

SUPREME COURT OF NIGERIA

11TH JULY, 1997. SC. 11/1991

**CORAM:- S.M.A.BELGORE, E.O.OGWUEGBU, U.MOHAMMED,
S. U. ONU, A.I.IGUH, JJSC.**

1. MOSES UZOCHUKWU & 8 ORS. PLAINTIFFS/APPELLANTS
(For themselves and on behalf
of the people of Elugwu/
Nkpokolo Village Achi)

AND

1. MADAMAMAGHALU ERI & 10 ORS.
(For themselves and on behalf of Nzubeka
Oganiru Achi Meeting) DEFENDANTS/RESPONDENTS
12. CYPRAINEZEJIOFOR & 2 ORS.
(For themselves and on behalf of
Agbadala Village, Achi)

APPEALS - *Findings of fact - That are based on demeanour or credibility of witnesses - Where not perverse - Appellate court should not come to a different conclusion.*

APPEALS - *Error in judgment - It is not every error in judgment that will result in the appeal being allowed - It is only when the error is substantial and has occasioned a miscarriage of justice - That an appeal court is bound to interfere.*

APPEALS - *Finding of fact - Where not based on demeanour or credibility of witnesses - Appellate Court is entitled to more readily form an independent opinion.*

JUDGMENTS - *Misdirection - That did not occasion miscarriage of justice - Is immaterial.*

LAND LAW - *Title - Reliance on Native Court Suit - Failed to establish appellants' claim of ownership.*

LAND LAW - *Title - concurrent findings that appellants failed to prove title by non of the methods - Will not be disturbed by the Supreme Court.*

PLEADINGS - *Evidence - That is at variance with the averments in the pleadings - Goes to no issue and should be disregarded by the court.*

FACTS

The plaintiffs, for themselves and on the behalf of the people of Elugwu/Nkpokolo Village of Achi instituted an action jointly and severally against the defendants. The plaintiffs predicated their title to the land in dispute on traditional evidence, acts of ownership and possession over and in respect of the land in dispute and possession of adjoining or adjacent land in circumstances which rendered it probable that they were also the owners of the land in dispute. They further pleaded and relied on the decision of the Achi Native Court. The defendants claimed that the 1st to 11th defendants were on the land in dispute on the authority of the 12th to 14th defendants. They had also exercised various acts of ownership over the land in dispute.

At the conclusion of the hearing, the plaintiffs' claim was dismissed in its entirety. The plaintiffs' appeal to the Court of Appeal was also dismissed. They have further appealed to the Supreme Court which had to determine the case based on 3 issues.

ISSUES FOR DETERMINATION

(1) Whether the Court of Appeal was right in dismissing the appellants' appeal after it had held that certain findings of the trial court were in error and could not be supported. Etc, see p. 1459

HELD (Unanimously dismissing the appeal per lead judgment of **IGUH JSC**) **Findings of fact - That are based on demeanour**

1. I think it is necessary to draw attention to the well known distinction between the finding of a specific fact which is based on the demeanour and credibility of witnesses as against a finding of fact which to all intent and purposes is but a deduction or inference drawn from documentary evidence before the court or from facts specifically found established. Where, there is no question of misdirection in the former case, and the finding is neither perverse nor reached on a result of a violation of some principles of law or procedure, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfactorily established that any advantage enjoyed by the trial court by reason of having seen and heard the witnesses was insufficient to explain or justify the finding in issue. (p. 1464 B)

Findings of fact - Where not based on demeanour

2. In the case on hand, it cannot be disputed that the trial court hardly based its findings of fact on the demeanour, bearing or credibility of the witnesses. Said the Court of Appeal, quite rightly, in my view -

"I must say that at no point did the Judge rely on the demeanour of

witnesses. *He considered the worth of their evidence and to the extent he thought a witness's evidence contradicted that of another, he remarked this. Such exercise is not a matter of relying on demeanour. It is simply a question of pitching one witness against another or examining the inconsistencies in the evidence of a particular witness to come to a conclusion what to believe or not."*

The Court of Appeal was therefore clearly and more readily entitled to form an independent opinion on the findings of the learned trial judge in the case. (p. 1464 F)

Pleadings - Evidence that is at variance

3. The point that needs be emphasised is that Exhibit C was relied on by the appellants in proof of title to the land in dispute. It is trite that parties are bound by their pleadings and evidence which is at variance with the averments in the pleadings goes to no issue and should be disregarded by the court. (p. 1465 H)

Reliance on Native Court Suit

4. It therefore seems to me that the court below was in agreement with the ultimate decision of the learned trial Judge with regard to Exhibit C in so far as it concerned proof of title to the land in dispute. This is to the effect that the appellants failed to prove that the said Native Court Suit No. 64/1928, Exhibit C, established their ownership of the land in dispute. (p.1466 F)

Judgment - Misdirection

5. In this connection, it ought to be stressed that what an appellate court has to decide is, whether the decision of the trial Judge was right; and not whether his reasons were. Misdirection not occasioning injustice is immaterial. It is only if the misdirection had caused him to arrive at an erroneous or wrong decision that it would be material. (p. 1466 G)

Appeals - Error in judgment

6. In the same vein, it is not every mistake or error in a judgment that will result in the appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that an appeal court is bound to interfere. The alleged errors of the trial court, as found, rightly in my view, by the court below, were clearly immaterial, inconsequential and occasioned no miscarriage of justice. The Court of Appeal was therefore right in dismissing the appellants' appeal notwithstanding that certain findings of the trial court as above mentioned could not, strictly speaking, be correct. (p. 1467 A)

Title - Concurrent findings

7. The two courts below accepted that the appellants, as plaintiffs, proved no title to the land in dispute whether by tradition, acts of ownership and possession, the production of any document of title or by possession of connected or adjacent land. Both courts below are also in agreement that the appellants B failed to prove that they were either in exclusive possession of the land in dispute or that the respondents had no right to be thereon. I can find no reason whatever to interfere with these concurrent findings. (p. 1468 B)

NOTABLE POINT OF INTEREST

C IGUHJSC

1. Five methods by which ownership of land may be established

The law appears well settled that there exists five recognised methods by which ownership of land may be established. Briefly put, they comprise as follows -

- D (i) Proof by traditional evidence.
- (ii) Proof by production of document of title.
- (iii) Proof by acts of ownership extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the persons exercising such acts are the true owners of the land.
- E (iv) Proof by acts of long possession and
- (v) Proof by possession of connected or adjacent land in circumstances rendering it probable that the owner of such land would in addition be the owner of the land in dispute. (p. 1461 C)

