the sum of Compensation agreed, ascertained and certified due and payable to the plaintiffs by the defendants for their Raffia Palms and economic trees of the plaintiffs destroyed or damaged at Umunu Island by the defendants and or their agents

23. The plaintiffs also claim interest at 14% hereof from the date of this writ until payment or judgment.”

Pleadings were ordered, filed and exchanged. The defendants clearly denied liability. The 1st defendant in addition pleaded in paras. 3 & 10 of its Amended Statement of Defence that-

“3. The defendant denies paragraphs 7 & 8 of the Statement of Claim. The defendant will contend at the trial that if Amunu Island existed, it was not part of land acquired by the defendant for the purpose of building Sapele Port Complex. The defendant shall rely on the acquisition notice and all plans and diagrams in respect of the land at the trial.

(a) The defendant only authorised 2nd defendant to carry out dredging and reclamation of Sapele Port Complex within the land acquired by the defendant.

(b) The defendant did not authorise the 2nd defendant to destroy any crop outside the area of acquisition. If there was any destruction of crops by the 2nd defendant, the 1st defendant is not liable in that it was not authorised.

(c) If any representative of the defendant and the Ministry of Agriculture made any enumeration of crops on the plaintiffs land, it was done in ignorance and the defendant is not liable in that the said land is not within the area of acquisition and did not contract or authorise any person to destroy crops in the said land. All compensation in respect of the said acquisition have been paid by the defendant.

10. *The defendant shall contend at the trial that the plaintiffs are not competent to sue in this case in that he has not given the required notice to the defendant before commencing this action. The defendant shall rely on section 97 of Ports Act Cap. 155 Laws of Federation of Nigeria and shall further contend that the action is statute barred.*

B *The defendant shall contend at the trial that the case be dismissed in that the suit is speculative, frivolous and abuse of legal processes,”*

The 2nd defendant also pleaded in paras. 4, 5 & 6 of its Amended Statement of Defence as follows:-

C *“4. In further answer to paragraphs 7, 9, 10, 11, 12, 13, 14 and 15 of the statement of claim the 2nd defendant states that the 2nd defendant was put in vacant possession of the site or parcel of land on which the Port is now situate by the 1st defendant in accordance with terms of agreement with the 1st defendant in July 1980.*

D *5. The 2nd defendant states that all its construction activities were confined to the land acquired by the Federal Government for the building of the Sapele Ports Complex and to no other piece or parcel of land.*

E *6. The 2nd defendant states further in answer to paragraphs 7, 9, 10, 11, 12, 13, 14 and 15 that it did not destroy any crop outside the parcel of land acquired by the 1st defendant for Sapele Port construction but in fact restricted its dredging and reclamation to the pm1 of the land acquired aforesaid and handed over to the 2nd defendant.”*

F The facts are briefly that between 1980 and 1981 the 1st defendant acquired a large tract of land for the purpose of designing, constructing and building of a new Sapele Port Complex. The plaintiffs claimed that UMUNU ISLAND at Ogharefe was part of the land acquired by the 1st defendant.

G They also claimed that during the construction work by the 2nd defendant, their raffia palms and their economic crops on the island were damaged or destroyed. That when they complained to the defendants they were advised to put up claims for compensation in accordance with the provisions of the Ports Act. The plaintiffs said they complied; and that after an enumeration exercise was carried out by the officials of the Ministry of Agriculture and Natural Resources Bendel State, a schedule of payment containing 85 names was prepared and forwarded to the 1st defendant. The total amount claimed and payable was N301,658.90.

H The 1st defendants on the other hand said Umuna Island was not part of the land acquired and for which compensation had been paid long before construction work started, nor did the island form part of the new port complex. When the defendants failed to pay up, the plaintiffs then filed this action in court on 27th November, 1984 claiming as above.

At the trial, five witnesses testified for the plaintiffs while one witness

each testified on behalf of the two defendants. In a reserved judgment the learned trial Judge after reviewing the evidence adduced before him, dismissed the plaintiffs claims when he concluded on page 84 of the record thus:

“The plaintiffs are absolutely barred from bringing an action against the 1st defendant for compensation. Therefore the plaintiffs claim fails. It is and hereby dismissed.

It is just fair and reasonable that parties should bear their costs in this case and I shall make no order as to costs.”

He had before now in his judgment on page 81 of the record, held that:

“There is no doubt that the plaintiffs had a genuine claim for compensation against the 1st defendant, but they slept on their rights and caught by the provisions of section 97(1) and (2) of the Ports Act. From all available authorities it would appear that the courts are not prepared to liberalise the provisions of Limitation Act. This view is supported by the case of Fadare & Ors. v. Attorney-General of Oyo State (1982) 4 S.C. 1.....”

