

SUPREME COURT OF NIGERIA
13TH MARCH, 1998. SC 76/1991
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE, E. O.
OGWUEGBU, U. MOHAMMED, S. U. ONU, JJSC

MARK KELE & 11 ORS. APPELLANTS
(For themselves and as representing the people
of Amaghaha and Umuiegwu of Amachara, Acha
Isiukwuato)

AND

OKOMO NWEREKERE & ANOTHER RESPONDENTS
(For themselves and as representing the people
of Ezieke and Owerre of Akpukpa Uturu)

EVIDENCE - Admissibility - Oral evidence - Of the fact that there was a settlement out of court - Leading to the withdrawal of an earlier action - Which was not challenged - Was properly acted upon.

JUDGMENTS - Injunction - To support a legal right - Was properly granted.

LAND LAW - Trespass - Tenancy - Which terminates at the end of each farming season - The appellants became trespassers thereafter - When they were on the land without the consent of the respondents.

FACTS

The proceedings leading to the appeal started with two suits filed in two separate customary courts in the then Eastern Nigeria. Both suits were transferred to the High Court of Eastern Nigerian holden at Owerri. They were later inherited by the Okigwe judicial division of the High Court of the then East Central State and were numbered as HO/1/71 and HO/2/71. The two suits were consolidated for hearing with the consent of the parties. The plaintiffs in Suit No. HO/1/71 became the plaintiffs in the consolidated suits and the defendants in the said suit who are the

plaintiffs in Suit No HO/2/71 became the defendants. The suits were prosecuted and defended in representative capacities. The plaintiffs claim inter alia against the defendants jointly and severally for a declaration of ownership of AKPAKA land situate at Akpukpa, Uturu, Okigwe, arrears of rent and perpetual injunction while the defendants claim for declaration of title to the land called "Akpaka" "Ogboko land" and "Alambula" in its different portions and an injunction inter alia.

The plaintiffs averred that the land in dispute belongs to them from time immemorial and that the entire land is called Akpaka land. They pleaded acts of ownership by farming the land, using the economic trees thereon and letting out portion of the land to Amachara settlers (defendants) for annual farming on payment of tribute. They brought this action when the defendants in three successive years farmed the land without their usual prior consent and started to lay claim on the land. Native court Suit No. 35/1945 (Exhibit "1") was relied upon by the plaintiffs. The defendants denied the above assertions of plaintiffs. They pleaded that they live on and farm the land as owners from time immemorial and that they never paid tribute to Ezieke na Owerre (plaintiffs). In 1965, the plaintiffs entered the land and started to claim it hence they instituted the action in Suit No HO/2/71.

At the close of hearing, the learned trial judge, made a declaration of title in favour of the plaintiffs in Suit No HO/1/71, granted an order of injunction against the defendants and dismissed Suit No HO/2/71 in its entirety. The plaintiffs' claim for arrears of rent was dismissed. The defendants in the consolidated suit being dissatisfied with the decision appealed to the Court of Appeal, Enugu Division. That court dismissed their appeal. Aggrieved by the decision they have further appealed to the Supreme Court. From the grounds of appeal filed, four issues were identified by the defendants/appellants for determination but issue number two was distilled from incompetent grounds of appeal and was thus struck out together with the said grounds leaving three issues .

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal was right in holding that Exhibit 1 was a conclusive act of possession and whether there was infact

oral evidence of the terms of settlement in Exhibit 1 and if so whether such oral evidence was admissible.

3. Whether the Court of Appeal can grant the relief of trespass not claimed by the respondents and whether the Court of Appeal having found that the appellants are customary tenants can never-the-less hold them to be trespassers without an order of forfeiture having regard to the pleading, evidence and relief claimed by the respondents.

4. Whether the Court of Appeal having found the Appellants were customary tenants can grant the relief of injunction to the respondents without the respondents first asking and obtaining an order for forfeiture of the customary tenancy."

