

SUPREME COURT OF NIGERIA
25TH SEPTEMBER, 1998. SC. 85/1991
CORAM:- A. B. WALL, M. E. OGUNDARE, E. O. OGWUEGBU,
U. MOHAMMED, A. I. IGUH, JJSC

IKEANAEZE EZEAKABEKWE & 2 ORS. DEFENDANTS/
APPELLANTS

AND

JULIUS EMENIKE PLAINTIFF/
(Substituted by Okechukwu Emenike) RESPONDENT
For himself and on behalf of Emenike
family of Amaba Umuchu

ACTIONS - Relief not claimed - Or which is more than what was claimed
- Should not be granted - As erroneously done by the trial court.

EVIDENCE - Exhibits - Allegation that some fresh exhibits were not
considered by the lower court - Is without substance.

JUDGMENTS - Extrinsic evidence - Is inadmissible in substitution of
judicial documents - Judgment of a superior court of record should speak
for itself.

LAND LAW - Traditional history evidence - Where cogent as in the present
case - Can support a claim for declaration of title.

LAND LAW - Title - Proving the boundaries and title to a smaller parcel
of land - Erroneous grant of title to the entire land verged green by the
lower courts - Will be amended by the Supreme Court - By granting title
to the smaller parcel verged pink.

FACTS

Before the High Court Awka, the plaintiff/respondent claimed
against the defendants/appellants declaration of title, N400.00 damages

for trespass and perpetual injunction in respect of the land in dispute. The plaintiff claimed that it was his late father Emenike, that first deforested "Ude Uchu" land in dispute, remained in exclusive possession until his death when the land devolved on the plaintiff and his brothers. The defendants on their part contested that it was one Ezeako, their ancestor who first deforested the land.

The trial court found in favour of the plaintiff and granted the entire land verged green to them instead of the smaller area in dispute verged pink. Defendants appeal to the Court of Appeal was dismissed. They have further appealed to the Supreme Court raising 6 issues which the apex court reduced to 2 issues.

ISSUES FOR DETERMINATION

1. Whether having regard to the pleadings and evidence, the court below was right in affirming the judgment of the trial court on the issue of title, trespass and injunction in respect of the land verged green in the respondent's plan, Exhibit 3

2. Whether the court below did infact ignore Exhibits "A" and "B" as alleged by the appellants and whether, otherwise, the judgment of the trial court as affirmed by the court below is justifiable in so far as it relates to the piece or parcel of the land in dispute verged pink in Exhibit 3.

HELD (Unanimously dismissing the appeal but amending the grant to be the area verged pink per lead judgment of **IGUH JSC**)

Judgments - Exhibits - Extrinsic evidence

1. A judgment of a superior court of record should speak for itself and extrinsic evidence is, in general, inadmissible in substitution of judicial documents. Thus, the record, or a certified true copy thereof, is the proper legal evidence of a proceeding in the High Court. And even if P.W. 3 was convicted by the trial court as alleged, it is clear that there is nothing on record to connect the alleged conviction with his evidence in respect of the deforestation in issue. At all events, it is apparent from the judgment of the court below at pages 158 and 159 of the record of proceedings that it carefully considered Exhibits "A" and "B" but found

them unhelpful. (p. 2272 G)

Actions - Relief not claimed

2. Turning now to the more important aspect of this appeal, a basic principle of law that must be stressed is that a court is without power to grant to a party a relief or remedy which he has not claimed or which is more than he has sought. See Edward Egonu (1978) 11-12 SC 111 at 133, Ekenyong v. Nyong (1975) 2 S.C. 71 at 81 - 82. It is therefore plain to me that the trial court was clearly in error to have awarded to the respondent, as against the appellants, customary right of occupancy in respect of the piece or parcel of land verged green in Exhibit 3. This is because the said piece or parcel of land verged green not only covers the precise area claimed by the respondent in the suit but it is far greater in extent than the piece or parcel of land verged pink claimed by the respondent. (p. 2273 D)

Traditional history evidence

3. As I have already mentioned, it is not in dispute that the learned trial Judge after a careful evaluation of the evidence of traditional history led on behalf of both parties and having tested the same in the light of recent facts established by evidence accepted the story of the respondent. Evidence of traditional history where this is found by the court to be cogent, as in the present case, can support a claim for declaration of title to land. See Alade v. Lawrence Ano (1975) 4 S.C. 215 at 228. (p. 2273 H)

