

**SUPREME COURT OF NIGERIA**  
18TH FEBRUARY, 2000. SC. 234/1992  
**CORAM:- A. B. WALI, M. E. OGUNDARE, S. U. ONU,**  
**A. I. IGUH, E. O. AYOOLA, JJSC.**

ALHAJI SALAMI O. ADEROUNMU & ANOR. .... APPELLANTS  
AND  
EMMANUEL OLAJIDE OLOWU ..... RESPONDENT

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**ACTIONS** - Counter claim - Separate consideration thereof - Is not necessary - Where determination of issues in the main claim - Were sufficient to dispose of the counter claim.

**APPEALS** - Fair hearing - Erroneous striking out of 3 of the appellants' grounds of appeal in this case - Does not amount to denial of fair hearing - As the court below decided the case on its merit - Though appellants wrongfully argued grounds instead of issues.

**APPEALS** - Findings of fact - That are supported by evidence - will not be disturbed by the appellate Court.

**APPEALS** - Grounds of appeal - Striking out - Grounds that disclose the precise nature of the appellant's complaint - Should not be struck out - Though it did not conform to a particular form.

**APPEALS** - Grounds of appeal - Alleging an error and misdirection - Will only be incompetent where it is vague.

**EVIDENCE** - Document - Issue of execution thereof by a Witness - Clear and unequivocal evidence by that witness - Is what would have been of benefit to the appellants.

**EVIDENCE** - Civil Proceedings - Burden of proof - In applying the principle that he who alleges must prove - There is no distinction between

*a plaintiff and a defendant.*

***PRACTICE & PROCEDURE*** - *Forgery allegation in civil proceedings - Ambiguous evidence - Cannot discharge the required burden of proof.*

### **FACTS**

Before the Oyo State High Court, the plaintiff/respondent filed an action against the defendants/appellants claiming statutory right of occupancy, damages for trespass and injunction in respect of the land in dispute. The Governor of Oyo Stated granted statutory right of occupancy to the respondent vide a Certificate of Occupancy Dated 13th November, 1980. Prior to this grant, respondent purchased the land from the Ikolaba Family through their representatives who were given a power of attorney. By a deed of conveyance dated 3rd July, 1964, the attorneys acting pursuant to the power of attorney and on behalf of the Ikolaba family conveyed the land to the respondent. The appellants who are members of the Ikolaba family counter claimed for similar relief. They claimed to have acquired prior title to the land by virtue of individual grants made to them sometime in 1954 by the Ikolaba family.

The appellants contested that the power of attorney relied upon by the respondent was fake and not valid. The trial Court found in favour of the respondent and gave judgment for him. Appellants' appeal to the Court of Appeal was dismissed. Following an objection raised by the respondent, the Court below struck out grounds 2, 6 and 10 of the appellants grounds of appeal as each of them complained of error in law and misdirection of fact at the same time. Being dissatisfied, the appellants have further appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

1. *Whether the power of attorney and the deed of conveyance relied upon by the respondent had not been successfully impugned.*
2. *Whether the Court of Appeal was in error in striking out three of the appellants' grounds of appeal.*
3. *Whether the appellants' Counter Claim was adequately considered.*

**HELD** (Unanimously dismissing the appeal per lead reasons for judgment of **AYOOLA JSC**)

***Document - Issue of execution***

1. It is obvious that the case of the respondent was not that an individual member of the family, such as Jimoh Abioye is (or, was?), gave a power of attorney. Rather, it was, that the family did. What would have been of benefit to the appellants' case was clear and unequivocal evidence by that witness that he did not participate in the execution of the document and that the thumb impression thereon put against his name, was not his own. (p. 347 B)

***Forgery allegation in civil proceedings***

2. When an allegation of forgery of a document, or, for that matter, of a criminal act, is made in a civil proceeding, evidence that would discharge the burden of proof on the person who made the allegation, must be clear and unequivocal. When evidence intended to discharge that burden is ambiguous or is capable of several interpretations, not all pointing to the criminal act alleged, the burden cannot be said to have been discharged. In this case, the evidence of Jimoh Abioye, quoted above, was, at best, ambiguous. The trial judge was right to have ignored it. The appellants' argument that the witness gave evidence denying being party to the power of attorney was based on an inexact statement, or misconception, of the evidence he gave. (p. 347 D)

***Civil Proceedings - Burden of Proof***

3. Notwithstanding the general onus which rests on the plaintiff to prove his entitlement to the declaration he claims, the evidential burden of proving certain facts occasionally shifts to the defendant. Such is the burden of proving the allegation that the document which the plaintiff relies on is a forgery. In the application of the general principle that he who alleges must prove, there is no distinction between a plaintiff and a defendant. In placing the onus on the appellants to rebut the presumption of due execution of the power of attorney and of proving that it was a 'fake', the judgment of the trial judge cannot at all be faulted. The court below was

right in upholding that aspect of the judgment. (p. 348 C)