HELD (Unanimously dismissing the appeal per lead judgment of **OG-WUEGBU JSC**)

Oral evidence of settlement out of court

1. The evidence of P.W. 1 in relation to Exhibit "1" can only be regarded as evidence of the fact that there was a settlement out of court and that settlement was the basis for the withdrawal of the suit which was eventually struck out. The learned trial judge believed and acted upon that piece of evidence which was not challenged by the appellants in their cross-examination of the witness. The court below held that the learned trial judge was justified in acting on the evidence that there was a settlement out of court which led to the withdrawal of the action. I am also satisfied that the Court of Appeal was right in affirming the finding of the learned trial judge on the evidence of P.W.1 touching on Exhibit "1".

(p. 576 F)

Tenancy which terminates at the end of each farming season

2. The appellants were therefore not in continuous occupation of the land in dispute and the tenancy between the respondents and the appellants came to an end at the end of each farming season after the crops they planted had been harvested. The Court of Appeal upheld the finding of the learned trial judge on the annual nature of the tenancy when it said:

"A temporary grant like the one in question in this case must

terminate without any formality once the purpose for which it was granted has been accomplished. However, it is my view that the appellants cannot be heard to complain that the learned trial judge was in error to have granted an injunction against them because the respondents neither sought B for forfeiture nor possession when they themselves did not admit or plead that the appellants are the customary tenants of the respondents."

The Court of Appeal also relied on the statement of Professor B. O. Nwabueze at p.261 of his book titled "Nigerian Land Law." It reads:
C "A customary tenancy for a specific period e.g. a farming season, comes automatically to an end when the purpose for which the grant was made has been accomplished. In the case of a tenancy granted for one farming season for the cultivation of seasonal crops, the purpose is accomplished when the crops have been harvested; the end of the harvest D marks also the end of the tenancy."

I am also of the opinion that this is a correct statement of the law and in the circumstance, the appellants had no business to be on the land in dispute after the 1962 farming season since no permission was given E to them to farm on any portion of the land in 1963 and it was also from that year that the appellants refused to pay annual tribute. They became trespassers from 1963 when they were on the land without the consent of the respondents. The courts below did not find the appellants to be F customary tenants at the material time. (p. 578 B)

Judgments - Injunction

3. It was proper for the court to grant an injunction to support a legal right. The legal right of the respondents to the piece of land in dispute G having been infringed by the appellants, the court below was right to have granted the order of injunction asked for. See Onyia v. Oniah (1989) 1 N.W.L.R. (Pt.99) 514. (p.579 B)

H REPRESENTATION

A. I. Idigbe Esq. with Ralph Uwechue Esq. for the Appellants
F. Chukwuemeka Ofodile Esq. for the Respondents

CASES REFERRED TO

Afolabi v. Adekunle (1983) 8 S.C. 98

Re Leys Will Trust Somerset v. Ley (1964) 2 ALL E.R. 326 at 329

Odunukwe v. Administrator-General, E.C.S. (1978) 1 S.C. 25

Onyia v. Oniah (1989) 1 N.W.L.R. (Pt. 99) 514

B

LEAD JUDGMENT BY OGWUEGBU JSC

This appeal is from the judgment of the Court of Appeal, Enugu Division delivered on 6th June, 1989. The proceedings leading to the appeal started with two suits filed in two separate customary courts in the then Eastern Nigeria. Both suits were transferred to the High Court of Eastern Nigeria holden at Owerri. They were latter inherited by the Okigwe Judicial Division of the High Court of the then East Central State and were numbered as HO/1/71 and HO/2/71.

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D

The plaintiffs in Suit No. HO/1/71 who are the respondents in this court are the people of Ezieke Na Owerre of Akpukpa in Uturu while the defendants in the same suit are the appellants before us and are the people of Amachara, Oguduasa in Isuikwuato. The parties changed positions in Suit No. HO/2/71. Both parties were in Okigwe Division of Imo State but are now in Abia State following the creation of that State. The two suits were consolidated for hearing with the consent of the parties. The plaintiffs in Suit No. HO/1/71 became the plaintiffs in the consolidated suits and the defendants in the said suit who are the plaintiffs in suit No. HO/2/71 became the defendants. The suits were prosecuted and defended in representative capacities.