Title - Proving the boundaries

4. It is settled law that where a plaintiff who is claiming a declaration of title to land succeeds in proving the boundaries and title to a smaller parcel of such land, he would be entitled to a declaration of title in respect of such smaller parcel of land in dispute, the title and boundaries of which he has proved with certainty. See Udeze v. Chidebe (1990) 1 N.W.L.R. (Part 125) 141. In the present case, the respondent claimed ownership of the entire piece or parcel of land verged green in the plan Exhibit 3. The appellants, for their own part, made similar claim of ownership to

the said piece or parcel of land verged green. Both courts below were of the view that the said piece or parcel of land was in the ownership of the respondent. The parcels of land verged pink in Exhibit 3 are completely within and form part of the said piece of land verged green in respect of which ownership was found in favour of the respondent. Their boundaries are also not in dispute as they are more particularly delineated in the respondent's plan Exhibit 3. In the circumstances, I think the trial court would have been entitled to issue a decree of title in favour of the respondent in respect of the areas verged pink in Exhibit 3 which constitute the land in dispute in this case. See too Nathan Okechukwu and others v. Frederick Okafor and others (1961) ALL N.L.R. (Part 4) 685. In the final result the judgments of both courts below are hereby amended and it is declared that the respondent, representing members of the Emenike family of Amaba, Umuchu is entitled, as against the appellants, to a grant of customary right of occupancy in respect of the areas verged pink on the plan, Exhibit 3. (p. 2275 A)

E **REPRESENTATION**

P. N. Achinonu (Miss) for the appellants
Ifeoma Chinwuba (Miss) for the respondent

F **CASES REFERRED TO**

- Egonu v. Egonu (1978) 11 - 12 S.C. 111 at 133
- Adeniji v. Adeniji (1972) 4 S.C 10 at 17
- Shitta-Bey v. Federal Public Service Commission (1981) 1 S.C. 40 at 59
- Edward Egonu (1978) 11-12 SC 111 at 133
- G Ekenyong v. Nyong (1975) 2 S.C. 71 at 81 - 82
- Kalio v. Daniel Kalio (1975) 2 SC 15 at 17
- Makonjuola v. Balogun (1989) 3 N.W.L.R. (Part 108) 192 at 206
- Olurotimi v. Ige (1993) 8 N.W.L.R. (Part 311) 257 at 271
- H Alade v. Ano (1975) 4 S.C. 215 at 228
- Idundun v. Daniel Okumagba (1976) 9/10 S.C. 227 at 245
- Udeze v. Chidebe (1990) 1 N.W.L.R. (Part 125) 141
- Sogunle v. Akerele (1967) N.M.L.R. 58

Araba v. Asanlu (1980) 6 - 7 S. C. 74 at 85 - 87

Iuna v. Okogbe (1993) 9 N.W.L.R. (Part 316) 159 at 175

LEAD JUDGMENT BY IGUHJSC

In the High Court of former Anambra State of Nigeria, the plaintiff, who is now the respondent, for himself and on behalf of the Emenike family of Amaba, Umuchu instituted an action jointly and severally against the appellants, who therein were the defendants, claiming as follows:-

"(1) Declaration of title (ownership) to the plaintiff's piece or parcel of land known as and called "Ude Uchu" situate at Amaba, Umuchu in Awka Judicial Division and more particularly shown or delineated in survey plan No. E/GA1583/73 filed with the plaintiff's Statement of Claim.

(2) N400.00 (Four hundred Naira) damages for trespass committed by the defendants on the said land in dispute.

(3) Perpetual Injunction restraining the defendants, their agents, servants and workmen from entering the said parcel of land and repeating or furthering any acts of trespass."

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

In paragraph 3 of his Statement of Claim, the plaintiff pleaded as follows -

"3. The land in dispute is shown on Survey plan No. E/AG1583/73 filed with this Statement of Claim and is therein verged Pink. It is a portion of the Plaintiff's land known as and called "Ude Uchu" and is situate at Umuchu within the Awka Judicial Division."

There is also paragraph 4 of the Statement of Claim in which he averred thus -

"4. The whole of Ude Uchu, the land of the plaintiff, including the one in dispute, was a forested swamp on the bank of and along the course of Uchu stream from which it derives its name."

The defendants, by paragraph 3 of their Statement of Defence H replied to the said paragraphs 3 and 4 of the Statement of claim as follows -

"3. The Defendants deny paragraphs 3 and 4 of the Statement

of Claim and aver that the land in dispute and the area verged green on Plan No. MEC/336/74 filed with the Statement of Defence is known as and called Ohia Iyi."

I think it ought to be emphasized that from the plaintiff's plead-
B ings and the entire evidence adduced on his behalf at the trial, the whole
of "Ude Uchu" land claimed by him is more particularly delineated on his
plan No. E/GA/1583/73 tendered and marked Exhibit 3 and it is therein
verged green. The areas in respect of which declaration of title and the
C other reliefs sought were tied to were clearly shown verged pink in the
said Exhibit 3. It is of importance to note that the said areas verged pink
are indicated within the piece or parcel of "Ude Uchu" land verged green
in the said Exhibit 3.

