

SUPREME COURT OF NIGERIA
19TH JANUARY, 2001. SC. 119/1995
CORAM:- A. G. KARIBI-WHYTE, M. E. OGUNDARE,
S. U. ONU, O. ACHIKE, S. O. UWAIFO, JJSC.

1. PETER ADEBOYE ODOFIN
2. OLATUNJI ANOKE PLAINTIFFS/APPELLANTS
(For themselves and as Representatives
of Izo and Idofin Communities
AND
JIMOH ONI DEFENDANT/RESPONDENT

CUSTOMARY LAW - Customary Court's decisions - Interpretation of - Focus should be on substance and not the form - And there should be no reliance on technicalities.

CUSTOMARY LAW - Customary Court's decisions - Interpretation of - Where restrictively interpreted - In breach of guidelines - Judgment should be reversed.

JUDGMENTS - Clerical error - Where noticed - The judgment should not be read in isolation of their various parts - To avoid distortion and confusion.

JUDGMENTS - Slips or error - Can be corrected by the court - As such Slips - Will not undermine or derogate from a good judgment.

LAND LAW - Identity of disputed land - Later disputes as to identity of land - Was a mere afterthought - Which should not be countenanced.

LAND LAW - Identity of disputed land - Uncertainty as to identity - Was resolved by a visit to locus in quo - And drafting of a rough plan.

LAND LAW - Title - Identity of disputed land - Must be clearly established by claimant - Except where it is familiar to both parties.

SUPREME COURT - *Supervisory powers - Includes power to correct all clerical errors - Arising from accidental slips - In judgments of lower courts.*

FACTS

The appellants in this case had sued the respondents who were defendants in the Asoko South Grade 1 Customary Court claiming ownership of a piece of land, recovery of damages for trespass and unlawful destruction of economic trees as well as an injunction restraining the defendants from entering into the said farmland. The Customary Court took evidence and visited the locus in quo where it took the evidence of a 100 year old man and equally drew a rough sketch of the land in dispute and adjoining parcels of land. It thereafter gave judgment in favour of the appellant.

Being dissatisfied the defendant appealed to the High Court which dismissed his appeal and confirmed judgment of the lower court. The defendants further appealed to the Court of Appeal sitting at Benin city who found in their favour and set aside the judgment of the trial court. The plaintiff/appellant being aggrieved has now appealed to the Supreme Court formulating the following issues for determination.

ISSUES

(1) Was the lower court right in proceeding to consider and finding in favour of the respondent the issue raised as arising from the complaint in ground 2 of the respondent's notice of appeal after it had earlier held that the said ground 2 lacked merit and deemed abandoned?

(2) Whether the learned Justices of the Court below were right in holding that all the arguments and other grounds of the respondent's appeal are covered by the two issues formulated by both parties without considering the binding decided cases cited to them by the appellants?

(3) Was the lower court right in using a finding of the customary court from which an appeal does not lie to it and which was not appealed against by the respondent in arriving at its conclusion that the identity of the land was not certain? Etc. see p.

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

Judgments - Clerical error

1. It will be unquestionably manifest to any dispassionate observer that it was a clerical slip on the part of the court or even a typographical error that instead of writing Ground 3 the Judge or the typist erroneously or mistakenly wrote Ground 2. It is evident that reading those two said sentences of the excerpt of the leading judgment at p. 100, lines 12 to 19 of the record disjointedly will provoke distortion and confusion in an otherwise lucid judgment of the lower court. This will be mischievous and tendentious and ought not to be encouraged. In any event, judgments of a court are not read in isolation of their various parts. (p. 313 F)

Slips may not undermine a good judgment

2. Courts are presided over by human beings and being human they are prone to mistakes and slips in the course of execution of their judicial functions. Such slips or errors are not swept under the carpet but are corrected and amended by appellate courts in the interest of justice. It is important to state that generally a court has powers to correct its own technical errors or slips of pen. Such powers are exercisable both in criminal and civil proceedings. It must be clearly stated that it is not every slip or error in a judgment that would be allowed to undermine or derogate from an otherwise well-written judgment. (p. 314 C)

Supreme Court - Supervisory powers

3. This Court in exercise of its general powers of supervision of all other courts in this country can invoke the plenitude of its powers under Order 8 Rule 16 of the Supreme Rules (as amended in 1999) to correct all clerical errors arising from what are undoubtedly accidental slips. Consequently, by reason of the above provisions of the Rules of this Court, I hereby correct the figure 2 at page 100 line 16 of the record to read 3. In the result, I hold that the submissions by appellants' counsel in relation to their Issues 1 and 2 are not well-founded because the lower court rightly entertained the appeal before it based on the two issues formulated which

were competently covered by valid grounds of appeal. (p. 314 E)

Identity of disputed land

4. A plaintiff desirous to succeed in his claim for declaration to title to the
 B land in dispute must regard establishing the identity of the land in dispute
 as a sine qua non. It does not make much difference whether the land
 suit is litigated in the superior or inferior courts. See Fabumi v Agbe
 (1985) 3 SC 28, at pp. 94-95, Odiche v Chibogwu (1994) 7 NWLR (Pt.
 C 354) 78, 86, Arabe v Asalu (1980) 5-7 SC. 78. Of course, where both
 parties are familiar with, or know the land in dispute, the question of its
 identity or its certainty will cease to perplex the trial court, so also the
 appellate court, and neither party will be allowed to place a cog in the
 wheel of justice by mischievously raising the issue of identity in order to
 D becloud what is otherwise a piece of land that is well-known to both
 parties. (p. 315 E)