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In Suit No. HO/1/71, the plaintiffs' claim before the High Court against the defendants jointly and severally is as follows:

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"(a) *A declaration of ownership of AKPAKA land situate at Akpukpa, Uturu, Okigwe, more particularly delineated and verged pink in a Plan No. MEC/14/66 already filed with the Statement of Claim.*

(b) f30 being arrears of rent for 1963, 1964 and 1965.

H

(c) A perpetual injunction restraining the defendants, their agents and servants from entering the said land."

The plaintiffs' claim in Suit No. HO/2/71 is as follows:

"1. Declaration of title to the land shown and delineated in pink in plan No. UND/51/66 filed by the plaintiffs in this suit, which land is called "AKPAKA", "Ogboko land" and "Alambula" in its different portions.

B 2. An injunction restraining the defendants from trespassing or interfering with the plaintiffs' ownership and possession of the land."

C At the close of pleadings, the consolidated suits proceeded to trial and in the end, Obi - Okoye, J. (as he then was) in a reserved judgment, made a declaration of title in favour of the plaintiffs in Suit No. HO/1/71, granted an order of injunction against the defendants and dismissed Suit No. HO/2/71 in its entirety. The plaintiffs' claim for arrears of rent was dismissed. The defendants in the consolidated suits who are the people of Amachara, were dissatisfied with the decision of the learned trial judge and appealed to the Court of Appeal, Enugu Division. That court dismissed their appeal. Aggrieved by the decision, they have further appealed to this court.

E From the five grounds of appeal filed, the following issues were identified by the defendants/appellants for determination:

F "1. Whether the Court of Appeal was right in holding that Exhibit 1 was a conclusive act of possession and whether there was infact oral evidence of the terms of settlement in Exhibit 1 and if so whether such oral evidence was admissible.

G 2. Whether having regard to the pleading and testimonies of the witnesses the findings of the learned trial judge that the Appellants did not call their boundary men whilst the respondents called theirs and that there was conflict between the evidence of the appellants to the effect that they do not live on the land in dispute but only farm thereon and their pleading on the issue were not against the weight of evidence before the Court.

H 3. Whether the Court of Appeal can grant the relief of trespass not claimed by the respondents and whether the Court of Appeal having found that the appellants are customary tenants can never-the-less hold them to be trespassers without an order of forfeiture having regard to the pleading, evidence and relief claimed by the respondents.

4. *Whether the Court of Appeal having found the Appellants were customary tenants can grant the relief of injunction to the respondents without the respondents first asking and obtaining an order for forfeiture of the customary tenancy."*

The plaintiffs/respondents on their part submitted the following five issues for determination:

"1. *Whether having regard to the issues raised on the appeal, the Court of Appeal was right in affirming the decision of the High Court over EXHIBIT "1".*

2. *Whether the learned trial judge properly evaluated the evidence and made the correct findings on the question of boundaries.*

3. *Whether the learned trial judge was justified in holding that the evidence of the defence to the effect that they (i.e. the Defendants) do not live on the land but only farm thereon was in conflict with the defence pleading.*

4. *Whether having regard to the case of the Plaintiffs before the trial Court (i.e. The PLEADINGS AND EVIDENCE) the Court of Appeal was right in upholding the decision of the trial court on the issue of TRESPASS AND INJUNCTION (UNDERLINING SUPPLIED FOR EMPHASIS).*

5. *Whether at the institution of this action the Defendants/Appellants held such tenancy, interest or right over the land in dispute that an ORDER FOR INJUNCTION OUGHT NOT TO BE ISSUED AGAINST THEM WITHOUT THE PLAINTIFFS/RESPONDENTS FIRST OBTAINING AN ORDER FOR FORFEITURE."*