There is also the defendants' survey plan No. MEC/336/74, Ex-
D hibit 4. It is the finding of both courts below that the two survey plans,
Exhibits 3 and 4, are entirely identical as to the area of land put in issue by
the plaintiff. I will revert to this aspect of the case later in this judgment.
It is however note-worthy that in both survey plans, Exhibits 3 and 4 and
E the pleadings of the parties, the land said to be in dispute is therein verged
green.

It is the case of the plaintiff that "Ude Uchu" land in dispute was
acquired by his father Emenike several years ago by "first deforestation"
F as the same was originally a thick virgin forest before his father entered
therein and became the first person to deforest and/or clear the same. It
was originally a thick juju forest which the towns people feared to enter.
But Emenike introduced Christianity in the town and, as a Christian,
G ventured into the forest and cleared the area of it along the bank of the
stream shown verged green in Exhibit 3. Subsequently, he planted raffia
palms in the entire area he deforested and remained in exclusive posses-
sion thereof and enjoyed the fruits of his adventure until his death about
the year 1946. Thereafter the land devolved on the plaintiff and his
H brothers. His case is that there is a well recognized existing, customary
law in Umuchu town whereby a virgin land or forest could be acquired
by first deforestation. It was claimed that it was pursuant to this cus-
tomary law that the plaintiff's father acquired the "Ude Uchu" land verged

green in Exhibit 3.

The defendants did not deny the existence of the customary law in issue. What they pleaded is that it was their ancestor, one Ezeako, who first acquired the land in dispute by deforestation pursuant to the said customary law. By implication, therefore, the defendants while appearing to admit the existence of the relevant custom asserted that it was their ancestor, Ezeako, who by deforestation acquired the land claimed by the plaintiff. The sole issue for determination, therefore, was whether it was Emenike of the one part or Ezeako, of the other part, who first deforested the land in issue to acquire the same under Umuchu native law and custom.

At the conclusion of hearing, the learned trial Judge, Obi-Okoye, J., as he then was, after an exhaustive review of the evidence on the 12th day of June, 1978 entered judgment for the plaintiff for title to the "land in dispute shown verged green on the plaintiff's plan," Exhibit 3, N200.00 damages for trespass and perpetual injunction. It was his finding that the plaintiff's case was more probable than that of the defence, that it was the plaintiff's father Emenike who was the first person to clear the virgin forest in dispute and who thereafter remained in exclusive possession thereof until his death. He further found that the land acquired by Emenike, on his death, devolved on his brothers and that the defendants unlawfully trespassed on the said land. He issued perpetual injunction against the defendants in respect thereof.

Being dissatisfied with the said judgment, the defendants lodged an appeal against the same to the Court of Appeal, Enugu Division which, in a unanimous decision, affirmed the judgment of the trial court on the 12th day of November, 1987. Aggrieved by this decision of the Court of Appeal, the defendants have further appealed to this court. I shall hereinafter refer to the plaintiff and the defendants in this judgment as the respondent and the appellants respectively.

Eleven 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 six issues identified on behalf of the appellants for the determination of this appeal are as follows -

"ISSUE NO. 1

B *What is the legal effect where a trial Court, apparently acting outside its jurisdiction, granted to a plaintiff an area of land outside the land in dispute and imposed perpetual injunction against an appellant? - Tied to Grounds 1, 2, 7.*

ISSUE NO. 2

C *What is the legal effect of a judgment given or a decision reached per incuriam? Based on Grounds 3 & 4.*

ISSUE NO. 3:

D *What would be the legal position of a judgment of an appellate Court where such a Court based its judgment entirely on a proposed amended statement of claim which was struck out by the trial Court and was not part of the pleadings on which the judgment of the trial Court was based? Based on Grounds 5, 6, & 8.*

ISSUE NO. 4:

E *What should be the attitude or decision of an Appellate Court where a trial Court made an award or grant to a plaintiff contrary to his pleadings or statement of claim and the relief therein contained? Ground 5.*

F ISSUE NO. 5:

G *Whether on the pleadings which were legally or properly before the trial Court and the evidence in support thereof, the plaintiff/respondent proved or established his case as required by law to warrant the declaration of title to right of occupancy granted to him for the area he asked for as being in dispute, and the area outside the land in dispute? Ground 9.*

ISSUE NO. 6:

H *Whether the Court of Appeal could completely ignore in its judgment fresh evidence, Exhibits "A" & "B", which were duly admitted by the Court, which fresh evidence showed that the witness on whose evidence that trial Court almost entirely based its decision was convicted and fined by the same trial Court for lying to it? Formulated from Ground*

11."