***Grounds of appeal - Striking out***

4. The rules of our appellate procedure relating to formulation of grounds of appeal are primarily designed to ensure fairness to the other side. The application of such rules should not be reduced to a matter of mere technicality, whereby the court will look at the form rather than the substance. The prime purpose of the rules of appellate procedure, both in this court and in the Court of Appeal, that the appellant shall file a notice of appeal which shall set forth concisely the grounds which he intends to rely upon on the appeal; and, that such grounds should not be vague or general in terms and must disclose a reasonable ground of appeal, is to give sufficient notice and information, to the other side, of the precise nature of the complaint of the appellant and, consequently, of the issues that are likely to arise on the appeal. Any ground of appeal that satisfies that purpose should not be struck out, notwithstanding that it did not conform to a particular form. (p. 349 C)

***Grounds of appeal - Competence***

5. A proposition widely stated that a ground alleging an error and misdirection is not incompetent is as objectionable as proposition that every such ground is incompetent. What makes a ground incompetent is not whether it is framed as an error and a misdirection but whether by so stating it, the other side is left in doubt and without adequate information as to what the complaint of the appellant actually is. In this case, notwithstanding the formulation of the grounds of appeal that were struck out, the detailed statement of the particulars of error and the clear statements of what the appellants conceived to be errors in law and misdirection in fact in the judgment of the trial judge, satisfied the requirement of the rule as to formulation of grounds of appeal. To hold otherwise will be tantamount to insistence on form rather than substance. I came to the view that the court below was wrong in striking out grounds 2, 6 and 10 on the ground that they were incompetent. (p. 350 B)

**Appeals - Fair hearing**

6. However, notwithstanding the view I held as above, I was unable to hold that, by reason of those grounds being struck out, the appellants have been denied a fair hearing of their appeal. By arguing grounds of appeal instead of issues for determination, the appellants themselves have adopted a procedure which is deprecated by appellate courts operating the brief system in this country. It is now well established that on an appeal to this court, and to the Court of Appeal, issues, and not grounds of appeal, are to be argued. See the cases Anie & ors v. Uzorka & ors (1993) 8 NWLR (part 309) 1,17 Odubiko v. Fowler (1993) 7 NWLR (part 308) 637, 653.) and, more recently, U.A.C. of Nigeria v. Fasheyitan & anor Ltd (1998) 7 KLR 1889, 1894 where this court (per Belgore, JSC,) said:

*"Any brief of argument that does not address the issues formulated therein but reverts to the grounds of appeal is not arguing the issues and will appear to abandon the issues."*

Not only did the appellants argue grounds of appeal instead of issues, even though issues for determination were formulated in the brief of argument of appellants, those grounds were argued in sets. Thus, grounds 1, 2, 4, 7, and 11 were argued together, while grounds 6, 8, 10 and 12 were argued together. Three sets of grounds were argued even though there were five issues for determination. The sets were not specifically tied to any of the issues. Notwithstanding this defect of procedure, the court below pronounced on the case on its merits after considering the issues in the case. Ogundere, JCA stated that: "I have carefully considered the issues in this appeal in the light of the Record of Proceedings of the court below, the findings in the judgment as well as the briefs and submissions of the parties at the hearing". That statement has not been challenged on this appeal. (p. 350 F)

**Findings of fact**

7. The appeal in the Court of Appeal was substantially on facts. The grounds of appeal which were struck out were, in substance and in reality, different formulations of complaints which would all lead to one

major question, namely: whether the trial judge made correct findings of fact; and, eventually, to an invitation to that court to interfere with the findings of fact made by the trial judge. It is now trite law, and it hardly needs citation of authorities to support it, that an appellate court may not lightly interfere with the findings of fact of the trial judge if they are supported by the evidence. (See *Odofin v. Ayoola* (1984) NSCC 711, (particularly per Obaseki, JSC at page 730). The evidence in support of the findings made by the trial judge in this case has been ample. His evaluation of the evidence left no room for any reasonable criticism. Hence, no reasonably tribunal would have interfered with the findings of fact which were supported by evidence properly evaluated. (352 A)

***Counter claim - Separate consideration thereof***

8. As to the last of the main questions raised on this appeal, it suffices to say that the issues determined in the claim were sufficient to dispose of the counter-claim. Where common questions determinative of a claim and a counter-claim arise in a case, the trial court is not expected to consider the same questions separately in relation to the counter-claim. In this case, once the right of the respondent to the statutory right of occupancy he claimed was found to be established, and he was found to be in possession of the land at the time of the trespass complained of, the counter-claim fell to the ground. The trial court was right in so holding. The contention that the trial court did not adequately consider the counter-claim being without substance, the court below was quite right in dismissing the appeal in its entirety. (p. 352 E)

**NOTABLE POINT OF INTEREST**  
**OGUNDARE JSC**

***1. Need not to lump complaints together in one ground of appeal***

The dictum of Nnaemeka-Agu JSC in *Nwadike v. Ibekwe* (supra) did not go as far as some of their Lordships of the Court of Appeal made it to look. The learned Justice of the Supreme Court advised against lumping together in a ground of appeal complaints that ought better to have been split into different grounds of appeal. I commend his wise counsel to all

legal practitioners engaged in drafting notices of appeal. I do not think, however, that non-adherence to this wise counsel will necessarily render incompetent any ground of appeal that otherwise complies with the requirements of the rules. And it is in this regard that I am of the view that Olanrewaju v. Bank of the North Ltd (1994) 8 NWLR 622 was B correctly decided by the Court of Appeal. (p. 358 G)

