

SUPREME COURT OF NIGERIA

9TH JULY, 1999. SC. 100/1993

**CORAM:- S. M. A. BELGORE, I. L. KUTIGI, S. U. ONU,
U. A. KALGO, S. O. UWAIFO, JJSC.**

AKAAER JOV	APPELLANT
V.		
KUTUKU DOM	RESPONDENT

APPEALS - Grounds of appeal - Incompetence - Where the issues formulated for consideration - Hardly follow the grounds of appeal - And the grounds are incompetent - The appeal cannot be competently considered.

JUDGMENTS - Appeal - findings of facts - By trial court - The attitude of appellate court to such findings.

JURISDICTION - Appeal - Issue of jurisdiction - Raised as a new issue at the Supreme Court - Although question of jurisdiction can be raised at any time in the proceedings - The proper procedure must be followed.

JURISDICTION - Land Use Act - Land covered by customary right of occupancy - The Court with jurisdiction in Benue State - In respect to such land - Is the Area Court.

FACTS

At Ihugh Area Court of Benue State the plaintiff/respondent sued the defendant/appellant claiming for a declaration of title to a piece of farm land in Mbaakune-Mbakase village. The plaintiff claimed that when he first saw the defendant on the land, he made a report to their common kindred. The kindred headed by PW1 found in favour of the plaintiff and advised the defendant to desist from going into the land again. But some years later the defendant came back and entered into the land and the kindred intervened again and ordered the defendant to immediately vacate the land. The third time the defendant not only entered but started erect-

ing mud houses on the land. Hence the plaintiff sued the defendant in the Area Court at Ihugh which had jurisdiction over the land situate at Mbaakune-Mbakase. After hearing evidence and visiting the disputed land, the Area Court gave judgment in favour of the plaintiff against the defendant.

Dissatisfied the defendant appealed to the High Court of Benue State. The appeal was allowed on the assumption that the trial court never evaluated the evidence properly. A retrial was ordered. Aggrieved, the plaintiff appealed to the Court of Appeal, Jos Division. The Court of Appeal after hearing the appeal came to the conclusion that the appellate High Court was in error to have set aside the findings of fact of the trial Area Court and to have ordered a retrial. The court of Appeal was satisfied that there was ample evidence to support the decision of the trial Area Court. The appeal was then allowed. Still dissatisfied the defendant has further appealed to the Supreme Court raising five issues. He raised the issue of lack of jurisdiction of the trial Area Court as a novel issue at the Supreme Court. The plaintiff/respondent in his brief objected to Grounds of Appeal 1, 2, 3, 4, 5, 6 and 7 contending that they are all grounds of fact and at best, grounds of mixed law and facts for which leave was required to file them and no leave was ever sought and therefore contravened section 213 (3) of the Constitution of the Federal Republic of Nigeria 1979. The plaintiff further objected to Ground 5 in that it is a new ground which was never raised in the Court below and no leave was obtained to file and argue the ground on jurisdiction.

ISSUES FOR DETERMINATION

"(a) Whether or not the Court of Appeal was right in upholding the decision of the trial Area Court Ihugh, which lacked the jurisdiction and competence to hear and determine the claim of the respondent.

(b) Whether or not the Court of Appeal was right in re-evaluating the evidence, affecting the credibility of witnesses and affirming the decision of the trial Area Court by holding that "the appellant (respondent herein) did prove his case on the preponderance of evidence as required by law", and therefore, overturning the decision of the appellate High Court.