Later disputes

E 5. It was common-ground and indeed not contradicted by anyone - that
 the land in dispute is a fairly small portion of land measuring 200 feet x
 200 feet on which the Respondent's Sosan Community was trespassing
 by building their Town Hall, and in consequence the Appellants chal-
 F langed them, giving rise to the report lodged to the Police as well as the
 institution of the action at the Akoko South Grade 1 Customary Court,
 Oka. What is more, at the locus in quo, both parties elicited information
 to the members of the customary court before they prepared a sketch of
 the land in dispute. Also, at the locus in quo, the Respondent neither
 G raised any argument nor contested the identity or area of the land in
 dispute. I cannot agree more with the submission of learned appellants'
 counsel that the Respondent's subsequent disputing of the identity or
 area of the land in dispute was clearly an afterthought whose only objec-
 H tive was to becloud an issue that was not raised at the trial court.(p.316G)

Uncertainty as to identity of land

6. It leaves a sour taste in the mouth for the Respondent at this belated

moment to strenuously contend that, in all sincerity, the identity of the disputed land is uncertain in terms of location and area. Whatever doubts that existed as to the location and identity of the land in dispute from the evidence led on both sides were cleared as a result of the visit to the locus in quo where the members of the court found no difficulty in making a rough plan of the land in dispute. It was as a matter of fact, not demonstrably shown that there was any misapprehension at the visit to the locus in quo regarding the identity of the said land. In the result, I find it manifestly compelling to hold that the identity of the little parcel of land in dispute (200' x 200') was not a real bone of contention in this case leading to this appeal. (p. 318 A)

Customary Court decisions - Focus should be on substance

7. In order to appreciate the real effect of the lower court's strong criticism of the statement of the customary court that the Respondent "*failed to prove ownership of the land in dispute*" it is important to stress that superior courts, particularly the apex court, have continued to stress that greater latitude and broader interpretations must be accorded to decision of customary courts as it is trite that the proceedings in the customary courts are not subject to the application of the Evidence Act. It is important that superior appellate courts in relation to matters relating to customary courts should focus their attention to the substance of the judgments or decisions in those courts rather than the form. This is so because customary courts - be they Area Courts or whatever name they are christened in our various judicial jurisdictions - are generally presided over by laymen without even rudimentary exposure to legal principles. An appellate court should in all circumstances strive to get to the bottom of the decision of a customary court. This can only be achieved by considering the import of a decision of a customary court not in fragments or in isolation of excerpts thereof but must be read harmoniously as a whole in order to capture its import. (p. 321 C)

Customary Court decision - Where restrictively interpreted

8. It seems to me from all I have been saying that the lower court's

approach to the interpretation of the trial customary court's expression that the "*defendants (meaning the respondents) failed to prove how they became the ownership of the disputed land*" was accorded a very restrictive connotation without heeding the time-honoured caution that expressions of inferior courts in this country should always be given greater latitude and broader interpretation in the interest of attainment of substantial justice between the parties. In the result, I unhesitatingly resolve Issue No. 5 in favour of the Appellants. (p. 322 H)

C REPRESENTATION

M.I. Igbokwe Esq, with him Miss Sylvia Abanah for the appellants.
Oba S.K.A. Adedoyin for the respondent.

D CASES REFERRED TO

Aromolaran v Kupoluyi (1994) 2 NWLR (Pt. 325) 221 at 244

Folounso v State (1993) 8 NWLR (pt.313) 612

Fabumi v Agbe (1985) 3 SC 28, at pp 94-95

E Odiche v Chibogwu (1994) 7 NWLR (pt.354) 78, 86

Arabe v Asalu (1980) 5-7 SC.78.

Ikpang v Edoho (1978) 6-7 SC 221

Osu v Ogiri (1988) I NWLR (pt.64) 221 at 230-231

F Latunde v Lajinfi (1989) 3 NWLR (pt. 108) 177 at 186

Ajagunjeun & ors v Sobo Osho of Yeku Village & ors (1977) 5 SC 89

Madubuonwu v Nnalue (1999) II NWLR (pt.628) 673

Ofozo Onyido v Goddy Ejemba (1991) 4 NWLR (PT. 184) 203

G Okoli v Onyejuluwa (2000) 10 NWLR (pt.676) 450

RULES REFERRED TO

Supreme Court Rules Order 8 Rule 16

H BOOK REFERRED TO

Customary Court Manual (1980)

LEAD JUDGMENT BY ACHIKE JSC

This is an appeal against the judgment of the Court of Appeal holding at Benin City and delivered on 3rd March 1995. The appellants herein, as plaintiffs, in the Akoko South Grade 1 Customary Court claimed against the defendants, herein as respondents, as follows:

“The plaintiffs’ claim for themselves and as representatives of Izo and Idofin Community, against the defendants jointly and severally

(i) The ownership of a piece of land lying and situate at near Sosan, valued N1,400.00 (one thousand four hundred naira).

(ii) Recovery of N1,300.00 (one thousand three hundred naira) being damages for unlawful desurfacing, destruction of economic trees, occupation and trespass into the plaintiffs farmland situate at and known as UGBOVIEBIEFA near Sosan, measuring about 200’ x 200’

(iii) INJUNCTION:- restraining the defendants and or their agents or members of their Community i.e. Sosan Oke, from further entering or trespassing onto the said farmland of the plaintiffs”.

After taking evidence from both parties and their witnesses and a visit to the locus in quo including taking of evidence thereat from a hundred years old man, Paul Agunbiade, a man from Isua Akoko who was duly subpoenaed, the Akoko South Grade 1 Customary Court, after drawing a rough sketch of the land in dispute and adjoining parcels of land, gave judgment in favour of the plaintiffs in terms of their claim for title to the land in dispute and N500.00 damages for trespass, and also awarded 46.40k costs to them.

Dissatisfied, the defendants appealed to the High Court of Justice, Ikare in exercise of its appellate jurisdiction. After hearing of arguments of learned counsel of the parties on the grounds of appeal filed, that court presided over by Ajayi, J dismissed the appeal and confirmed the judgment of the trial court.

