

SUPREME COURT OF NIGERIA
2ND MARCH, 2001. SC. 127/1996.
CORAM:- M. L. UWAIS CJN, U. MOHAMMED, S. U. ONU
O. ACHIKE, S. O. UWAIFO, JJSC.

OBA FELIX ABIDOYE

(ALAAGBA OF AGBA) & 4 ORS DEFENDANTS/

(For themselves and on behalf of APPELLANTS

Aagba Community, Ifelodun

Local Government Area).

AND

OBA JACOB ALAWODE

(OLORORUWO OF ORORUWO) & 4 ORS PLAINTIFFS/

(For themselves and on behalf of RESPONDENTS

Ororuwo Community, Ifelodun

Local Government Area).

***APPEALS** - Appellate court - Reevaluation of evidence - Was rightly declined - As they were not proved to be perverse.*

***APPEALS** - Concurrent findings of fact - Was rightly affirmed - In absence of any special circumstances.*

***APPEALS** - Finding of fact - Was a proper exercise judicial discretion - By the trial court - Which used the right approach in making the findings.*

***APPEALS** - Grounds of appeal - Mixed law and fact - As no leave of court was obtained to appeal - The ground is incompetent - And should be struck out.*

***APPEALS** - Grounds of appeal - Mixed law and fact - Test for its determination.*

***APPEALS** - Review and evaluation of evidence - Distinction between the*

two - The duty was properly discharged by trial court.

PRACTICE & PROCEDURE - Evidence - Proof - Respondents had proved their case - On the balance of probabilities - And their claim had been rightly upheld by the lower court.

FACTS

The Appellants as defendants were sued by the Respondents as plaintiffs for the following reliefs at the Osun State High court (1) Declaration that the plaintiffs were entitled to a statutory right of occupancy to a piece of land; (2) N5,000.00 damages for trespass on the land; and (3) Injunction restraining the defendants from further trespasses.

The learned trial judge after considering the traditional history of both parties gave judgment in favour of plaintiffs only for their first relief and dismissed the other two reliefs. The appellants/defendants were dissatisfied and appealed to the Court of Appeal which dismissed their appeal unanimously. They have further appealed to the Supreme Court raising one issue for determination.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal fully discharged its legal responsibility of evaluating the whole evidence tendered in the lower court following the complaint of the Appellants that proper evaluation was not done in the judgment of the High Court.”

HELD (Unanimously striking out the appeal per lead judgment of **ONU JSC**)

Grounds of appeal - Test for determination

1. A careful examination of the only ground of appeal in this case set out above and particulars of error reveal that the Appellants are questioning the evaluation of the facts by the lower courts before the application of the law and therefore the ground involves a question of mixed law and fact. As this Court has pointed out in several decided cases such as in Ogbechie & Ors. v. Onochie & Ors. (1986) 2 NWLR (Part 23) 484 at

488 what is important in determining whether a ground of appeal involved questions of law or fact or mixed law and fact, is not its cognomen, nor its designation as “*Error in Law*”. It is rather the essence of the ground, the reality of the complaint embedded in that name that determines what any particular ground involves. See also *United Bank for Africa Ltd. v. Stahlbau Gmbh & Co.* (1989) 3 NWLR (Part 110) 374 at 377 and 410 and *Ojemen v. Momodu* (1983) 3 SC. 173. (p. 927 C)

Grounds of appeal - Leave of court

2. As the only ground filed attacking the decision of the court below is of mixed law and fact and apparently neither the leave of the court below nor that of this Court was sought and obtained as required by Section 213(2) and 213(3) of the Constitution of the Federal Republic of Nigeria, 1979 (it is only where an appeal is on ground of law alone that an appellant can appeal as of right from the Court of Appeal to the Supreme Court without leave), I take the firm view that the appeal is incompetent and should be struck out. The only issue formulated thereon to which I will shortly come, is also incompetent and should be struck out. See *Aja & Anor v. Okoro & Ors.* (1991) 7 NWLR (Part 203) 260 at 273 and 284. (p. 927 F)

Reevaluation of evidence

3. I wish to stress that the court below in the instant appeal rightly declined to re-evaluate the evidence before the trial court on the rationale decided in *Onwuka v. Ediala* (1989) 1 NWLR (Part 96) 182 at 208 wherein the learned Justice posited, *inter alia* that “*Re-evaluation suggests and pre-supposes a prior evaluation. If evidence has already been evaluated by the trial court, on what grounds, on what basis, on what principles would an appellate court undertake another evaluation of the same evidence?*”

