

SUPREME COURT OF NIGERIA
14TH DECEMBER, 2001. SC. 108/1991
CORAM:-S.M.A.BELGORE,I.L.KUTIGI,
E.O.OGWUEGBU,A.I.KATSINA-ALU,U.A.KALGO,JJSC.

1. S. O. IGBINOKPOGIE
2. ENOMAMIE GUOBADIA APPELLANTS
AND
GEORGE OGEDEGBE RESPONDENT

APPEALS - Dismissal - Equity - As delay defeats equity - Court should have dismissed the appeal of the plaintiff

EQUITY - Delay defeats equity - An action brought 15 years after the cause of action accrued -Is defeated by the delay

JUDGMENTS - Out of court settlement - Bindingness of -It is binding on a party to the settlement - Who accepted it without complaint

PRACTICE & PROCEDURE - Terms of settlement - Right of rescission Is defeated - Where an innocent third party has for value acquired title in the land

FACTS

The respondent as plaintiff sued the appellants herein at the Benin City High Court claiming certain reliefs. The reliefs included amongst others a declaration that he was in possession of the land in dispute and was entitled to a certificate of occupancy in respect of the land as well as an injunction restraining the defendant from trespassing on the land. At the trial the plaintiff relied on a customary grant by the Oba of Benin dated 8th January 1957 for his root of title to the land. The 2nd defendant from whom the 1st defendant had purchased the portion of land also relied on a customary grant by the Oba of Benin dated 2nd November 1961. This was preceded by a receipt for the purchase by the 2nd defendant of the economic trees from the previous occupier of the land

in dispute dated 2nd May 1955. The defendant went into possession in J 955 and built on a portion of the land in dispute.

In September 1962, the plaintiff through his agent and attorney brought an action against the 2nd defendant for a declaration of title and trespass to the said land in the Customary Court. The parties however settled the matter out of court. By the terms of settlement, the land in dispute was partitioned into two equal halves between the parties. The 2nd defendant subsequently sold and transferred his share of the land to the 1st defendant. The transfer by sale and purchase to the 1st defendant was in 1964 and the approval of the Oba for the change of ownership was obtained. The 1st defendant built and occupied the said land by tenants. Then in 1978 the plaintiff brought this action over the 2nd defendant's share of the land claiming as already stated above.

The Learned trial Judge in a reserved judgment, dismissed the plaintiffs claim and gave judgment for the 1st defendant as per his counter-claim. The plaintiffs appeal to the Court of Appeal was allowed and the 1st defendant's counter-claim was dismissed. The defendants are dissatisfied and have now appealed to the Supreme Court.

ISSUE FOR DETERMINATION

The central issue of this appeal is whether in the face of Exhibit 'H' the court below was right in reversing the decision of the trial court.

HELD: (Unanimously allowing the appeal per lead judgment of **KATSINA-ALU JSC**)

Judgments - Out of court settlement - Bindingness of

1. It must be appreciated that the defendants expressly pleaded Exhibit H as a bar to the plaintiff's action. It is to be observed that before 1978 the plaintiff at no time took steps to show that the settlement was unacceptable to him. On the facts of the case, therefore, can the plaintiff be allowed to reopen the matter? The silence of the plaintiff for 16 years is a clear indication that he accepted the settlement. In my judgment the plaintiff is bound by Exhibit H. He could not now be heard to lay claim to the land in dispute.