The issues formulated by both parties are identical. Grounds two and three of the grounds of appeal raise two unrelated questions. The appellants lumped the two questions as issue number two and the respondents rightly identified them as issues numbers two and three. However, grounds two and three of the appellants' amended notice of appeal from which the appellants distilled issue number two for determination are incompetent. The two grounds of appeal are complaints against the decision of the learned trial judge and are proper grounds of appeal in the court below. This court has no jurisdiction to hear appeals direct

from the High Court. Grounds two and three of the grounds of appeal being incompetent are hereby struck out together with arguments on issue number two in the appellants' brief. The court is therefore left with the first, third and fourth issues formulated by the appellants and issues B one, four and five identified by the respondents.

The respondent in Suit No. HO/1/71 averred that the parcel of land verged pink in their survey plan No. MEC/14/66, lying between Ataba stream and Aku stream, belongs to them from time immemorial and that the entire land is called Akpaka land. They pleaded that Amachara C people (defendants) have their own home land elsewhere from where they came to settle on the land of Amaigbo east of the Aku Stream. They pleaded acts of ownership by farming the land, using the economic trees thereon and letting out portion of the land to Amachara settlers (defen- D dants) for annual farming on payment of tribute. They brought this action when the defendants, in three successive years farmed the land without their usual prior consent and started to lay claim to the land. The said annual tribute was latter commuted to ten pounds annually. Native E Court suit No. 35/1945 (Exhibit "1") was relied upon by the plaintiffs. The defendants resumed farming on the land with the plaintiffs' prior permission on payment of ten pounds annual tribute after the settlement of the 1945 case.

F The defendants denied the above assertions of the plaintiffs and maintained that Ataba stream is the boundary and had been so determined since 1929. They pleaded that they live on and farm the land as owners from time immemorial and that they never paid tribute to Ezieke na Owerre (plaintiffs). They averred that the land is known by them in various G portions as Akpaka, Ogboko and Alambula. They agreed that the land to the West of Ataba stream belongs to the plaintiffs and gave its name as Okohia Akpaka in their survey plan No. UND/51/66.

H They averred that in 1929 one Ajala from the plaintiffs' town brought an action in court against some people from the defendants' town and that the final decision is that Ataba stream is the boundary between the plaintiffs of Ezieke na Owerre and the defendants of Amachara. In 1965, the respondents entered the land and started to

claim it hence they instituted the action for declaration of title to the land and for injunction.

At the trial both sides led oral evidence and tendered documents in proof of their respective cases. I will from now in this judgment refer to the defendants in the consolidated suits as the appellants and the plain- B
tiffs as the respondents.

The complaint of the appellants under issue number one is that both the High Court and the Court of Appeal held that Exhibit 1 is a conclusive act of possession against the appellants and in favour of the respondents. Mr. Idigbe for the appellants submitted in the appellants' C
brief that the terms of settlement was not stated in Exhibit 1 or made the judgment of the court in the said exhibit and that no witness gave evidence bearing on the terms of the settlement apart from the evidence of P.W.1. Learned counsel referred to Exhibit 1 and the evidence of P.W.1 D
during the hearing of the present proceedings in the High Court and submitted that the said evidence can not be construed as a reference to the terms of settlement.

It was further submitted that if the alleged terms of settlement E
should be made the judgment of the court, the parties should have made it so in Exhibit 1 and failure to do so showed clearly that exhibit 1 was never intended to constitute an act of possession as the case was simply struck out. It was also argued by Mr. Idigbe that for Exhibit 1 to amount F
to a conclusive act of possession, it must be shown that the terms of settlement was made the judgment of the court, that the resultant consent judgment met the requirements of a consent judgment and that the burden of proof that Exhibit 1 constitutes an act of possession was on G
the respondents and not on the appellants. We were referred to the cases of Afolabi & 2 ors. v. Adekunle (1983)8 S.C.98, Re Leys Will Trust Somerset & Or. v. Ley & Or. (1964)2 All E.R. 326 at 329 and Odunukwe v. Administrator-General, E.C.S. (1978)1 S.C.25.