F REPRESENTATION

G.E. Ezeuko, S.A.N., with J.O. Okeke, for the appellant
Chief Enechi Onyia, S.A.N., with J.M. Achi-Kanu, for the respondents

CASES REFERRED TO

- G Fashanu v. Adekoya (1974) 1 All N.L.R. 35
- Nzekw v. Nzekwu (1989) 2 N.W.L.R. (Part 104) 373 at 442
- Nwaezema v. Nwaiyeke (1990) 3 N.W.L.R. (Part 137) 230 at 239
- Lawal v. Ollivant (1972) 3 S.C. 124
- Piaro v. Tenalo (1976) 12 S.C. 31 at 41-43
- H Atanda v. Ajani (1989) 3 N.W.L.R. (Part 111) 511
- Odofoin v. Ayoola (1984) 11 S.C. 72
- Emegokwue v. Okadigbo (1973) 4 S.C. 113 at 117
- Njokwu v. Eme (1973) 5 S.C. 293
- Ike v. Ugboaja (1993) 9 KLR 62

Ukejianya v. Uchendu 13 W.A.C.A 45 at 46

Anyanwu v. Mbara (1993) 5 N.W.L.R. (Pt. 242) 386 at 400

LEAD JUDGMENT BY IGUH JSC

This is an appeal against the judgment of the Court of Appeal, Enugu Division, which had on the 15th day of November, 1988 dismissed the appeal B by the plaintiffs from the decision of Ubaezonu, J., as he then was, sitting at Enugu in the High Court of the former Anambra State of the Federal Republic of Nigeria.

The plaintiffs, for themselves and on behalf of the people of Elugwu/Nkpokolo Village of Achi had instituted an action jointly and severally against C the 1st to the 11th defendants, for themselves and on behalf of Nzubeka Oganiru Achi Meeting and the 12th to the 14th defendants, for themselves and on behalf of the people of Agbadala Village in Achi town, claiming, as subsequently amended as follows -

"(i) A declaration that plaintiffs are entitled to the grant of the D Customary right of occupancy of part of the larger piece and parcel of land known as and called "Ani Agu Nwaeke" situate at Elugwu/Nkpokolo Village, Achi in Oji River Local Government Area, more particularly delineated in Plan No. EP/AN 525 LD/83 verged red and filed with this statement of claim;

(ii) N50,000.00 damages for the alleged trespass;

(iii) Perpetual injunction restraining the defendants their servants, agents and privies from further acts of trespass on the said land or doing anything whatsoever on the said land, without the prior consent and authority of the plaintiffs."

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

At the subsequent trial, the parties testified on their own behalf and called witnesses. The plaintiffs predicated their title to the land in dispute on traditional evidence, acts of ownership and possession over and in respect of G the land in dispute and possession of adjoining or adjacent land in circumstances which rendered it probable that they were also the owners of the land in dispute. They further pleaded and relied on the Achi Native Court suit No. 64/1928 with the review thereof by F.H. Ingles, Esq. Resident, Onitsha Province.

The defendants, for their part, claimed that the 1st to the 11th defendants were on the land in dispute on the authority of the people of Agbadala village who, in this action, are represented by the 12th, 13th and the 14th defendants. It was their case that the land in dispute had from time immemo-

rial been the bona fide property of the said people of Agbadala village who had always exercised various acts of ownership and possession over the same, as owners thereof, without any let or hindrance from any one whatever. The defendants claimed they had their Ngwu shrine in the Agu Ihuezi Chimilem Agbadala land, part of which was in dispute. They denied that the plaintiffs were entitled as claimed.

At the conclusion of hearing the learned trial Judge after a careful review of the evidence on the 23rd day of September, 1985 dismissed the plaintiffs' claims in their entirety.

Dissatisfied with this decision of the trial court, the plaintiffs lodged an appeal against the same to the Court of Appeal, Enugu Division. The Court of Appeal in a unanimous judgment on the 15th day of November, 1988 dismissed the plaintiffs' appeal.

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

Three grounds of appeal were filed by the appellants against this decision of the Court of Appeal. It is unnecessary to reproduce them in this judgment. It suffices to state that the parties pursuant to the rules of this court, filed and exchanged their written briefs of argument.

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

"(A) Whether the Court of Appeal was right in dismissing the appeal when it accepted that the various findings made by the Court of trial on which the Court of Appeal based its dismissal of the case before it were unsupported by evidence and were consequently erroneous and the effect of a conclusion by the Court of Appeal that the findings made by the trial Court on which the claim before the Court was dismissed were erroneous as not flowing from the evidence before the Court.

(B) Whether on the law of pleadings the Appellants were obliged to plead specifically in the Statement of Claim the features forming the western boundary of the land in dispute when the said features to wit: EKPE WALL and TRENCH were clearly demonstrated on the Appellants' plan pleaded in the Statement of Claim and tendered in court as an exhibit."

The respondents, on the other hand, submitted that having regard to the appellants' grounds of appeal, only two issues arise for determination in this appeal. These are -

"(1) Whether there was misinterpretation of paragraph 13 of the Statement of Claim by the Court of Appeal and/or whether the interpreta-

tion given by the said Court resulted in injustice?

(2) *Whether the errors found by the Court of Appeal in the judgment of the High Court or error of the Court of Appeal were such that would ground the setting aside of the judgments of the High Court and Court of Appeal."*

I have closely examined the two sets of issues identified in the respective briefs of the parties and it seems to me that they are amply covered by the under-mentioned three issues, namely -

(1) Whether the Court of Appeal was right in dismissing the appellants' appeal after it had held that certain findings of the trial court were in error and could not be supported.

(2) Whether the Court of Appeal was right in upholding the decision of the trial court on the ground that on the pleadings and evidence, the appellants' failed to prove their case.

(3) Whether any errors of the trial court or the Court of Appeal were such that would warrant the setting aside of the judgments of the High court or the court of Appeal.

The above three issues, to a large extent, overlap each other and I propose, in this judgment, to consider them together.