Still dissatisfied, the defendants appealed to the Court of Appeal sitting at Benin City. That Court found in their favour in December 1983 and set aside the judgment of the High Court.

The plaintiffs in turn appealed to the Supreme Court and after hearing legal submissions by counsel it declared the judgment of the Court of

Appeal null and void on the ground that the defendant, neither sought nor obtained an order for extension of time to file appeal before the Court of Appeal.

This situation was regularised by the 2nd defendant after the death of the 1st defendant, having been granted extension of time within which to ask for leave to appeal to the Court of Appeal from the decision of the Ikare High Court as well as leave to appeal and an extension of time to appeal against the said judgment. The Court of Appeal, after due hearing of the appeal handed down its judgment on 3rd march, 1995 in favour of the defendants. This appeal by the plaintiff, as earlier stated, is against the said judgment of the Court of Appeal.

It is useful to note that at the Court of Appeal, the defendants as appellants filed five grounds of appeal and formulated two issues for determination therefrom, while the plaintiffs, as respondents identified one issue for determination.

In their brief, Mr. M. I. Igboke, learned counsel for the plaintiffs, as appellants, identified the following issues for determination in paragraph 2.1 of Appellant's unpagged Brief of argument:

"2.1 The Appellants humbly submit that the following issues arise for determination in this appeal namely:-

(1) Was the lower court right in proceeding to consider and finding in favour of the respondent the issue raised as arising from the complaint in ground 2 of the respondent's notice of appeal after it had earlier held that the said ground 2 lacked merit and deemed abandoned?

(2) Whether the learned Justices of the Court below were right in holding that all the arguments and other grounds of the respondent's appeal are covered by the two issues formulated by both parties without considering the binding decided cases cited to them by the appellants?

(3) Was the lower court right in using a finding of the customary court from which an appeal does not lie to it and which was not appealed against by the respondent in arriving at its conclusion that the identity of the land was not certain?

(4) Was the lower court right in holding that the High Court failed to resolve the issue of identity of the land in dispute and that the identity

of the land was not certain?

(5) Was the lower court right in not properly considering and applying to this case the guidelines laid down in the judgments of this Honourable court for the interpretation of the claims in procedure followed by and the proceedings and judgment in a customary court? B

(6) Was the lower court not wrong in entertaining and determining against the appellants the issues of the impropriety of or lack of direction on the casting of the onus of proof on the respondent by the customary court when the issue did not relate to or arise from any of the grounds of appeal filed by the respondent? C

(7) Was the lower court not wrong in failing to properly raise the issues of non-suited the appellants or ordering a retrial of the suit and thereafter non-suited the appellants or ordering a retrial of the suit instead of dismissing the appeal? D

Issues 1 and 2

Permit me to reproduce them again. Issue 1 reads as follows:-

(i) Was the lower court right in proceeding to consider and finding in favour of the respondent the issue raised as arising from the complaint in ground 2 of the respondent's notice of appeal after it had earlier held that the said ground 2 lacked merit and deemed abandoned? E

While Issue 2 runs thus:

(2) Whether the learned Justices of the Court below were right in holding that all the arguments and other grounds of the respondent's appeal are covered by the two issues formulated by both parties without considering the binding decided cases cited to them by the appellants? F

It seems quite clear to me that the complaints raised under these two issues are closely related and ought to be taken together thereby avoid unnecessary repetition. I must commend the sensible way learned respondent's counsel tackled the same issues by taking them together. G

Appellants' learned counsel pointed out that, and I wish to quote him verbatim as much as possible: H

"The lower court at pages 102 line 10 to 108 of the record considered and held in favour of the Respondent the issues raised for determination by the Respondent in his brief (pp.65-66) based on ground 2 of his notice

of appeal (pp.48-49) which complained against the holding that the land in dispute was certain or ascertainable. It is submitted to this Honourable Court that even though the lower court allowed the appeal inter alia because of the complaint in ground 2 of the Respondent's Notice of Appeal that the appellate High Court wrongly held that the land in dispute and in respect of which the trial court gave the Appellants judgment was certain and ascertainable (pp.103-109), the lower court had before then already held in respect of the said ground 2 as follows:-

"I agree with the submissions of the Respondent that ground 2 lacks merit and is deemed abandoned" (p. 100 lines 15-17) after considering the submissions of the Appellants on the issues raised by the Respondent for determination vis-a-vis the Respondent's grounds of appeal".

It is learned counsel's submission that the lower court having held that the said ground 2 was unmeritorious and deemed abandoned, that court ought to have struck out or discountenanced the said ground 2 and any issue raised therefrom. Counsel contended that such ground of appeal could not be evoked to allow the appeal as the lower court did, more so as the mix-up has also occasioned a miscarriage of justice to the appellants. Counsel finally submitted that a ground of appeal that lacks merit and deemed abandoned could not go to any issue; he placed reliance on the authorities of Aromolaran v Kupoluyi (1994) 2 NWLR (Pt.325) 221 at 244 and Folounso v State (1993) 8 NWLR (Pt. 313) 612.

In Issue 2, inter alia, counsel complained about the mix-up in the use of the words 'trial Judge/Court' (i.e. customary court) affirming the judgment of the 'lower court' and this mix-up was conceded by the respondent in his Reply Brief. It is counsel's further submission that the issues formulated by the respondent in the lower court were not covered by any of his grounds of appeal and ought to have been discountenanced.

Respondent's learned counsel arguing Issues 1 and 2 together submitted that the lower court was right to have entertained the appeal before it on the two issues as formulated. It is counsel's submission that the two issues formulated were within the purview of grounds 1, 2, 4 and 5 of the grounds of appeal and there was nowhere in the record where the lower court actually held that ground 2 of the Respondent's

grounds of appeal had been abandoned. It is counsel's further submission that appellant's formulation of his issues for determination was an admission on their part that the issues were based and covered by the grounds of appeal filed.