The court was referred to section 131 of the Evidence Act to H
show that the evidence of P.W.1 (Jonas Ukezi) relied on as establishing the terms of settlement was inadmissible and that the dismissal of the plaintiffs' claim against the defendants in Exhibit "6" clearly established

acts of ownership over the land by the appellants.

Learned counsel for the appellants finally submitted on this issue that the courts below misdirected themselves on the proper import and purport of Exhibit 1 and the testimony of P.W.1 because the purported settlement which resulted in the striking out of Suit No. 35/1945 in Exhibit 1 was never intended to create any legal obligation.

In reply to the above issue, the learned counsel for the respondents, Mr. F. C. Ofodile gave the genesis of Exhibit 1 in the respondents' brief. He stated that the question raised by the defendants/appellants for determination by the Court of Appeal in their issue number 3 in that court is:

"Was the learned trial judge right in holding that exhibit 1 operate as resjudicata against appellants?"

He submitted that the court below was not called upon to decide whether the land in dispute in Exhibit 1 is the land subject matter of the present proceedings and that the court below was not also called upon to decide whether or not Exhibit 1 was conclusive act of possession in favour of the respondents. He argued that the court below was neither called upon to decide the effect of the failure by the appellants to call Mathias Ike as a witness nor whether there was oral evidence before the trial judge showing that the settlement in Exhibit 1 awarded the land in dispute to the respondents.

Mr. Ofodile concluded his submission on issue one as follows:

"..... going by the issue submitted before the Court of Appeal, (i.e. whether exhibit 1 Operates As Res-Judicata Against The Appellants - See Page 102). The decision of that court (Paragraph 4.04 Above - Pages 153-155) was in order. The oral testimony as to the "terms of settlement" were admissible in law. Noting (sic) forbade the reception by the court of such oral testimony of settlement."

Exhibit 1 was tendered by the respondents in support of their averment in paragraph 7 of their amended statement of claim which reads:

"7. In Uturu Native Court Suit No. 35/1945 the Plaintiffs sued the Defendant and claimed inter alia declaration of title and damages for trespass After the Plaintiffs had stated their case, the matter was

adjourned. In the interval the defendants paid the required rents apologised to the Plaintiffs and the matter was struck out as having been settled out of Court. The Plaintiffs will found on this case."

In answer to paragraph 7 of the amended statement of claim, the appellants averred in paragraph 11 of their statement of defence:

"11. Paragraph 7 of the Statement of Claim is denied. Suit No. 35/1945 does not concern the defendants in this case nor does it relate to the land in dispute."

P.W. 1 (Jonas Ukezi) tendered Exhibit 1 in the course of his examination-in-chief. In Exhibit 1, the plaintiffs stated their case and the 15th defendant who was in court applied for an adjournment. The case was adjourned to 6:4:45 to enable the witnesses for the defendants to attend the court. When the case came up again on 19:4:45, the record reads:

"Parties stated that case had been settled out of court. Case struck out."

P.W. 1 concluded his evidence as follows:

"After this case in Exhibit 1 the defendants resumed to come to the land with our permission and on payment of the ten pounds annual tribute....."

On Exhibit "1", the learned trial judge found as follows:

"One fact that casts a baleful light on the veracity of Mark Kele is the denial of knowledge of the case of 1945 exhibit 1. What the Amacharas pleaded was that this case did not concern them and did not concern the land now in dispute. In the cross-examination of Jonas Ukezi, the learned counsel for the Amacharas endeavoured to show that the plaintiffs on record in that case came from different town in Akpukpa and that the land involved was Okohia Akpaka land. It was a land case involving Amachara people, Mark Kele admitted that as far back as 1929 he represented his people in a land case - vide Exhibit 6. Is it likely that he could be totally ignorant of a latter case in 1945? And who instructed their counsel that the case related to a different land? It will be borne in mind that Gabriel Orji and Mathias Ike of Amachara were parties to the 1945. It is surprising that Mathias Ike who is a party also

in the present case was not called to testify. I accept the evidence of Ezieke na Owerre that the land in dispute in Exhibit 1 is the land now in dispute and that Mathias Ike of Amachara named in this suit was Mathias in that case. Mathias Ike did not venture into the witness box to rebut these facts as well as the terms of settlement of the case given in evidence in this case by Ezieke na Owerre. I accept the evidence that Amachara acknowledge the title of Ezieke na Owerre to the land when sued in exhibit 1 as a result of which the suit was discontinued and settled out of court. This evidence was not even challenged in cross-examination."