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

The main argument of learned counsel for the appellants, G. E. Ezeuko Esq., S.A.N., is that the court of Appeal in its review of the findings of the trial court had stated that some of these findings upon which the learned trial Judge based his dismissal of the appellants' case were, strictly speaking, incorrect and erroneous. He identified these erroneous findings of the trial court as follows -

(1) That "Uzo Egbo Adu" was the Western boundary of the land awarded to the appellants' people of Nkpokolo in the Native Court suit No. 64/1928, Exhibit C, and

(2) That the land in dispute was no part of the land awarded to the appellants in the said Exhibit C.

Learned Senior Advocate stressed that the Court of Appeal did not equivocate in holding that the above findings of the trial court were "not strictly speaking right." By this posture, he claimed that the court below found the said findings to be erroneous. Relying on the decisions in Fashanu v. Adekoya (1974) 1 All N.L.R. 35 and Nzekwu v. Nzekwu (1989) 2 N.W.L.R. (part 104) 373 at 442 he contended that where the findings of a trial court were not based on the evidence before the court, an appellate court has a duty to interfere and set

aside such findings. This duty, the court below failed to perform in the present case. Learned Senior Advocate pointed out that the evaluation of the entire evidence by the trial court was rightly observed by the court below not to have been based on the credibility or the demeanour of the witnesses. He referred to the decision in Nwaezema v. Nwaiyeke (1990) 3 N.W.L.R. (Part 137) B 230 at 239 and stressed that the court below was undoubtedly in as good a position to evaluate the evidence as the trial court. This evaluation, the court below failed to undertake. He submitted that in the face of its finding that the trial court committed various errors on certain aspects of the appellants' case upon which it based its dismissal of their case, the court below went into a greater error in affirming this dismissal of the appellants' claims. This is more so when it is clear that the Native Court judgment, exhibit C, awarded to the appellants the Agu Nweke land in dispute. Learned counsel submitted that this is a proper case for the Supreme Court to intervene and correct the injustice created by the judgment of the Court of Appeal.

D Learned appellants' counsel finally referred to the case of Lawal v. G.B. Olivant (1972) 3 S.C. 124 which was relied upon by the Court of Appeal for the proposition that merely pleading the appellants' plan did not entitled them to lead evidence on the features on the land as demonstrated on the plan pleaded without specifically pleading such features in the statement of claim. E He was of the view that the Court of Appeal was in error in this regard. His contention is that so long as a document is specifically pleaded in the pleadings and it is shown that reliance will be placed on that document, its contents may properly be relied upon at the trial. He argued that the court below was in error in its interpretation and application of the case of Lawal v. G.B. Olivant, F supra. He urged the court to allow the appeal and to order a retrial of the case particularly when it appears clear that the trial court failed to determine the vital issues before it.

Learned counsel for the respondents, Chief Enechi Onyia, S.A.N., in his reply pointed out that the respondents were neither parties nor privies to G the 1928 suit, Exhibit C. The appellants relied on Exhibit C and pleaded that the same awarded the land in dispute to them. But learned Senior Advocate stressed that Exhibit C merely concerned demarcation of boundary between the appellants and an entirely different party and awarded no land to the appellants. He stated that both courts below found it established that the H land involved in Exhibit C was outside the present land in dispute and that the appellants, as plaintiffs, proved no title, whether by way of tradition, long possession or otherwise over the land in dispute. He argued that there is ample evidence to establish that the appellants failed to prove their case in respect of the land in dispute. Learned Senior Advocate urged the court not

to disturb the concurrent findings of both courts below to the effect that the appellants failed to prove their case in respect of the land in dispute.

Chief Onyia next referred to the decision in Sunday Piaro v. Chief Wopnu Tenalo and others (1976) 12 S.C. 31 at 41-43 and submitted that the appellants did not prove their case in accordance with any of the five recognised methods for the proof of title to land. He conceded that the trial court might have made one or two mistakes in its evaluation of the evidence but contended that it is not each and every slip in a judgment that will result in an appeal being allowed. He submitted that the errors complained of had not led to any miscarriage of justice and he urged the court to discountenance them as trivial, irrelevant and immaterial to the final decision of the trial court as affirmed by the Court of Appeal.

The law appears well settled that there exists five recognised methods by which ownership of land may be established. Briefly put, they comprise as follows -

- (i) Proof by traditional evidence. D
- (ii) Proof by production of document of title.
- (iii) Proof by acts of ownership extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the persons exercising such acts are the true owners of the land.
- (iv) Proof by acts of long possession and E
- (v) Proof by possession of connected or adjacent land in circumstances rendering it probable that the owner of such land would in addition be the owner of the land in dispute.

See Idundun and others v. Okumagba (1976) 9 and 10 S.C. 277 at 246 - 250, Atanda v. Ajani (1989) 3 N.W.L.R. (Part 111) 511, Anyanwu v. Mbara (1992) 5 N.W.L.R. (Part 242) 381, Sunday Piaro v. Chief Tenalo and others (1976) 12 S.C. 31 at 41 - 43 etc.

From the state of the pleadings and the sum total of the evidence adduced before the court, the learned trial Judge was of the view that the appellants sought to prove the ownership of the land in dispute by each and every one of the above methods. He then proceeded to consider these methods severally to determine how the appellants fared in proving their title to the land in dispute.

On the issue of proof by traditional evidence, the trial court rejected the defence allegation that Nkpokolo people are strangers in Achi. He was of the further view, after a close evaluation of the evidence, that the evidence of tradition led by the appellants was "quite inconclusive and insufficient to lead to the conclusion that the land in dispute is part of the land inherited by the plaintiffs from their ancestors or occupied or enjoyed by them from time imme-

monial."

Turning to acts of ownership and possession, the learned trial Judge stressed that both parties relied mainly on alleged farming on the land in dispute. He went on -

"When acts of ownership or possession relied upon by parties are based on farm work, they are largely nebulous and become a question of whom the Court believes. If the acts of ownership are based on such things as existing buildings on the land, it becomes much easier to determine which side is speaking the truth. The onus is however on the plaintiffs who are making a claim to prove their claim by preponderance of evidence. Placing the evidence of the plaintiffs and their witnesses side by side with that of the defendants and their witnesses, or better still, putting the evidence of both parties on the imaginary scale, I find no such preponderance of evidence in favour of the plaintiffs for which I should prefer their story to that of the defendants."

He referred to some damaging contradictions in the evidence of the appellants on the issue and concluded -

"A house divided against itself can hardly stand. It is my view that the damage done to the plaintiffs' case on this point by P.W. 6 is irreparable I do not believe that the plaintiffs have communally exercised the various acts of ownership and possession on the land in dispute as they claim to have exercised."