It is in answer to the above question that I agree with the learned counsel for the Respondents’ submission that an appellate court will not re-evaluate or interfere with the findings of fact of a trial court without clear proof that those findings were perverse or not the result of a proper exercise of judicial discretion. See in *Re: Adewumi* (1988) 1 NWLR

(Part 83) 483. (p. 928 G)

Concurrent findings of fact - Was rightly affirmed

4. I also agree with the decision of the court below wherein it affirmed
 B the findings of fact made by the trial court based on concurrent findings
 of fact and concurrent judgments of the two lower courts. The attitude
 of this court as expressed by a long line of decided cases has been that it
 will not allow a question of fact to be re-opened where there has been
 C two concurrent findings of fact by two lower courts in the absence of
 special circumstances. See Lokoyi & Anor. v. Olojo (1983) 8 SC 61 at
 68 – 73.

In the instant case, the Appellants have not shown that the rel-
 evant findings of fact by the two lower courts are perverse, patently erro-
 D neous, or not the result of a proper exercise of judicial discretion. Nor
 have the Appellants also shown any special circumstances warranting in-
 terference with the findings. I will therefore decline to interfere with the
 concurrent findings of fact of the two lower courts. See Lokoyi v. Olojo
 E (supra). (p. 929 C)

Findings of fact - Was a proper exercise judicial discretion

5. There is no appeal by the Appellants against the findings of fact of the
 F trial court which have been affirmed by the court below. It has been
 further demonstrated that the trial court adopted a proper approach to the
 issues of fact and findings of fact by reviewing the evidence tendered
 before it and evaluating the evidence before making findings of fact thereon,
 after which it made use of the applicable law to the findings. See Adeyeye.
 G V. Ajiboye (1087) 3 NWLR (Part 61) 432 at 451; Onwuka v. Ediala (su-
 pra) at 209 and Attorney-General of Oyo State v. Fairlakes Hotels (No. 2)
 (1989) 5 NWLR (Part 121) 255 at 292. The findings of fact in this case
 therefore constitute, in my view, a proper exercise of judicial discretion
 H by the trial court and which the court below rightly affirmed. (p. 929 H)

Review and Reevaluation of evidence

6. The Court below had in its judgment at pages 217-228 of the records

reviewed and evaluated the evidence before the trial court before supporting its (trial court's) judgment. The two courts below therefore had discharged their legal and primary duties, leaving no stone unturned with regard to the review and evaluation of evidence at the trial. See A.G. Oyo State v. Fairlakes Hotels (No.2) (supra). B

The trial court, after a critical review made findings of fact as enumerated from page 152, line 25 to page 156, line 14, thus evaluating the evidence of both parties. It thereupon proceeded by accepting the evidence of traditional history and acts of ownership tendered by the Respondents while rejecting that of the Appellants. As a review imports a critical examination of evidence while an evaluation imports a determination of the value of evidence, the trial court having accepted the evidence of the traditional history and acts of ownership of the Respondents, in rejecting that of the Appellants as incoherent, inconsistent and full of mere denials of obvious truth and hence unreliable, has discharged the duty of reviewing and evaluating the evidence tendered before it. D
(p. 930 D & 931 A)

Evidence - Proof

7. I am also of the firm view that the court below properly evaluated the evidence of the Respondents' PW8 by concluding that no probative value has been ascribed to it as contended by the learned counsel to the Appellants. As can be seen, the learned Justices of the court below dealt with this point at pages 222-223 in their judgment and as to contradiction, I am of the firm view that the learned Justices found no such contradictions as against the Respondents' claim to title to statutory right of occupancy and they so held. The contention of the Appellant that the court below did not properly evaluate documentary evidence Exhibits D2 and D4 tendered by the Appellants, in my view, is also misconceived. This is because the court considered this complaint in its judgment and pin-pointed some materials in the Exhibits that lent credence to the Respondents' case. H
From the foregoing, I cannot but agree entirely with the Respondents that the incidents of customary tenancy and payment of Ishakole have been proved on the balance of probabilities by them in the instant case

which the court below, in my view, rightly upheld in its judgment dated 25th April, 1994. (p. 931 F & 932 C)

REPRESENTATION

- B Mrs. Bola Ojo for the appellants.
M. A. Laogun Esq. with him A. A. Laogun Esq., for the respondents.

