

**SUPREME COURT OF NIGERIA**  
15TH JANUARY, 1999. SC.217/1993  
**CORAM:- S. M. A. BELGORE, A. B. WALI, M. E. OGUNDARE,**  
**E. O. OGWUEGBU, S. U. ONU JJSC.**

GODWIN UZOECHI

(Substituted for John Eleke, deceased

For himself and on behalf of Nkpokirioha

alias Okorokwaraure Kindred of Obiohia in

Ideato Local Government Area ..... PLAINTIFF/RESPONDENT/

APPELLANT

AND

ELIAS ONYENWE & ORS. .... DEFENDANTS/APPELLANTS/

RESPONDENT

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***ACTIONS*** - Representative action - Locus standi - Where by the pleadings and evidence - The plaintiff belonged to the kindred whose interest is affected by the dispute - He has every right to sue.

***APPEALS*** - Findings of fact - By trial court -Based on pleadings and evidence before it - The Court of Appeal was in error to have interfered with them.

**FACTS**

The plaintiff/respondent/appellant brought an action against the defendants/appellants /respondents seeking for declaration of title, damages for trespass and injunction in respect of a piece of land called Ohiagu situate at Obiohia in Ideato Local Government Area of Imo State. The original plaintiff John Eleke who sued in a representative capacity on behalf of Okorokwaraure kindred, died on 2nd February, 1982, in the course of the proceedings and by the application of the kindred the present plaintiff Godwin Uzoechi was granted leave by the trial High Court to be substituted as plaintiff. The plaintiff pleaded that his kindred is called Okorokwaraure in Obiohia and the kindred is also known as Mkpokiriohia.

The defendants admitted this in paragraph 2 of their statement of Defence. However the defendants asserted that the plaintiff's kindred were shown the land in dispute by the defendant's ancestors for their dwelling.

At the conclusion of hearing, the learned trial judge delivered judgment in favour of the plaintiffs. Aggrieved, the defendants appealed against this decision to the Court of Appeal, Port Harcourt Division. The Court of Appeal allowed the appeal and set aside the entire decision of the trial court. The plaintiffs have now appealed to the Supreme Court raising three issues: but the appeal was determined on two issues.

### **ISSUES FOR DETERMINATION**

*"i. Whether the plaintiff proved his locus standi to sue in respect of land which, on the evidence, belongs to the descendants of OKOROKWARAURE.*

*ii. Whether the Court of Appeal acted correctly in reviewing the findings of fact of the High Court, setting aside the same and substituting its own findings.*

**HELD** (Unanimously allowing the appeal per lead judgment of **BELGORE JSC**)

### ***Actions - Representative action - Locus Standi***

1. It is clear in paragraph 2 of the amended statement of defence that the defendants admitted plaintiff belonged to Okorokwaraure kindred and thus he had locus standi to sue. The Court of Appeal apparently erred when it held that the plaintiff was not from Okorokwaraure kindred. The plaintiff, by the pleadings and evidence before the trial court had every right to sue either by himself or in a representative capacity because he was of the Okorokwaraure kindred in so far as it is right for him to protect his interest as well as that of his kindred (See Melifounwu & Ors. vs. Egbuji & Ors. (1982) 9 SC. 145; Odeneye v Efunuga (1990) 7 NWLR (pt. 64) 1618. (p. 62 C)

### ***Appeals - Findings of fact***

2. The Court of Appeal was in error to have interfered with clear findings

of fact by trial court based on pleadings and evidence before it. Once the findings of fact are based on the evidence upon the pleadings of the parties, the Court of Appeal should not interfere with them (Agwunedu vs. Onwumere (1994) 1 NWLR (Pt. 321) 375;; Nwoke vs. Okere (1994) 5 NWLR (Pt. 343) 159. It is a different thing if trial court failed to make findings or arrived at inconsistent findings on a crucial issue raised by the parties (Adegbite vs. Ogunfaolu) (1990) 4 NWLR (Pt.146) 578. With great respect, the Court of Appeal never availed itself of this time honoured principle of law. (p. 64 E)

## **NOTABLE POINT OF INTEREST**

### **OGUNDARE JSC**

#### *1. Use of affidavit evidence in an earlier application*

Another ground for interfering with the judgment of the trial High Court is the use made by the trial High Court of the affidavit evidence in an earlier interlocutory application before the trial court. I think here again the court below went off tangent. I cannot see the justification for the criticism made by the court below in this regard. As earlier found by me above the competence of the plaintiff to sue in this case was not an issue between the parties at the trial. The use, whether rightly or wrongly, of the affidavit evidence was only to show the competence of the plaintiff. This is of no consequence in this case as the plaintiff had already been granted leave to represent the plaintiff's kindred in the action. (p. 66 A)

### **REPRESENTATION**

Chief F.R.A Williams, SAN (with him T.E. Williams) for the Appellants.  
G.R.I. Egonu, SAN. (with him N.C. Obi Esq.) for the Respondents.

