

SUPREME COURT OF NIGERIA

6TH APRIL, 2001. SC.174/1997

**CORAM:- S. M. A. BELGORE, E. O. OGWUEGBU, S. U. ONU,
U. A. KALGO, S. O. UWAIFO, JJSC.**

SUNDAY OGUNSINA & 2 ORS. APPELLANTS
(For themselves and on behalf of
Ogundare and Ojoomo families of
Otta)

AND

SUNMONU MATANMI & 3 ORS. RESPONDENTS
(For themselves and on behalf of
Matanmi Family of Ijemo
Compound Otta)

APPEALS - Issue - Where already discussed - The court will not consider it separately again (H 8)

EVIDENCE - Admissibility - Inadmissible evidence - Admission of exhibits without objection - Neither the parties nor the trial court has the power to admit a document inadmissible in law (H 4)

EVIDENCE - Identity of land in dispute - The evidence of the witnesses on record - Has sufficiently described the boundaries of the land (H 2)

EVIDENCE - Pleadings - Facts pleaded - Where the facts pleaded did not make reference to facts contained in Exhibits - The Exhibits should not be admissible (H 3)

EVIDENCE - Exhibits - Probative value - Placed on wrongfully admitted exhibits - Is immaterial - As the decision would be the same - If they were not admitted (H 5)

EVIDENCE - Exhibits - Wrongful admission of exhibits - Did not occasion any miscarriage of justice or affect the decision of the court (H 6)

JUDGMENTS - *Findings by trial court - The trial court was right to have preferred the story of the respondents (H 1)*

ORDERS - *Injunctions - Where a necessary ancillary order to protect title is made - Respondents are entitled to such order of injunction (H 7)*

FACTS

The appellants as plaintiffs sued the respondents for declaration that the plaintiffs are entitled to customary and statutory rights of occupancy on a parcel of land situate at Ijoko Otta via Abeokuta, Ogun State, forfeiture and injunction to restrain the defendants, privies and agents from doing anything on the land without the consent of the plaintiffs. The appellants filed a 38 paragraphs amended statement of claim and the respondent filed a 58 paragraphs amended statement of defence denying the appellants' claims and setting up a counter-claim in paragraph 50. Parties called witnesses in support of their respective pleadings, the learned trial judge delivered a considered judgment in which he upheld the counter-claim of the respondent and dismissed the appellants' claims.

Dissatisfied with the decision, the appellants appealed to the Court of Appeal which heard the appeal, dismissed it and affirmed the decision of the trial court. The appellants further appealed to the Supreme Court raising 4 issues for determination

ISSUES FOR DETERMINATION

“1. Whether the Respondents established the identity of the land in dispute with certainty as to entitle them to the Declaration sought.

2. Whether having regard to the Respondents' pleadings, the learned Justices of Court of Appeal were right in holding that Exhibits 12 and 12A were admissible; And if No: Whether the admissibility of Exhibits 12 and 12A did not occasion miscarriage of justice. Etc. see p.

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

Findings by trial court

1. At the trial, the appellants and their witnesses only gave evidence on

Ojoomo as their ancestor and from whom they inherited the land in dispute but nothing was said about Ogundare or his descendants. If it was true that Ogundare married Subuola, the daughter of Elerinko, and he was the one who brought Ojoomo to the place, the story about Ogundare should feature prominently in the land dispute. The learned trial judge was therefore right in my respectful view to have preferred the story of the respondents and rejected that of the appellants. (p. 1014 G)

Identity of land in dispute

2. Therefore the parties are fully aware of the area of land in dispute and in my respectful view, the evidence of the witnesses of both parties on record has sufficiently described the boundaries of the land in dispute as pleaded by the parties and so I have no hesitation in finding that the identity of the land in dispute in this case was properly proved. (p. 1015 B)

Pleadings - Facts pleaded

3. This, in my judgment means that the facts pleaded in paragraphs 29, 34 and 39 of the further amended Statement of Defence of the respondents did not support Exhibit 12 and 12A. It therefore means that the decisions in Azubuike and Ogbeiwi cases relied upon by respondents' counsel to support the admission of Exhibits 12 and 12A are not applicable in this case and I so hold. (p. 1016 H)

Evidence - Admissibility

4. On the question of the admission of Exhibits 12 and 12A in evidence without objection by the appellants this court in a similar situation in the case of Oseni v Dawodu (1994) 4 NWLR (pt. 339) 390 at p.404 held that:-