### **REPRESENTATION**

Chief Oye Esan (with him Mr. A. A. Farinmade) for the appellants C  
J. A. Kester Esq. for the respondent

### **CASES REFERRED TO**

T. A. S. Ltd v. I. A. S. Cargo Airlines (Nig.) Ltd (1991)7 NWLR (part D  
23) 156, 175  
Ogbechie v. Onochie (1986) NWLR (PART 23 484, 493  
Nwadike v. Ibekwe (1987) 4 NWLR (part 67) 718, 744  
Neogwuija v. Ikuru (1998) 10 NWLR (part 569) 267, 310  
Anie v. Uzorka (1993) 8 NWLR (part 309) 1, 17 E  
Odubeko v. Fowler (1993) 7 NWLR (part 308) 637, 653.)  
U.A.C. of Nigeria v. Fasheyitan (1989) 7 KLR 1889, 1894  
Odofin v. Ayoola (1984) NSCC 711  
Anyaoke v. Adi (1986) 3 NWLR (pt.31) 731, 74 F  
Bereyin v. Gbogbo (1989) 1 NWLR (pt.97) 372, 80

### **LEAD REASONS FOR JUDGMENT BY AYOOLA JSC**

This is an appeal from a judgment of the Court of Appeal (Ibadan G  
Division: Ogundare, JCA, Ogwuegbu, JCA (as he then was), and  
Muhammed, JCA] dated 16th April, 1992, whereby an appeal to the Court  
of Appeal, taken from a decision of the High Court of Oyo State (Adeyemi,  
J.) by the appellants in this appeal, (defendants at the High Court), was H  
dismissed. On 4th April, 1996, the High Court entered judgment for the  
respondent in this appeal, (plaintiff in that court). By the judgment, the  
respondent's claim for a declaration of a statutory right of occupancy to  
a parcel of land at Ikolaba village, Ibadan; damages for trespass and

injunction, was granted and, the appellants' counterclaim for a similar relief was dismissed. At the conclusion of oral hearing of this appeal on 23rd November, 1999 this court dismissed the appeal and announced that reasons for the judgment would be given at a later date. My reasons  
B now follow.

This case arose because, as alleged by the respondent and found by the trial judge, the appellants, sometime in 1982, entered into land which had always been in the possession of the respondent from the time, sometime in 1964, when he purchased it from the original owners,  
C the Ikolaba family, up to the time of the entry thereon by the appellants. For the declaration of a statutory right of occupancy which he claimed, the respondent relied on a grant to him by the Governor of Oyo State of that right sometime in 1980, and witnessed by a Certificate of Occupancy  
D dated 13th November, 1980. The respondent's case was that prior to the grant of statutory right of occupancy the land was vested in him by virtue of a purchase of the land from the Ikolaba family through their representatives who were given a power of attorney dated 17th January,  
E 1964. By a deed conveyance dated 3rd July, 1964 the attorneys, acting pursuant to the power of attorney and on behalf of the Ikolaba family, conveyed the land to the respondent.

The appellants, who are members of the Ikolaba family, also  
F counter-claimed for similar relief as the respondent. They claimed to have acquired a prior title to the land by virtue of individual grants made to them sometime in 1954 by the Ikolaba family. They alleged that they have been in continuous possession of the land from the time of their several grants. The butt of the appellants' case at the trial, both in regard  
G to their defence and to their counter-claim, was that the power of attorney relied on by the respondent was a 'fake' and was not valid.

At the trial, understandably, the issues that came to the fore were: first, whether the person who conveyed the land to the respondent  
H held a valid power of attorney from the Ikolaba family; secondly, whether the respondent was in possession of the land as claimed by him; and, thirdly, whether the appellants had any grants of the land as claimed by them.



All these were, evidently, questions of fact. The trial judge, after a careful and, I dare say, painstaking consideration of the evidence, found that the power of attorney was valid and was not a 'fake' as alleged by the appellants. He found that the respondent was in possession of the land from the time he purchased it up to the time when the appellants B trespassed on it. He rejected the case of the appellants that they had grants of the respective plots of land they laid claim to from the Ikolaba family, describing almost all, if not all, of the witnesses called by the appellants' as untruthful witnesses. Thus, all the questions of fact in C controversy were resolved by the trial judge, who had the advantage of seeing and hearing the witnesses, against the appellants. In the result, he gave judgment as earlier mentioned.

On their appeal to the Court of Appeal, the appellants contended D that the trial judge was in error in holding that the power of attorney was valid; that he misplaced the burden of proving due execution of the power of attorney on the appellants; that he did not properly evaluate the evidence; and, that he should have found that the appellants had grants from the Ikolaba family. All these contentions were articulated in the issues for E determination formulated in the appellants' brief of argument in the court below.

The Court of Appeal, on an objection raised by counsel on behalf to the respondent, struck out three of the appellants' thirteen grounds of F appeal, namely: grounds 2, 6 and 10, holding that they were incompetent on the ground that each of them complained of error in law and misdirection of fact at the same time. In ground 2 it was complained that the trial judge "misdirected himself in fact and in law", while in grounds 6 and 10 G it was complained that he "erred in law and on the facts". In each of the grounds particulars of error alleged were set out.