### **CASES REFERRED TO**

Oloriodi vs. Oyebe (1984) 1 SCNLR. 268.  
Melifounwu & Ors. vs. Egbuji & Ors. (1982) 9 SC. 145;  
Odeneye v Efunuga (1990) 7 NWLR (Pt. 64) 1618;  
Oseni vs. Dawodu (1994) 4 NWLR (Pt. 339) 390;  
Akinfolarin vs. Akinnola (1994) 3 NWLR (Pt. 335) 659).

Agwunedu vs. Onwumere (1994) 1 NWLR (Pt. 321) 375;;

Nwoke vs. Okere (1994) 5 NWLR (Pt. 343) 159;

U. B. N. Ltd. vs Albert Ozigi (1994) 3 NWLR (Pt. 333) 385;

Oro vs. Folade (1995) 5 NWLR (Pt. 396) 385;

B Nlewedim vs. Uduma (1995) 6 NWLR (Pt. 402).383:)

Adegbite vs. Ogunfaolu (1990) 4 NWLR (Pt.146) 78

### **LEAD JUDGMENT BY BELGORE JSC**

C The original plaintiff who sued in representative capacity on behalf of okorokwaraure kindred, John Eleke died on 2nd February, 1982, in course of proceedings and by application of the kindred the present plaintiff, Godwin Uzoechi was granted leave by trial court to substitute as plaintiff. The action was for declaration of title, damages for trespass and injunction in respect of a piece of land called "Ohiagu" by plaintiff D and in respect of which a plan, Exhibit A was drawn. After all the pleadings were exchanged, the trial court heard evidence and Ugoagwu, J., delivered judgment in favour of the plaintiff by concluding as follows:-

E *"In the final result, on a calm view of the totality of the evidence adduced, the pleadings and submission of learned counsel for the parties, I am satisfied that the plaintiff has proved his case on the balance of probabilities and that he is entitled to the judgment of this Court.*  
F *I will also add that I find as a fact that the name of the land in dispute is "Ohiagu" and not "Ukabi". Consequent upon the aforementioned judgment, the learned judge made the following orders:-*

G *"1. The plaintiff Godwin Uzoechi and members of Okorokwaraure kindred in Obiohia are entitled to the Customary Right of Occupancy of that piece of land called "OHIAGU" situate at Obiohia in ideato local Government Area within jurisdiction and more particularly shown verged Red in plan No.P.O./E41/76, Exhibit 'A'.*

H *2. The defendants shall, jointly and severally, pay to the plaintiff N400.00 general damages for trespass to the said land.*

*2. The defendants by themselves, their agents and of servants are hereby perpetually restrained from acting in any manner inconsistent with the plaintiff's rights of possession of the said Ohiagu land."*

The defendants appealed against this decision to the Court of Appeal port Harcourt Division.. The court of Appeal allowed the appeal and set aside the entire decision of the trial court. The plaintiff pleaded that his kindred is called Okorokwaraure in Obiohia and the kindred is also known as Mkpokiriohia, this defendants admit in their paragraph 2 of Statement of Defence. However defendants assert that the plaintiff's kindred were shown the land in dispute by defendant's ancestors for their dwelling. It is very clear in this paragraph 2 which state as follows:-

*"The defendants admit paragraph 1 of the Statement of claim only to the extent that the plaintiff is a resident of the kindred called Okorokwaraure in Obiohia and also called Mkpokiriohia which is the name of the section of Okorokwaraure to whom the defendants 'ancestors showed a dwelling place in a portion of defendants' village land called Ukabi Ohiagu now being disputed by the plaintiff. Defendants deny that plaintiff's fellow kinsmen are all in support of plaintiff's claim to defendants' land or that he represents them and plaintiff is hereby put to the strictest proof thereof."*