In Akpasubi v. Umweni (J982) JSC 132 the parties agreed at the Oba's palace to partition the land into two equal halves between them. A week after the purported settlement the plaintiff informed the defendant that she would sue him to court to claim her land. Shortly after the warning the defendant was given notice that the settlement was unacceptable to the plaintiff. Both the Court of Appeal and this court held that the warning was a clear indication that the plaintiff did not accept the settlement. It will be clearly seen that the facts of Akpasubi v. Uweni (supra) are distinguishable from the facts of the present case. (p 1605 B)

Terms of settlement - Right of rescission

2. Moreover in the intervening period, an innocent third party (1st defendant) has acquired for value title in the land. The right of rescission is D clearly defeated. (p. 3605 G)

Appeal - Dismissal - Delay defeats equity

3. It seems to me clear that the Court of Appeal was in grave error when E II reversed the judgment of the trial High Court. The Court of Appeal had, rightly in my view, held that:

“But the appellant, in the instant case, did not start to manifest his intention to fight for what is his own until more than fifteen years after the purported agreement. Exhibit H was signed on 25th November, 1992 and the writ of summons which has culminated in this appeal was not taken out until 19th May, 1978. It is settled law that delay defeats equity”

The proper order at that stage should have been one of dismissal of the appeal of the plaintiff to that court. (p. 3605 G)

NOTABLE POINT OF INTEREST
BELGORE JSC

1. Parties are bound by their pleadings

I have closely examined the pleadings of the parties at the trial and found that the question of priority of estate under the Bini Customary law was not pleaded. It is well established now that parties to any action in court

are bound by their pleadings and anything outside the pleadings cannot be considered. See George v. Dominion Flour Mill Limited (1963) 1 All 71.

I therefore find that the Court of Appeal was wrong in acting upon evidence on matters not pleaded and since the judgment of that court was completely dependant upon their finding that the respondent had earlier obtained approval for the grant of the land in dispute to him by the Oba of Benin, it cannot stand. (p. 3609 E)

C REPRESENTATION

Dr. S. S. G. Enemeru for the Appellants.

A. O. Eghobamien Esq. for the Respondents.

CASES REFERRED TO

D Arase v. Arase (1981)5 SC 33

Apkasubi v. Umweni (1982)11 SC 132

George v. Dominion Flour Mill Limited (1963)1 All NLR 71

N.I.P.C. Limited v. The Thompson Organisation (1969)1 All NLR 138

E Nsirim v. Nsirim (1990) 3 NWLR (pt. 138) 285

LEAD JUDGMENT BY KATSINA-ALU JSC

The respondent herein George Ogedegbe was the plaintiff at the Benin City High Court in Suit No. B/126/78. His claim against the defendants/appellants herein was for the following reliefs as contained in his further amended statement of claim.

“(a) A declaration that the plaintiff was seised of and in possession of the parcel of land in dispute under Bini Customary Law applicable to Land Acquisition in Benin City and Districts before the Land Use Act, 1978.

(b) A declaration that the plaintiff is entitled to a certificate of occupancy in respect of the said parcel of land.

(c) Perpetual injunction against the defendants, their servants or agents restraining them from further or continuing acts of trespass on the said land.

(d) General damages of N100.00 (one hundred naira) against the 2nd defendant's trespass unto the said parcel of land."

The parties exchanged pleadings. The defendants filed a joint statement of defence and the 1st defendant filed a counter-claim against the plaintiff. The plaintiff in turn filed a reply to the counter-claim.

The plaintiff testified and called four witnesses to prove his case. The defendants testified and called two witnesses. B

At the trial the plaintiff relied on a customary grant by the Oba of Benin for his root of title to the land in dispute. This grant dated 8 January 1957 was tendered and received in evidence in the proceedings as exhibit A. The 2nd defendant from whom the 1st defendant had purchased the portion of land in question also relied on a customary grant by the Oba of Benin. This grant dated 2 November 1961 was received in evidence as exhibit 'M'. Exhibit 'M' was preceded by exhibit L dated 2 May 1955. This is a receipt for the purchase by the 2nd defendant of the economic trees from the previous occupier of the land in dispute. The 2nd defendant went into possession in 1955. D

Following the approval of the land for him by the Oba of Benin, the 2nd defendant built on a portion of the land in dispute. In September 1962, the plaintiff through his agent and attorney brought an action against the 2nd defendant for a declaration of title and trespass to the said land in the customary court. The parties however settled this matter out of court. The terms of settlement were tendered and received at the trial as Exhibit H. By the terms of settlement, the land in dispute was partitioned into two equal halves between the parties. Subsequently the 2nd defendant sold and transferred his share of the land to the 1st defendant. F