In dismissing the appellants' appeal Ogundare, JCA, who delivered the leading judgment of the court below, with which the rest of the court H agreed, said:

*"As to the Certificate of Occupancy, Exhibit 4, a Land Certificate of Title (sic) confers on the holder a prima facie evidence of title to the parcel of land in survey plan attached to it: Onayemi v. Balogun (1972)*

*1 All NLR 26, 30, 33. But if the person obtained a certificate of title based on a conveyance from a person not entitled to the land or on a forged conveyance that certificate will be void or at least voidable: Kareem v. Ogunde (1972) 1 All NLR (part 1)73, 76-77. In this instance Exhibits 1 and 2 on which the validity of the Certificate of Occupancy rest have not been successfully impugned by the defendants/appellants,"*

The Court of Appeal, consequently, held that the trial judge was right in his decision to award the land to the plaintiff and dismissed the appellants' appeal.

On this further appeal, the appellants argued that the court below was in error in holding that the power of attorney and the deed of conveyance had not been successfully impugned; that that court was in error in striking out three of the appellants' grounds of appeal; and, their counter-claim had not been adequately considered. We were urged to consider the evidence of the 5th defence witness, one Jimoh Abioye, and come to the conclusion therefrom that the power of attorney was not genuine.

At the trial, in the court below and on this appeal, the appellants have put at the forefront of their case, and alleged invalidity of the power of attorney which was admitted in evidence as exhibit I at the trial. The only ground on which the validity of the document was challenged at the trial being that it was not genuine, the trial judge devoted some time to a consideration of that aspect of the case. He adverted to the fact that the document, on the face of it, showed that it was prepared by a lawyer and was executed before a magistrate, after it had been read and interpreted to the makers, who were not literate, before they affixed their thumb-impressions on it. He adverted to the admission by several of the appellants' witnesses that those who were mentioned in the document as having executed it, were members of the Ikolaba family. Finally, he had regard to the presumption raised by section 118 of the Evidence Act and came to the conclusion that that presumption had not been rebutted. At the end, he was emphatic and unequivocal in his conclusion that the power of attorney, exhibit I, was validly executed and was a genuine document.

On this appeal, the appellants clung to a narrow thread, which

can only be an illusory lifeline, when the relied on assertions made by the 5th defence witness, Jimoh Abioye, in, examination in chief, that: "I did not give anybody power of attorney.", and, under cross-examination, that "I did not give the power of Attorney in exhibit I to any body.", as basis for the submission that the evidence of that witness rendered improbable the genuineness of the power of attorney. **It is obvious that the case of the respondent was not that an individual member of the family, such as Jimoh Abioye is (or, was?), gave a power of attorney. Rather, it was, that the family did. What would have been of benefit to the appellants' case was clear and unequivocal evidence by that witness that he did not participate in the execution of the document and that the thumb impression thereon put against his name, was not his own.**

**When an allegation of forgery of a document, or, for that matter, of a criminal act, is made in a civil proceeding, evidence that would discharge the burden of proof on the person who made the allegation, must be clear and unequivocal. When evidence intended to discharge that burden is ambiguous or is capable of several interpretations, not all pointing to the criminal act alleged, the burden cannot be said to have been discharged. In this case, the evidence of Jimoh Abioye, quoted above, was, at best, ambiguous. The trial judge was right to have ignored it. The appellants' argument that the witness gave evidence denying being party to the power of attorney was based on an inexact statement, or misconception, of the evidence he gave.**

It was clear that the trial judge properly appreciated the burden which was on the appellants: first, to rebut the presumption of due execution of the power of attorney and, secondly, of proving that the document was a forgery. Section 118 of the Evidence Act is clear in its provisions that:

*"The court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a notary public, or any court, judge, magistrate... was so executed and authenticated."*

The presumption of due execution embraces a presumption that the document was in fact executed by the persons mentioned thereon as the makers of document. That the presumption is rebuttable gives the person alleging the contrary of what is presumed, the liberty to prove it.

B In this case the appellants had an additional burden of proving that the document was a forgery. That is what a reasonable person would understand their description of the document as a 'fake' to mean. The case of Jules v. Ajani [1980] NSCC 222 has clearly established, quite a while ago now, that where in a claim for declaration of title to land the defendant alleges that the document relied on by the plaintiff for the title he seeks is a forgery, the burden is on the defendant who so alleges to prove that fact. **Notwithstanding the general onus which rests on the plaintiff to prove his entitlement to the declaration he claims,**  
C **the evidential burden of proving certain facts occasionally shifts to the defendant. Such is the burden of proving the allegation that the document which the plaintiff relies on is a forgery. In the application of the general principle that he who alleges must prove,**  
D **there is no distinction between a plaintiff and a defendant. In placing the onus on the appellants to rebut the presumption of due execution of the power of attorney and of proving that it was a 'fake', the judgment of the trial judge cannot at all be faulted. The court below was right in upholding that aspect of the judgment.**  
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The second main branch of the appellants' case is that the court below was in error in striking out three of their thirteen grounds of appeal. The court below was of the view that those grounds of appeal were incompetent because, as the truth was, in each of them were alleged  
G error in law and misdirection in fact. As earlier stated, each of those grounds had, subjoined to it, particulars stating what was alleged to be the error in law, or, as the case may be, the misdirection of fact or error in fact, complained of.. Thus, any careful reader of the grounds would  
H not be misled or left in any reasonable doubt as to what the appellants were complaining of and the nature of their complaints. Notwithstanding that fact, the court below relied on the cases of T. A. S. Ltd v. I. A. S. Cargo Airlines (Nig.) Ltd (1991)7 NWLR (part 23) 156, 175; and Ogbechie