Counsel finally submitted that, as found by the lower court ground 3 of the grounds of appeal was not covered by the two issues formulated by the appellant and conceded that it was an error on the part of the lower court to have mistakenly said that "ground 2 lacks merit and is deemed abandoned" whereas the lower court intended to refer to ground 3.

I have given a dispassionate consideration to the issues and submissions of both learned counsels in this regard. I must confess that I find the arguments of appellant's learned counsel on Issues Nos 1 and 2 absolutely woolly, wobbling and misplaced. It is unfortunate that counsel unduly laboured to make a mountain out of a molehill with respect to the obviously clerical slip committed in the leading judgment of Ige, J.C.A. where her Ladyship is alleged to have said: "Of all the grounds of appeal complained against (sic) by the Respondents in their brief of argument I can say that only Ground 3 is not covered by the two issues formulated by the Appellant". (Emphasis supplied by me). This is undoubtedly the true state of affairs. But in the next sentence that followed the foregoing immediately the learned Justice of Appeal is credited with saying "I agree with the submission of the Respondents that Ground 2 lacks merit and is deemed abandoned. All the arguments and other grounds of appeal are covered by the two issues formulated by both the Appellants and the Respondents". (Again, emphasis is mine) **It will be unquestionably manifest to any dispassionate observer that it was a clerical slip on the part of the court or even a typographical error that instead of writing Ground 3 the Judge or the typist erroneously or mistakenly wrote Ground 2. It is evident that reading those two said sentences of the excerpt of the leading judgment at p. 100, lines 12 to 19 of the record disjointedly will provoke distortion and confusion in an otherwise lucid judgment of the lower court. This will be mischievous and tendentious and ought not to be encouraged. In any event,**

judgments of a court are not read in isolation of their various parts.

I need make only two more observations to show that the submission by counsel for the Appellants is not well-founded. First it should be noted that at nowhere in their brief in the lower court did the Appellants
B canvass the invalidity of ground 2 of the Grounds of appeal for any reason whatsoever, even on the issue of abandonment. Secondly, even though appellants' learned counsel had readily submitted that the mix-up in this regard has occasioned a miscarriage of justice, nevertheless, I
C have searched the record carefully and I am unable to discover anywhere in it where counsel demonstrated the alleged miscarriage of justice. I myself I am unable to pinpoint any miscarriage of justice arising from the circumstances of this case.

Courts are presided over by human beings and being human
D **they are prone to mistakes and slips in the course of execution of their judicial functions. Such slips or errors are not swept under the carpet but are corrected and amended by appellate courts in the interest of justice. It is important to state that generally a court**
E **has powers to correct its own technical errors or slips of pen. Such powers are exercisable both in criminal and civil proceedings. It must be clearly stated that it is not every slip or error in a judgment that would be allowed to undermine or derogate from an otherwise well-written judgment. This Court in exercise of its general**
F **powers of supervision of all other courts in this country can invoke the plenitude of its powers under Order 8 Rule 16 of the Supreme Rules (as amended in 1999) to correct all clerical errors arising from what are undoubtedly accidental slips. Consequently, by reason**
G **of the above provisions of the Rules of this Court, I hereby correct the figure 2 at page 100 line 16 of the record to read 3. In the result, I hold that the submissions by appellants' counsel in relation to their Issues 1 and 2 are not well-founded because the**
H **lower court rightly entertained the appeal before it based on the two issues formulated which were competently covered by valid grounds of appeal. Thus, in the final analysis, Issues 1 and 2 are resolved against the Appellants.**

It may be recalled that the remaining five issues were submitted for our consideration as alternative to Issues 1 and 2. I must comment, albeit, cursorily that appellants' learned counsel appears to have the knack of proliferating issues for determination. Already, as evinced in the first two issues in this appeal, I was obliged to take Issues Nos 1 and 2 together. Now I observe that issues 3 and 4 are matters bothering on identity and certainty of the land in dispute and ought to have been properly couched as one issue. Again, counsel's penchant for proliferation of issues is demonstrated in his Issues Nos 5 and 6 which together relate to attitude of appellate courts towards proceedings and imperfections by Judges of customary courts. The summary from what I have been saying is that the rest of this appeal can be considered from two angles, namely, the question of identity and certainty of the land in dispute (i.e. Issues 3 and 4) and the attitude of the appellate court to proceedings of customary courts (i.e. issues 5 and 6). Clarity, though, may necessitate taking Issues 5 and 6 separately.

Issues 3 and 4: identify and certainty of the land in dispute.

A plaintiff desirous to succeed in his claim for declaration to title to the land in dispute must regard establishing the identity of the land in dispute as a sine qua non. It does not make much difference whether the land suit is litigated in the superior or inferior courts. See Fabumi v Agbe (1985) 3 SC 28, at pp. 94-95, Odiche v Chibogwu (1994) 7 NWLR (Pt. 354) 78, 86, Arabe v Asalu (1980) 5-7 SC. 78. Of course, where both parties are familiar with, or know the land in dispute, the question of its identity or its certainty will cease to perplex the trial court, so also the appellate court, and neither party will be allowed to place a cog in the wheel of justice by mischievously raising the issue of identity in order to becloud what is otherwise a piece of land that is well-known to both parties.

It may be recalled that both parties respectively gave evidence directed towards the identification of the land in dispute. Subsequently, the Customary Court judges visited the locus in quo and took evidence from a 100 years old man, Pa Paul Agunbiade who had earlier been subpoenaed to appear. He was one of the elders that late Dare the first settler on the

land came to when he wanted to ask for the land and was the very same old man who was mentioned in the court by one of defendant's witnesses that used to see them harvest garden fruits ("Igba") on the disputed land. The appellants showed the court members the land earlier
B given to the respondents as a freehold for their settlement. But it was when the respondents encroached on the appellants' land outside the area showed to them and commenced work to erect a community Hall that the appellants were obliged to institute action against them which is the off-shoot of this appeal.