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

Appeals - Grounds of appeal

1. It is clear that grounds 1, 2, 3, 4, 6 and 7 are all grounds of mixed law and facts. Each ground either complains of the evidence not being considered or wrongly considered. The particulars of each are clearly matters of evidence. A ground is not a ground of law simply because the appellant calls it so, it is the content of the ground that will indicate what it really is. The issues formulated for consideration in this appeal, which are matters to be considered for deciding the appeal, hardly follow the grounds of appeal. This appeal therefore insofar as grounds 1,2,3,4,6 and 7 are concerned cannot be competently considered. Those grounds are incompetent and they are struck out. (p. 2189 E)

Jurisdiction - Appeal

2. As for the issue of jurisdiction raised in issue (a) for determination; it is a ground of law but it is novel to this case. It was never raised in any of the three tiers of courts below and to raise it here, a procedure must be followed. It is true, question of law and jurisdiction can be raised at any time in the proceedings, but it is not on a free for all procedure. The court can raise a matter of law and Constitution at any time, but in doing so the two sides must be afforded the opportunity of addressing on it. This basically goes to the spirit of fair hearing. It is for this reason that a party to an appeal that intends to raise a new issue or introduce a novel matter into an appeal must seek leave to do so. This is so in order to avail the other side every opportunity to advert to that issue. But to contend that issue of law or the Constitution can be raised at any time and do nothing more than to raise it in argument is like laying a disrupting ambush for the opponent. This is not the spirit of our practice of adjudication of holding the even balance. Proper application must be made so that the other side will know clearly what he has to meet. In the present appeal the appellant introduced ground 5 on lack of jurisdiction by trial Area Court, a matter not raised in the appellate High Court and in the Court of Appeal. It came like a bird out of the whirlwind. Why was this

not raised at the High Court or at the Court of Appeal? (p. 2189 H)

Jurisdiction - Land Use Act

3. Assuming at any rate that the issue on jurisdiction was properly raised,
 B I find no merit in it. The land in dispute is covered presumably under the
 Land Use Act by Customary Right of Occupancy and not Statutory Right
 of Occupancy and the court with jurisdiction in Benue State is the Area
 Court. (p. 2190 E)

C
Judgments - Appeal

4. The next question concerns the attitude of appellate court to findings
 of facts by trial court. The Area Court, Ihugh, to my mind, upon all the
 evidence before it found the case of the plaintiff proved to its satisfac-
 D tion. The defendant, now appellant, never called any credible witness
 and this is clear on the printed record before that court. Nothing is
 perverse or illegally received as evidence in the case. The High Court in
 its appellate jurisdiction clearly went beyond its powers by interfering
 E with clear and supported findings of facts of trial Area Court and in this
 case was in error. (Omoregie & Ors. vs. Idugiemwanye & Ors. (1985)
 N.S.C.C. (Vol. 8) (pt. 11) 838; Ejabulor vs. Osha (1990) 5 N.W.L.R. (pt.
 148) 1; Olowu vs. Olowu (1985) 3 N.W.L.R. (pt. 13) 372; Agbeja vs.
 F Agbeja (1985) 3 N.W.L.R. (pt. 11) 11). The Court of Appeal therefore
 came to a right decision when it held that the appellate High Court was in
 error to have interfered with the findings of fact of trial Area Court.
 (p. 2190 F)

G
NOTABLE POINTS OF INTEREST
ONUJSC

1. The substance of a claim before Area Courts - How determined

It is trite that the substance of a claim before area courts is determined by
 H reading the whole proceedings. See Innocent Ibero & Ors. v. Obioha
Ume-Ohana (1993) 2 S.C.N.J. 156 at 165-166; (1993) 2 N.W.L.R. (pt.
 277) 510 at 521 (per Nnaemeka-Agu, J.S.C)

".... Even though the court generally guards against regarding

evidence given in a previous suit as evidence in the instant when, however, the previous case was decided in a Native Court or in an appeal therefrom it is the substance and not the form that is material. So the whole proceedings must be regarded. The management and the evidence can be looked into to find out who the parties were and in what capacities they fought or defended the case as well as what the subject-matter and issues were. See on this - *Chapman v. C.F.A.O & Anor.* (1943) 9 W.A.C.A. 181; *Ikpang & Ors. v. Edoho & Anor.* (1978) 2 LRN 29. It is only by this approach that substantial justice, which is the sole purpose of all decisions of native tribunals, can be achieved " (p. 2192 H) C