The transfer by sale and purchase to the 1st defendant was in 1964. Thereafter the Oba's approval for the change of ownership to the 1st defendant was obtained see exhibit 'J'. In the meantime the 1st defendant built and occupied the said land by tenants. It is this land, the 2nd defendant's share which is the subject matter of this action, which was brought in 1978. H

The learned trial Judge, in a reserved judgment, dismissed the plaintiff's claim and gave judgment for the 1st defendant as per his

counter-claim. The plaintiff's appeal to the Court of Appeal was allowed. The 1st defendant's counter-claim was dismissed.

The defendants are dissatisfied and have now appealed to this court upon a number of grounds.

B The appellants, at page 5 of their joint brief of argument raised three issues for determination in this appeal. These read:-

1. Whether the Court of Appeal reversing the decision of the learned trial Judge to the contrary was right to have made the declaration sought by the respondent in the face of Exhibit H and the attendant delay in bringing this action in repudiation thereof.

C
D 2. Whether the Court of Appeal was right to have based its decision to grant the respondent the declaratory and other reliefs sought in the action on the doctrine of priority of estates in land under Bini Customary Law by reference only to the date of the Oba's approval of the respective application of the parties: moreso, after distinguishing the instant from other decided cases in which the said doctrine had been applied.

E 3. Whether the Court of Appeal rightly dismissed the counter-claim of the 1st appellant as a matter of course after dismissing the grounds on which its grant by the court of 1st instance was challenged.

For his part, the respondent also raised three issues for determination. These are:

F 1. Having regard to the finding of the facts by the learned trial Judge that the land in dispute is as contained in Exhibit 'B' was the Court of Appeal not right in holding that exhibit 'A' which was approved by the Oba on 8th January, 1957 is earlier in time than exhibit 'J' and by which were approved on 30th January, 1965 and 20 November 1961 respectively.

G 2. Having regard to the totality of the evidence was the Court of Appeal right in uphold the respondent's appeal.

H 3. Did the first appellant discharged the onus on him to entitle him to his counter-claim having regard to the contradictions between his evidence and the further amended statement of claim.

I think the central issue of this appeal is whether in the face of exhibit 'H' the court below was right in reversing the decision of the

trial court. This appeal revolves on exhibit 'H'.

To fully appreciate this point, it is necessary to examine the pleadings of the parties in this connection. The respondent as plaintiff pleaded in paragraph 8, 10, 11, and 12 of his further amended statement of claim as follows:

"8. On or about the 27th September, 1962 one Enomamie Guobadia the 2nd defendant who claimed to be the owner of the rubber trees on the said land started asserting rights of ownership also on the plaintiff's land upon which the plantation was lying.

10. The Caretakers (Messrs Asoro and Omogui) of the land promptly warned the said Enomamie off the land, informing him that that land belonged to the plaintiff.

11. When it appeared that the said 2nd defendant would not desist from his claim on the land, one of the caretakers - Mr. Asoro on the authority of the plaintiff sued the 2nd defendant to the customary court for a declaration of title on behalf of the plaintiff in suit No. 614/62, which shall be relied upon at the hearing.

12. The 2nd defendant appealed to the plaintiff and conceded title to the plaintiff at the customary court. This was reported to customary court and case struck out with 9.00 (N18.00) as costs against the 2nd defendant. The 2nd defendant failed and or refused to comply with the said decision and he failed to desist from his wanton act of trespass."

The defendants/appellants herein, filed a joint statement of defence. In paragraphs 2, 4, 5, 6 and 7 of the further amended statement of defence, the defendants averred thus:

2. The defendants deny paragraphs 1, 2,4,6,7, 8, 9, 12, 13 and 14 of the further amended statement of claim; and will at the trial put the plaintiff to the strictest proof thereof.