That the defendants were not disputing that the plaintiff, Godwin Uzoechi is a member of Okorokwaraure kindred of Obiohia in Ideato Local Government . Nkpokirioha kindred is the same as Okorokwaraure kindred. Despite this admission of the kindred to which the plaintiff belongs by the defendants, it is curious that the Court of Appeal held as follows:

*"i that the plaintiff is not a member of Okorokwaraure kindred, he descending from Okonkwo and therefore in essence had no locus standi to sue on behalf of that kindred;*

*ii that the plaintiff failed to prove conclusively his traditional evidence because "any evidence of long possession build on traditional evidence must also fail since it would be without foundation:*

*iii no creditable evidence was led to prove plaintiff's claim to title by acts of ownership:*

*iv trial court did not properly evaluate the evidence relating to the traditional boundary between Ohiala and Uruala."*

The plaintiffs as appellants in this court, on the line of their grounds of appeal, formulated the following issues for determination:-

"i. *Whether the plaintiff proved his locus standi to sue in respect of land which, on the evidence, belongs to the descendants of*  
B *OKOROKWARAURE.*

ii. *Whether the Court of Appeal acted correctly in reviewing the findings of fact of the High Court, setting aside the same and substituting its own findings.*

iii. *Whether the Court of Appeal was right in deciding that the*  
C *plaintiff cannot rely on affidavits which were not tendered as evidence at the interlocutory stage of the proceedings."*

**It is clear in paragraph 2 of the amended statement of defence that the defendants admitted plaintiff belonged to**  
D **Okorokwaraure kindred and thus he had locus standi to sue.** Before the Court of Appeal, the defendants as appellants in their brief of argument stated clearly as follows:

*"It was common ground between the parties that the plaintiff/*  
E *respondent and his kindred (Okorokwaraure) were native (sic) of Obiohia and that the defendants/ appellants were natives of Umuago Urualla."*

**The Court of Appeal apparently erred when it held that the plaintiff was not from Okorokwaraure kindred.** The Court no doubt  
F got confused by not relating that Okechukwu the plaintiff, descendants was actually of the kindred of Okorokwaraure. This is one of the dangers of appellate court being unwary of disturbing findings of fact by trial court. It must be pointed out that plaintiff substituted John Eleke who died, and that to make substitution possible the court had to grant  
G leave so to do after hearing an application by way of motion supported by affidavit. The affidavit indicated clearly the relationship of the substitute to the Okorokwaraure kindred. Once he was allowed to substitute John Eleke, he certainly had acquired locus standi and that was never an  
H issue again in the Court of Appeal. It is a little storm in a cup. Assuming even the Court of Appeal is right that the plaintiff had no locus, will dismissal of the action be the lawful verdict. (See Oloriodi vs. Oyebe (1984) 1 SCN NLR. 268.) **The plaintiff, by the pleadings and evi-**

dence before the trial court had every right to sue either by himself or in a representative capacity because he was of the Okorokwaraure kindred in so far as it is right for him to protect his interest as well as that of his kindred (See Melifounwu & Ors. vs. Egbuji & Ors. (1982) 9 SC. 145; Odeneye v Efunuga (1990) 7 B NWLR (Pt. 64) 1618; Oseni vs. Dawodu (1994) 4 NWLR (Pt. 339) 390; Akinfolarin vs. Akinnola (1994) 3 NWLR (Pt. 335) 659). At any rate, the order of the High Court substituting late John Eleke with Godwin Uzoechi was not challenged either at the High Court or at the Court of Appeal. C

The Court of Appeal dwelt at length on findings of fact by the trial court. An appellate court must be wary of disturbing the findings of fact by trial court. The trial court saw and heard the parties and it is not easy task for an appellate court to replace its eyes and ears for those of trial court. The evidence of plaintiff on traditional history in line with his statement of claim was that the first owner of the disputed land was one Ohaere. This the Court of Appeal held, was deficient because it was not pleaded how Ohaere came on the land "whether by conquest, deforestation and appropriation of virgin land". Is this a defect when viewed along with what is contained in the evidence and pleading of the defendant? Is it always necessary to indicate how a remote ancestor settled on the land? It is remarkable to find that the Court of Appeal observe as follows:- D E F

*"Another glaring flaw in the judgment of the learned trial judge is his misdirection when, on page 165 lines 7-13 he commented that the appellants did not plead their traditional history in respect of the land in dispute and that the respondent pleaded his and led evidence in support. He went further to hold on page 168 lines 16-19 that there was no evidence from the appellants to weigh against that of the respondent on traditional evidence."* G