On the question of proof by the production of document of title, the learned trial Judge pointed out that the appellants claimed the land in dispute by virtue of the Native Court judgment in Suit No. 64/1928, Exhibit C, fought between the Nkpokolo community and a third party, the Isiokwe village in respect of part of Agu-Nweke land with the judicial reviews thereof and other accompanying correspondence. Exhibit C was therefore relied upon by the appellants in proof of their title to the land in dispute. He then observed -

"It is agreed that the Old Udi Military Road as appearing on the sketch in Exhibit C was the boundary in the final judgment of the Native Court case. The Isiokwe people were awarded land East of that road while Nkpokolo people were awarded land West of that Road. The question now is - what is the Western Boundary of the Agu Nweke land awarded to Nkpokolo? Learned counsel for the plaintiffs contends that the Western Boundary of the land awarded to Nkpokolo people would be the Western Boundary of the land in present dispute. I do not however think so, I find as a fact that Uzo Egbo Adu was the Western Boundary of the land awarded to Nkpokolo people in Exhibit C. This road is shown in the plaintiffs' plan Exhibit B as Enugwu Agu Road (Uzo Egbo) and runs from the Mgburu Oba

shrine to the Inyi-Oji river/Awgu Road and forms the Northern and north-eastern boundary of the land in dispute as in Exhibit B. The Eastern boundary, of course is along the Old Udi Military Road which is East of the Oji River-Awgu Road."

He concluded -

"I therefore find as a fact that the land in present dispute is not part of the land awarded to Nkpokolo people in the Native Court Suit of 64/1928. The plaintiffs' witness P.W. 6 also supports this view. His evidence on this issue is as follows:-

"The land dispute in 1928 is not part of the land in present dispute. The land disputed in the 1928 suit is about 4/5Km. to the land in present dispute." I have no doubt in my mind that the land which was disputed in 1928 and part of which was awarded to the Nkpokolo people of the plaintiffs does not include the land in present dispute. It is interesting to note that the plaintiffs have concentrated in donating land in respect only of the portion which I have found Nkpokolo people won in the Native Court Suit and have not made a single donation of land or put up a single structure on the area in present dispute."

Dealing finally with proof of ownership or possession of adjoining lands, the learned trial Judge pointed out, quite rightly, that this mode of proof of ownership merely raises a presumption that the owner of the adjoining land is likely to be the owner of the land in dispute. He went on -

"Now, I have no doubt in my mind that the plaintiffs are the owners of all the land North-East of the land in dispute as shown in their plan Exhibit B. This is the land which was granted to the Nkpokolo people of the plaintiffs by the Native Court judgment of 1928. I have already made that finding. This is also the land in respect of which the plaintiffs have exercised indisputable acts of ownership by granting several portions to several institutions and Government. The plaintiffs concede that the defendants, or at least, the Umuchimilem of the defendants are the owners of the land forming the Southern boundary of the land in dispute - see also Exhibit B. According to the defendants' plan Exhibit D the defendants occupy the entire Southern and north-western boundary of the land in dispute. In the other words, both the plaintiffs' and the defendants' lands adjoin the land in dispute."

He concluded -

"I find nothing in the occupation by the plaintiffs of the North-Eastern boundary of the land in dispute which entitles them to the ownership of the land in dispute any more than the occupation by the defendants of the Southern boundary should not equally entitle them to the land in dispute. I therefore hold that S. 45 of the Evidence Act cannot operate

in favour of the plaintiffs so as to give them ownership of the land in dispute having regards to the facts of this case."

In the final result, the appellants' claims were dismissed in their entirety as they failed to prove ownership of the land in dispute based on any of the modes of proof they relied on.

- B Before I advert to those findings of the trial court which the Court of Appeal, in dismissing the appellants' appeal before it, was of the view that they were erroneous, **I think it is necessary to draw attention to the well known distinction between the finding of a specific fact which is based on the demeanour and credibility of witnesses as against a finding of fact which to**
- C **all intent and purposes is but a deduction or inference drawn from documentary evidence before the court or from facts specifically found established. Where, there is no question of misdirection in the former case, and the finding is neither perverse nor reached on a result of a violation of some principles of law or procedure, an appellate court which is disposed to come**
- D **to a different conclusion on the printed evidence should not do so unless it is satisfactorily established that any advantage enjoyed by the trial court by reason of having seen and heard the witnesses was insufficient to explain or justify the finding in issue.** See Odofin v. Ayoola (1984) 11 S.C. 72, Ogbero Egiri v. Uperi (1974) 1 N.M.L.R. 22, Okpiri v. Jonah (1961) All N.L.R. 102 at 104
- E - 105, Woluchem v. Gudi (1981) 5 S.C. 291 at 295 - 296, 326 - 329 etc. In the case of the latter, however, the appellate court will more readily form an independent opinion than in the case of the former which involves an evaluation of the evidence of witnesses, particularly where the finding was based on their bearing, demeanour or credibility. See Okpiri v. Jonah, *supra*, Benmax v. Austine
- F Motor Co. Ltd. (1955) A.C. 370, Lawal v. Dawodu (1972) 8 - 9 S.C. 83 at 114 - 115, Balogun v. Agboola (1974) (1) S.C. 111 at 118 - 119, Woluchem v. Gudi, *supra* etc.

- In the case on hand, it cannot be disputed that the trial court hardly based its findings of fact on the demeanour, bearing or credibility of the
- G witnesses. Said the Court of Appeal, quite rightly, in my view -

- "I must say that at no point did the Judge rely on the demeanour of witnesses. He considered the worth of their evidence and to the extent he thought a witness's evidence contradicted that of another, he remarked this. Such exercise is not a matter of relying on demeanour. It is simply a ques-*
- H *tion of pitching one witness against another or examining the inconsistencies in the evidence of a particular witness to come to a conclusion what to believe or not."*

The Court of Appeal was therefore clearly and more readily entitled to form an independent opinion on the findings of the learned trial judge in the case.