The respondent, on the other hand, set out two issues in his brief of argument as arising in this appeal for the determination of the court. These are -

"1. Whether the mistake of the Court of Appeal in following the mistake of the trial Court by regarding the land in dispute as the area verged GREEN in the plaintiff's plan - Exhibit 3 - instead of the area verged PINK, should result in setting aside the decision of the Court of Appeal and dismissing the plaintiff's case, or should result in the Supreme Court setting aside the decision but entering a non-suit.

2. IN THE ALTERNATIVE:

Whether, as the mistake was a mistake of fact made by both parties to the dispute, as well as the Court of Appeal (following the mistake of the trial Court), the Supreme Court should make the amendment asked for and allow it to stand."

A close study of the appellants' first five issues discloses that they revolve around the propriety or otherwise of the judgment of the trial court as confirmed by the court below in-as-much-as the same was tied to the larger piece or parcel of land verged green as against the actual pieces or portions in dispute verged pink in the respondent's plan, Exhibit 3. There is also issue 6 which questions whether it was right for the court below to have failed to consider Exhibits "A" and "B". These two Exhibits were said to constitute evidence of the fact that P.W. 3 on whose testimony the trial court was alleged to have "almost entirely" based its decision was convicted and fined by the trial court for "lying" in respect of the alleged "clearing of the virgin forest."

I have closely examined the issues set out in the respective briefs of the parties and they appear to me amply covered by the undermentioned two issues, namely -

1. Whether having regard to the pleadings and evidence, the court below was right in affirming the judgment of the trial court on the issue of title, trespass and injunction in respect of the land verged green in the respondent's plan, Exhibit 3

2. Whether the court below did in fact ignore Exhibits "A" and

"B" as alleged by the appellants and whether, otherwise, the judgment of the trial court as affirmed by the court below is justifiable in so far as it relates to the piece or parcel of the land in dispute verged pink in Exhibit 3.

B I propose, in this judgment, to consider the above two issues together.

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

C The main contention of learned counsel for the appellants, P.M. Achinonu (Miss) centered on the fact that the judgments of both court below were grossly erroneous in that title was awarded to the respondent in respect of the area verged green in the survey plan Exhibit 3 instead of the areas verged pink which were the pieces or parcels of land claimed D by the respondent in his Statement of Claim to be the land in dispute. She argued that the Court of Appeal in an apparent error, mistakenly utilized the respondent's proposed amended Statement of Claim which sought to amend the land claimed by the respondent from those verged pink in E Exhibit 3 to the larger area verged green in the same plan. She pointed out that the proposed amended Statement of Claim was infact withdrawn by the respondent and was accordingly struck out by the trial court. She therefore submitted that both the trial court and the court below were in F error to have tied their judgments to the larger area of land verged green in Exhibit 3, a piece of land not claimed by the respondent in his pleadings. Citing the decision in Egonu and others v. Madam Eziamaka Egonu (1978) 11 - 12 S.C. 111 at 133, learned counsel submitted that a court of law is without power to award to a plaintiff that which he did not claim. G Relying on the decisions in Overseas Construction v. Creek Enterprises (1985) 3 N.W.L.R. (Part 13) 407, Adeniji v. Adeniji (1972) 4 S.C 10 at 17, Shitta-Bey v. Federal Public Service Commission (1981) 1 S.C. 40 at 59, learned counsel argued that where a court strays outside the plead- H ings and bases its judgment on facts or issues which were never before it, the judgment would be liable to be set aside. She stressed that in the present case, the piece or parcel of land claimed to be in dispute by the respondent and over which he sought declaration is the area verged pink.

She submitted that it was wrong for the court below to affirm the award of title by the trial court to the respondent in respect of the area verged green.

With regard to Exhibits A and B, it was argued on behalf of the appellants that P.W. 3 on whose evidence it was alleged the trial court "almost entirely" based its decision in favour of the respondent was convicted and fined "for lying" to the court" in respect of the alleged clearing of the virgin forest". It was contended that it was wrong for the trial court to, rely on the testimony of such a "condemned liar". It was equally wrong for the court below to affirm a decision based on the evidence of such a witness.