That Court never pointed at any evidence the trial Court omitted on the side of defendants. The Court of Appeal also never indicated the traditional evidence of defendants the trial court never considered. Rather the trial court juxtaposed traditional evidence on both sides and came to a H

conclusion believing the plaintiff's evidence. The plaintiff pleaded and testified on three survey beacons on the Northern boundary of the land in dispute, these survey beacons are in the plans tendered as Exhibits A and B by plaintiffs and defendants respectively. The plaintiff pleaded Nkoro B (ancient defensive trench) as the Northern boundary and showed it on Exhibit A. The defendants who planted the beacons and called them (plaintiff's kindred) to witness the exercise; the defendants were silent on this. The trial judge on this believed the version of the plaintiff and rejected the evidence of the defendants. The defendants established the C beacons because the Nkoro was becoming shallow and with time it might disappear altogether; the trial court believed this. It is to be noted that rather than the Nkoro the plaintiff claimed as the boundary the defendants denied even having a common boundary with the plaintiff's kindred. D The Court of Appeal, like the trial court, believed they had a common boundary.

The plaintiff's kindred were all along in physical possession of the land in dispute by farming on it. The defendants tried to explain this E away by claiming the plaintiff's kindred were their customary tenants, which the trial court rightly rejected. **The Court of Appeal was in error to have interfered with clear findings of fact by trial court based on pleadings and evidence before it. Once the findings of fact are based on the evidence upon the pleadings of the parties, the F Court of Appeal should not interfere with them** (Agwunedu vs. Onwumere (1994) 1 NWLR (Pt. 321) 375; Nwoke vs. Okere (1994) 5 NWLR (Pt. 343) 159; U. B. N. Ltd. vs Albert Ozigi (1994) 3 NWLR (Pt. 333) 385; Oro vs. Folade (1995) 5 NWLR (Pt. 396) 385; Nlewedim G vs. Uduma (1995) 6 NWLR (Pt. 402) 383). It is a different thing if trial court failed to make findings or arrived at inconsistent findings on a crucial issue raised by the parties (Adegbite vs. Ogunfaolu) (1990) 4 NWLR (Pt. 146) 578. With great respect, the Court of H Appeal never availed itself of this time honoured principle of law.

*"It is to be noted that the defendants tried to make a big issue of the missing Nkoro in their plan Exhibit B. Rather, belatedly they concentrated their argument not on Nkoro but on "Awala Muo"- which means*



*the same thing. It has not caused the slightest confusion .*

I find great merit in this appeal and for the foregoing reasons, I allow it. I set aside the decision of the Court of Appeal and restore the judgment of the trial court. I award N10,000.00 against the defendants /respondents in this court and N5,000.00 in the Court of Appeal as costs in favour of plaintiff/appellant. B

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### WALI JSC

I have read in advance the lead judgment of my learned brother Belgore, JSC and I agree with his reasoning and conclusion for allowing the appeal and restoring the judgment of the trial court in favour of the plaintiff's/appellants. C

For the same reasons ably stated in the lead judgment, I also hereby allow the appeal and adopt the consequential orders made therein, that of costs inclusive. D

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### OGUNDARE JSC

I have had the privilege of a preview of the judgment of my learned brother Belgore JSC just delivered. I agree with him that this appeal has merit. E

On the first issue placed before the court below, that is, whether the plaintiff proved his locus standi to sue in respect of the land in dispute, I agree with the reasoning of my learned brother that plaintiff had the necessary locus standi. Not only is he a member of the Nkpokirioka (otherwise known as Okorokwaraure) kindred, the members of that kindred appointed him to represent them in the action in substitution for their original leader John Eleke who died in the course of the proceedings. The new plaintiff obtain leave of court to represent that kindred. Neither did the defendants contest the competence of the plaintiff to prosecute the action. To all intents and purposes the action was strictly between the plaintiff's kindred and the defendants' kindred. The parties herein were only named parties. There is, therefore, no basis for the F G H

finding of the court below to the effect that the plaintiff had no locus standi to prosecute his action.