The Court of Appeal after a careful consideration of the conclusion reached by the learned trial judge on Exhibit "1" and the evidence of P.W.1, held as follows:

"It is therefore manifest that the appellants had no quarrel with the evidence as to the acknowledgment of the title of the respondents by the appellants. Upon that ground, I am satisfied that the learned trial judge was perfectly justified in acting on evidence which explained the terms of settlement reached by the parties leading to the withdrawal of the action in Exhibit 1. The case of Ikusebiala (supra) is, in my view, applicable to the appeal in hand. Because exhibit 1 contains a statement that the parties have settled out of court, and the terms of settlement were not stated in Exhibit 1, I am satisfied that oral evidence as to the terms of settlement was properly admissible as it does not contradict but merely compliment Exhibit 1."

The evidence of P.W. 1 in relation to Exhibit "1" can only be regarded as evidence of the fact that there was a settlement out of court and that settlement was the basis for the withdrawal of the suit which was eventually struck out. The learned trial judge believed and acted upon that piece of evidence which was not challenged by the appellants in their cross-examination of the witness. The court below held that the learned trial judge was justified in acting on the evidence that there was a settlement out of court which led to the withdrawal of the action. I am also satisfied that the Court of Appeal was right in affirming the finding of the learned

trial judge on the evidence of P.W.1 touching on Exhibit "1". The settlement out of court was also the basis of the resumption of the farming activities of the appellants on the land with the permission of the respondents and on payment of the annual tribute. This situation obtained after Exhibit "1" until the appellants defaulted for three years and the respondents instituted the present proceedings. B

The evidence which the learned trial judge believed and acted upon is the evidence of P.W.1 that there was a settlement out of court of Suit No. 35/1945 leading to the withdrawal of the suit and the resumption of farming on the land by the appellants. That evidence is an issue of fact. C

Finally on this issue, the courts below did not find that Exhibit "1" established an act of possession over the land by the respondent.

I will discuss issue numbers three and four together. Issue number three questions the grant by the court below of the relief of trespass not claimed by the respondents after the same court had found the appellants to be customary tenants and when there was no order for forfeiture. The fourth issue complained that the court below granted the relief of injunction to the respondents without the respondents first seeking and obtaining an order for forfeiture of the customary tenancy which the said court had found to exist. D

I think the learned appellants' counsel misconceived the findings of the courts below on the nature of the tenancy of the appellants. The learned trial judge found as follows: F

"I find as a fact that Ezieke na Owerre are the owners of the land verged pink in the plan No. MEC/14/66 from time immemorial over which they have been exercising right of ownership by farming it, making use of the economic trees therein, and letting it out for annual farming to the Amacharas on payment of tribute which was in course of time quantified to ten pounds annually. I reject the claim of Amacharas to the ownership of the land in dispute." (the underlining is for emphasis). G
The learned trial judge made a specific finding that the relationship between the respondents and appellants was on annual basis, that is to say, any year the appellants desired to farm, they applied to the respondents H

who in turn allotted them specific area for that year on payment of the annual tribute. This finding flowed from the evidence of P.W.1(Jonas Ukezi)who said:

"The defendants do not live on the land in dispute. They come from where they live on the land of Amaigbo people to farm this land and go back. Each year they come to farm, we allot to them the area to make farm."

The appellants were therefore not in continuous occupation of the land in dispute and the tenancy between the respondents and the appellants came to an end at the end of each farming season after the crops they planted had been harvested.