v. Onochie (1986) NWLR (PART 23 484, 493. Those cases are of course no authority for the step taken by the court below since they do not deal with incompetence of grounds of appeal.. The court below mentioned in their judgment, as did counsel for the respondent the case of Nwadike v. Ibekwe (1987) 4 NWLR (part 67) 718, 744 where B Nnaemeka-Agu, JSC expressed an opinion that

*".....a ground of appeal cannot be an error and a misdirection at the same time as the appellants ground clearly postulates. By their very nature one ground of appeal cannot be two"*

**The rules of our appellate procedure relating to formulation of grounds of appeal are primarily designed to ensure fairness to the other side. The application of such rules should not be reduced to a matter of mere technicality, whereby the court will look at the form rather than the substance. The prime purpose of the rules of appellate procedure, both in this court and in the Court of Appeal, that the appellant shall file a notice of appeal which shall set forth concisely the grounds which he intends to rely upon on the appeal; and that such grounds should not be vague or general in terms and must disclose a reasonable ground of appeal, is to give sufficient notice and information, to the other side, of the precise nature of the complaint of the appellant and, consequently, of the issues that are likely to arise on the appeal. Any ground of appeal that satisfies that purpose should not be struck out, notwithstanding that it did not conform to a particular form.** C D E F

In my opinion, what is important in a ground of appeal, and the test the court should apply, is whether or not the impugned ground shows clearly what is complained of as error in law and what is complained of as misdirection, or, as the case may be, error of fact. The view, with which I am inclined to agree, is expressed in the Court of Appeal case of Neogwuija & ors v. Ikuru & ors (1998) 10 NWLR (part 569) 267, 310 that the mere fact that a ground of appeal is framed as an error and a misdirection does not make it incompetent. In my view, only general propositions can be made in a matter in which the question is not as to form. It must be realised, and emphasised, that, ultimately, an G H

unobjectionable ground of incompetence of a ground of appeal, in the context of the question raised in this appeal, is to be sought in its lack of preciseness or specificity in, or the ambiguity of, what it complains about. In this wise, it is not a question of formal defect but of the ground not satisfying the requirements of preciseness and specificity, set by the rules of appellate procedure. Ultimately, it is for the court before which the question is raised to decide whether, viewed objectively, the ground satisfies the requirements of preciseness and clarity. **A proposition widely stated that a ground alleging an error and misdirection is not incompetent is as objectionable as proposition that every such ground is incompetent. What makes a ground incompetent is not whether it is framed as an error and a misdirection but whether by so stating it, the other side is left in doubt and without adequate information as to what the complaint of the appellant actually is.**

In this case, notwithstanding the formulation of the grounds of appeal that were struck out, the detailed statement of the particulars of error and the clear statements of what the appellants conceived to be errors in law and misdirection in fact in the judgment of the trial judge, satisfied the requirement of the rule as to formulation of grounds of appeal. To hold otherwise will be tantamount to insistence on form rather than substance. I came to the view that the court below was wrong in striking out grounds 2, 6 and 10 on the ground that they were incompetent.

However, notwithstanding the view I held as above, I was unable to hold that, by reason of those grounds being struck out, the appellants have been denied a fair hearing of their appeal. By arguing grounds of appeal instead of issues for determination, the appellants themselves have adopted a procedure which is deprecated by appellate courts operating the brief system in this country. It is now well established that on an appeal to this court, and to the Court of Appeal, issues, and not grounds of appeal, are to be argued. See the cases *Anie & ors v. Uzorka & ors* (1993) 8 NWLR (part 309) 1, 17; *Odubiko v. Fowler* (1993) 7 NWLR (part 308) 637, 653.) and, more recently, *U.A.C. of Nigeria v. Fasheyitan & anor Ltd*

(1998) 7 KLR 1889, 1894 where this court (per Belgore, JSC,) said:

*"Any brief of argument that does not address the issues formulated therein but reverts to the grounds of appeal is not arguing the issues and will appear to abandon the issues."*

Not only did the appellants argue grounds of appeal instead of issues, even though issues for determination were formulated in the brief of argument of appellants, those grounds were argued in sets. Thus, grounds 1, 2, 4, 7, and 11 were argued together, while grounds 6, 8, 10 and 12 were argued together. Three sets of grounds were argued even though there were five issues for determination. The sets were not specifically tied to any of the issues. Notwithstanding this defect of procedure, the court below pronounced on the case on its merits after considering the issues in the case. Ogundere, JCA stated that: "I have carefully considered the issues in this appeal in the light of the Record of Proceedings of the court below, the findings in the judgment as well as the briefs and submissions of the parties at the hearing". That statement has not been challenged on this appeal.