2. *The fact that the Land Use Act is a Federal Law does not make land a Federal cause*

In addition to the Land Use Act, the Benue Plateau Area Courts Edict No. 4 of 1968 (applicable to Benue State) which is an existing law by virtue of Section 274(1) of the 1979 Constitution of Nigeria, has conferred jurisdiction on the area court having jurisdiction over the area in which land is situated. In the instant case, there is no dispute whatsoever that the land in dispute is situated within the local limits of the jurisdiction of the trial Grade II Area Court, Ihugh. The court therefore properly had jurisdiction over the subject-matter. In this regard, section 250(2) of the Constitution of Nigeria, 1979 (ibid) is not apposite since land is not a Federal Cause. Land does not appear anywhere as an item in the 2nd Schedule under the Exclusive Legislative List in the 1979 Constitution. This view is further supported by section 2(1)(a) and (b) of the Land Use Act, 1978 which vests the control and management of land in two organs, to wit: D E F G

- (i) The Government of the State
- (ii) The Local Government.

I therefore agree with the respondent's submission that the mere fact that the Land Use Act is a federal law does not ipso fact make land a federal cause so as to oust the jurisdiction of the Area Courts as the appellant would want me to hold. See:

- (a) *Matari v. Dangaladima* (1993) 3 S.C.N.J. 122 at 137.

(b) *Bakare v. The Attorney-General of the Federation* (1990) 9 S.C.N.J. 43 at 49. (p. 2194 B)

UWAIFO JSC

- B 3. *What to prove in order to succeed in an appeal against findings of fact*
To succeed in any appeal against findings of fact, it must be shown that in the performance of its primary duty of appraisal of oral evidence and ascription of probative values to such evidence that the court of first instance made imperfect use or improper use of the opportunity of hearing and seeing the witnesses, or has drawn wrong conclusions from accepted or proved facts which those facts do not support: see *Omoriegie v. Edo* (1971) 1 All N.L.R. 282 at 289. (p. 2197 B)
- C

D **REPRESENTATION**

Bernard Hom for the Appellant

P. A. Mbahon Esq. for the Respondent

E **CASES REFERRED TO**

Omoriegie vs. Idugiemwanye (1985) N.S.C.C. (Vol. 8) (pt. 11) 838

Ejabulor vs. Osha (1990) 5 N.W.L.R. (pt. 148) 1

Ibero v. Ume-Ohana (1993) 2 S.C.N.J. 156 at 165-166

- F *Olowu vs. Olowu* (1985) 3 N.W.L.R. (pt. 13) 372

Agbeja vs. Agbeja (1985) 3 N.W.L.R. (pt. 11) 11)

Zaria v. Maituwo (1966) N.M.L.R. 59

Okolo v. Uzoka (1978) 4 S.C. 77 at 86.

U.A.C. v. MC Foy (1962) A.C. 152

- G *Madukolu v. Nkemdilim* (1962) 1 All N.L.R. 587 at 595

LEAD JUDGMENT BY BELGORE JSC

- The plaintiff sued the defendant (now appellant) at Ihugh Area
H Court of Benue State claiming a piece of land which the court visited in the course of hearing. The land as described at the locus in quo by plaintiff and accepted as the land in dispute by defendant is the one starting from" Anchor stream by the 'Chiha' tree straight to the path

leading to Ihugh and thence to 'Anachinda' stream and across it to Mtema stream that stands behind the new settlement being erected by the defendant." Therefore there was no dispute as to the identity of the disputed land. The plaintiff, now respondent, claimed that when he first saw the appellant on the land, he reported to their common kindred. The kindred, headed by Awarga Avenda (PW1) found in favour of the plaintiff and advised the defendant to desist from going into the land again. But some years later the defendant came back and entered into the land and the kindred intervened again and ordered the defendant to immediately vacate the land. The third time the defendant not only entered but started erecting round mud houses on the land. This time the plaintiff sued the defendant in the Area Court at Ihugh which had jurisdiction over the land situate at Mbaakune-Nwaakase. After hearing evidence and visiting the disputed land, the Area Court gave judgment in favour of the plaintiff against the defendant.