Dissatisfied with the decision of the High Court, the plaintiffs appealed to the Court of Appeal holden at Benin City. Eight grounds of appeal were filed and six issues submitted for resolution. The Court of Appeal had no hesitation in coming to the conclusion that the issues were not succinct enough and that there were over-lapping and duplication of the issues. In fact, the issues were never argued in the brief; but rather, the grounds of appeal were argued together. The court then identified the single question set forth in the defendants briefs, being the interpretation and effect of section 97(1) & (2) of the Ports Act Cap. 155 Vol. v. Laws of the Federation of Nigeria and Lagos 1958, as the crucial issue for determination in the appeal. I hasten to say that exactly the same issue is being raised in this court now as we shall soon see.

The Court of Appeal in a reserved and unanimous judgment considered all the points canvassed before it and dismissed the plaintiffs appeal. The judgment of the trial High Court was upheld in that the learned trial Judge rightly applied section 97(1) & (2) of the Ports Act to the facts of the case before him and came to the right conclusion when he held that plaintiffs claims must be dismissed because no notice of action was served on the 1st defendant before the suit was commenced and that the action-itself was statute barred.

Aggrieved by the decision of the Court of Appeal, the plaintiffs have further appealed to this court. The Notice of Appeal contained seven grounds of appeal. The parties filed and exchanged briefs of argument. At the hearing of the appeal on 17/2/97 only the 2nd defendant was represented by counsel, the other parties were absent and not represented. The appeal was accordingly

treated as having been argued vide Order 6 Rule 8(6) Supreme Court Rules. Alhaji Femi Okunnu SAN who appeared for the 2nd defendants adopted his brief, made a few oral submissions and asked us to dismiss the appeal.

Mr. Eduvie learned counsel for the plaintiffs as I said above filed seven grounds of appeal. He has in his briefs of argument submitted four issues B as arising for determination in the appeal. However, for reasons best known to him he decided to abandon all the issues and argued the grounds of appeal together contrary to the provisions of Order 6 Rule 5(1)(b) Supreme Court Rules. This was exactly what counsel did in his brief in the court below. This is not proper as it is against the Rules of Court. Be that as it may; of the four C issues listed by counsel on pages 2 - 3 of his brief, issue (1) is concerned with the interpretation and effect of section 97(1) & (2) of the Ports Act, while issues (ii), (iii) & (iv) respectively ask whether the plaintiffs could have sued the defendants for trespass, whether the 1st defendant had power under the Act to construct or build the port complex and whether there was a contract between the plaintiffs and the 1st defendant.

D I shall deal with issues (ii), (iii) & (iv) first. The record shows that when Mr. Eduvie addressed the Court of Appeal in the appeal on 24/1/89 the following transpired amongst others on pages 150- 151 of the record -

"Mr. Eduvie: says that appellants land relating to this matter was not compulsorily acquired by the Federal Government.

E *Court: How do you reconcile this statement with paragraph 7 of your Statement of Claim?*

Counsel: At the trial we led evidence to the effect that our land was not included in the land compulsorily acquired for the port complex.

F *Court: If your land was not compulsorily acquired and the respondents went on it and destroyed your crops without your consent, what tort is that?*

Counsel: It is trespass as we did not consent to their coming on our land and doing damage thereon.

Court: Did you sue for trespass?

Counsel: No, Sir?"

G **It is abundantly clear therefore that learned plaintiffs counsel knew and in fact admitted that their claim was not for trespass but for compensation for compulsory acquisition of land. Claim for trespass is therefore not relevant here now. It never was.**

The Court of Appeal in the lead judgment of Ndoma-Egba, J.C.A. on page 169 said:-

H *"Learned counsel however, admitted that there was no evidence adduced in support of the averment in para. 7 of the statement of claim nor was the latter amended. He significantly conceded that the plaintiffs/appellants*

land was not included in the land compulsorily acquired by the 1st defendant/respondent and that they did not sue for trespass. He conceded also that the enumeration of the crops took place before the damage to crops complained of, he referred to para.6 and shifted from his original position to concede that the plaintiffs/appellants did not plead the existence of a contract, oral or written with the defendants/respondents to pay compensation for the crops purportedly destroyed by the defendants/respondents. He firmly admitted that the plaintiffs/appellants action was statute barred."