Dealing with the learned trial Judge's evaluation of the 1928 Native Court case, Exhibit C, the Court of Appeal after setting out a portion of the judgment of the trial court stated thus -

"He has, in my view, properly identified the crux of the case and then came to the important conclusion subject, of course, to the observation I now make. I do not intend them as any criticism but merely to show that he might have been led to make certain findings because of the way issues he dealt with were canvassed before him by the parties both on the pleadings and in the evidence tendered, as well as in the arguments advanced." (Underlining supplied for emphasis). B

It then set out the observations alluded to above which, in the main, were:- C

(i) that the 1928 case did not, strictly speaking, award an area of land to the Nkpokolo people but merely created a boundary between them and Isiokwe people;

(ii) that it would be inappropriate in the circumstances to make a definite finding, as the learned trial Judge did, that Uzo Egbo Adu was the Western boundary of the land awarded to Nkpokolo because Exhibit C he relied on did not so say;

(iii) that although it seems unobjectionable, the trial court found that the present land in dispute was not part of the land awarded to Nkpokolo people in Exhibit C, this is not strictly speaking right as no area of land was covered, notwithstanding the evidence of P.W. 6 in support of that finding. E

Learned counsel for the respondents dismissed the above criticisms as academic as none went to the root of the issues between the parties in the case or affected the ultimate decision of both courts below in the suit. What stood out as established uncontroverted fact between the parties and accepted by both courts below is that the boundary between the peoples of Nkpokolo and Isiokwe is as shown in Exhibit C. The Nkpokolo people were held to own the land west of that boundary line while the Isiokwe people owned the land east thereof. Admittedly there were different claims as to this boundary line. However, Exhibit C, the Native court case No. 64/1928 settled this boundary line between the parties. Accordingly it cannot be regarded as totally incorrect to state, as the trial court did, that the 1928 case awarded some land to the Nkpokolo people, the extent of which the appellants were unable to establish. The 1928 case did award some land to the parties. It awarded land west of the boundary line shown in Exhibit C to the Nkpokolo people and land east thereof to Isiokwe people. To this extent, the learned trial Judge cannot be said to be entirely wrong in his finding. F G H

The point that needs be emphasised is that Exhibit C was relied on by the appellants in proof of title to the land in dispute. It is trite that parties are

bound by their pleadings and evidence which is at variance with the averments in the pleadings goes to no issue and should be disregarded by the court. See Emegokwue v. Okadigbo (1973) 4 S.C. 113 at 177, George and others v. Dominion Flour Mills Ltd. (1968) 1 ALL N.L.R. 71 at 77, Kalu Njoku and others v. Ekwu Eme and others (1973) 5 S.C. 293 etc. What therefore seems to me relevant and of crucial importance in the matter of Exhibit C is not whether it awarded an area of land to the Nkpokolo people or whether uzo Egbo Adu was the Western boundary of the land awarded to the Nkpokolo people in Exhibit C as the trial court appeared to find but whether the decision of the Native Court in Exhibit C established the appellants' ownership of the land in dispute. If it did not, then the sole reliance on it as a document of title to the land in dispute is bound to fail. It will make no difference that the trial court in dismissing the claim under that mode of proof of title to the land in dispute made erroneous but inconsequential findings of fact in respect of the document which in no way occasioned a miscarriage of justice in the ultimate decision of the court in the suit.

I think I should, in all fairness to the court below, point out that after its criticism of the trial court's findings on Exhibit C, concluded as follows -

"I think what the learned Judge would have said, and would have been entitled to say, in all the circumstances of this case was that since the plaintiffs pleaded that the decision in the Nkpokolo-Isiokwe dispute established their ownership of the land in dispute, that they had failed to make out a case on the basis of that averment. In other words, that they had not shown that by Exhibit C, their land extended to the West of the boundary fixed therein beyond the said Uzo Egbo Adu."

It therefore seems to me that the court below was in agreement with the ultimate decision of the learned trial Judge with regard to Exhibit C in so far as it concerned proof of title to the land in dispute. This is to the effect that the appellants failed to prove that the said Native Court Suit No. 64/1928, Exhibit C, established their ownership of the land in dispute. Indeed, the court below made its position clear when it further stated as follows -

"I have already pointed out in what regard the learned Judge's reasoning and findings on that issue could not be said to be strictly right but I certainly do not agree that he came to a wrong decision."

In this connection, it ought to be stressed that what an appellate court has to decide is, whether the decision of the trial Judge was right; and not whether his reasons were. Misdirection not occasioning injustice is immaterial. It is only if the misdirection had caused him to arrive at an erroneous or wrong decision that it would be material. See Ukejianya v. Uchendu 13 W.A.C.A. 45 at 46, and Emmanuel Taiwo Ayani and others v.

William Abiodun Sowemimo (1982) 5 S.C. 60 at 73 - 75. In the same vein, it is not every mistake or error in a judgment that will result in the appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that an appeal court is bound to interfere. See Onajobi v. Olanipekun (1985) 4 S.C. (Part 2) 156 AT 163, Oje v. Babalola (1991) 4 N.W.L.R. (Part 185) 267 at 282, Azuetonma Ike v. Ugboaja (1993) 6 N.W.L.R. (Part 302) 539 at 556, Anyanwu v. Mbara (1992) 5 N.W.L.R. (Part 242) 386 at 400 etc. The alleged errors of the trial court, as found, rightly in my view, by the court below, were clearly immaterial, inconsequential and occasioned no miscarriage of justice. The Court of Appeal was therefore right in dismissing the appellants' appeal notwithstanding that certain findings of the trial court as above mentioned could not, strictly speaking, be correct.

Turning now to the rest of the case advanced by the appellants before the trial court, the court below observed -

"I believe I can now proceed to say that the plaintiffs/appellants failed to prove exclusive ownership of the land in dispute, and that as the onus to prove that was on them, they were not entitled to judgment: See Okafor & ors v. Idigo III & ors (1984) 6 S.C. 1. It is also the established law that in a declaration of title the burden of proof on the plaintiff is not discharged even where the scales are evenly weighted between the parties: See Odieta & ors v. Okotie & ors (1975) 1 NMLR. 175 applied in Saka Owoade & anor v. John Abodunrin Omitola & ors (1988) 2 NWLR. (Part 77) 413. I think the learned judge gave adequate consideration to all the issues in this case and weighed both sides of the case fairly on the principles laid down in Mogaji & ors v. Odofin & ors (1978) 4 S.C. 91 at 93; Woluchem v. Gudi (1981) 5 S.C. 291 at 294-295; Owoade & anor v. Omitola & ors (supra) at 422. There is always a presumption in favour of the correctness of a decision of a trial court on the facts and an appellate court requires an appellant to displace that presumption and show up the error arising from those facts which make the decision wrong before it will intervene. See Williams v. Johnson (1987) 2 W.A.C.A. 253 at 254; Folorunso v. Adeyemi (1975) 1 N.M.L.R. 128; Kimdey & ors v. Military Governor of Gongola State & ors (1988) 2 N.W.L.R. (Part 77) 445 at 474. It is clear to me that that presumption has not been displaced here."