CASES REFERRED TO

- C Ogbechie & Ors. v. Onochie & Ors. (1986) 2 NWLR (Part 23) 484 at 488
United Bank for Africa Ltd. v. Stahlbau Gmbh & Co. (1989) 3 NWLR (Part 110) 374 at 377
Ojemen v. Momodu (1983) 3 SC. 173
Yusuff v. N.T.C. (1977) 6 sc.39 at 49
D C.D. Olale v. G. O. Ekwelendu (1989) 7 SCNJ 181
Narumal & Sons v. Niger Benue Transport (1989) 4 SCNJ 107
Onwuka v. Ediala (1989) 1 NWLR (part 96) 182 at 208
University of Lagos v. Olaniyan (1985) 5 NWLR (part 1) 156
E Kodilinye v. Odu (1936) 2 WACA 336 at 33
Ojomu v. Ajao (1983) 9 SC. 22 at 53
Akpapuna & Ors. v. Obi Nzeka II (1983) 7 SC.1 at 25

LEAD JUDGMENT BY ONU JSC

- F Before Popoola, J. sitting at the High Court of Justice of Osun State holden in Osogbo in Suit No. HOS/32/86, the Appellants as defendants were sued by the Respondents who were plaintiffs, claiming the following reliefs:

- G “(i) Declaration that the plaintiffs are entitled by customary derivation to statutory certificate of occupancy in respect of all the piece or parcel of land situate lying and being at Ororuwu, Ifelodun Local Government Area and which land will be more particularly described
H and delineated on survey plan to be filed later.

(ii) N5,000.00 being general damages for trespass committed by the defendants on the said plaintiff's land.

(iii) Injunction restraining the defendants, their servants, agents

or privies form committing further acts of trespass on the said land”.

Pleadings were ordered, filed and exchanged by the parties with both parties in the interval being afforded the liberty to amend them before the case went to trial. After taking evidence adduced by both sides, the learned trial Judge in a reserved and well considered judgment, proceeded to grant the plaintiffs the first leg of their claim and founded on their plan No. AAY715 of 19/8/69 while dismissing the remaining two. B

The defendants who in the rest of this judgment I shall refer to simply as Appellants, on feeling dissatisfied with the said decision, appealed to the Court of Appeal (hereinafter referred to as the Court below) sitting in Ibadan where they, in a unanimous decision, dismissed the appellants appeal. C

Being further aggrieved by the said decision, the Appellants have now appealed to this Court on the sole ground that the Court below did not properly evaluate the evidence given in that Court. D

Before proceeding to consider the arguments of learned counsel for both sides based on their briefs of argument exchanged in accordance with the Rules of this Court, I think it is pertinent to examine firstly, the Respondents evidence in support of their claim to ownership of the land in dispute thus:- E

The land in dispute which is situate and being at Orowuro Town in the former Ifelodun Local Government Area of Oyo State (now Osun State of Nigeria), is verged “BLUE” IN survey Plan No. AAY 1715 dated 19/8/86 vide Exhibit ‘P1’. It is described as forming part of a vast area on which Oba Adesiyani, the ancestor of the Orowuro people settled over two hundred years ago when he migrated from Hamagbon to found Old Ororuwo. The vast area settled upon, it is further contended, is bounded by Lakuta Hill on Aagba Eburu side: by “Oro Tree” and Town Hall on Iragbiji side; by Ogundugudu stream on Ibekun side and Ibokun land. It was demonstrated how Oba Adesiyani was the first Oba of old Orowuro and was succeeded by Oba Olawuro and Oba Kosoniola in that order. They reigned over and used the land during their lifetime. It was shown how Ijesa Arara war broke out during the reign of Kosoniola leading to death of Fagunwa, son of Oba Olawuro as well as Gbebikan, the son of H

Oba Kosoniola. However, Alawode, Adewuyi, Sango-yoyin, Olaoye and Adetunji, children of Fagunwa and Gbebikan survived. They later went to Aagba Eburu near Iree from where they came to Iragbiji and finally proceeded from there to resettle at Ororuwo.

B Alawode, it was further shown, became the next Orowuro and that the Obas who reigned after Oba Alawode were Oba Sangoyoyin, Oba Adedoja, Oba Lawani Adekeye and Oba Jacob Adejumo Alawode II.