4. In further and specific answer to paragraphs 2, 4, 5 and 11 of further amended statement of claim, the 1st defendant avers that consequent upon the customary court action in suit NO.614/62 dated 9/9/62 the parties thereto, namely Messrs D.O. Asoro (suing as plaintiff on behalf of the plaintiff in this action), the 1st defen-

dant, and others decided to settle their dispute out of court.

5. *At the settlement meeting held at D.O. Asoro's residence on 25th November, 1962, it was discovered by those present at the meeting that one Mr. Omoruyi Ogiamien of Sakpoba Road Benin duly sold and transferred the said rubber plantation to the 2nd defendant at a price of 40 (i.e. N80). By an application dated 9/5/55 the 2nd defendant applied through, Ward 18/H council to the Benin Native Authority for the allocation to him of the said plot of land, measuring 96ft. by 110ft. (at the time). That approval was eventually granted to the 2nd defendant on 2/11/61 by His Royal Highness Akenzua II the Oba of Benin.*

6. *The meeting further discovered that the customary grant to the plaintiff of a piece of land measuring 100ft x 100ft in Ward 18/H council by his Royal Highness Akenzua II the Oba of Benin on 8/1/57 was made in error because the land had already been in the occupation of the 2nd defendant since 2/5/55*

7. *Consequently a compromise agreement dated 25/11/62 and signed by all those present at the meeting, including the plaintiff/agent Mr. D.O. Asoro, and the 2nd defendant herein. An important aspect of the said compromise agreement is the decision that half of the land measuring 96ft x 120ft be shared between the 2nd defendant and the plaintiff's agent who was requested to pay the sum of 20 (i.e. N40) being part of the N80 (40) paid by the 2nd defendant to the owner of the said rubber plantation on 2/5/55."*

Before I begin a consideration of the agreement dated 25/11/62 Exhibit H, I would like to point out certain salient facts which are largely undisputed. Both parties acquired the piece of land in dispute under Benin customary law duly approved by the Oba of Benin at different dates. The plaintiff's application received the Oba of Benin's approval on the 8th day of January, 1957.

The 2nd defendant by an application dated 9/5/55 applied through ward 18/H council for the allocation to him of the plot of land in question measuring 96ft by 110ft. The 2nd defendant was in occupation of the said piece of land from 2/5/55 the day on which one Mr. Omoruyi Ogiamien of Sakpoba Road, Benin sold and transferred to

him the rubber plantation on the land. His application of 9/5/55 was approved by the Oba of Benin on 2/11/61. These are the background facts which called for a meeting the result of which is exhibit H. Now exhibit H is the agreement to settle the dispute out of court the terms of which are embodied therein. Exhibit H read:

MEETING ON LAND DISPUTE BETWEEN MR. D.O. ASORO ^B
ON BEHALF OF MR. OGEDEGBE AND MR. N.T.IGUOBADIA
25th November, 1962

Place of meeting: MR. D.O. ASORO's HOUSE.

Present: MR. D.O. IGHARO, MR. S.O. ODE, MR. N. C
IGUOBADIA, MR. G.I. INEH, MADAM OMOYEMWENSE
IGHAGBON, MR. W.E. OKUNMWENDIA.

The land in dispute situates in ward 18/H between block numbers 200 and 233, measuring 96ft by 120ft.

After hearing from Mr. D.O. Asoro Mr. P.U. Igharo and Mr. ^D
N. Iguobadia, the committee took the following decisions to effect peaceful settlement and good relationship among those concerned.

That

1. The land measuring 96ft. by 120ft. be divided equally between Mr. N. Iguobadia and Mr. Ogedegbe since both parties acquired ^E
the land and a house has been built on one part by Mr. N. Iguobadia

2. Application be made to the ward for compensation since the ward allocated the said land to two people now in dispute, and that the land when acquired be divided into two equal parts between Mr. N. ^F
Iguobadia and Mr. Ogedegbe.

3. The sum of (twenty pounds) 20 be paid by Ogedegbe to Iguobadia as a part of latter expense on rubbers in the said plot.