On appeal to the High Court of Benue State (Coram: Ikongbeh, J. (as he then was) and Hwande, J.), the appeal was allowed on the assumption that the trial court never evaluated the evidence properly. In its judgment, there was speculation that a kindred head was bribed by the respondent and that the defendant farmed the land without opposition. It then ordered a retrial. The plaintiff appealed to the Court of Appeal, sitting at Jos.

The Court of Appeal after hearing the appeal came to the conclusion that the appellate High Court was in error to have set aside the findings of fact of the trial Area Court and to have ordered a retrial. It found as follows:-

"The most important thing is that there was ample consistent evidence adduced by the plaintiff which the trial judge believed. It is in evidence that the appellant called witnesses including the Ag. Kindred head who testified that the land in dispute was confirmed to be his by the elders. The respondent however did not call any of these arbitrators whom he alleged confirmed the land to be his. The law imposes the burden of proving particular facts on the party who seeks to rely on it and who will fail where such evidence is not adduced. See Arase v. Arase

(1981)5 S.C. 33. *What is more the appellant discharged the onus of proving that he is entitled to the disputed farmland. It is settled law that a judge before whom evidence is given, has the advantage of hearing and watching the demeanour of the witnesses and thus have the prerogative of believing or disbelieving the evidence of any of the witnesses, as long as they are not perverse and there is no contrary strong evidence, and that is exactly what the trial judges did in this case. See Yesufu Adekunle & 1 or. v. Adeyemi Adepoju & 1 or. (1992) 2 N.W.L.R. (pt. 223) page 257 and Woluchem v. Gudi (1981) 5 S.C. 291. The position of the law is that an appeal court will not interfere with the findings of a trial court where such findings flowed from evidence and they are not perverse. See Egri v. Uperi (1974) 1 N.W.L.R. page 22, Ebba v. Ogodo (1984) 1 S.C.N.L.R. 372, and Maiunguwa Ibro Tukurwa v. Alhaji Bala Kwa-Kwa (1992) 2 N.W.L.R (pt. 224) page 381.*

The learned judges sitting on appeal thus had no business interfering with the findings of the trial court."

The Court of Appeal was satisfied that there was amply evidence to support the decision of the trial Area Court. The appeal was allowed and decision of the High Court was set aside and the judgment of the trial Area Court was restored. Thus this appeal by the defendant to the Supreme Court. For this appeal the appellant raised five issues for determination as follows:-

"(a) *Whether or not the Court of Appeal was right in upholding the decision of the trial Area Court Ihugh, which lacked the jurisdiction and competence to hear and determine the claim of the respondent.*

(b) *Whether or not the Court of Appeal was right in re-evaluating the evidence, affecting the credibility of witnesses and affirming the decision of the trial Area Court by holding that "the appellant (respondent herein) did prove his case on the preponderance of evidence as required by law", and therefore, overturning the decision of the appellate High Court.*

(c) *Whether or not the Court of Appeal was right in not striking out the incompetent grounds 1 & 2 of the appellant before it (now respondent) grounds of appeal and/or the formulated issues numbered one*

("A") and three ("C") which, did not arise from any of the grounds of appeal filed despite the objection, which was not really replied to and in relying on same in allowing the appeal.

(d) Whether or not the Court of Appeal was right in granting leave to appellant before it (herein respondent) to file and argue the general or omnibus ground, as a ground on facts out of time, when there was no application for extension of time within which to apply for such leave.