C In conclusion, it is stated that the members of Ororuwo community used the land settled upon by Oba Adesiyan which land included the one in dispute for farming and that they planted cocoa, palm trees and other economic crops thereon. Members of Ororuwo Community whose families still have economic crops on the land in dispute were named as including those of Samuel Abioye, Shittu Adeyanju, Oba Adedoja and D Daniel Faniyi.

Leading evidence as to the appellants' customary tenancy on the land in dispute, the respondents stated as follows:

(i) That the appellants and other members of the Aagba Community were descendants of the inhabitants of Aagba Eburu which was in the value of Lakuta near Iree. As they were open to attacks of wild beasts and reptiles, they approached the then Olororuwo, Oba Alawode through one Ojerinde of Esa-Orun's Compound. Aagba Eburu for land to resettle their people. Oba Alawode granted them the parcel of land lying from Lakuta F Hilland stretching up to the place where Alaagba Odeyale later built his palace. After the said grant, the Defendants ancestors moved out of Aagba Eburu and founded the present Aagba on the land granted them by Oba Alawode of Ororuwo. The Aagba people later approached Oga Alawode G through one Ogunwole for additional grant of land for farming purposes. Oba Alawode then granted the land in dispute to the Aagba Community on the payment of annual customary tribute, that is palm oil and one load of yam to be paid during Olokun festival to the Olororuwo.

H (ii) The Aagba Community paid the said Ishakole to the Olororuwo throughout the reign of Oba Alawode. During the reign of Oba Sangoyoyin who succeeded him, however, the Aagba Community refused to continue to pay the Ishakole for their use of the land in dispute. The Aagba Com-

munity was therefore asked to quit the land while their refusal to do so led to the “*Fejeboju War*” fought between Ororuwo and Aagba Communities about 1909.

(iii) The Fejeboju War brought the land in dispute between the two communities to the attention of the District Officer Osogbo called Mr. Biney, whose intervention led to his fixing of a boundary between the two communities about 14/3/1909 the decision which was embodied in a memorandum of the same date which was tendered and admitted as Exhibit 03. B

(iv) Evidence of the interventions of other Residents and/or District Officers of Oyo Province, it was demonstrated, were shown various memoranda and/or minutes between both communities between 1911 and 1920 were tendered and admitted as Exhibits P8A to P8N. C

(v) The Aagba Community on commencing the payment of the Ishakole after the boundary line was fixed by Biney in 1909 vide Exhibit P3, continued to do so until in 1916 when they stopped again. The Ororuwo Community lodged a complaint to Mr. S.V. Grier, the then District Officer, Osogbo, who intervened and changed the Ishakole to a lump sum of five pounds (5.00 Pounds) per annum. This decision was, it is maintained, was endorsed by him on Exhibit P3 and confirmed in Exhibits P8 to P8N. Thereafter, the Aagba Community was said to continue to pay the Ishakole of five pounds per annum until 1924. D E

(vi) When Aagba Community stopped paying the Ishakole again, the matter resulted in a Suit before the Ikirun Native Court by Ororuwo Community asking the Aagba Community to quit. Letters were in the meantime addressed to the Alagba by the Olorowuwo demanding payment of the accrued Ishakole vide Exhibit P6 and P7 Letters addressed to the Aagba Community were admitted as Exhibit P4. F G

(vii) The Ororuwo Community also lodged a complaint against the Defendants (Appellants) before the Traditional Council of the then Ifelodun Local Government, the findings and recommendations which were admitted as Exhibit P2. The Appellants ignored the recommendations and the contents of Exhibits P3, P8A to P8N and continued to challenge the title or customary ownership of the Respondents in respect of the land in dispute. The Plaintiffs/Respondents thus instituted the H

action giving rise to the appeal herein in the trial Court.

1. Secondly, the Defendants/Appellant' case as made is as follows: That the land in dispute and a portion on which the Respondent's Community was settled was a portion of the land acquired by one Ajuwon who was one of the founder's of the Appellants' Community. The land on which the Respondents' Community settled was jointly granted to Oba Alawode by Odeyale son of Ajuwon from the Appellants' community and Oba Oleyede Dada Iragbiji.

2. The land of the Respondents is surrounded on three sides by the land of the Appellants community and on the fourth side by Iragbiji land.