“On the issue that the admissibility of the said survey plans before the trial court was justified on the ground that they were admitted in evidence without objection, it must firstly be observed that neither a trial court nor the parties have the power to admit without objection, a document that is in no way or circumstances admissible in law. See Idowu

Alase & others v Sanya Olori Ilu & Others (1965) NMLR 66 at 77 and *Salau Jagun Okulade v Abolade Agboola Alade* (1976) All NLR (pt. 1) 67. Indeed if a document is wrongly received in evidence before the trial court, an appellate court has an inherent jurisdiction to exclude it although B counsel at the lower court did not object to its going in. see *Mallam Yahaya v Mogoga* (1947) 12 WACA 132 at 133 and *Alase v Ilu* (1965) NMLR 66 at 77.”

I agree and accept this principle and apply it to the circumstances of this C case. I hold that exhibits 12 and 12A were wrongly admitted in evidence at the trial and wrongly upheld by the Court of Appeal as properly admitted. I answer issue 2 in the negative. (p. 1017 B)

Exhibits - Probative value

D 5. There is no doubt that the learned trial judge had placed high probative value on Exhibits 12 and 12A. This can clearly be seen on page 291 of the record of appeal. In the case of the Court of Appeal, although it agreed with the trial court on the probative value of Exhibits 12 and 12A, E it examined the evidence of the witnesses on record and had this to say on p. 434 per Mukhtar JCA:-

“even though the exhibits may have affected the decision of the lower court, my opinion is that the decision would have been the same if F they were not admitted.”

I entirely agree with the opinion expressed by the Court of Appeal in the circumstances of this case. (p. 1018 A)

Exhibits - Wrong admission of exhibits

G 6. I therefore find that the wrong admission and use by the trial court of the documents Exhibits 12 and 12A in this case, did not occasion any miscarriage of justice or affect the decision of that court in any way. (p. 1020 E)

H

Orders - Injunctions

7. The order of injunction in this case is a necessary ancillary relief to protect the title of the respondents and to prevent any further infringe-

ment of their rights on the land by the appellants. The respondents are properly entitled to it in the circumstances of this case and I so hold. I answer issue 3 in the affirmative. (p. 1020 H)

Appeals - Issue

8. I do not think in the light of what I have said and found above, there is any need to consider issue 4 in this case. In fact it was indirectly discussed and answered in issue 2. I therefore see no useful purpose to consider issue 4 separately again. (p. 1021 A)

REPRESENTATION

Alabi Fashanu Esq., for the Appellants

Olaseeni Okunloye Esq., for the Respondents.

CASES REFERRED TO

Odochie v. Chibogwu (1994) 7 NWLR (pt.354) 78

Onwuka v. Ediala (1989) 1 NWLR (pt.96) 182 at 184

Olusanmi v. Oshasona (1992) 6 NWLR (pt.245) 22 at 36

Olukade v. Alade (1976) 1 ALL NLR (pt.1) 67

Opiti Ogbeiwi (1992) 4 NWLR (pt.234) 184

Oseni v. Dawodu (1994) 4 NWLR (pt.339) 390 at p.404

Idowu Alase & others v. Sanya Olori Ilu & others (1965) NMLR 66 at 77

Mallam yahaya v. Mogoga (1947) 12 WACA 132 at 133

Kojo v. Bonsie (1957) 1 W.L.R.I 227

LEAD JUDGMENT BY KALGO JSC

In the Ogun State High Court, holden at Abeokuta in the Abeokuta Judicial Division, the appellants as plaintiffs sued the respondents for:-

(1) Declaration that the plaintiffs are entitled to customary and Statutory Rights of occupancy on a piece or parcel of land situate, lying and being at Ijoko Otta via Abeokuta, Ogun State.

(2) Forfeiture of whatever interest the defendants may have on the land for misconduct;

(3) Injunction to restrain the defendants, privies and agents from

alienating leasing or doing anything on the land without the consent or approval of the plaintiffs.

The appellants filed a 38 – paragraphs amended statement of claim and the respondents filed a 58 – paragraphs amended statement of defence denying the appellants’ claims and setting up a counter – claim in paragraph 59 which reads:-

(1) That the Matanmi family is entitled to the Statutory/Customary right of occupancy in respect of the piece or parcel of land situate lying and being at Ijoko Otta, Ogun State as shown in plan No. ESEW/W2523/15 drawn by M.A. Sewaje a Licensed Surveyor.