C It is worthy of note that the respondents also showed the court members their boundaries from Sosan to Upo-Egboiyin stream, very near Isua land across the road, while the 100 years-old man showed the court members' and the defendants an Ancient City War Wall built alone by the
D appellants fathers during the era of slave trade, having denied that the Ancient City War Wall was built by the forefathers of the appellants and the respondents. In fact, it is also worthy of note that 2nd Defendant, one Chief Agu, aged about 80 years, who is a member of the Sosan
E people attested that there had long existed a common boundary between Sosan people and the Isua (i.e. between the Appellants and the Respondents), each group clearing to the common boundary between the parties called Upo-Egboiyin stream. He further attested that the land in dispute
F "is just a distance of an electric-pole to his house.

At the visit to the locus in quo the Customary Court members prepared a rough sketch of the land in dispute which also showed the other areas of land owned respectively by the parties which are not in dispute. Interesting features shown thereon are the Ancient War Wall which was
G conceded to have been erected by the Appellants during the era of slave-trade, Isua farm lands as well as Sosan farmlands. **It was common-ground and indeed not contradicted by anyone - that the land in dispute is a fairly small portion of land measuring 200 feet x 200**
H **feet on which the Respondent's Sosan Community was trespassing by building their Town Hall, and in consequence the Appellants challenged them, giving rise to the report lodged to the Police as well as the institution of the action at the Akoko South Grade 1 Custom-**

ary Court, Oka. What is more, at the locus in quo, both parties elicited information to the members of the customary court before they prepared a sketch of the land in dispute . Also, at the locus in quo, the Respondent neither raised any argument nor contested the identity or area of the land in dispute. The two immediate lower courts sitting in exercise of their appellate jurisdictions were only bound to determine the appeal on the record of appeal and were not obliged to visit the locus in quo in order to resolve any conflict in relation to the identity of the disputed land or in fact in relation to any feature of the land. I cannot agree more with the submission of learned appellants' counsel that the Respondent's subsequent disputing of the identity or area of the land in dispute was clearly an afterthought whose only objective was to becloud an issue that was not raised at the trial court. It is equally remarkable that at the inspection at the locus in quo, the court members were shown the Ugbo-vibiefa where the respondents were constructing a Community Hall. When the court members also questioned appellants' first witness, Isiah Leramo, about the economic trees that were allegedly felled by the Respondents, this witness showed them a felled carob tree ('Igi-igba') and explained that the respondents started to cut down trees one by one over the past years.

After a thorough review and evaluation of evidence placed before the trial court, that court believed the testimonies of the appellants that the land in dispute belonged to them because the appellants as "plaintiffs have proved their case beyond reasonable doubt" and accordingly proceeded to declare title of ownership of the land in dispute in their favour, which declaration was tied to the land shown on the rough sketch prepared by the customary court members at the locus in quo.

This appeal is a high-flier from the proceedings of a customary court presided over by laymen without any assistance whatsoever from legal practitioners appearing for the parties. From the evidence led by both parties, including the visit to the locus in quo and parties' responses to questions put to them thereat the making of the rough sketch of the land in dispute was facilitated. It is interestingly significant that the parties while at the inspection of the land in dispute - a small parcel of land

roughly measuring 200ft by 200 ft - where the building construction of the Respondents' Community Hall evoked the action leading to this appeal was even shown on the rough sketch, but did not attract any argument or opposition, even from the Respondents, as defendants, as an action perpetrated within the land in dispute. **It leaves a sour taste in the mouth for the Respondent at this belated moment to strenuously contend that, in all sincerity, the identity of the disputed land is uncertain in terms of location and area. Whatever doubts that existed as to the location and identity of the land in dispute from the evidence led on both sides were cleared as a result of the visit to the locus in quo where the members of the court found no difficulty in making a rough plan of the land in dispute. It was as a matter of fact, not demonstrably shown that there was any misapprehension at the visit to the locus in quo regarding the identity of the said land. In the result, I find it manifestly compelling to hold that the identity of the little parcel of land in dispute (200' x 200' was not a real bone of contention in this case leading to this appeal.**

Accordingly, I respectively resolve Issues 3 and 4 against the Respondent.

Issue 5

"Was the lower court right in not properly considering and applying to this case the guidelines laid down in the judgements of this Honourable Court for the interpretation of the claims in procedure followed by and the proceedings and judgments in a customary court?"

The gravamen of the submission by Mr. Igbokwe, learned counsel for the Appellants in the Appellants' brief, is that the superior courts, including this Court, have handed down guidelines on the interpretation and consideration by appellate courts to the effect "that they should not be too strict but liberal and give great latitude in the interpretation of these matters." Counsel relies on the authority of Ikpong v Edoho (1978) 6-7 SC 221. It is counsel's further submission that the lower court was far from being liberal in the consideration of the judgment and acts of the trial customary court. Such liberal approach, counsel contended, would have enabled the lower court to fully appreciate the rough sketch of the

land in dispute prepared by the members of the customary court. In the same breath counsel submitted that the lower court ought not to have applied the strict technicalities of procedure and the Evidence Act, particularly on the question of onus of proof as it relates to a customary court, as cautioned by this court in a long chain of judicial authorities; B see, for example, Osu v Ogiri (1988) 1 NWLR (Pt.64) 221 at 230-231 and Latunde v Lajinfi (1989) 3 NWLR (Pt. 108) 177 at 186. Had the lower court allowed itself to be guided or influenced by the aforesaid guidelines, counsel finally submitted, it would not have set aside the decision of the High Court which in exercise of its appellate jurisdiction had C in its judgment affirmed the judgment of the trial customary court.