Plaintiffs' paras. 7 & 10 of the Statement of Claim also read:-

"7. In exercise of the powers conferred on the 1st defendant by section 34,.Part VII of the Ports Ordinance Cap. 155; Volume 5 of the Laws of the Federation of Nigeria and Lagos, the 1st defendant compulsorily acquired a large piece of land along Benin/River of which Umunu Island at Ogharefe is but a part for the purpose of building a modern Ports Complex at Sapele.

10. The plaintiffs stated that when their Raffia Palms, Rubber and other economic crops or trees of the plaintiffs were damaged or destroyed by the 1st and 2nd defendants, the plaintiffs quickly protested to the 1st and 2nd defendants who were always at the site. The 1st and the 2nd defendants advised the plaintiffs to put up claims for compensation in accordance with section 39 of the Ports Ordinance, Cap. 155 Volume 5, Laws of the Federation of Nigeria and Lagos."

I have myself read through the record of appeal herein particularly the pleadings and the testimonies of witnesses. **I am in complete agreement with the Court of Appeal that the plaintiffs woefully failed to prove that their land was within the land acquired for the port complex. The pleadings of the plaintiffs also clearly showed that no contract was pleaded and none was proved to have been entered into between the plaintiffs and the 1st defendant to pay them any compensation. No issue of any contract therefore arises for consideration in the instant case. Needless to say also that there was no issue on the pleadings about the powers of the 1st defendant to construct the new port complex. No declaratory relief was also sought against the defendants. These questions to me therefore are clearly incompetent. As I said, a close study of the pleadings makes it clear that the questions of contract or agreement or power to construct new port complex were not raised as issues for determination by the court. It is trite that parties are bound by their pleadings and that evidence which is at variance with the pleadings must be discountenanced as they go to no issue (see Emegokwue v. Okadigbo (1973) 4 SC 113). It is also trite that it is not open to a party to depart from his pleadings and put up a different case from the one pleaded just as it is not competent for a court of law to depart from the pleaded case to find on that which is never**

pleaded. (See Lemomu v. Alli-Balogun (1975) 3 S.C. 87). No amount of submissions can change the law as it is now.

Issues (ii) (iii) & (iv) are therefore quite simply resolved against the plaintiffs

I now turn to the really main issue in this appeal which is the applicability or otherwise of section 97(1) & (2) of the Ports Act to this case. The section reads:-

“97(1) When any suit is commenced against the Authority or any servant of the Authority for any act done in pursuance or execution or intended execution of any ordinance or law or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such ordinance, law, duty or authority such suit shall not lie or be instituted in any court unless it is commenced within twelve months next after the act, neglect, or default complained of or, in the case of a continuance of injury or damage within twelve months next after the ceasing thereof.

(2) No suit shall be commenced against the Authority until one month at least after written notice of intention to commence the same shall have been served upon the Authority by the intending plaintiff or his agent. Such notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims.”

Now, going by the plaintiffs pleadings it was clear that they knew of the compulsory acquisition of land for the purpose of building a modern port complex at Sapele. They also knew that the 1st defendant awarded the contract for the job to the 2nd defendant in or about July, 1980. They knew that their raffia palms and other crops were damaged or destroyed by the 2nd defendant during the nine months following the award of contract to them and during which time they worked day and night in the area.

Paragraphs 7, 8 & 9 of the Statement of Claim read thus:-

“7. In exercise of the powers conferred on the 1st defendant by Section 34, Part VII of the Ports Ordinance Cap. 155; Volume 5 of the Laws of the Federation of Nigeria and Lagos, the 1st defendant compulsorily acquired a large piece of land along Benin/River of which Umunu Island at Ogharefe is but a part for the purpose of building a modern Ports Complex at Sapele.

8. The 1st defendant thereafter awarded the contract for the design, construction and reclamation of the Port of Sapele to the 2nd defendant in/ or about July, 1980.

9. The plaintiffs will state that during the Ports construction, dredging and reclamation which were continuously employed or carried on for nine months both day and night, all the Raffia Palms, Rubbers, Economic trees and crops planted at Umunu Island by the plaintiffs were destroyed or damaged

by the 2nd defendant with the servants or agents of the 1st defendant."