Learned counsel for the respondent, Ifeoma Chinwuba (Miss), in her reply, pointed out that it is clear from the respondent's brief of argument that there was an apparent mistake in the judgment of the trial court which tied the reliefs it granted to the respondent to the area verged green in Exhibit 3. She however pointed out that the whole of the respondent's "Ude Uchu" land, as pleaded, is the area verged green in Exhibit 3. She stressed that it was the same very area verged green that was contested by the parties throughout the trial before the learned trial Judge. She explained that a motion was filed by the respondent before the trial court for the amendment of paragraph 3 of the Statement of Claim. This amendment, if it had been granted, would have converted the piece of land verged green as the land in dispute and, the two portions of land verged pink within the area verged green, as the areas of trespass. This motion was subsequently withdrawn and struck out. Both parties and the trial court were however of the erroneous impression that the contest was in respect of the said area verged green. This common mistake regrettably persisted in the court below as neither the appellants nor the respondent as much as mentioned it any where in their briefs of argument before that court. It was contended that both courts below found overwhelmingly for the respondent in his claims in respect of the said area verged green in Exhibit 3. The area verged pink being within the land verged green, learned counsel submitted that this court is entitled to affirm the judgment of both courts below in respect of the said area

verged pink in Exhibit 3.

Turning to the issues under consideration, it cannot be disputed that a close study of the pleadings and the survey plans filed by the parties discloses in no uncertain terms, that the land in dispute is more particularly shown and delineated on the respondent's survey plan, Exhibit 3 and is therein shown verged pink. But it is therein shown as only a portion of land acquired by first deforestation by the respondent's father, Emenike, which land is known as and called "Ude Uchu". The whole of the respondent's "Ude Uchu" land is verged green in the respondent's survey plan, Exhibit 3. Within this piece of land verged green are two portions thereof verged pink which, together, comprise the land in dispute.

By a motion on notice dated and filed in the trial court on the 5th day of October, 1977, the respondent applied to amend, inter alia, paragraph 3 of his Statement of Claim by constituting the parcel of land verged green in Exhibit 3 the piece of land in dispute, and the portions verged pink as the areas of trespass. This motion was on the date of commencement of the actual hearing of the suit before the trial court with drawn by learned counsel for the respondent and was duly struck out. Accordingly the land in dispute remained the piece or parcel of land verged pink in Exhibit 3.

It is, however, clear from the proceedings that for one reason or the other, both parties to the dispute together with the trial court labour under the misapprehension that the piece or parcel of land in dispute was the area verged green, as against the true area in dispute verged pink in Exhibit 3. And so, the learned trial Judge in the course of his judgment had cause to observe as follows:-

"The plans of both parties were received in evidence by consent. The plaintiff's plan NO. E/GA1583/73 was marked Exh. 3, while the defendants' plan NO. MEC/336/74 was marked Exh. 4. The two plans are identical on the area of the land put in issue by the plaintiff. The northern boundary of the land is Uchu stream. The southern boundary is marked by other lands. Exhibit. 3 as well as Exh 4 Verged the said land in dispute green. In-side it are two portions verged pink said to be the

areas of trespass complained of by the plaintiff. The disputed land is well known to both parties. Its boundaries, on the face of the plans of both parties, are not in dispute."

In the same vein, the learned trial Judge after an exhaustive evaluation of the entire evidence led before the court concluded thus - B

"..... I reject the defence evidence to the contrary. If this conclusion were arrived at before the 29th of March, 1978, I would have made a declaration of title of ownership to the land verged green in the plan exhibit 3 in favour of the plaintiff in the capacity he sued. But in view of the provisions of the Land Use Decree No. 6 of 1978, the declaration I now make is that the plaintiff and his brothers are entitled as against the defendants to the customary right of occupancy to the said piece of land." C

It is note-worthy that neither the appellants nor the respondent D in their briefs of argument before the Court of Appeal raised the issue, no matter how remotely, of the land in dispute not being the area verged green in Exhibit 3 as decreed by the trial court. It was also not the complaint of either of the parties, particularly the appellants in their brief E of argument, that the learned trial Judge had erred by awarding to the respondent an area of land more than what he had claimed. They did not also raise the point or make an issue of it in their very comprehensive notice and grounds of appeal to the Court of Appeal. Indeed in their brief F of argument before this court, the appellants conceded thus -

"It is submitted therefore that as the judgment of the Court of Appeal was given in the mistaken belief that the proposed amended statement of claim was not with-drawn and struck out, the judgment as well as the decision and the orders made should be set aside by the Supreme Court." G

The respondent, for his own part, submitted in paragraph 4(a) of his own brief of argument before the Court of Appeal as follows -

"The land in dispute is verged GREEN on the respondent's Plan H - Exhibit 3 - and on the appellants' plan - Exhibit 4. The learned trial Judge found that:

'the two Plans are identical on the area of the land put in issue

by the plaintiff. In both Plans the land in dispute is verged *GREEN*'.

Later on, the learned trial Judge concluded as follows:-

'The disputed land is well known to both parties. Its boundaries, on the face of the Plans of both parties, are not in dispute.'"