Learned counsel for the Respondent, in Respondent's brief submitted that the lower court was not strict in its consideration of the judgment of the customary court. It is counsel's submission that while an D appellate court will make allowances for some omission made in procedure of a customary court, nevertheless, these concessions would not be at the expense of doing substantial justice in the case before it. He contended that liberal approach is only encouraged in relation to procedure E and decisions of customary courts but does not enable a plaintiff who has failed to prove his claim to succeed in his action. Thus learned counsel fully endorsed the approach by the lower court when it rejected the conclusion of the customary court in its judgment that there was F onus on the Respondent (who did not make a counter-claim) to prove ownership to the land in dispute.

It is incontestable and indeed beyond peradventure that this case which originated from the Akoko Sough Grade 1 Customary Court Oka, G was fought principally on the facts elicited in evidence by both parties at the trial, including the evidence led at the hearing at the locus in quo as well as the rough sketch of the locus in quo prepared by members of the Customary Court. Permit me to reiterate, only as emphasis, and to elucidate what transpired at the customary court, that after due hearing which H went to a great length to review and evaluate the evidence tendered, and thereafter, the court came to a conclusion, in its own words, as follows: "DECISION

After careful consideration of evidence before the court on this claim the plaintiffs have proved their case beyond reasonable doubt as contained in the Customary Court Manual 1980, page 85, section 2 paragraph 52(b) (iv).

B *The defendants, who had earlier settled in two different places and this being their 3rd settlement failed to prove how they became the ownership of the disputed land as his evidence did not conform with any section in 2 - 52 page 85 of the Customary Court Manual 1980(b) 1-iv.*

C *Finally, the plaintiff is declared the title and Ownership of the disputed land by the Court. See Rough Sketch on page 14.” (Emphasis is mine)*

D The Court of Appeal was manifestly outraged by the decision of the trial Customary Court which was confirmed by the decision of Ajayi, J sitting in the High Court in exercise of his appellate jurisdiction and who confirmed the judgement of the Customary Court by the misplaced shifting of onus of proof of title on the defendants (herein Appellants). Hear the excerpt of the leading judgment of Ige, JCA at the Court of Appeal in this regard.

E *“In this case the Appellants were the Defendants and they did not file any claim against the Plaintiff by way of a cross action hence one wonders why the Court should refer to them as having failed to prove ownership of the land including the land in dispute. It is the Plaintiffs/*
F *Respondents that must prove ownership of the land in dispute and then the Defendants/Appellant can rebutt the evidence of ownership.*

To confirm the confusion of the trial Customary Court in its evaluation of the evidence the Court kept heaping the burden of proof on the Defendants/Appellants.”

G It is certainly not the law, if not bizarre, to insist or expect a plaintiff in a civil case “to prove his case beyond reasonable doubt.” On the contrary, it is the law that a plaintiff in any civil case, in order to succeed must establish his case on preponderance of evidence, because the phrase
H “proof beyond reasonable doubt” is only apposite in criminal prosecutions. It is significant that the lower court did not consider it appropriate to make any passing remark, albeit cursorily, on this stupendous high standard of proof insisted to be established by the Akoko South Grade 1

Customary Court in what was unquestionably an ordinary civil suit. Obviously, when it is borne in mind that the trial customary court was satisfied that the Appellants proved their civil claim “beyond reasonable doubt” then a dispassionate observer who also heard the same customary court state that the Respondents even failed to prove ownership of the land in dispute would appreciate, having regard to the penchant for our metaphoric mode of expression, that it seemed clear that the customary court was duly making a far-reaching remark that the Respondents had no answer to the Appellants’ case who had established their case to the hilt i.e. beyond reasonable doubt. The same sublime result is achieved by harmonious construction of the several clauses and the words of each clause in written instruments.

In order to appreciate the real effect of the lower court’s strong criticism of the statement of the customary court that the Respondent “*failed to prove ownership of the land in dispute*” it is important to stress that superior courts, particularly the apex court, have continued to stress that greater latitude and broader interpretations must be accorded to decision of customary courts as it is trite that the proceedings in the customary courts are not subject to the application of the Evidence Act. It is important that superior appellate courts in relation to matters relating to customary courts should focus their attention to the substance of the judgments or decisions in those courts rather than the form. This is so because customary courts - be they Area Courts or whatever name they are christened in our various judicial jurisdictions - are generally presided over by laymen without even rudimentary exposure to legal principles. An appellate court should in all circumstances strive to get to the bottom of the decision of a customary court. This can only be achieved by considering the import of a decision of a customary court not in fragments or in isolation of excerpts thereof but must be read harmoniously as a whole in order to capture its import. In other words, when greater latitude is accorded to the interpretation of the decisions of customary courts it will be sufficient if such decisions are seen to accord with the view of persons of good common sense and reason completely

devoid of legalistic encroachments. This, to my mind, is what can be distilled from a long line of judicial authorities on the limit to which superior appellate courts are cautioned to go in any attempt to decipher the true meaning of decisions of customary courts presided over by non-legal practitioners. It is only by heeding such caution that the painstaking adjudicatory functions of customary courts as they relate to their decisions can be meaningfully comprehended and harnessed in the attainment of substantial justice in contradistinction to undue reliance on technicalities. See Ikpang v Edoho (1978) 6-7 SC.221, Ajagunjeun & ors v Sobo Osho of Yeku Village & ors (1977) 5 SC. 89, Madubonwu v Nnalue (1999) 11 NWLR (Pt. 628) 673, Ofozo Onyido v Goddy Ejemba (1991) 4 NWLR (Pt. 184) 203 and Okoli v Onyejuluwa (2000) 10 NWLR (Pt. 676) 450.