Before I part with this appeal, two aspects of the matter before the Court of Appeal should be noted.

First, it is evident that the Court of Appeal agreed with findings made by the trial judge both in regard to the validity of the power of attorney and, the effectiveness of the deed of conveyance executed by the attorneys. It is also implied in the conclusion of the court below that title in the land was vested in the Ikolaba family at the time of the sale of the land to the respondent. This is implied in the statement of the principles of law by which that court was guided as follows:

*".....if a person obtain a certificate of title based on a conveyance from a person not entitled to the land or on a forged conveyance that certificate will be void or at least voidable."*

That the court below did not find the Certificate of Occupancy void or voidable, implied that the person who sold the land to the respondent had title to sell and convey interest in the land at the time of the sale and that the conveyance was neither forged nor based on a forged

power of attorney.

Secondly, the appeal in the Court of Appeal was substantially on facts. The grounds of appeal which were struck out were, in substance and in reality, different formulations of complaints which would all lead to one major question, namely: whether the trial judge made correct findings of fact; and, eventually, to an invitation to that court to interfere with the findings of fact made by the trial judge. It is now trite law, and it hardly needs citation of authorities to support it, that an appellate court may not lightly interfere with the findings of fact of the trial judge if they are supported by the evidence. (See *Odofin v. Ayoola* (1984) NSCC 711, (particularly per *Obaseki*, JSC at page 730).

The evidence in support of the findings made by the trial judge in this case has been ample. His evaluation of the evidence left no room for any reasonable criticism. Hence, no reasonably tribunal would have interfered with the findings of fact which were supported by evidence properly evaluated.

As to the last of the main questions raised on this appeal, it suffices to say that the issues determined in the claim were sufficient to dispose of the counter-claim. Where common questions determinative of a claim and a counter-claim arise in a case, the trial court is not expected to consider the same questions separately in relation to the counter-claim. In this case, once the right of the respondent to the statutory right of occupancy he claimed was found to be established, and he was found to be in possession of the land at the time of the trespass complained of, the counter-claim fell to the ground. The trial court was right in so holding. The contention that the trial court did not adequately consider the counter-claim being without substance, the court below was quite right in dismissing the appeal in its entirety.

After taking all the question raised by this appeal into consideration, I felt no hesitation in coming to the conclusion that the appeal was lacking in substance. For the reasons that I now state, I dismissed it accordingly with costs to the respondent.



**WALI JSC**

I have read before now, the lead judgment of my learned brother Ayoola, JSC and I agree with his reasoning for dismissing the appeal. I also, for the same reasons contained in the lead judgment, hereby dismiss it and adopt the consequential orders made in the lead judgment B

**OGUNDARE JSC**

I dismissed this appeal on the 23rd day of November 1999 with C  
N10,000.00 costs to the Respondent and indicated then that I would give my reasons for so doing today.

I have had the privilege of reading in advance the reasons given by my learned brother, Ayoola JSC for he too dismissing the appeal. I agree entirely with the reasons given by him; I adopt these reasons as D  
mine. I only wish to add a few words on Issue (2) raised in the Appellants' brief, that is to say:

*"Whether the learned Justices of the Court of Appeal Ibadan were right in striking out Grounds 2, 6 and 10 of the Grounds of Appeal E  
filed on the ground that they constitute both errors in law (and) misdirection on facts?"* (words in brackets supplied by me)

The said grounds 2, 6 and 10 read as follows:

*"The learned trial Judge misdirected himself in fact and in law F  
when he held that:-*

*'It is significant to note, also that name (sic) of those named in Exhibit 1 some of whom were admitted to be still alive was ever called to testify on behalf of the Defendants to say that they never knew that a G  
power of attorney was ever executed in the manner alleged in Exhibit 1. I consider this omission on the part of the Defendants to be fatal to their case, moreso as it was admitted, hesitantly though, that they heard of some fake power of attorney in respect of which they caused the said publication to be made in the Daily Sketch Newspaper in 1975'. H*

**PARTICULARS OF ERROR ON THE FACTS**

(i) The Respondent was the person relying on Exhibit 1, as his root of title.

(ii) All the Appellants deposed to was the fact that that root of i.e. Exhibit 1, was not valid.

PARTICULARS OF ERROR IN LAW

(i) On the pleadings the validity of Exhibit 1, is questioned, and it was therefore for those who hold it to be valid to prove it as valid.

(ii) The onus of proving that Exhibit 1, was properly executed by the family was on the Respondent and this he failed to do on the state of the pleadings.

6. GROUND 6:

The learned trial Judge erred in law, and on the facts when he failed to evaluate adequately the evidence led at the trial especially the evidence in favour of the Defendants.

PARTICULARS OF ERROR IN LAW

The learned trial Judge did not evaluate the evidence in favour of the Defendants as against the evidence led by the Respondent before rejecting the evidence in favour of the Defendants.

PARTICULARS OF ERROR ON THE FACTS

The learned trial Judge failed to consider whether or not the Power of Attorney 'Exhibit 1' was executed by all the persons said to have executed it before coming to the conclusion that Exhibit 1 was properly executed and donated despite evidence led by the Defendants to the contrary.