(2) Forfeiture of whatever interest the 1st Plaintiff/Defendant (Iyabo Albert) may have on the said land.

(3) Injunction to restrain Plaintiff/Defendant by counter-Claim from alienating, leasing or doing anything on the land without the consent of the Defendants/Counter-Claimants.

Parties called witnesses in support of their respective pleadings at the end of which their counsel addressed the court. The learned trial judge, Sogbetun J. delivered a considered judgment on the 20th of January 1987, in which he upheld the counter – claim of the respondents and dismissed the appellants’ claims. He stated on p.298 of the record:-

“It is hereby declared that the Matanmi Family is entitled to the Statutory/Customary Right of Occupancy in respect of the vast area of land situate lying and being at Ijoko, Otta, Ogun State and as shown in Exhibit “14” plan No. SEW/W/2523/15 subject to specific grants existing on the land.

Injunction is also hereby granted against the Plaintiffs restraining them from alienating, leasing or doing anything further on the land above mentioned and described without the consent of the Defendants/Counter – Claimants.”

Dissatisfied with this decision, the appellants, appealed to the Court of Appeal Ibadan which heard the appeal, dismissed it and affirmed the decision of the trial court. The appellants appealed to this court on seven grounds of appeal. In this court, both parties filed and exchanged their briefs of argument as required by the rules of court. The appellants in their

brief raised 4 issues for the determination of this court to wit:-

“1. Whether the Respondents established the identity of the land in dispute with certainty as to entitle them to the Declaration sought.

2. Whether having regard to the Respondents’ pleadings, the learned Justices of Court of Appeal were right in holding that Exhibits 12 and 12A were admissible; And if No: Whether the admissibility of Exhibits 12 and 12A did not occasion miscarriage of justice.

(3) Whether having regard to the dismissal of the Respondents’ claim for forfeiture, the Learned Justices of Court of Appeal were right in holding that the Respondents were entitled to the order of injunction.

(4) Whether the learned Justices were right in their endorsement of the learned trial judge’s approach in treating the conflict in traditional evidence of both parties.”

According to the Respondent, there are only 3 issues which properly arise from the grounds of appeal filed by the appellants and they are:-

(1) “Whether the admission in evidence of Exhibits 12 and 12A were justifiable in law and whether the judgement of the trial court, which was affirmed by the court below could have been otherwise without Exhibits 12 and 12A.

(2) Whether on the materials before the lower court, it was right and/or proper for that court to have affirmed the decision of the trial court that the identity of the land in question has been proved.

(3) Whether in the circumstances of this case, the grant of the order of injunction was rightly granted.”

I have carefully examined the issues raised by the parties for the determination of this court in this appeal and find that the issues of the appellants appear to me to be properly distilled from the grounds of appeal earlier filed. I adopt the 4 issues of the appellants as set out in his brief and in this judgment.

Issue 1:

This issue deals with the question whether the Respondents have established the identity of the land in dispute to entitle them to a declaration.

On page 178 of the record, the Respondents who were defendants at the trial, in their further amended statement of defence pleaded in

paragraphs 5, 6 and 7 thus:-

“5. The defendants state that the whole land of Matanmi family is in the defendants’ plan No. SEW/W/2523/15 drawn by one Mr. A Sewaje, a licensed surveyor which was settled upon by Matanmi more than a century ago, a copy of the plan is attached herewith and filed along.

6. The defendants state that their family land is founded by (1) Agoro (2) Arinko (3) Hufin (4) Hoye and Ibaragun families land properties and that these various families have always recognised the title of Matanmi family over their family land as boundary owner to their families lands.

7. The defendants state that Arinko or Elerinko family land only forms boundary with Matanmi family land and the Arinko or Elerinko family has never laid any claim to Matanmi family land anytime except in 1973 when there was a small boundary dispute.”

And in their counter – claim, the respondents still pleaded in paragraph 61 sub-paragraph 1:-

“That the Matanmi family is entitled to the statutory/customary right of Occupancy in respect of the piece or parcel of land situate lying and being at Ijoko Otta, Ogun State as shown in plan No. ESEW/W2523/15 drawn by M.A. Sewaje a licensed surveyor.”