3. The land in dispute is shown on Survey Plan No. POY/16/87 tendered in Court. That the land has always been in possession of Ajuwon the original owner represented by the 5th Defendant/Appellant and that houses and churches were built on the land.

4. The land in dispute is 5th Appellant's Family land and not the land of Aagba Community.

5. The Appellants denied ever being Tenants of the Respondents and Oba Fatorisa of Aagba to whom Oba Alawode of Ororuwo was alleged to have granted the land on which present Aagba was established died in 1849 whereas Oba Alawode was installed in 1891. The Appellants denied that there was Aagba Eburu.

6. The Appellants denied that any Resident, District Commissioner or District Officer had ever intervened or ordered Aagba Community to pay Ishakole to Ororuwo Community for the use of the land in dispute. The Appellants also denied that there had never been any dispute between Ororuwo and Aagba Communities, thus denying the existence of Exhibits P2, P3, and P8A to P8N.

The only ground of appeal filed by the Appellants as I earlier remarked is a complaint against the evaluation of the evidence given in the lower court.

It is pertinent to point out that the Appellants have not appealed against the findings of fact of either of the trial court or the court below. Indeed, the Court below in its judgment dealt at length with the issue relating to the findings of fact and held that the Appellants have not shown

that the findings of fact are perverse.

The Respondents have filed a Notice of Preliminary Objection to the only ground of appeal challenging the decision of the court below. The ground without its particulars complains thus:

“The Court of Appeal erred in law when it failed in its duty to adequately and properly evaluate the evidence before the lower court notwithstanding the complaint of the appellants that the findings of the lower court was perverse and not supported by the whole evidence but in fact opposed to the evidence.” B

A careful examination of the only ground of appeal in this case set out above and particulars of error reveal that the Appellants are questioning the evaluation of the facts by the lower courts before the application of the law and therefore the ground involves a question of mixed law and fact. As this Court has pointed out in several decided cases such as in Ogbechie & Ors. v. Onochie & Ors. (1986) 2 NWLR (Part 23) 484 at 488 what is important in determining whether a ground of appeal involved questions of law or fact or mixed law and fact, is not its cognomen, nor its designation as “*Error in Law*”. E It is rather the essence of the ground, the reality of the complaint embedded in that name that determines what any particular ground involves. See also United Bank for Africa Ltd. v. Stahlbau GmbH & Co. (1989) 3 NWLR (Part 110) 374 at 377 and 410 and Ojemen v. Momodu (1983) 3 SC. 173. F

As the only ground filed attacking the decision of the court below is of mixed law and fact and apparently neither the leave of the court below nor that of this Court was sought and obtained as required by Section 213(2) and 213(3) of the Constitution of the Federal Republic of Nigeria, 1979 (it is only where an appeal is on ground of law alone that an appellant can appeal as of right from the Court of Appeal to the Supreme Court without leave), I take the firm view that the appeal is incompetent and should be struck out. The only issue formulated thereon to which I will shortly come, is also incompetent and should be struck out. See Aja & Anor v. Okoro & Ors. (1991) 7 NWLR (Part 203) 260 at 273 and 284. G H

Issue for Determination

It was the Appellants' contention that the issue for determination in this appeal is as follows:

"Whether the Court of Appeal fully discharged its legal responsibility of evaluating the whole evidence tendered in the lower court following the complaint of the Appellants that proper evaluation was not done in the judgment of the High Court."

Although the upholding of the preliminary objection would have been enough to dispose of this appeal, it is only fair in the instant case to consider the appeal on its merit, founded as it were, on the lone issue proffered by the Appellants and which the Respondents unreservedly have adopted.

The complaint of the Appellants simply put, does not relate to the failure of the High Court to review the evidence tendered in the lower court but to the failure of the High Court to evaluate the evidence of one party against the other party in relation to the historical evidence relied upon by each of the two parties. It is further submitted that it is the duty of the court below where there has been a complaint of non-evaluation or improper evaluation the evidence adduced by both parties before arriving at a conclusion. The cases of Yusuff v. N.T.C. (1997) 6 SC 39 at 49; C.D. Olale v G.O. Ekwelendu (1989) 7 SCNJ 181; Narumal & Sons v. Niger Benue Transport (1989) 4 SCNJ 107 and Balogun v. Akanji & Anor. (1988) 2 SCNJ 104 were cited in support of the proposition, adding that the court below did not properly review the facts of the case as stated by the Appellants and therefore failed to properly evaluate the Appellants' case vis a vis the Respondents' vide the review of the Appellant's case by the court below as per Isah Ayo Salami, JCA on page 219 paragraph 2, lines 24-30 of the records.