(e) Whether or not the Court of Appeal did not exceed its jurisdiction under the provisions of section 16 of the Court of Appeal Act, in affirming the decision of the trial Area Court without considering the judgment of the appellate high Court."

The respondent, in his brief objected to Grounds of Appeal 1,2,3,4,5,6, and 7 contending that they are all grounds of fact for which leave was required to file them and no leave was ever sought and therefore contravened Section 213 (3) of the Constitution of the Federal Republic of Nigeria 1979. At best, he submitted they are grounds of mixed law and facts. On Ground 5, the respondent submitted that a new ground was raised which was never raised in the court below and no leave was obtained to file and argue the ground on jurisdiction.

It is clear that grounds 1, 2, 3, 4, 6 and 7 are all grounds of mixed law and facts. Each ground either complains of the evidence not being considered or wrongly considered. The particulars of each are clearly matters of evidence. A ground is not a ground of law simply because the appellant calls it so, it is the content of the ground that will indicate what it really is. The issues formulated for consideration in this appeal, which are matters to be considered for deciding the appeal, hardly follow the grounds of appeals. This appeal therefore insofar as Grounds 1, 2,3,4, 6 and 7 are concerned cannot be competently considered. Those grounds are incompetent and they are struck out.

As for the issue of jurisdiction raised in issue (a) for determination; it is a ground of law but it is novel to this case. It was never raised in any of the three tiers of courts below and to raise it

here, a procedure must be followed. It is true, question of law and jurisdiction can be raised at any time in the proceedings, but it is not on a free for all procedure. The court can raise a matter of law and Constitution at any time, but in doing so the two sides must be afforded the opportunity of addressing on it. This basically goes to the spirit of fair hearing. It is for this reason that a party to an appeal that intends to raise a new issue or introduce a novel matter into an appeal must seek leave to do so

This is so in order to avail the other side every opportunity to advert to that issue. But to contend that issue of law or the Constitution can be raised at any time and do nothing more than to raise it in argument is like laying a disrupting ambush for the opponent. This is not the spirit of our practice of adjudication of holding the even balance. Proper application must be made so that the other side will know clearly what he has to meet. In the present appeal the appellant introduced ground 5 on lack of jurisdiction by trial Area Court, a matter not raised in the appellate High Court and in the Court of Appeal. It came like a bird out of the whirlwind. Why was this not raised at the High Court or at the Court of Appeal? Assuming at any rate that the issue on jurisdiction was properly raised, I find no merit in it. The land in dispute is covered presumably under the Land Use Act by Customary Right of Occupancy and not Statutory Right of Occupancy and the court with jurisdiction in Benue State is the Area Court.

The next question concerns the attitude of appellate court to findings of facts by trial court. The Area Court, I think, to my mind, upon all the evidence before it found the case of the plaintiff proved to its satisfaction. The defendant, now appellant, never called any credible witness and this is clear on the printed record before that court. Nothing is perverse or illegally received as evidence in the case. The High Court in its appellate jurisdiction clearly went beyond its powers by interfering with clear and supported findings of facts of trial Area Court and in this case was in error. (*Omorie & Ors. vs. Idugiemwanye & Ors.* (1985) N.S.C.C. (Vol. 8) (pt. 11)

Jov v. Dom (1999) 7 KLR Belgore JSC 2191
838; Ejabulor vs. Osha (1990) 5 N.W.L.R. (pt. 148) 1; Olowu vs. Olowu (1985) 3 N.W.L.R. (pt. 13) 372; Agbeja vs. Agbeja (1985) 3 N.W.L.R. (pt. 11) 11.

The Court of Appeal therefore came to a right decision when it held that the appellate High Court was in error to have interfered with the findings of fact of trial Area Court. I therefore find no merit in this appeal and I dismiss it with N10,000.00 costs to the respondent.