There is no doubt therefore that the cause of action in the case arose between July 1980 and April 1981, but certainly before December 1981. **The Writ of Summons on page 1 of the record shows that the action herein was filed only on 27/11/84, which is about three years or more since the plaintiffs knew of the damage or destruction of their crops. I think Section 97(1) B of the Ports Act (supra) is quite clear and unambiguous. The imperative nature of the provision is also not in doubt. On these facts, I am in complete agreement with the decisions of both the two lower courts (and as rightly conceded by Mr. Eduvie) that the plaintiffs suit is statute barred and therefore rightly dismissed. (See NIGERIA BROADCASTING CORPORATION v. BANKOLE (1972) 4 S.C. 94 at 101-103 (1972) 1 All NLR (Pt.1) 327). Again it was in fact not disputed that the plaintiffs never gave any notice to the 1st defendant herein before instituting the suit. That is also against the mandatory provisions of section 97(2) (supra). The main issue is therefore resolved against the plaintiffs.** D

The end result is that this appeal has no merit whatsoever. Both the High Court and the Court of Appeal were right when they held that section 97(1) & (2) of the Ports Act (supra) applied in this case and that plaintiffs claims are statute barred. The appeal is accordingly dismissed with costs of N1,000.00 to each set of defendants. E

WALI JSC

I have the privilege of reading in advance a copy of the lead judgment of my learned brother, Kutigi, J.S.C. and I agree with his reasoning and F conclusion for dismissing the appeal.

My learned brother Kutigi, J.S.C. has in his lead judgment considered the submissions made by learned counsel related to the issues raised and canvassed in this appeal and rightly dismissed this appeal. I shall only add my comment to emphasize the issue of applicability of S.97(1) and (2) of the Port's Act 1958 (now S.110 (1) and (2) of the Port's Act [Cap. 361] Laws of the Federation of Nigeria 1990], which provides thus:- G

"97(1) When any suit is commenced against the Authority or any servant of the Authority for any act done in pursuance or execution, or intended execution of any ordinance or law or of any public duties or authority, or in H respect of any alleged neglect or default in the execution of such ordinance, Law, duty or authority, such suit shall not lie or be instituted in any court unless it is commenced within twelve months next after the act, neglect, or default complained of, or, in the case of a continuance of injury or damage,

within twelve months next after the ceasing thereof.

No suit shall be commenced against the Authority until one month at least after written notice of intention to commence the same shall have been served upon the Authority by the intending plaintiff or his agent. Such notice shall state the cause of action, the name and place of abode of the intending B plaintiff and the relief which he claims."

It is an undisputed fact in both the pleadings and the evidence adduced at the trial by the 1st defendant that the plaintiff's cause of action was not only statute barred but also filed in contravention of S. 97(1) and (2) of the Ports Ordinance (Cap. 155) Laws of the Federation of Nigeria and Lagos, 1958, C now S.110 (1) and (2) of the Ports Act, (Cap. 361) Laws of the Federation of Nigeria, 1990. The evidence of D.W.2 showed that the site compulsorily acquired by the Federal Government as evidenced by Exhibit E, was handed over by the 1st defendant to the 2nd defendant for the Sapele Port Complex construction. The work commenced and lasted from October, 1980 till April, 1982. In paragraph 5 of the Statement of Claim it was averred that the Hon. D Minister of Transport laid the foundation stone of the Sapele Ports Complex in 1980. This shows that the cause of action complained of arose in that year. The Writ of Summons was filed on 27th November, 1984. Taking that the laying foundation stone for the construction of the Port took place on the last day of December, 1980, since no specific date is mentioned anywhere in the E pleading, the time within which the action could have been filed would have run out by 31st December, 1981. So by the time the writ was taken out on 27th December, 1984 the cause of action was more than two years out of time and therefore caught by the provision of s.97(1) and (2) referred to above.

There was no evidence of any impediment as to why the plaintiffs F failed to commence the action in accordance with the provisions of S. 97(1) and (2) of the Ports Act. Time will begin to run, when there exists a person capable of suing when all the facts, material to instituting the action, have happened. See T. J. Solomon v. African Steamship Co. Ltd. by their Agents Mangers Messrs. Elder Demster Co. Ltd. of Victoria 9 NLR 99.

The plaintiffs action having been brought more than one year after G the cause of action accrued, and there being no circumstances which would have suspended the operation of S. 97(1) and (2) of the Ports Act, it is barred by the operation of the provision of the said Act. The action therefore fails and it is dismissed.

I subscribe to the order of costs made in the lead judgment.

H **OGWUEGBU JSC**

I have had the privilege of reading the draft of the judgment just read

by my learned brother Kutigi, J.S.C. and I agree that for the reasons stated therein this appeal should be dismissed. I endorse the orders he made in the said judgment.