10. GROUND 10

The learned trial Judge erred in law and on the facts when he neglected the evidence favourable to the Defendants and thereby came to a wrong decision in the matter.

PARTICULARS OF ERROR IN LAW

The evidence of user by the 3rd Defendant (second Appellant herein) on the land in dispute both before and after the Plaintiff's alleged purchase, was confirmed by the Plaintiff but the learned trial Judge ignored it.

PARTICULARS OF ERROR ON THE FACTS

The facts of user by the 3rd Defendant (the 2nd Appellant herein) made the evidence of the Defendants as to the rights on the land more reliable."

Each of these grounds complained either of errors "in law and on the facts" or of misdirection "in fact and in law". In each particulars of the error or misdirection, either of law or fact, were given. It cannot be disputed that the complaint in each of these grounds is clear and unambiguous. Ground (2), read as a whole, complained that the trial Judge in the passage quoted put the burden of proof of the proper execution of Exhibit 1 on the defendants rather than on the plaintiff. B

Ground 6 read along with its particulars, shows clearly that the appellants complained essentially of inadequate evaluation by the trial Judge of the evidence before him. In ground (10), on the other hand, appellants could be seen to be complaining of non-consideration by the trial Judge of the evidence favourable to them C

At the hearing of the appeal in the Court below, the respondent therein (who is also the respondent here) objected to the competence of these three grounds of appeal. The Court below, per Ogundere JCA, adjudged as follows: D

*"But let us deal first with the objection on competence of grounds 1 2, 6-10. The learned counsel to the respondent also complained that the following of the 13 grounds of appeal were incompetent and should be struck out. Ground 1 alleges misdirection without stating particulars of such misdirections. Order 3 Rule 2 (2) 1981 Rules of the Court of Appeal provides:* E

*'If the grounds of appeal allege misdirection or error in law, the particulars and the nature of the misdirection or error in law shall be clearly stated'.* F

Anyaoke & Ors. v. Adi & Ors. (1986) 3 NWLR (pt.31) 731, 74. G

*Grounds 2,6 and 10 constitute both errors in law and misdirection on facts which render them incompetent. Nwadike & Ors. v. Ibekwe & Ors. (1987) 2 NWLR (pt.67) 718, 744 where it was held that a ground of appeal cannot be an error in law and a misdirection at the same time. Although the respondent did not object on 10th February, 1989 when leave to amend the Notice of Appeal was sought and granted, that is not a bar to the objection on the Respondent's brief. In Bereyin v. Gbogbo (1989) 1 NWLR (pt.97) 372, 80 it was held that the incompetency of any H*

*ground of appeal can be raised any time.*

*In reply learned counsel for the appellants submitted that ground 1 needed no further particulars and I agree with that submission. His submission that grounds 2, 6 and 10 are good is misconceived. I agree with the learned counsel for the respondent that they are bad in law. Error in law and misdirection on facts should be two separate grounds. T.A.S.A. Ltd. v. I A. S. Cargo Airlines (Nig.) Ltd. (1991) 7 NWLR 156, 175. Ogbechie v. Onochie (1986) 2 NWLR (pt. 23) 484, 493, Grounds 2, 6 and 10 are incompetent and are accordingly struck out.*

The appellants are now questioning in Issue (2), the correctness of the decision reached in the above passage. It is submitted by them that the decision in Nwadike & Ors. v. Ibekwe & Ors. (1987) 4 NWLR 718 relied on by the Court below in reaching its decision complained of, is not authority that a complaint in an appeal cannot be ground as an error in law and a misdirection or error on facts. It is argued that as the grounds of appeal in question were with particulars and the Respondent was not misled, the grounds were good grounds of appeal and that the cases relied on by the Court below were wrongly applied.

In Nwadike v. Ibekwe (supra) the appellants had appealed as of right from the Court of Appeal to this Court on a number of grounds of appeal, some christened "error in law" or "error in law or misdirection". The competence of the appeal was questioned by the respondents. The appeal would be competent only if the grounds of appeal were grounds of law alone - see section 213(2)(a) of the Constitution of the Federal Republic of Nigeria, 1979 (then applicable). It would however be incompetent if the grounds of appeal were grounds of fact or mixed law and fact as no leave to appeal was sought nor obtained by the appellants as required by section 213(3). Agbaje, JSC in his lead judgment, with which the other Justices agreed, examined the grounds of appeal in the case and found some of them to be grounds of fact or, at best, of mixed law and fact, notwithstanding the label tagged on them. Such latter grounds were held incompetent and were accordingly struck out.

Nnaemeka-Agu JSC in the course of his concurring judgment observed at pages 744G-745A of the report:

*"Let me pause here to observe that a ground of appeal cannot be an error in law and a misdirection at the same time, as the appellants' grounds clearly postulate. By their very nature one ground of appeal cannot be the two. For, the word 'misdirection' originated from the legal and constitutional right of every party to a trial by jury to have the case which he made either in pursuit or in defence, fairly submitted to the consideration of the tribunal. (See Bray v. Ford (1895) A.C. 44, at p.49. In our system in which the Judge is Judge and Jury, a misdirection occurs when the Judge misconceives the issues, whether of facts or of law, or summarizes the evidence inadequately or incorrectly. See Chidiak v. Laguda (1964) 1 NMLR 123, at p. 125. He may commit a misdirection either by a positive act or by non-direction. But when his error relates to his finding it cannot properly be called a misdirection: It could be an error in law. This is why the appellants' grounds 4,5,7 and 8 said to be 'error in law and misdirection' are, above every other defects, obvious incongruities."*

It is this passage that the Court below per Ogundere JCA, took as authority for saying that a ground of appeal that alleges "error in law and on the facts" or "error in law and misdirection in law or facts" is incompetent. Are their Lordships of that Court right? I don't think so.