KUTIGIJSC

I read in advance the judgment just rendered by my learned brother, Belgore, J.S.C I agree with his reasoning and conclusions. The appeal lacks merit and must fail. It is accordingly dismissed with N10,000.00 costs to the respondent.

ONUJSC

Having been privileged to read in draft the judgment of my learned brother, Belgore, J.S.C. I agree with his reasoning and conclusion that this appeal fails and it is accordingly dismissed by me.

The only issue worth considering in this appeal which in itself is totally misconceived and devoid of merit is the first issue founded on jurisdiction. The other issues (2-5) have been so meticulously taken care of in the lead judgment of my learned brother which I have stated I entirely agree with, that I only make the following elaboration in respect of issue one in my contribution thereto as follows:-

This issue queries:-

"Whether or not the Court of Appeal was right in upholding the decision of the trial Area Court Ihugh, which lacked the jurisdiction and competence to hear and determine the claim of the respondent."

On this issue which relates to Ground 5 of the Notice of Appeal, the argument proffered is to the following effect.

That the Area Court Ihugh had no jurisdiction to hear and deter-

mine the claim for declaration of title to land, the subject matter of this appeal, and both the High Court and the Court of Appeal ought to have declared the purported trial null and void if the attention of those courts had been properly drawn to the relevant law. It is next contended that the jurisdiction of courts in land matters is governed by the provisions of the Land Use Act, 1978, a Federal enactment on the subject subsisting and applicable in Benue State. Section 41 thereof was cited in support. It is next submitted that Section 250(2) of the Constitution of the Federal Republic of Nigeria, 1979 (as amended) which has not been suspended, precludes courts presided over by persons who are not, or have not been qualified to practice as legal practitioners in Nigeria from exercising jurisdiction in respect of Federal causes.

It is appellant's further contention that the trial Area Court as presided over by Hon. F.I. Omanga and Hon. S. A. Ikpilaka, none of whom is or has been qualified to practice as a legal practitioner had no jurisdiction and that any proceedings taken without jurisdiction is void and cannot be allowed to stand. The cases of *U.A.C. v. MC Foy* (1962) A.C. 152 and *Madukolu v. Nkemdilim* (1962) 1 All N.L.R. 587 at 595, were cited in support of the proposition, adding that the issue of jurisdiction can be raised at any stage, even on appeal including the Supreme Court, as the law on this is well established. A host of cases were further called in aid.

It was finally submitted on behalf of the appellant that the Court of Appeal erred in law in upholding the decision of the trial Area Court, Ihugh, which lacked the jurisdiction and competence to hear and determine the claim of the respondent. We were urged to allow the appeal, nullify the trial and decision of the trial Area Court and declare the decisions of the lower courts similarly null and void and of no effect.

I am of the firm view that the trial Area Court, Ihugh was lawfully seised of the case brought before it and that for the same reason had the jurisdiction to decide the subject matter of the claim. It is trite that the substance of a claim before area courts is determined by reading the whole proceedings. See *Innocent Ibero & Ors. v. Obioha Ume-Ohana* (1993) 2 S.C.N.J. 156 at 165-166; (1993) 2 N.W.L.R. (pt. 277) 510 at

521 (per Nnaemeka-Agu, J.S.C) and Jumai Alhaji Zaria v. Yar Maituwo (1966) N.M.L.R. 59. As Nnaemeka-Agu, J.S.C. stated at page 521 of the N.W.L.R. (pt. 277) case:

".... Even though the court generally guards against regarding evidence given in a previous suit as evidence in the instant when, however, the previous case was decided in a Native Court or in an appeal therefrom it is the substance and not the form that is material. So the whole proceedings must be regarded. The management and the evidence can be looked into to find out who the parties were and in what capacities they fought or defended the case as well as what the subject-matter and issues were. See on this - Chapman v. C.F.A.O & Anor. (1943) 9 W.A.C.A. 181; Ikpang & Ors. v. Edoho & Anor. (1978) 2 LRN 29. It is only by this approach that substantial justice, which is the sole purpose of all decisions of native tribunals, can be achieved"