It also seems clear to me that the strictures of the lower court as regard the offending statement of the trial customary court that the “*defendants failed to prove ownership of the land in dispute*” relate to the style of writing of judgment by a lay panel but does not offend the substance of the decision reached by the lay trial customary court nor did that court commit any serious error of procedure, even if it is not bound by strict Rules of the Evidence Act. For example, suppose the complaint is that the trial Customary Court, on the case being called up before it, ordered that the defendants must begin to state their case and field all their witnesses in proof of their ownership to the land in dispute before calling up the plaintiffs to prove or establish their case. That, to say the least, would have been blatantly contrary to the provisions of the Customary Court Manual (1980) supplied to such inferior courts for their guidance in the dispensation of civil justice. Any decision reached under such bizarre approach is contemptibly unpardonable and sufficient to strike down the decision of the customary court in favour of a trial de novo.

It seems to me from all I have been saying that the lower court’s approach to the interpretation of the trial customary court’s expression that the “*defendants (meaning the respondents) failed to prove how they became the ownership of the disputed land*” was ac-

corded a very restrictive connotation without heeding the time-honoured caution that expressions of inferior courts in this country should always be given greater latitude and broader interpretation in the interest of attainment of substantial justice between the parties. In the result, I unhesitatingly resolve Issue No. 5 in favour of the Appellants. B

The resolutions I have so far made in respect of Issues Nos. 3, 4, and 5 are so substantial and in Appellants' favour that no useful purpose will be served by further determination of the remaining two issues which, in my view, are rather inconsequential. C

For the foregoing reasons, the appeal having been resolved in favour of the Appellants, the appeal must be , and is hereby, allowed. I set aside the judgment of the Court of Appeal, including the order as to costs and restore the judgment of the High Court presided over by Ajayi, J wherein he affirmed the judgment of Akoko South Grade 1 Customary Court, Oka. D

I assess costs at 10,000.00 against the Respondent in this Court and also 5,000.00 in the lower court. E

KARIBI-WHITE JSC

I have had the privilege of reading the leading judgment of my learned brother Okay Achike, JSC in this appeal. I agree entirely with the reasoning and conclusion therein allowing the appeal of the Appellants. I also abide by the costs awarded and the orders made. F

OGUNDARE JSC

I have read in advance the judgment of my learned brother Achike JSC allowing this appeal, setting aside the judgment of the Court of Appeal and restoring the judgment of the appellate High Court. I agree with him that the appeal has merit. G

The suit leading to this appeal originated in the Akoko South Grade 1 Customary Court where the plaintiffs who are now Appellants before us had sued Chief Agu and Mr. Jimoh Oni as defendants claiming title to the land in dispute and damages for trespass and injunction. My learned H

brother has in his judgment set out the history of this case. I do not need to go over all that again. Suffice it to say however, that the trial Customary Court after taking evidence from the parties and their witnesses and conducting an inspection of the land in dispute entered judgment in favour of the plaintiffs. The Court tied the declaration of title to a rough sketch prepared by it as a result of its inspection of the locus in quo. The defendant appealed to the High Court of Ondo State sitting in its appellate jurisdiction. The appeal was dismissed. There was a further appeal to the Court of Appeal by the defendants. The Court of Appeal allowed the defendant's appeal and set aside the judgment of the two courts below it. It is against that judgment that the plaintiffs have now appealed to this Court.

It may be pertinent to mention at this stage that the 1st defendant died before the appeal to the Court of Appeal but the proceedings were continued by the 2nd defendant who is now the Respondent before us as he was the only appellant in the Court of Appeal.

The Court below allowed the appeal of the defendant on two grounds - (1) Uncertainty of the land in dispute; (2) Misplacement of the burden of proof by the trial Customary Court. I want to say a few words on these two issues. I agree entirely with my learned brother Achike JSC in his criticism of the proliferation of issues proffered in the appellants' brief. It is sufficient for the purpose of this determination to limit our consideration to the two issues upon which the Court below allowed the appeal of the Respondent.

(1) Identity of Land in dispute: It is note worthy to observe that it was only in the Court of Appeal that the defendant raised for the first time the issue of the identity of the land in dispute. Ige JCA in her lead judgment observed:

"In this case by their evidence given in the Customary Court the parties have given varied descriptions of the land in dispute."

And later in the judgment she also observed -

"Looking at the descriptions of the land given by plaintiffs and their witnesses, and the descriptions given by the Defendants/Appellants and their witnesses there seems to me to be no clear correspondence with

the report of the Court's inspection of the locus in quo.

The testimonies in this case with respect to the identity of the land in dispute are so conflicting and divergent that the parties could not have been referring to the same piece of land."

With profound respect to their Lordships of the Court below, I think these observations are misplaced. In the evidence of the 1st plaintiff at the trial he stated thus:

The boundaries of the land is (sic) as follows:-

In the East by a rock called Egbeta; in the West by a rock called Orisi; in the South by Igbomusi; in the North by Egba Fowode"

I can see no evidence of any other witness in support of plaintiffs' case contradicting the description above. The 2nd defendant who is now the Respondent in this appeal gave a description of the land he claimed to belong to his people. This is his evidence -

"He named the boundaries as:

(1) Upo-egboiying stream from Ishua which runs to Ipesi

(2) Orisi Rock

(3) ?

(4) Bounded by Ogbon stream near Ifira"

The trial Court visited the land in dispute in the presence of the parties who showed the Court members the land in dispute in consequence of which the Court prepared a rough sketch of the land. I think taking all these into consideration it will not be right to say that the identity of the land was uncertain. It will appear that the defendant raised this at the Court of Appeal as the last straw to hold on to and I think the evidence given by the 1st plaintiff taken together with the rough sketch drawn by the trial court is sufficient to satisfy the test laid down in KWADZO V. ADJEI 10 W.A.C.A. 274 to the effect that whether a surveyor taking the record could produce a plan showing accurately the land to which title has been given. The court below was clearly in error to find that the land in dispute was not certain.