4. The summons fees of 9.15.6 (Nine pounds fifteen shillings ^G
six pence for case No. 614/62 be paid by Mr. N. Iguobadia to Mr. D.O. Asoro.

The above was unanimously accepted by the parties concerned.
SIGNATORIES

1. (Sgd.) D.O. Asoro

2. (Sgd) P.U. IGHARO 26/11/62

3. (Sgd.) N. IGUOBADIA (R.T.I)

H

N. IGUOBADIA

4. (Sgd.) O. IGHAGBON (R.T.I)

Omoyemwense Ighagbon

Cost of Summons and other expenses 9.15.6 paid by me

(Sgd.)

B The question to be resolved was whether Exhibit H was binding on the parties. The trial Judge resolved it in the affirmative. He held the view that by the terms of settlement exhibit H the plaintiff had relinquished his claim to the portion of land now in dispute in favour of C the 2nd defendant. He was also of the view that in a case of two conflicting grants made in error to different persons, by the Oba of Benin through the same ward, the doctrine of first in time may be applicable if certain conditions are met. See Arase v. Arase (1981) 5 SC 33. On this basis the trial court as already indicated, dismissed the D action but granted the counter-claim.

The decision of the trial Judge was however reversed by the Court of Appeal by which its order now under appeal declared that the plaintiff was the owner of the plot of land in question. In the course of E its judgment, the Court of Appeal said:

"It is apt, at this stage, to observe that both parties applied through the same appropriate committee, Ward 18/H Plot Allotment Committee, to the Oba of Benin for his approval of a grant of ownership in respect of the land in dispute. The want of F date on the appellant's application by virtue of his approval being earlier in time acquired good title to the land to the detriment of the 20th respondent. The appellant acquired good title because as from the date of approval to the appellant, 8/1/57 there was no G longer any interest left in Oba of Benin to grant or to approve for 20th respondent."

It is not in dispute that the same piece of land was allocated to both parties. It is also not in contention that the plaintiff's approval by the Oba of Benin was earlier in time. The central issue for resolution H however is this. As already stated, the plaintiff had in 1962 sued the 2nd defendant at the customary court for title and trespass to the land. The parties informed the court that they had resolved to settle the dispute out of court. They asked for time. By an agreement as stated

in exhibit H the parties agreed that the land be shared into two and each side to the dispute should take a share. Exhibit H was communicated to the customary court on the strength of which that court struck out the claim of the plaintiff. This was in 1962.

It was not until in 1978 that the plaintiff brought this action for title to the 2nd defendant's share of the land. This was after a period of some sixteen (16) years after the settlement. B

It must be appreciated that the defendants expressly pleaded Exhibit H as a bar to the plaintiff's action. It is to be observed that before 1978 the plaintiff at no time took steps to show that the settlement was unacceptable to him. On the facts of the case, therefore, can the plaintiff be allowed to reopen the matter? The silence of the plaintiff for 16 years is a clear indication that he accepted the settlement. In my judgment the plaintiff is bound by Exhibit H. He could not now be heard to lay claim to the land in dispute. C D

In Akpasubi v. Unweni (1982) 11 S.C 132 the parties agreed at the oba's palace to partition the land into two equal halves between them. A week after the purported settlement the plaintiff informed the defendant that she would sue him to court to claim her land. Shortly after the warning the defendant was given notice that the settlement was unacceptable to the plaintiff. Both the Court of Appeal and this court held that the warning was a clear indication that the plaintiff did not accept the settlement. It will be clearly seen that the facts of Akpasubi v. Unweni (supra) are distinguishable from the facts of the present case. E F

Moreover in the intervening period, an innocent third party (1st defendant) has acquired for value title in the land. The right of rescission is clearly defeated. G

It seems to me clear that the Court of Appeal was in grave error when it reversed the judgment of the trial High Court. The Court of Appeal had, rightly in my view, held that: H

"But the appellant, in the instant case, did not start to manifest his intention to fight for what is his own until more than fifteen years after the purported agreement. Exhibit H was signed

on 25th November, 1962 and the writ of summons which has culminated in this appeal was not taken out until 19th May, 1978. It is settled law that delay defeats equity.”