A cursory glance through the proceedings of the trial Area Court on pages 1-12 discloses how the claim consists of a declaration of title to a piece of farm land in a village (Mbaakune - Mbakase) and subject of customary right of Occupancy as defined in the Land Use Act, 1978. See Section 50 of the Land Use Act, 1978 (ibid). Moreover, section 41 of the Land Use Act has expressly conferred jurisdiction on Area Courts in respect of proceedings of a nature concerning customary right of occupancy. The Section provides:-

"41. An Area Court or Customary Court or other court of equivalent jurisdiction in a State have jurisdiction in respect of proceedings in respect of customary right of occupancy granted by a Local Government under this Decree; and for the purposes of this paragraph proceedings includes proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court regulating practice and procedure of such courts shall have effect with such modifications as would enable effect to be given to this section."

See also Alhaji Abubakar Sadikwu v. Alhaji Abba Dalori (1996) 5 N.W.L.R. H (pt. 447) 151 at page 163 where this court held inter alia that:-

"In substance, the purpose of section 41 of the Land Use Act, 1978 and Section 41(2) (a) of the Land Tenure Law of Northern Nigeria,

1963 is the same. The provisions of the two laws confer jurisdiction on the Area or Customary courts in respect of proceedings involving the statutory or customary right of occupancy granted by a Local Government or a Local Authority In the instant case, the Maiduguri High Court lacked jurisdiction to entertain the suit, rather, it is an Area or Customary Court which has jurisdiction. (*Salati v. Shehu*) (1986) 1 N.W.L.R. (pt. 15) 198 referred to"

In addition to the Land Use Act, the Benue Plateau Area Courts Edict No. 4 of 1968 (applicable to Benue State) which is an existing law by virtue of Section 274(1) of the 1979 Constitution of Nigeria, has conferred jurisdiction on the area court having jurisdiction over the area in which land is situated. In the instant case, there is no dispute whatsoever that the land in dispute is situated within the local limits of the jurisdiction of the trial Grade II Area Court, Ihugh. The court therefore properly had jurisdiction over the subject-matter. In this regard, section 250(2) of the Constitution of Nigeria, 1979 (*ibid*) is not apposite since land is not a Federal Cause. Land does not appear anywhere as an item in the 2nd Schedule under the Exclusive Legislative List in the 1979 Constitution. This view is further supported by section 2(1)(a) and (b) of the Land Use Act, 1978 which vests the control and management of land in two organs, to wit:

- (i) The Government of the State
- (ii) The Local Government.

I therefore agree with the respondent's submission that the mere fact that the Land Use Act is a federal law does not ipso fact make land a federal cause so as to oust the jurisdiction of the Area Courts as the appellant would want me to hold. See.

- (a) *Matari v. Dangaladima* (1993) 3 S.C.N.J. 122 at 137.
- (b) *Bakare v. The Attorney-General of the Federation* (1990) 9 S.C.N.J. 43 at 49.
- (c) *Kuusuu v. Udom* (1990) 2 S.C.N.J. 40 or (1990) 1 N.W.L.R. (pt. 127) 421
- (d) *Oloba v. Akereja* (1988) 7 S.C.N.J. 56
- (e) *Chacharos & Anor. v. Ekimpex Ltd. & Ors.* (1988) 1 S.C.N.J.

(f) Onyebuchi Eke v. Federal Republic of Nigeria (1987) 2 S.C.N.J. 76.

My answer to the issue is rendered in the affirmative.

For the above reasons and those contained in the leading judgment of my learned brother, Belgore, J.S.C., with which I agree, I too dismiss this appeal and make the same consequential orders inclusive of those as to costs.