It went on -

"It is indisputable that the learned Judge gave sufficient consideration to the evidence before him, and made proper evaluation and drew correct inferences upon the correct principles. In such a situation an appellate court must approach any findings of fact by the trial court with extreme caution: see Etowa Enang & ors v. Fidelis Ikor Adu (1981) 11-12 S.C. 25 at

38-40 per Nnamani JSC. *It is only where the trial court has failed in its primary duty to evaluate evidence properly and make correct findings that an appellate court has a duty to interfere: see Trustees of Apostolic Faith Mission v. James* (1987) 3 N.W.L.R. (part 61) 556 S.C.; *Balogun v. Akanji* (1988) 1 N.W.L.R. (part 70) 301 S.C."

B I must state that I have given this appeal a most careful consideration and fully endorse the above observations of the court below. **The two courts below accepted that the appellants, as plaintiffs, proved no title to the land in dispute whether by tradition, acts of ownership and possession, the production of any document of title or by possession of connected or adjacent**
 C **land. Both courts below are also in agreement that the appellants failed to prove that they were either in exclusive possession of the land in dispute or that the respondents had no right to be thereon. I can find no reason whatever to interfere with these concurrent findings.**

D On the issue of retrial raised by learned counsel for the appellants, I need only say that this was neither raised in the appellants' grounds of appeal nor in the issues formulated in their brief of argument for the determination of this court. There is ample evidence to show that the appellants woefully failed to prove their ownership of the land in dispute.

E In the final result, I am of the opinion that issues 1 and 2 must be answered in the affirmative and issue 3, in the negative.

I find no substance in this appeal and the same is hereby dismissed with costs to the respondents against the appellants which I assess and fix at N1,000.00

F

BELGORE JSC

The facts upon which the concurrent findings of the two Courts below cannot be assailed that I find no reason to interfere with them. As my learned brother, Iguh, J.S.C., has amply set out in his judgment, I also find no
 G merit in this appeal and I dismiss it with N1,000.00 costs to the respondents.

OGWUEGBU JSC

I have had the advantage of reading in draft the judgment just read
 H by my learned brother Iguh J.S.C. and I entirely agree with his reasoning and conclusions.

It was the contention of the appellants' counsel that the court below in its review of the findings of the trial court observed that certain findings made by that court upon which the plaintiffs' claim was dismissed were erro-

neous and that the plaintiffs' appeal to the Court of Appeal ought to have been allowed or, in the alternative, a re-trial ordered.

After setting out the observations and findings of the learned trial judge, the court below per Uwaifo, J.C.A. said:

"I have had to quote the learned Judge in extenso for compelling need. He has, in my view, properly identified the crux of the case and then came to important conclusion subject, of course, to the observations I now make. I do not intend them as any criticism but merely show that he might have been led to make certain findings because of the way issues he dealt with were canvassed both on the pleadings and in the evidence tendered, as well as in the arguments advanced.

..... I think what the learned Judge would have said, and would have been entitled to say, in all the circumstances of this case, was that since the plaintiffs pleaded that the decision in the Nkpokolo-Isiokwe dispute established their ownership of the land in dispute, that they had failed to make out a case on the basis of that averment. In other words, that they had not shown that by exhibit C. their land extended to the west of the boundary fixed therein beyond the said Uzo Egbo Adu. As a matter of pleadings I do not think that the said Ekpe wall and trench not having been specifically pleaded as boundary features and how and perhaps since when they became boundary features, but were simply shown in the survey plan, evidence of it could properly be lead (sic) The effect of that, certainly would be that they failed to discharge the burden on them to prove their title to the present land in dispute, resulting in the dismissal of their claim."

The observations and findings of the courts below were in relation F to paragraph 13 of the statement of claim which reads:

"13. The Plaintiffs will at the trial reply on the Acting District Officer's letter M.P. 37/1930/16 of 4/6/31 to the Resident Onitsha Province Onitsha, entitled Nkpokolo-Isiokwe land dispute, the reply of the Resident Onitsha Province ref.O.P.2 CO 1930/8 of 12/6/31 and the map annexed thereto, the G Chief's decision on 16/4/31, and the Native Court Case No. 64/1928 and the review of the case dated July 13, 1913 and signed by F. H. Ingles as to the ownership of the land in dispute"
(the underlining is for emphasis only).

The Court of Appeal was rightly of the view that the learned trial H judge properly identified the crux of the case and came to important conclusion which was subject to some observations. Those observations did not detract from the vital question posed by the learned trial judge and his conclusion thereon. The question is:

"..... What is the Western Boundary of Agu Nweke land awarded to Nkpokolo? Learned counsel for the plaintiffs contends that the Western Boundary of the land awarded to Nkpokolo people would be the Western boundary of the land in dispute. I do not however think so"

The learned trial judge having identified the main issue calling for his determination and the answer to it, the court below was of the view that the learned trial judge should have said that the plaintiffs failed to prove their averment in paragraph 13 of their statement of claim. In other words, they had not shown that by virtue of Exhibit "C", their land extended to the West of the boundary fixed therein beyond Uzo Egbo Adu.

Both the trial court and the court below came to the same conclusion that Exhibit "C" did not determine the extent of the plaintiffs' land beyond Uzo Egbo Adu or Enugu Agu Road though some of the reasons leading to the conclusion of the trial judge were found to be erroneous by the court below. That notwithstanding, the Court of Appeal had no doubt that the conclusion reached by the learned trial judge on the point was right.

It was not shown by the appellants either in the court below or in this court that the error was substantial and had tilted the scale of justice. I have myself gone through the proceedings and the judgments of both courts and I have come to the conclusion that the Court of Appeal and the learned trial judge were justified in dismissing the claims of the plaintiffs. It is the law that where an error does not occasion a miscarriage of justice, an appeal court will not upset the judgment. See Ukejianya v. Uchendu 13 W.A.C.A 45 at 46, Onajobi & Or. v. Olanipekun & Ors. (1955) 4 S.C. 156 at 163 and Anyanwu v. Mbaria & Or. (1993) 5 N.W.L.R. (Pt. 242) 386 at 400.