B There is next the judgment of the Court of Appeal where Macaulay, J.C.A., delivering the leading judgment of the court which was concurred to by Ikwechegh and Katsina - Alu, JJ.C.A. Commented as follows -

C *"I therefore have no hesitation in saying that the case on the whole was fought over the entire piece or parcel of land verged Green, however called or described by the contestants, and that the respondent's case was found to be more probable."*

Earlier on, Macaulay, J.C.A had also stated thus -

D *"The judgment of Obi-Okoye J, is predicated on the findings of fact that the land in dispute is the whole piece or parcel of land verged GREEN, over a piece or parcel well-known to the contestants and clearly shown on their respective sketch plans, Exhibit 3 and 4, whatever may*
E *have been the names the parties called the said land."*

It seems to me clear that the two parties to this dispute, including, regrettably, the trial court, appeared to have been ad idem on the issue that the piece or parcel of land in dispute was the area verged green in the plans Exhibits 3 and 4. I think it would be right to state that both
F parties fought the case on the basis that the entire area verged green in both plans was the parcel of land in dispute.

The respective cases of both parties have already been stated earlier on in this judgment. It suffices to state that the learned trial Judge
G painstakingly reviewed the case of both parties and tested their traditional history with events in recent times, before he arrived at the conclusion that the respondent's case was more probable than the defence of the appellants. Said the learned trial Judge:-

H *"I have given careful consideration to the evidence adduced by both parties. Despite the apparent indecision of the defence on the issue, I think there is sufficient evidence from both sides on which I can come to the conclusion, and I do so, that a custom exists in Umuchu as pleaded by*

the plaintiff, whereby a person becomes the owner of any piece of land which he first deforested. It is one thing to say that right now at Umuchu, there is no virgin forest for anyone to deforest, and quite another to say that such custom is non-existent. There is in fact evidence from some defence witnesses that the land which they themselves claim as their own were acquired by deforesting the lands. The core of the defence on this is that in the time of Emenike, there couldn't have been more land left for him to deforest. But I regard this as mere surmise which flies on the face of the evidence. There is evidence from the plaintiff and his witnesses that the land in dispute was acquired by Emenike who deforested it."

He went on:-

"From the totality of the evidence and in view of the reasons given above, I am satisfied that the case of the plaintiff is more probable than the defence of the defendants. I find as a fact that Emenike, the father of the plaintiff, originally deforested the land now in dispute and appropriated it according to the custom of the people as his personal land. He planted raffia palms therein. At his death, the land devolved to the plaintiff and his brothers. Since the death of Emenike, his sons have been exercising maximum acts of ownership over the land which include putting in farming tenants therein such as their last witness Ezeanya Unekwe and causing the raffia palms therein to be tapped for their benefit. I reject the defence evidence to the contrary."

The learned trial Judge then considered the Native Court proceedings in suit numbers 255/1927 and 475/28, Exhibits 1 and 2 and was satisfied that the land in dispute in those cases was the same as the land in dispute in the present action. He held that the relevance of Exhibits 1 and 2 was that Emenike was protecting his interest in the land in dispute in those cases while the appellants' fore-fathers stood by and did not intervene. He accordingly found for the respondent and declared that the respondent and his brothers were entitled, as against the appellants, to the customary right of occupancy to the piece or parcel of land verged green in the plan Exhibit 3. N200.00 damages for trespass was awarded against the appellants together with perpetual injunction restraining the appellants, their servants and agents from any further entry on the said

land. This judgment, as I have already indicated was affirmed by the court below. The real question is whether the respondent, in all the circumstances of the case, is entitled to succeed in his claims in respect of the area verged pink which, without doubt, is the land in dispute in this B action.

Before deciding the point, I think it is convenient at this stage to dispose briefly of the second issue which poses the question whether the court below failed to deal with the fresh evidence, Exhibits "A" and "B", C as alleged by the appellants, and consequently, whether its judgment is not therefore erroneous on point of law. The contention of the appellants is that the said Exhibits "A" and "B" were evidence of the fact that P.W 3, whose testimony the trial court was said to have "almost entirely based its decision on" was allegedly convicted and fined by the same D court for "telling lies" in respect of the alleged deforestation of the land in dispute.

In the first place, the trial court is a superior court of record and is enjoined pursuant to the provisions of section 53 of the High Court E Law of the former Eastern Nigeria, 1963 to take down in writing the purport of all oral evidence given before the court and the minutes of the proceedings. Similarly, under the provisions of Order 49 Rule 4 of the High Court Rules of Eastern Nigeria, a minute of every judgment shall be F made by the court. I have closely studied Exhibits "A" and "B" and can find nothing therein in support of the submission of learned counsel for the appellants to the effect that P.W. 3 was tried and/or convicted for telling any untruth to the court in respect of the deforestation of the land in issue by the respondent's father.