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MOHAMMED JSC

I also agree that appellants claim is statute barred. The limitation period in section 97(1) and (2) of the Ports Act, Cap. 155, Vol. V, Laws of the Federation of Nigeria is without any doubt, confusion or difficulty clearly spelt out in the Act. Whoever wishes to sue the Ports Authority for any public duty undertaken by the Authority or its servants must do so within twelve calendar months, next after the act complained of. The construction of the Ports Complex was completed in April, 1982 and his suit was filed on 27th November, 1984. If the appellants had any right to sue they must have slept over it. The lead judgment of my learned brother, Kutigi, J.S.C., which I have had the privilege to read, in draft, before now, has covered all the issues raised in this appeal. I agree with him that this appeal has failed. It is for the reasons given in that judgment that I too hereby dismiss the appeal.

I abide by the order made on costs.

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ONU JSC

I have been privileged to read in advance the judgment just delivered by my learned brother Kutigi, J.S.C. I am in entire agreement therewith that the appeal lacks merit and ought to be dismissed.

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I only wish to add by way of expatiation the following views of mine without a resort to repeating the facts therein which, in my considered view, have been taken care of by my learned brother.

Quite apart from the technical legal knock-out suffered by the appellants in virtue of the provisions of section 97(1) and (2) of the Ports Act, Cap. 155 Vol. V Laws of the Federation of Nigeria 1958 (now S. 110 (1) and (2) of the Port Act (Cap. 361) L.F.N., 1990) which stipulates that:-

“97(1) When any suit is commenced against the Authority or any servant of the Authority for any act done in pursuance or execution, or intended execution of any ordinance or law or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such ordinance, law, duty or authority, such suit shall not lie or be instituted in any court unless it is commenced within twelve months next after the act, neglect, or default complained of, or in the case of a continuance of injury or damage,

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within twelve months next after the ceasing thereof.

(2) *No suit shall be commenced against the Authority until one month at least after written notice of intention to commence the same shall have been served upon the Authority by the intending plaintiff or his agent. Such notice shall state the cause of action, the name and place of abode of the intending B plaintiff and the relief which he claims.*" (Italics is mine for comments)

The appellants woefully failed to prove by credible evidence following their pleadings that their piece or parcel of land they called Umunu, was within the land the 1st respondent acquired for the port complex at Ogharefe. Nor have the appellants been able to establish any contractual relationship C or agreement between them and the respondents either jointly or severally for the payment of compensation to them (appellants) relating to the said land on which grew raffia palms. Such a contractual agreement between the parties inter se being non-existent, the appellants suit commenced on 27th November, 1984 against the respondents which arose between July, 1980 and sometime in April, 1981, is statute-barred for not having been commenced D within twelve months of the period the cause of action arose. The suit having also been commenced without a written notice of the appellants intention to commence same having been served on the 1st respondent, the trial court rightly dismissed the action and the Court of Appeal being justified in dismissing the suit as statute-barred. See: Lasisi Fadare & Ors. v. A.-G., Oyo State E (1982) 4 S.C. 1 and Savannah Bank v. Pan Atlantic (1987) 1 NWLR (Pt.49) 212. Besides, the appellants suit being for N301,658.90 as compensation for their raffia palms and economic trees destroyed at Umunu as well as interest thereon in pursuit of compulsory acquisition pleaded by the respondents evidence adduced in pursuit or half-hearted acts in trespass and/or contract F which never availed them made their case also speculative and as going to no issue. At all events, as the appellants claimed no declaratory reliefs, evidence adduced or submissions made which are at variance with their pleadings go to no issue. See: Olarewaju Bamigboye (1987) 3 NWLR (Pt.60) 353 at 359; Emegokwue v. Okadigbo (1973) 4 S.C. 113; George v. U.B.A. Ltd. (1972) 1 All NLR (Pt.2) 347 and Great Nigeria Insurance Co. Ltd. v. Lad Group Ltd. G (1986) 4 NWLR (Pt.33) 72. Indeed, it is now settled that parties are bound by their pleadings and that a party will not be allowed at the trial to set up a case on facts he did not plead: nor will the court in its judgment provide a party with a case he did not himself set up in his pleadings. See Abdul Lem-omu & ors. v. Hadji N. Alli-Balogun & ors. (1975) 1 All NLR 30 at 39-40; Ayodele James v. Mid-Motors Nigeria Co. Ltd. (1978) 11-12 S.C. 31 at 63-64; H Omaha Akpawpuna v. Obi Nzeka II & ors (1983) 2 SCNLR 1 and Idahosa v. Oronsaye (1959) SCNLR 407; (1959) 4 F.S.C. 166.

For these and the fuller reasons contained in the lead judgment of my learned brother Kutigi. J.S.C. I too, dismiss this appeal with the same consequential orders inclusive of costs as proposed therein.
Appeal dismissed.

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