I wish to stress that the court below in the instant appeal rightly declined to re-evaluate the evidence before the trial court on the rationale decided in Onwuka v. Ediala (1989) 1 NWLR (Part 96) 182 at 208 wherein the learned Justice posited, inter alia that "Re-evaluation suggests and pre-supposes a prior evaluation. If evidence has already been evaluated by the trial court, on what grounds,

on what basis, on what principles would an appellate court undertake another evaluation of the same evidence?”

It is in answer to the above question that I agree with the learned counsel for the Respondents’ submission that an appellate court will not re-evaluate or interfere with the findings of fact of a trial court without clear proof that those findings were perverse or not the result of a proper exercise of judicial discretion. See in Re: Adewumi (1988) 1 NWLR (Part 83) 483; Lauwers Import & Export v. Jozebson Industries Ltd. (1988) 3 NWLR (Part 83) 429; University of Lagos v. Olaniyan (1985) 5 NWLR (Part 1) 156 and Kodilinye v. Odu (1936) 2 WACA 336 at 338. I also agree with the decision of the court below wherein it affirmed the findings of fact made by the trial court based on concurrent findings of fact and concurrent judgments of the two lower courts. The attitude of this court as expressed by a long line of decided cases has been that it will not allow a question of fact to be re-opened where there has been two concurrent findings of fact by two lower courts in the absence of special circumstances. See Lokoyi & Anor. v. Olojo (1983) 8 SC 61 at 68 – 73.

In the instant case, the Appellants have not shown that the relevant findings of fact by the two lower courts are perverse, patently erroneous, or not the result of a proper exercise of judicial discretion. Nor have the Appellants also shown any special circumstances warranting interference with the findings. I will therefore decline to interfere with the concurrent findings of fact of the two lower courts. See Lokoyi v. Olojo (supra); Okagbue v. Romaine (1982) 5 SC. 133 at 170 – 171; Ojomu v. Ajao (1983) 9 SC 22 at 53; enang v. Adu (1981) 11-12 SC. 25 at 42; Ehotor v. Osayande (1992) 6 NWLR (Part 249) 524 and Ogoyi v. Umagba (1995) 9 NWLR (Part 419) 253 at 295-296; 298.

There is no appeal by the Appellants against the findings of fact of the trial court which have been affirmed by the court below. It has been further demonstrated that the trial court adopted a proper approach to the issues of fact and findings of fact by reviewing the evidence tendered before it and evaluating the evidence

before making findings of fact thereon, after which it made use of the applicable law to the findings. See Adeyeye. V. Ajiboye (1087) 3 NWLR (Part 61) 432 at 451; Onwuka v. Ediala (supra) at 209 and Attorney-General of Oyo State v. Fairlakes Hotels (No. 2) (1989) 5 NWLR (Part 121) 255 at 292. The findings of fact in this case therefore constitute, in my view, a proper exercise of judicial discretion by the trial court and which the court below rightly affirmed. That the Court below correctly affirmed the decision of the trial court can be seen from the following extract in its judgment at page 223 of the Records where it said:

“An appellate court will not, therefore interfere with the findings of fact of a trial court except such findings are unsound, perverse or is not supported by evidence but counsel has not shown that the findings of fact in the instant appeal is perverse.”

The Court below had in its judgment at pages 217-228 of the records reviewed and evaluated the evidence before the trial court before supporting its (trial court’s) judgment. The two courts below therefore had discharged their legal and primary duties, leaving no stone unturned with regard to the review and evaluation of evidence at the trial. See A.G. Oyo State v. Fairlakes Hotels (No.2) (supra). In this wise, I share the Respondents’ submission that the Appellants in their argument are confused as to the import of a review and an evaluation of evidence before the courts. In one breath they claimed that their grouse did not relate to the failure of the trial court to review evidence tendered but in its failure to evaluate the evidence of one party against the other party and that the court below followed the footsteps of the trial court. At paragraph 504 of their brief they complained that the court below did not properly review the facts of the case as stated by the Appellants and therefore failed to properly evaluate the Appellants’ case vis-à-vis the Respondents’. It is the same confusion as to what amounted to a review of evidence and an evaluation thereof, that pervaded the Appellants’ argument and submission on the only issue for determination, it was further contended.