The Court of Appeal upheld the finding of the learned trial judge on the annual nature of the tenancy when it said:

"A temporary grant like the one in question in this case must terminate without any formality once the purpose for which it was granted has been accomplished. However, it is my view that the appellants cannot be heard to complain that the learned trial judge was in error to have granted an injunction against them because the respondents neither sought for forfeiture nor possession when they themselves did not admit or plead that the appellants are the customary tenants of the respondents."

The Court of Appeal also relied on the statement of Professor B. O. Nwabueze at p.261 of his book titled "Nigerian Land Law." It reads:

"A customary tenancy for a specific period e.g. a farming season, comes automatically to an end when the purpose for which the grant was made has been accomplished. In the case of a tenancy granted for one farming season for the cultivation of seasonal crops, the purpose is accomplished when the crops have been harvested; the end of the harvest marks also the end of the tenancy."

I am also of the opinion that this is a correct statement of the law and in the circumstance, the appellants had no business to be on the land in dispute after the 1962 farming season since no permission was given to them to farm on any portion of the land in

1963 and it was also from that year that the appellants refused to pay annual tribute. They became trespassers from 1963 when they were on the land without the consent of the respondents. The courts below did not find the appellants to be customary tenants at the material time. B

It was proper for the court to grant an injunction to support a legal right. The legal right of the respondents to the piece of land in dispute having been infringed by the appellants, the court below was right to have granted the order of injunction asked for. See Onyia v. Oniah (1989) 1 N.W.L.R. (Pt.99) 514. C

The question of forfeiture did not call for consideration in this case. The appellants were not customary tenants from 1963 when the cause of action arose. They did not even pretend to be customary tenants at any time. In paragraph 4 of their statement of defence, they averred as follows: D

"Except that the land in dispute is verged pink in the plaintiffs' plan the defendants deny paragraph 3 of the statement of claim. The land in dispute has been from time immemorial in the ownership and possession of the defendants and situate in Amachara which is the village of the defendants. The defendants and their people farm on the land in dispute." E

From the above stand point, the appellants did not claim to be customary tenants of the respondents and one wonders why they should raise the issue of forfeiture which was not their case in the courts below. F

The end result is that the appeal fails and I hereby dismiss it. The judgment and orders of the Court of Appeal dated 6th June, 1989 are affirmed. The respondents are awarded N10,000.00 costs against the appellants in this appeal. G

BELGORE JSC

The appellants were annual tenants of the respondents and the evidence on this is clearly in the record of proceedings. Their (appellants') right was seasonal and once the season is at an end all they needed H

to continue on the land was to seek fresh permission. It would seem they now wanted to claim more than they were customarily entitled to. They were on the land only to farm and their homesteads were not there; they were allotted land to farm each year by the respondents. These were the facts of this case as held by the two lower Courts. It is therefore manifest that the appellant here now try to claim ownership of the land. They have failed to prove this. I find no merit in this appeal and I dismiss it with N10,000.00 costs to the respondents.

C **OGUNDARE JSC**

I entirely agree with the judgment of my learned brother Ogwuegbu JSC just read. This appeal is totally lacking in merit and I have no hesitation whatsoever in dismissing it.

D The appeal is dismissed by me with costs as assessed in the judgment of Ogwuegbu JSC.

MOHAMMED JSC

E I entirely agree with the opinion of my learned brother, Ogwuegbu, J.S.C., in the lead judgment, just read, that this appeal has failed. The appellants have failed to establish any sound reason for the concurrent findings of fact of the two lower courts to be disturbed. I therefore dismiss this appeal and abide by the orders made in the lead judgment by my learned brother on costs.

ONU JSC

G The judgment of my learned brother Ogwuegbu, JSC just delivered was made available to me in draft form before now. Having had the privilege to read it, I am in entire agreement therewith that it lacks substance and must perforce fail.

H I adopt the same as mine and have nothing further to add thereto. I make the same consequential orders including costs therein made.