Another ground for interfering with the judgment of the trial High Court is the use made by the trial High Court of the affidavit evidence in an earlier interlocutory application before the trial court. I think here again the court below went off tangent. I cannot see the justification for the criticism made by the court below in this regard. As earlier found by me above the competence of the plaintiff to sue in this case was not an issue between the parties at the trial. The use, whether rightly or wrongly, of the affidavit evidence was only to show the competence of the plaintiff. This is of no consequence in this case as the plaintiff had already been granted leave to represent the plaintiff's kindred in the action.

I agree with the reasoning of my learned brother Belgore, JSC on the issue of the findings of fact made by the trial court. I agree entirely with him that the court below was wrong to have reviewed those facts and to have come to a conclusion different from that of the trial court. The attitude that an appellate court should adopt towards findings of fact made by a trial court has been restated in a number of cases. In Lengbe v. Imale (1959) WNLR 325, the Federal Supreme Court (the precursor of this Court) per Quashie -Idun, Ag. F. J. declared at page 328 of the report:

*"It is not function of this Court to disturb the findings of the lower Court, but , where in the opinion of the Court, such findings are not supported by the evidence, or where the judgment is unreasonable having regard to the evidence, the Court will set aside the judgment."*

This summarizes the general attitude of an appellate court towards findings of fact of the trial court. See further, Fatoyinbo v. Williams 1 FSC 87, Okpiri v. Jonah (1961) All NLR 102, Akinola v. Oluwo (1962) 1 All NLR 224, Akinyemi v. Akinyemi (1963) 1 All NLR 340, Akinloye v. Eyiola (1968) NMLR 92 and a host of other cases on the same issue. Having regard to the pleadings and the evidence in this case I think the court below was clearly in error to have sought to reverse the findings of fact made by the trial High Court. There was no justification for this.

The findings of the trial court are adequately backed up by the credible evidence before the learned trial judge.

For the reasons given above and the other reasons in the lead judgment of my learned brother Belgore JSC, I too allow this appeal, set aside the judgment of the court below and restore the judgment of the trial High Court. I abide by the order for costs made by my learned brother Belgore JSC.

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**OGWUEGBU JSC**

I have had the benefit of reading in draft the judgment just delivered by my learned brother Belgore, J, S, C, with which I entirely agree. I too would therefore allow the appeal.

I however wish to add by way of emphasis that the learned trial judge considered and evaluated the evidence adduced by the parties before making his findings. The findings are supported by the totality of the evidence and as there is no obvious error in the judgment, the court below was wrong to have interfered with those findings of fact. See Federal Commissioner For Works & Housing v. Lababedi (1977) 11-12 S.C. 15, Fashanu v. Adekoya (1974) 1 All N.L.R. (Pt. 1) 35, Akinloye & Ors. v. Eyiola & Ors. (1968) N.M.L. 92, Fatoyinbo & Ors. v. Williams & Ors. (1956) 1 F.S.C. 87 and Benmax v. Austin Motors Co. Ltd. (1955) A.C. 370.

In this case, my examination of the evidence showed that the learned trial judge was right when he held:-

*(1) that the defendants failed woefully to prove that their ancestors showed plaintiffs people the portion verged brown in Exhibit "B" for settlement;*

*(2) that the traditional evidence adduced by the plaintiff relating to ownership and possession of the portion verged brown in Exhibit "B" from Ohaere to John Eleke which was five generations or from Ohaere to Godwin Uzoechi (present plaintiff) which is six generations was not contradicted;*

*(3) that the story of payment of tribute by the plaintiffs people*

was a mere concoction;

(4) that the so-called Awalla-Muo is not the boundary between the towns of Obiohia and Urualla, and,

(5) that the defendants planted survey beacons Nos. CE 21388, CE 21382 and CJ 11993 on the northern boundary of the land in dispute when they were surveying their land and that when doing so, they invited the plaintiff and his people to witness the same.

Where a court of trial unquestionably evaluated the evidence and appraised the facts as in this case, it is not open to a Court of Appeal to substitute its own views for those of the trial court which is abundantly supported by the evidence.

For this reason and the fuller reasons contained in the Judgment of my learned brother Belgore, J.S.C. I too would allow the appeal and make the same orders as to costs proposed by him.

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### ONU JSC

Having been privileged to have a preview of the leading judgment of my learned brother Belgore, JSC just read, I am in entire agreement with his reasoning and conclusions that this appeal has great merit and ought therefore to succeed.

I too accordingly also allow it and make similar consequential orders as contained in the leading judgment.

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