I have myself perused the entire records and I am of the firm

view that the trial court critically and painstakingly examined the evidence tendered by both parties at pages 139 to 152 of the records.

The trial court, after a critical review made findings of fact as enumerated from page 152, line 25 to page 156, line 14, thus evaluating the evidence of both parties. It thereupon proceeded by accepting the evidence of traditional history and acts of ownership tendered by the Respondents while rejecting that of the Appellants. As a review imports a critical examination of evidence while an evaluation imports a determination of the value of evidence, the trial court having accepted the evidence of the traditional history and acts of ownership of the Respondents, in rejecting that of the Appellants as incoherent, inconsistent and full of mere denials of obvious truth and hence unreliable, has discharged the duty of reviewing and evaluating the evidence tendered before it.

In relation to the court below, it being settled law that an appellate court will not normally interfere with the findings of fact of a trial court especially when such findings are based on credibility of witnesses except such findings are unsound, perverse or are not supported by evidence, this court as the ultimate court of appeal will decline to interfere with such findings of fact unless the decisions arrived at in those lower courts are shown to be unsound, perverse or unsupported by evidence.

I am also of the firm view that the court below properly evaluated the evidence of the Respondents' PW8 by concluding that no probative value has been ascribed to it as contended by the learned counsel to the Appellants. As can be seen, the learned Justices of the court below dealt with this point at pages 222-223 in their judgment and as to contradiction, I am of the firm view that the learned Justices found no such contradictions as against the Respondents' claim to title to statutory right of occupancy and they so held. The contention of the Appellant that the court below did not properly evaluate documentary evidence Exhibits D2 and D4 tendered by the Appellants, in my view, is also misconceived. This is because the court considered this complaint in its judgment and pin-pointed some materials in the Exhibits that lent credence to the Respondents'

case. In the instant case, there was sufficient evidence of traditional history, acts of ownership and other documentary evidence such as Exhibits PE, P3, P8A to P8N which supported the Respondents' claim to the hilt. Items 7 and 19 of Exhibit D4 lend their support to the Respondents' case. See Akinola v. Oluwo (1962) 2 All NLR 224 at 227; Akunwata Nwagbogu v. Chief M.O. Ibeziako (1972) Vol. 2 (Part 2) ECLR 335 at 338; 91973) 1 All NLR 113; Akpapuna & Ors. v. Obi Nzeka II (1983) 7 SC 1 at 25 and Adebambo & Ors. v. Olowosago (1985) 3 NWLR (Part 11) 207. The court below affirmed the trial court's finding thereon and went on to hold that "*no reasonable tribunal faced with these welter of evidence can give Exhibit D2 any weight after testing it against other documents and pieces of evidence led by the respondents.*"

From the foregoing, I cannot but agree entirely with the Respondents that the incidents of customary tenancy and payment of Ishakole have been proved on the balance of probabilities by them in the instant case which the court below, in my view, rightly upheld in its judgment dated 25th April, 1994. it is clear case of concurrent findings of facts in which the preliminary objection also serves to destroy the appeal.

The preliminary objection having been upheld the ground of appeal is accordingly struck out with costs assessed in favour of the Respondents in the sum of N10,000.00 only.

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother Onu, JSC. I agree that the appeal is incompetent as shown by the preliminary objection raised by learned counsel for the Respondents. Based on this point only, I too will strike out the appeal and it is hereby struck out with N10,000.00 cost to the Respondents against the Appellants.

MOHAMMED JSC

I agree with my learned brother Onu JSC, that the preliminary objection raised by the respondents counsel has merit. The appeal is

therefore incompetent. My Lord Onu has considered all the salient issues for the determination of this appeal and I have nothing I can usefully add. The appeal is struck out. I abide by the orders made including the assessment of costs.

ACHIKE JSC

I have before now read the leading judgment of my learned brother, Onu, JSC and I am in full agreement with him that this appeal deserves to fail.

The defendants/appellants were sued by the plaintiffs/respondents at the Osun State High Court wherein three reliefs were sought, namely, (1) that the plaintiffs were entitled to a statutory right of occupancy to a piece of land situate at Oruruwo in Ifelodun Local Government Area; (2) N5,000.00 damages for the trespass on the said land; and (3) injunction restraining further acts of trespass. After due trial, the trial court gave judgment in favour of plaintiffs only for declaration and dismissed the two other reliefs. Dissatisfied, the defendants appealed but the appeal was dismissed on 25th April, 1994.