I am aware that the case on hand is not the first where the Court of Appeal had held as it did in this case. See for example: (1) Trans Atlantic Shipping Agency Ltd. v. I.A.S. Cargo Airlines (Nig.) Ltd. (1991) 7 NWLR 156, 175 G-H where Achike JCA (as he then was) said:

*"It is also trite that there cannot exist in one ground of appeal a competent of error in law as well as misdirection in fact. Such complaint is improper. The true position is that error in law should be constituted under a separate ground of appeal, so also a misdirection in fact. See Anadi v. Okoli (1977) 7 SC 57, pp 63-65, Ogbechie v. Onochie (1986) 2 NWLR (pt. 23) 484 at P. 491, and Pfeiffer v. Midland Rly Co. (1887) 18 QBD 243."*

(2) Akuchie v. Nwamadi (1992) 8 NWLR 214 at p.223, per Onu JCA (as he then was) relying on Nwadike v. Ibekwe (supra). (3) Mbionwu v. Obi (1997) 2 NWLR 298 where Akuchie v. Nwamadi was followed and

(4) Idaayor v. Tigidam (1995) 2 NWLR 359.

Now, Order 3 rule 2 (1) - (4) of the Court of Appeal Rules provide:

"2. (1) All appeals shall be by way of rehearing and shall be brought by notice (hereinafter called 'the notice of appeal') to be filed in the Registry of the court below which shall set forth the grounds of appeal, shall state whether the whole or part only of the decision of the court below is complained of (in the latter case specifying such part) and shall state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, and shall be accompanied by a sufficient number or copies for service on all such parties. It shall also have endorsed on it an address for service.

(2) If the grounds of appeal allege misdirection or error in law the particulars and the nature of the misdirection or error shall be clearly stated.

(3) The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.

(4). No ground which is vague or general in items or which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of the evidence, and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on application by the respondent."

These provisions spell out what are required of a ground of appeal and the purpose is to ensure that the respondent is not taken by surprise. Once, therefore, a ground of appeal clearly states what the appellant is complaining about and there is compliance with the rules of court, I cannot describe such a ground as bad and therefore incompetent. The dictum of Nnaemeka-Agu JSC in Nwadike v. Ibekwe (supra) did not go as far as some of their Lordships of the Court of Appeal made it to look. The learned Justice of the Supreme Court advised against lumping together in a ground of appeal complaints that ought better to have been split into

different grounds of appeal. I commend his wise counsel to all legal practitioners engaged in drafting notices of appeal. I do not think, however, that non-adherence to this wise counsel will necessarily render incompetent any ground of appeal that otherwise complies with the requirements of the rules. And it is in this regard that I am of the view that Olanrewaju v. Bank of the North Ltd (1994) 8 NWLR 622 was correctly decided by the Court of Appeal.

Anyaoke v. Adi (1986) 3 NWLR 731 and Ogbechie v. Onochie (1986) 2 NWLR 484 relied on by the Court below in the instant case are just not apposite. The latter case lays down the tests to be applied in determining whether a ground of appeal is one of law, mixed law and fact or fact simpliciter. The former case deals with a number of issues none of which is relevant to the issue arising in the instant appeal.

Examining grounds 2, 6 and 10 placed before the Court below, I am of the humble view that they complied with the rules of that court. The particulars required by the rules were given and the grounds in no way, could be described as vague, general in terms or disclose no reasonable ground or mislead the Respondent. With respect to their Lordships of that Court, I think they were wrong in striking them out. It may be that prudence dictates that they could have been split into more grounds of appeal but that is not the same as saying that they are incompetent.

As the grounds were however argued along with other grounds of appeal in the Appellants' Brief before that Court - ground 2 along with grounds 1,4,7 and 11; grounds 6 and 10 along with grounds 8,12 and 13 - the error committed by the Court below in striking them out did not occasion any miscarriage of justice. It was for this reason and the other reasons given by my learned brother Ayoola JSC that I too dismissed this appeal on 23rd November, 1999.

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ONU JSC

I had a preview of the reasons for judgment just delivered by my learned brother Ayoola, J.S.C. His reasoning articulated therein agrees

entirely with my own that I have inevitably come to the same conclusion. It was for the same reason that I dismissed the appeal, as lacking in substance and reserved reasons for my judgment till today.

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**IGUH JSC**

On the 23rd November, 1999, I dismissed this appeal and then indicated that I would give my reasons for so doing today.

C

I have since had the advantage of reading in draft the reasons for judgment just delivered by my learned brother, Ayoola J.S.C., and I agree entirely with them.

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It is precisely for the same reasons that I, too, dismissed the appeal as utterly groundless and lacking in substance with N10,000.00 costs to the respondent.

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