The issue raised in paragraph 13 of the statement of claim is on proof of ownership of land by production of documents of title. Here the plaintiff relied on Exhibit "C" which is of no assistance to them. They also relied on the other four ways of proving ownership of land and none of them, like the production of Exhibit "C", was successfully proved. See Idundun & Ors. v. Okumagba & Ors. (1976) 10 N.S.C.C. 445; (1976) 9-10 S.C. 277.

The appellants have in the alternative urged us to make an order for a retrial. Such an order implies that one of the parties, usually the plaintiff, is being given another opportunity to relitigate the same matter and before deciding to make such an order, an appellate court should be satisfied that the other party is not thereby being wronged to such an extent that there would be a miscarriage of justice. See Ayoola v. Adebayo & Ors. All N.L.R. 154 at 159. An order for retrial is not appropriate in this case where the plaintiffs wholly failed to prove their case and I am in entire agreement with my learned brother Iguh, J.S.C. that the appeal has no merit. The proper order in the circum-

stances is that of dismissal of the plaintiffs' case. The defendants are entitled to costs which I assess at N1,000.00

MOHAMMED JSC

I agree that the two lower courts are right in their concurrent findings B that the appellants had failed to prove that they were either in exclusive possession of the land in dispute or that the respondents who were in possession were trespassers. My learned brother Iguh, JSC, has covered all the issues raised in this appeal and has left nothing for me to add. The appeal is dismissed by me. I also award N1,000.00 costs to the respondents. C

ONU JSC

Having been privileged to read in draft the judgment of my learned brother Iguh, JSC just read, I entirely agree with his reasoning and conclusion D that the appeal lacks merit and must therefore fail.

I only wish by way of expatiation to add the following words of mine to this appeal, the fulcrum on which revolves on Exhibit C - the 1928 Native Court judgment No. 64/28, and accompanying documents (correspondence).

Of the two sets of issues formulated by either side and submitted to E us for determination both of which are talking more or less of the same thing, those of the appellants are prolix as well as tautologous in tenor and I express a preference for the respondents' which would suffice to dispose of the appeal. Besides, at the hearing of this appeal on 14th April, 1997, the appellants abandoned Issue 3 and it was accordingly struck out. At the hearing of this F appeal the two respondent's issues query -

"1. Whether there was mis-interpretation of paragraph 13 of the Statement of Claim by the Court of Appeal and/or whether the interpretation given by the said Court resulted in injustice.

2. whether the errors found by the Court of Appeal were such that G would ground the setting aside of the judgments of the High Court and Court of Appeal."

ISSUES NOS. 1 & 2 CONSIDERED TOGETHER

To appreciate the complaint of the appellants on these issues which H I deem pertinent to consider together, I will first set out paragraph 13 of the appellants' statement that was said to have been misinterpreted.

In that paragraph the appellants averred as follows:-

"13. The Plaintiff will at the trial rely on the Acting District Officer's letter M.P 37/1930/16 of 4/6/31 to the Resident Onitsha Province Onitsha,

entitled Nkpokolo - Isioke land dispute, the reply of the Resident Onitsha Province ref. O.P. 2 CO 1930/8 of 12/6/31 and the map annexed thereto, the Chief's decision of 16/4/31, and the Native Court case No. 64/1928 and the review of the case dated July 13, 1931 and signed by F. H. INGLES as to the ownership of the land in dispute."

B In relation to the above paragraph the learned trial Judge held inter alia -

"The important issue in this case however, is the identity and extent of the "Agu Nkweke" land which the plaintiffs claim to be their own. It is in this connection that the 4th mode of proof i.e. production of document of title adopted by the Plaintiffs become relevant. The plaintiffs tendered Exhibit B.

C *showing the plan of the land in dispute and it is therein shown that all land North of the blue verge is the "Agu Nweke land. The plaintiffs also tendered Exhibit C. which is the native court Suit No. 64/1928 and accompanying correspondences. Exhibit C was a tussle between the Nkpokolo people and the Isiokwe people. My first task is to identify the area awarded to Nkpokolo*
D *people by the final judgment in Exhibit C. My only guide in identifying the area in relation to the plaintiffs' plan or indeed the defendants' plan is a sketch contained in Exhibit C on which Counsel on both sides addressed me extensively. It is agreed that the old Udi Military Road as appearing on the sketch in Exhibit C was the boundary in the final judgment of the native*
E *Court case. The Isiokwe people were awarded land East of that road while Nkpokolo people were awarded land West of that Road."*

The pertinent question arising out of the above findings made by the learned trial Judge is, what is the Western boundary of the "Agu Nweke" awarded to Nkpokolo?

F The learned trial Judge held that the Western boundary was not the Western boundary of the land in dispute. The question remained whether the appellants at any stage proved to the satisfaction of the trial court the Western boundary of the land which Exhibit C demarcated between the Nkpokolo people and the Isiokwe people for him to place implicit reliance on Exhibit C. In
G his judgment the learned trial judge gave the answer in the negative.

Thus, on the questions of how the appellants derived title to the land in dispute the learned trial Judge stressed that both parties relied mainly on alleged farming thereon as two of the five recognised modes of land acquisition recognised by law. He held after weighing the parties' cases on the
H imaginary scale that the duty to prove their case lay on the appellants i.e. by establishing the boundaries of the land which was adjudged to be theirs - a task they did not fulfil. To exemplify this, reference was rightly made to the evidence of P.W. 6, Akalusi Ezeanochie, who stated in evidence as follows:-

"I know the land that was the subject matter of 1928 Native Court

Suit. I know the boundaries of the land that was disputed in 1928. Cement beacons were put on the boundary. The land disputed in 1928 is not part of the land in dispute. From the land in dispute to the land disputed in 1928 is about 4/5 K.M.."

The learned trial Judge in relation to the above piece of evidence held on the damaging contradiction revealed therein as follows:-

"A house divided against itself can hardly stand. It is my view that the damage done to the plaintiff's case on this point by P.W.6 is irreparable I do not believe that the plaintiffs have communally exercise the various acts of ownership and possession on the land in dispute as they claim to have exercised."