C

KALGO JSC

This appeal was against the decision of the Court of Appeal, Jos Division which over-turned the decision of the High Court Katsina-Alu, Benue State and restored the decision of the trial Area Court Grade II holden at Ihugh, in Benue State. D

The main issue raised by the appellant in this court were that the trial court lacked jurisdiction and competence to try the case and that the Court of Appeal had no power to evaluate the evidence given in the trial Area Court. The respondent by respondent's notice, also raised a preliminary objection challenging the competence of the grounds of appeal filed by the appellant in this court. E

In the leading judgment of my learned brother, Belgore, J.S.C., in this appeal, which I was privilege to read earlier, all these issues were properly taken care of, discussed and conclusions reached thereon. In the said judgment it was found that the trial Area Court had jurisdiction to try the case as it did as the land in dispute was held under customary right of occupancy. The Court of Appeal was also properly found to have full power and authority to evaluate the evidence given in the trial court under section 16 of the Court of Appeal Act, 1976. And finally, the preliminary objection on the competence of the grounds of appeal filed by the appellant in this court was found to be baseless and therefore failed. I entirely agree with the reasoning and conclusions reached on these issues which I adopt as mine on this appeal. I have nothing useful to add. F G H

In sum, I agree that this appeal has no merit and I hereby dismiss it with N10,000.00 costs in favour of the respondent.

UWAIFO JSC

B

I read in advance the judgment of my learned brother, Belgore, J.S.C., and for the reasons he has fully stated I agree with his conclusion that this appeal lacks merit.

C

The issue of jurisdiction raised by the appellant is based on a compete misconception. The land in dispute is in a rural area of Benue State. The Benue-Plateau Area Court Edict No. 4 of 1968 confers jurisdiction on Area Courts in respect of such land dispute. This had been reinforced by section 41 of the Land Use Act, 1978. The trial court in this case is the Area Court of Ihugh Grade II of Benue State. It eminently has jurisdiction to entertain the suit.

D

The Court of Appeal adequately considered the merit of the case presented before the Area Court. What was essentially in issue was whether the findings of fact made by the trial court were reasonably supported by the evidence. The trial court found for the plaintiff (now respondent) and gave three reasons why it so found. The first and third reasons are based on evidence of settlement and acts of possession which the court considered were in favour of the plaintiff both on the basis of the oral evidence and what was observed at the locus in quo and recorded.

F

The second reason given by the trial court for giving judgment for the plaintiff was that the defendants, from the evidence, made attempts to claim the land in dispute by several trespassory acts. He was found to be a stranger at Mbaakune-Mnaakase village desperate to have his own farmland. The trial court considered that this led him, from his own evidence, to give a goat to the Kindred head to help him, although he did not call him as a witness.

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The appellate High Court was not impressed with these reasons. It was largely because of this that that court came to the conclusion that the trial court did not do proper evaluation of evidence. I think that

court, with due respect, took a wrong view. The Court of Appeal has now indisputably resolved the matter. The simple position is that the trial court was faced with evidence which bordered virtually on who to believe, having had, in addition, the advantage of hearing and seeing the witnesses testify as well as visiting the land in dispute. It believed one side, and there is evidence to support this, and made findings which cannot be said to be perverse. An appellate court would not be entitled to disturb such findings: see Ebba v. Ogodo (1984) 4 S.C. 84 at 98. To succeed in any appeal against findings of fact, it must be shown that in the performance of its primary duty of appraisal of oral evidence and ascription of probative values to such evidence that the court of first instance made imperfect use or improper use of the opportunity of hearing and seeing the witnesses, or has drawn wrong conclusions from accepted or proved facts which those facts do not support: see Omoregie v. Edo (1971) 1 All N.L.R. 282 at 289; Fashanu v. Adekoya (1974) 1 All N.L.R. 35 at 41; Okolo v. Uzoka (1978) 4 S.C. 77 at 86.

I too find no merit in this appeal and accordingly I dismiss it with costs of N10,000.00 to the respondent.

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