The proper order at that stage should have been one of dismissal of the appeal of the plaintiff to that court.

B For the foregoing reasons this appeal succeeds and I allow it. The judgment of the Court of Appeal given on 19 December, 1989 is hereby set aside. The judgment of the trial High Court delivered on 1st November, 1985 is hereby restored. There shall be costs of N10,000.00 C in this court and N2,000.00 in the court below in favour of the defendants/appellants.

BELGORE JSC

D I agree that the appeal has great merit. From 25th November, 1962 when Exhibit H was signed to 19th May, 1978 when the writ of summons was taken out is an inordinately long time. The respondent took that long to sleep over his right to the extent that innocent third E party acquired substantial interest for value. Delay defeats equity. The Court of Appeal erred in setting aside the decision of trial court that was based on sound principles of law.

I therefore allow this appeal and agree with the reasons advance in the judgment of my learned brother, Katsina-Alu, JSC for F allowing the appeal. I make the same order as to costs.

KUTIGI JSC

G I read in advance the judgment just delivered by my learned brother Katsina-Alu, JSC. I agree with his reasoning and conclusions. The plaintiff is clearly bound by the terms of agreement (exhibit H), settling the dispute out of court in 1962, and his attempt to reopen the H matter in 1978 some 16 years after settlement, ought not to have been permitted. I will also allow the appeal set aside the judgment of the Court of Appeal and restore that of the trial High Court with costs as assessed.

OGWUEGBU JSC

I have had a preview of the judgment which has just now been delivered by my learned brother Katsina-Alu, J.S.C and I agree that this appeal ought to be allowed.

The court below relied on the principles of priority under Bini customary law in allowing the appeal of the plaintiff. This was in utter disregard of its sound findings on exhibit “H” dated 25th November, 1962. Exhibit “H” is a settlement reached by the plaintiff and the second defendant which led to the striking out of a civil action filed by the plaintiff against the second defendant for a declaration of title to the parcel of land now in dispute (Suit No. B/614/62). The contents of Exhibit “H” is quite illuminating. C

The plaintiff filed the action leading to this appeal on 19th May, 1978 about sixteen years after Exhibit “H” was made and the second defendant transferred his interest in his share to the first defendant shortly after. D

The agreement exhibit “H” in my view, amounts to an abandonment of the plaintiff’s right to the 2nd defendant’s portion which had been transferred to the 1st defendant. E

The delay on the part of the plaintiff is fatal to his case. It is unreasonable. In addition, there is a substantial lapse of time before the plaintiff initiated these proceedings. These exposed him as a man without conscience and it will be unjust for any court to grant the reliefs sought by the plaintiff. F

The court below was in gross error when it interfered with the decision of the trial Judge. I therefore allow the appeal, set aside the judgment of the court below and restore the judgment of the learned trial Judge. G

I abide by the order as to costs proposed in the judgment of my learned brother Katsina-Alu, J.S.C.

KALGO JSC

I have had the opportunity of reading in advance the judgment of my learned brother Katsina-Alu, J.S.C just delivered in this appeal. I am in full agreement with the reasoning and conclusions reached therein, which I adopt as mine and for which I also allow this appeal.

B However without repeating all what my learned brother said in the judgment, I wish to emphasis some crucial points he has already made therein.