On Exhibit C which the appellants tenaciously held on to as establishing their title the learned trial Judge held, rightly in my view, among other things thus:

"It is agreed that the old Udi Military road as appearing on the sketch in Exhibit C was the boundary in the final judgment of the Native Court case. The Isiokwe people were awarded land East of that road while Nkpokolo people were awarded land West of that Road The question now is - what is the Western Boundary of the Agu Nweke land awarded to Nkpokolo? Learned counsel for the plaintiffs contends that the Western Boundary of land awarded to Nkpokolo people would be the Western Boundary of the land in present dispute. I do not however think so I find as a fact that Uzo Egbo Adu was the Western Boundary of the land awarded to Nkpokolo people in Exhibit C. This road is shown in the plaintiffs' plan Exhibit B as Enugu Agwu Road (Uzo Egbo) and runs from the Mgburu Obo shrine to the Inyi-Oji river/Awgu Road and farms the Northern and north-eastern boundary of the land in dispute as Exhibit B. The Eastern boundary, of course is along the Old Udi Military Road which is East of the Oji river - Awgu Road."

The learned trial Judge concluded crisply inter alia as follows:-

"I therefore find as a fact that the land in present dispute is not part of the land awarded to Nkpokolo people in the Native Suit of 64/1928. The plaintiffs' witness P.W. 6 also supports this view "

From the above it is obvious that there was a dispute in 1928 over a piece of land, the extent of which the appellants failed to establish in evidence before the trial court. Irrespective of the seemingly sting from the judgment of the court below as to the award made by the trial court relating to Exhibit C, the criticism would appear to me to be academic in view of what the court below itself said in redemption of the attack. Said the court below:

"I have to quote the learned Judge in extenso for compelling need.

He has, in my view, properly identified the crux of the case and then came to important conclusion subject, of course, to the observation I now make. I do not intend them as any CRITICISM BUT MERELY to show that he ought to have been led to make findings because of the way issues he dealt with were canvassed before him by the parties both on the pleadings and in the evidence tendered as well as the arguments advanced."

In so far as the court below has not alleged a misdirection or error in law which affected the judgment of the trial court or went to the root of it, the judgment ought to be sustained. It is trite law that what a Court of Appeal should decide is whether the decision of the judge is right and not whether the reasons were. See Ukejianya v. Uchendu 13 WACA 45 at 46 and Emmanuel Taiwo Ayeni v. W.A. Sowemimo (1982) 5 SC. 60 at 73 and 75.

Thus, when finally the court below stated:

"I have already pointed out in what regard the learned trial Judge's reasoning and findings in that issue could not be said to be strictly right but I certainly do not agree that he came to a wrong decision" (Underlining is mine for emphasis).

That is enough reason for saying that the court below corrected some errors, if errors they were, and found that the trial court's judgment could still stand. That also is sufficient reason to hold that nowhere had appellants pleaded the Western boundary of the land in dispute in Exhibit C to be an "Ekpe Wall" or trench.

From the foregoing it should be borne in mind that the law is established that it is not every error discovered on appeal that will automatically lead to the reversal of the judgment. Such an error indeed must be substantial to warrant being interfered with. See Gwonto v. The State (1983) 1 SCNLR 142; Olubode v. Salami (1985) 2 NWLR (Part 7) 282; Famuroti v. Agbeke (1991) 5 NWLR (Part 189) 1 at 14 and Onajobi v. Olanipekun (1985) 4 SC 156 at 163.

It is also a well established principle of law that parties are bound by their pleadings. A party's case is not made in its brief but in its pleadings. See Aderemi v. Adedire (1966) NMLR 398; A.C.B. LTD. v. A.G. (North) (1967) NMLR 231; Nwawuba & Ors. v. Enemuo & ors. (1988) 5 SCNJ 154 at 166; (1988) 2 NWLR (Part 78) 581. Since no miscarriage of justice has been established and the judgment of the trial court can stand irrespective of the errors, this court will be loath to interfere therewith see Okafor & ors. v. Idigbo III & Ors. (1984) 6 H SC. 7.

Thus, where also as in the instant case the appellants failed to prove their case for a declaration of title (Communal Customary Right of Occupancy), the proper order to make is one of dismissal. See Ayodele v. Dr. Olumide (1969) 1 All NLR 233 at 239; The Stool of Abinabina v. Enyimadu 12 WACA 171 at 259

and Kodilinye v. Odu (1935) 2 WACA 336 at 337 and not a retrial.

The court below in confirming the decision of the trial court on the dismissal of the appellants' action held as follows:-

"I think the learned Judge gave adequate consideration to all the issues in this case and weighed both sides of the case fairly on the principles laid down in -

Mogaji & ors. v. Odofin & ors. (1978) 4 SC. 91 at 93 *Woluchem v. Gudi* (1981) 5 SC. 291 at 294-295 *Owoade v. Omitola & ors.* (1988) 2 NWLR (Part 77) page 413."

I cannot agree more.

The appellants' plan, Exhibit "B" which was amply pleaded in paragraph 4 of the Statement of Claim showed the Western boundary of their land from the said old Udi Military road was marked with an EKPE WALL and a TRENCH. The respondents denied the existence of these outstanding boundary features on the west of the land in dispute. Of the Ekpe wall and Trench the learned trial Judge said:

"The plaintiff have strongly contended that "Ekpe" wall or trench forms the natural or traditional boundary between their "Agu Nweke" land and the land of Agbadala and Umumba people. The defendants have put the existence of the "Ekpe" wall or trench in issue and vigorously denied its existence. I have carefully considered the evidence of both sides on the issue and find nothing for which I should prefer the evidence of the plaintiffs."

The observation of the court below as regards these features was:

"As a matter of pleadings, I do not think that the said Ekpe wall and Trench not having been specifically pleaded as boundary features and has and perhaps since when they became boundary features but were simply shown in the survey plan evidence of it could properly be led." See Lawal v. G.B. Olivant (1972) SC. 124.

The decisions of the two courts below clearly therefore constitute concurrent findings of fact which, having neither been shown to amount to a miscarriage of justice nor shown to contain any error in procedure or indeed in any way perverse, I am loath to interfere therewith. See Mogo Chinwendu v. Mbanegbo Mbamali (1980) 314 SC. 31; Ibodo v. Enarofia (1980) 314 SC. 42 at 50, 55-57 and Kalu Njoku v. Ukwu Eme (1973) 5 SC. 293 at 305 etc.

For these and the fuller reasons contained in the leading judgment of my learned brother Iguh, JSC, I have no hesitation than to dismiss this appeal. H Costs of N1000 are awarded in favour of the respondents.