G **A judgment of a superior court of record should speak for itself and extrinsic evidence is, in general, inadmissible in substitution of judicial documents. Thus, the record, or a certified true copy thereof, is the proper legal evidence of a proceeding in the H High Court. And even if P.W. 3 was convicted by the trial court as alleged, it is clear that there is nothing on record to connect the alleged conviction with his evidence in respect of the deforestation in issue.**

At all events, it is apparent from the judgment of the court below at pages 158 and 159 of the record of proceedings that it carefully considered Exhibits "A" and "B" but found them unhelpful. The court observed thus -

"On the preponderance of evidence accepted before the learned trial Judge, I am clearly of the view that the respondent having made out a case, the totality of that body of evidence before him the plaintiffs/respondents were, in my view, entitled to succeed in the writ filed."

I agree entirely with this conclusion of the Court of Appeal as apart from P.W. 3, there is the evidence of the respondent, Julius Emenike and P.W. 2, Jeremiah Emenike, both of whom testified as to how Emenike acquired the land by deforestation. Issue 2 must therefore be resolved in favour of the respondent.

Turning now to the more important aspect of this appeal, a basic principle of law that must be stressed is that a court is without power to grant to a party a relief or remedy which he has not claimed or which is more than he has sought. See Edward Egonu (1978) 11-12 SC 111 at 133, Ekenyong v. Nyong (1975) 2 S.C. 71 at 81 - 82, Kalio v. Daniel Kalio (1975) 2 SC 15 at 17, Makonjuola v. Balogun (1989) 3 N.W.L.R. (Part 108) 192 at 206, Olurotimi v. Ige (1993) 8 N.W.L.R. (Part 311) 257 at 271 etc. It is therefore plain to me that the trial court was clearly in error to have awarded to the respondent, as against the appellants, customary right of occupancy in respect of the piece or parcel of land verged green in Exhibit 3. This is because the said piece or parcel of land verged green not only covers the precise area claimed by the respondent in the suit but it is far greater in extent than the piece or parcel of land verged pink claimed by the respondent. The crucial question is the position of the area verged pink claimed by the respondent in the suit and whether he is entitled to judgment in respect thereof.

As I have already mentioned, it is not in dispute that the learned trial Judge after a careful evaluation of the evidence of traditional history led on behalf of both parties and having tested the same in the light of recent facts established by evidence ac-

cepted the story of the respondent. Evidence of traditional history where this is found by the court to be cogent, as in the present case, can support a claim for declaration of title to land. See Alade v. Lawrence Ano (1975) 4 S.C. 215 at 228, Olujebe of Ijebu v. Oso (1972) 5 S.C. 143 at 151, Idundun and others v. Daniel Okumagba (1976) 9/10 S.C. 227 at 245 etc. He therefore held that the respondent was entitled to a customary right of occupancy in respect of the land verged green in Exhibit 3.

The above vital finding of the learned trial Judge is fully supported by evidence and was affirmed by the Court of Appeal. The finding is clearly relevant in the suit as although the respondent's claims were in respect of the area verged pink in Exhibit 3, both parties joined issue on the question of ownership of the larger area of land verged green. The said issue was fully canvassed by both parties following which the trial court arrived at his finding thereupon. This did not however enjoin the trial court to make any solemn award of title to the respondent in respect of any land outside the piece or parcel of land claimed by him in the suit verged pink in the plan Exhibit 3. The finding, however, seems to me relevant and vital, having regard to the provisions of Section 46 of the Evidence Act which enact as follows:-

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

For the above section of the law to apply, however, there must be proof, as found in the present case, or an admission by the other party, that the land in dispute is surrounded by other lands belonging to the plaintiff. See O. O. Idundun and others v. Daniel Okumagba (1976) 9-10 S.C. 227 at 249. The final question must now be whether in all the circumstances of this case, the respondent's claim must be dismissed in its entirety as urged by learned counsel for the appellants by reason of the fact that both courts below awarded title to the respondent to more land

that he claimed.

It is settled law that where a plaintiff who is claiming a declaration of title to land succeeds in proving the boundaries and title to a smaller parcel of such land, he would be entitled to a declaration of title in respect of such smaller parcel of land in dispute, the title and boundaries of which he has proved with certainty. See Udeze v. Chidebe (1990) 1 N.W.L.R. (Part 125) 141 Sogunle v. Akerele (1967) N.M.L.R. 58, Araba v. Asanlu (1980) 6 - 7 S. C. 74 at 85 - 87, Iuna v. Okogbe (1993) 9 N.W.L.R. (Part 316) 159 at 175. In the present case, the respondent claimed ownership of the entire piece or parcel of land verged green in the plan Exhibit 3. The appellants, for their own part, made similar claim of ownership to the said piece or parcel of land verged green. Both courts below were of the view that the said piece or parcel of land was in the ownership of the respondent. The parcels of land verged pink in Exhibit 3 are completely within and form part of the said piece of land verged green in respect of which ownership was found in favour of the respondent. Their boundaries are also not in dispute as they are more particularly delineated in the respondent's plan Exhibit 3. In the circumstances, I think the trial court would have been entitled to issue a decree of title in favour of the respondent in respect of the areas verged pink in Exhibit 3 which constitute the land in dispute in this case. See too Nathan Okechukwu and others v. Frederick Okafor and others (1961) ALL N.L.R. (Part 4) 685.