(2) Misplacement of the burden of proof by the trial Customary Court: In its judgment, the trial Customary Court wrote as follows:

"After careful consideration of evidence before the Court on this

claim the plaintiffs have proved their case beyond reasonable doubt as contained in the Customary Court Manual 1980, page 85, section 2 paragraph 52(b)(iv).

The defendants, who had earlier settled in two different places and this being their 3rd settlement failed to prove how they became the ownership (sic) of the disputed land as his evidence did not conform with any Section in 2 - 52 page 85 of the Customary Court Manual 1980(b) 1 iv” It is the statement in the second paragraph of the passage above that the Court below, per Ige JCA, took umbrage. In her lead judgment the learned Justice of the Court of Appeal said:

“It is my candid view that the Customary Court became confused in its evaluation of the evidence before it, when it stated thus in its judgment. I quote;

‘The Defendants on their own evidence stated that the whole land including the disputed area belonged to them and denied the evidence of the Plaintiff that the late Mr. Dare and Ikegbejo came to beg for the land which they settled (see page 14 for Rough Sketch) - in the opinion of the Court, the Defendants have failed to prove ownership of the land including the disputed area as shown on the Rough Sketch - as directed by the Customary Court Manual 1980 2 -52(b) page 86’

What that section of the Customary Court Manual edited by Orojo CJ (as he then was) said that a Plaintiff must specify the nature of the title which he claims and establish that he has it - see *EDU V. COLE* (1960) WNLR 18; *EMEAGWARA V. NWAIMO* 14 WACA p.347. The section of the Manual went further to state the different ways in which a Plaintiff’s title to a right of occupancy may arise.

In this case the appellants were the Defendants and they did not file any claim against the Plaintiff by way of a cross action hence one wonders why the Court should refer to them as having failed to prove ownership of the land including the land in dispute. It is the Plaintiffs/Respondents that must prove ownership of the land in dispute and then the Defendants/Appellants can rebut the evidence of ownership.”

I think the Court below, with profound respect to their Lordships of that Court, was too strict in its consideration of the proceedings of the trial

Customary Court. Their Lordships should have allowed themselves to be guided by the advice of Lord Atkin in NTHAM V. BENNIEH (1931) AC 72; 1 W.A.C.A. 1 to the effect that -

“...decisions of the native tribunals on such matters which are peculiarly within their knowledge, arrived at after a fair hearing on relevant evidence, should not be disturbed without very clear proof that they are wrong”

See also: 1 BRAHIMAH V. GARIBA, 13 WACA 174. It must also be remembered that the Evidence Act is not applicable to Customary or Area Courts. Hence the proceedings of those Courts are not conducted in strict conformity with the Act. It is sufficient that they are conducted fairly and in accordance with their rules. Reading through the record of appeal in this case, it cannot be said that there has been any breach of the rules of fairness or of the rules of the court in the conduct of the proceedings in the trial court. The passage the Court below took objection to does not portray shifting the burden of proof on the Defendants as the Court took it to be. Rather, what the trial court seemed to be saying was that the defendants had failed to rebut the strong case proved in evidence by the plaintiffs. That, in my respectful view, is not shifting of burden of proof to the defendants.

The trial court was satisfied that the plaintiffs had proved their case and that the defendants failed to rebut or dislodge what the plaintiffs had succeeded in doing. Surely if the court below had considered carefully the case proved by both sides, it would not have come to the conclusion that the judgment of the trial court was perverse. It was plaintiffs' case that they owned the land in dispute and adjoining lands and that they gave part of the adjoining lands to the defendants' ancestors; that the defendants went beyond the area granted to their ancestors and trespassed into the land belonging to the plaintiffs. The defendants for their own part, claimed that they owned the land as of right. It was shown in evidence that an ancient city war wall was on the land and that this ancient wall was built by the plaintiffs' ancestors. Surely the existence of this ancient wall must go a long way in deciding who owned the land. The defendants did not dispute that the ancient wall was built by the plaintiffs'

ancestors. This obviously must tilt the scale in favour of the plaintiff and that is exactly the conclusion the trial Court arrived at. The existence of the ancient wall apart, there was the evidence of the 100-year old man - Pa Agunbiade whose evidence went in favour of the plaintiffs. In my judgment the trial Court properly evaluated the evidence before it and I can see nothing perverse in the conclusion arrived at. I must, therefore, come to the conclusion that the Court below was in error to reverse the judgment of the High Court.

Finally, I too allow this appeal. I set aside the judgment of the Court of Appeal and restore the judgment of the appellate High Court. I affirm the judgment of the Akoko South Grade 1 Customary Court. I abide by the order for costs made in the lead judgment of my learned brother, Achike JSC.

D

ONU JSC

I have read in advance the judgment of my learned brother Achike, JSC allowing this appeal, setting aside the judgment of the Court of Appeal and restoring the judgment of the appellate High Court. I agree with his reasoning and conclusion that the appeal is meritorious.

Accordingly, I allow the appeal, set aside the judgment of the Court of Appeal and make similar consequential orders inclusive of those as to costs as therein made.

F

UWAIFO JSC

I read in advance the judgment of my learned brother Achike JSC. I was also privileged to read the judgment of my learned brother Ogundare JSC. After having carefully considered both judgments, I am satisfied that the lower court was in error to have disturbed the decision of the appellate High Court which upheld the trial Customary Court. I feel grateful to my learned brothers and will accordingly allow this appeal, set aside the judgment of the Court of Appeal and restore that of Appellate High Court which affirmed the judgment of the Customary Court Akoko South Grade 1. I abide by the order for costs awarded by Achike JSC.

H