They have further appealed to this Court on the lone ground, shorn of its particulars, reads thus:

“The Court of Appeal erred in law when it failed in its duty to adequately and properly evaluate the evidence before appellants that the findings of the lower court was perverse the lower court notwithstanding the complaint of the and not by the whole evidence but in fact opposed to the evidence.”

The respondents raised a preliminary objection against the lone ground of appeal in that the said ground of appeal is not sustainable in that although it is couched as a ground of law, it is in fact not so, but one of mixed law and fact, and as such, prior leave of the lower court or of this Court ought to have been sought and received in order to validate the said ground of appeal. Not having done so, the ground of appeal is bad and incompetent.

I am satisfied that the objection is unanswerable because a close scrutiny of the lone ground of appeal clearly shows that in the consider-

ation of this ground of appeal in the light of its particulars, thus will of necessity, engaged the Court in an evaluation of the facts in this appeal. Such an exercise invariably involves a question rooted in mixed law and fact and it is of no moment that the appellant titled the ground of appeal as
B “Error in Law”. The law is quite clear that it is not what the appellant chooses to designate a ground of appeal that controls, rather it is the nature of the ground of appeal read together with the particulars that characterises the ground of appeal as one of pure law or mixed law and fact or facts alone.

C The result is that the preliminary objection is upheld by me and the appeal is accordingly struck out by me with N10,000.00 costs in favour of the respondents.

D **UWAIFO JSC**

I read in advance the judgment of my learned brother Onu JSC and I agree with him that the appeal has no merit.

In the suit brought by the plaintiffs (now respondents) against the
E defendants (now appellants), they sought three reliefs, namely, (a) Declaration that the plaintiffs are entitled to a statutory right of occupancy to a parcel of land at Ororuwo in Ifelodun Local Government Area; (b) N5,000.00 damages for trespass; and (3) Injunction against further acts of
F trespass. Judgment was given on 30 June, 1989 in favour of the plaintiffs in respect of the declaration while the other two reliefs were dismissed. The appeal against that judgment by the defendants was dismissed by the Court of Appeal on 25 April, 1994.

G The further appeal to this court is upon one ground of appeal which reads:

“The Court of Appeal erred in law when it failed in its duty to adequately and properly evaluate the evidence before the lower court notwithstanding complaint of the appellant that the findings of the lower
H court was perverse and not supported by the evidence.

PARTICULARS OF ERROR

1. Whereas the law requires the Court of Appeal to evaluate the evidence tendered in lower court when the finding on it is perverse, the

Court of Appeal in the instance (sic) case failed in its legal duty to adequately and properly evaluate the evidence thereby reaching the conclusion that is clearly perverse and not supported by the whole evidence but in fact opposed to the evidence.

2. *The Court of Appeal failed to evaluate the historical evidence of the parties in relation to all the evidence before the court.* B

3. *Proper evaluation of the evidence by the Court of Appeal would have shown clearly that there was no evidence connecting the appellants as such with the complaint of the respondent.* C

A preliminary objection has been raised by the respondents to this ground of appeal as being one that cannot be entertained by this court without the leave of either the Court of Appeal or of this court since it is a ground of mixed law and fact. I think there is substance in the objection. It is true that the ground of appeal is couched as being a ground of law. D That does not lead to a conclusion that it is a ground of law. It must be examined as to its contents and true import: see *Ojemen v. Momodu* (1983) 1 SCNLR 188; (1983) 3 SC.173; *U.B.A. Ltd v. Stahlban GmbH* (1989) 3 NWLR (pt. 110) 374. But an examination of it no doubt reveals that the complaint there is that the lower court did not do proper evaluation of the evidence thereby reaching a wrong conclusion. In order to decide whether the lower court failed in its duty to consider the evidence properly, it is necessary for this court to examine facts as given in evidence. This court F will therefore have to deal with conflicting facts in the process of judging the performance of the lower court. That makes the ground of appeal at best one of mixed law and fact for which leave must be sought and obtained in an appeal to this court.

I therefore uphold the objection and strike out the ground of ap- G
 peal. In the result the appeal has not been argued and it is struck out with costs of N10,000.00 to the respondents.