Exhibit ‘C’ was the proceedings of the grade ‘C’ customary
C court Benin City in which the respondent sued the 2nd appellant and one other claiming declaration of title to a large piece of land measuring 100 feet by 100 feet in Benin City. The case was No. 614/62. Before any evidence was taken in the case, the parties wrote a letter (page 187 of the record) signed by all of them and dated 26th November, 1962 informing the court that they have unanimously and mutually
D “effected amicable settlement among themselves” on the land in dispute and therefore requested the court to strike out the case. Thereafter the case was accordingly struck out. This was on 26th November, 1962. Earlier, on the 25th of November, 1962, the plaintiff in that case,
E Mr. Asoro acting on behalf of the respondent, pursuant to the power of attorney granted to him by the respondent, together with the 2nd appellant and two witnesses signed the terms of settlement, Exhibit H (page 175 of the record) which reads in part thus:-

F “1. *The land measuring 96 feet by 120 feet be divided equally between Mr. N. Iguobadia and Mr. Ogedegbe since both parties acquired the land and a house has been built on one part by Mr. Iguobadia.*

G 2. *Application to be made to the ward for compensation since the ward allocated the said land to two people now in dispute, and that the land when acquired be divided into two equal parts between Mr. Iguobadia and Mr. Ogedegbe ... “*

H There was ample evidence as found by the learned trial Judge that the land measuring 96 feet by 120 feet was subsequently divided equally between the respondent and the 2nd appellant. There was also overwhelming evidence that the 2nd appellant sold his own share of the land to the 1st appellant as evidenced by the sale agreement (Ex-

hibit K), and the transfer of the land from the 2nd appellant to the 1st appellant was approved by the Oba of Benin in 1964 as required by the tradition. The 1st appellant built on the land and occupied it since then.

The present action was instituted by the respondent in 1978 claiming the land occupied by the 1st appellant thereby completely ignoring the terms of settlement of which he was a party as contained in exhibit "H". The 1st appellant however counter-claimed for a declaration of title in respect of the same land. The learned trial Judge dismissed the respondent's claims and granted the counter-claim of the 1st appellant, having regard to the terms of settlement Exhibit 'H' and the fact that the 1st appellant had developed and occupied the land from 1964 to 1978 undisturbed. The Court of Appeal which reversed the decision of the trial court did so by relying on the principle of the doctrine of priority of estate in land under the Bini Customary law when they found that the respondent first obtained his customary grant in respect of the same land from the Oba of Benin in 1957 (Exhibit 'A') while the 1st appellant obtained his grant from the same source in 1961. The learned trial Judge considered this also in his judgment but found that the issue was not pleaded by the respondent and he disregarded it.

I have closely examined the pleadings of the parties at the trial and found that the question of priority of estate under the Bini customary law was not pleaded. It is well established now that parties to any action in court are bound by their pleadings and anything outside the pleadings cannot be considered. See *George v. Dominion Flour Mills Limited* (1963) 1 All NLR 71; (1963) 1 SCNLR 117; *NIPC Limited v. The Thompson Organisation* (1969) 1 All NLR 138; *Nsirim v. Nsirim* (1990) 3 NWLR (Pt.138) 285.

I therefore find that the Court of Appeal was wrong in acting upon evidence on matters not pleaded and since the judgment of that court was completely dependent upon their finding that the respondent had earlier obtained approval for the grant of the land in dispute to him by the Oba of Benin, it cannot stand. On the other hand, in the circumstances of this case, the respondent was fully bound by the contents of the terms of settlement signed by Mr. Asoro for him, the 1st appellant and some two persons as witnesses on 25th November, 1962 and from that time to 1978 (a period of sixteen years) he (respondent) did not

challenge exhibit 'H'. He must be guilty of laches and is too late to challenge it as he did. I think exhibit 'H' is binding between the parties at all times and since the 2nd appellant has lawfully sold and transferred his interest on the half of the land which belonged to him per Exhibit 'H', his right to do so is derived from the terms of settlement
B Exhibit 'H'; and the 1st appellant got proper title to the land in dispute.

For these and the more detailed reasons given by my learned brother Katsina-Alu, J.S.C in the lead judgment, I also find that there is merit in the appeal. I allow it and set aside the decision of the Court of
C Appeal delivered on 19th December, 1989 and restore the decision of the learned trial Judge. I abide by order of costs in the lead judgment.

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