In the final result the judgments of both courts below are hereby amended and it is declared that the respondent, representing members of the Emenike family of Amaba, Umuchu is entitled, as against the appellants, to a grant of customary right of occupancy in respect of the areas verged pink on the plan, Exhibit 3. Subject thereto, this appeal is hereby dismissed with costs to the respondent against the appellants which I assess and fix at N10,000.00

WALI JSC

I have read before now the lead judgment of my learned brother Iguh, JSC and I agree with his reasoning and conclusion for allowing the appeal in part.

B For the same reasons ably set out in the lead judgment which I hereby adopt, I also allow the appeal in part and make the following consequential orders:-

C that the judgment of both the trial court and the Court of Appeal are hereby amended in that the respondents representing members of the Emenike family of Amaba Umuchu are entitled, as against the appellants to a grant of customary right of occupancy in respect of the area verged pink on the plan Exhibit 3; and subject thereto, the appeal is hereby dismissed with N10,000.00 costs to the Respondents against the Appel-
D lants.

OGUNDARE JSC

E I agree entirely with the judgment just delivered by my learned brother Iguh, JSC.

F There is no doubt that the issue between the parties, both in the pleadings and evidence, was as to who of their respective fathers deforested the land shown 'green' on their plans Exhibits 3 and 4 and thereby owned same. The learned trial Judge after a painstaking evaluation of the evidence, found it was Plaintiff's father Emenike who deforested the land and, by custom of the area, owned it. The Court of Appeal affirmed this finding of fact. I have not been persuaded in this appeal to come to a
G different conclusion. I too affirm that finding.

In paragraph 3 of his statement of claim, however, the Plaintiff claimed title and injunction to the areas marked PINK on his plan, rather than the entire area owned by his father and marked 'GREEN'. His case
H was that the whole area marked 'GREEN' was inherited from his father but that Defendants trespassed into the areas marked 'Pink'. The case was fought on that basis. The trial Court on that understanding entered judgment in favour of the Plaintiff and granted title and injunction to him

in respect of the whole area. An application to amend paragraph 3 to extend the claims to the whole area marked Green was, for inexplicable reasons, not pursued with and was struck out. No doubt, had the application been pursued with, the trial court would have granted it in order to bring the pleadings in line with the evidence and in order to do substantial justice between the parties - OLOTO V. ATTORNEY-GENERAL, 2 FSC 74, OGUNTIMESIN V. GUBERE (1964) 1 ALL NLR 176. Even at the stage of the appeal to this Court, the Plaintiff could still have moved this Court to amend his pleadings and this Court pursuant to section 22 of the Supreme Court Act and Order 8 rule 12 (1) of the Rules of this Court, would have considered such application and would have granted same if it was satisfied that to do so would bring the pleadings in line with the evidence or would do substantial justice among the parties - see: ADEGBAIYE VS AKINRIMISI (1974) 10 SC 123. No application has, however, been brought before us for this purpose. In the result the judgment of the trial Court must be amended to reflect what Plaintiff actually claimed, notwithstanding that there is a finding in his favour that his father, and, therefore himself, owned the whole area edged 'Green' on Exhibits 3 and 4.

Subject to this amendment made in the lead judgment of my learned brother Iguh JSC, I see no merit in this appeal which I too dismiss. I abide by the consequential orders, including the order as to costs, made by him.

OGWUEGBU JSC

I have had a preview of the judgment of my learned brother Iguh, J.S.C I entirely agree with his reasoning and conclusion. I, too, dismiss the appeal as lacking in merit. I abide by the consequential orders contained therein including the order as to costs.

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MOHAMMED JSC

I agree with the opinion of my Lord, Iguh, JSC, in the judgment just delivered. I have had the privilege of reading the judgment in draft before now. I agree that the judgments of the two lower courts be
B amended to the effect that the respondent is entitled to a declaration that he, being representative of Emenike Family of Amaba, Umuchu, is entitled to a grant of the customary right of occupancy in respect of the area verged pink on the plan, Exhibit 3. Consequently, the appeal is
C dismissed with costs as assessed at N10,000.00 in favour of the respondent.

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