It is common ground and as disclosed by the evidence on record that the parties are related by blood. According to the appellants Ige Elerinko and Owolabi who were hunters first founded and settled on the land in dispute. They founded the village of Ijoko. The only daughter of Elerinko, Subuola, married Ogundare and Ogundare brought his brother Ojomo who lived with him and both were serving Elerinko, who had no male child. For the services rendered by Ogundare and Ojomo to Ige Elerinko, the latter gave them the land in dispute. **At the trial, the appellants and their witnesses only gave evidence on Ojomo as their ancestor and from whom they inherited the land in dispute but nothing was said about Ogundare or his descendants. If it was true that Ogundare married Subuola, the daughter of Elerinko, and he was the one who brought Ojomo to the place, the story about Ogundare should feature prominently in the land dispute. The learned trial judge was therefore right in my respectful view to have**

preferred the story of the respondents and rejected that of the appellants.

According to the respondents, their witnesses, especially DW 1, 7 and 17 testified that Matanmi, their ancestor first settled on the land in dispute, founded Ijoko and later became the Bale of Ijoko. The families of both parties later built their houses and settled on the land, but the land now in dispute “*situate, lying and being at Ijoko Otta*” is part of the larger area of the land as described in the appellants’ plan Exhibit 3 and the respondents’ plan Exhibit 14. **Therefore the parties are fully aware of the area of land in dispute and in my respectful view, the evidence of the witnesses of both parties on record has sufficiently described the boundaries of the land in dispute as pleaded by the parties and so I have no hesitation in finding that the identity of the land in dispute in this case was properly proved.** See Odochie v Chibogwu (1994) 7 NLR (pt.354) 78; Onwuka v. Ediala (1989) 1 NWLR (pt. 96) 182 at 184; Olusanmi v Oshasona (1992) 6 NWLR (pt. 245) 22 at 36. I answer issue 1 in the affirmative.

Issue 2

This issue challenges the admissibility of Exhibits 12 and 12A at the trial and the effect it had on the judgment of the trial court. In his brief the learned counsel for the appellant submitted that Exhibits 12 and 12A were not pleaded by the respondents and should not therefore be admitted at all and having been admitted should be expunged from the record. He further submitted that the exhibits could not have properly been admitted in support of the facts pleaded in paragraphs 29 and 34 of the respondents’ amended Statement of Defence and counter-claim. Learned counsel finally submitted that the Court of Appeal misdirected itself on the clear principle enunciated in Olukade v Alade (1976) 1 All NLR (pt.1) 67 and that apart from Exhibits 12 and 12A upon which the trial court relied heavily to give judgment for the respondents, there is nothing to support it. He cited many legal authorities in support of his arguments. The learned counsel for the respondents submitted in his brief that Exhibits 12 and 12A, though not specifically pleaded, were properly admitted in evidence at the trial because the facts pleaded in paragraph 39 of their further amended

Statement of Defence and Counter – Claim fully cover what those exhibits were all about. It was not therefore necessary, counsel argued, to plead them specifically. He cited in support Monier Construction Co. Ltd v Azubuike (1990) 3 NWLR (pt.136) 74 and Opiti v Ogbeiwi (1992) 4 NWLR (pt.234) 184. Counsel further submitted that the Court of Appeal was right to have agreed with the learned trial judge that the said Exhibits were properly admitted in evidence in the circumstances of this case. He finally submitted that learned trial judge even without Exhibits 12 and 12A, there was sufficient evidence to support the findings of the learned trial judge as affirmed by the Court of Appeal.

Exhibits 12 and 12A were tendered and admitted in evidence by D.W. 6 one Ijaola Alamu Kujore without any objection by the appellants. They are agreements relating to land transactions made by Lawani Oke, the progenitor of the respondents which transactions were witnessed by Ogunsina the progenitor of the appellants. The exhibits were documentary evidence of sale and dispositions of part of the land in dispute by Lawani Oke, as evidence of acts of ownership. There is no dispute that Exhibits 12 and 12A were not pleaded by the respondents. This means that any evidence relating to them cannot be accepted at trial and if accepted must be expunged.

The Court of Appeal in agreeing with the learned trial judge on the admissibility of Exhibits 12 and 12A, seemed to rely on paragraphs 34 and 39 of the further amended Statement of Defence and Counter-Claim of the respondents, which were treated as having covered the contents of the said exhibits. The learned trial judge however relied on paragraph 29 of the respondents pleadings. I have read carefully paragraphs 29, 34 and 39 of the further amended Statement of Defence and I find no reference in them to the facts contained in Exhibits 12 or 12A. The evidence at the trial reveals that these exhibits were agreements made by Lawani Oke relating to land in 1926 and 1927. Paragraph 29 referred to villages which grew up on the land granted by Matanmi and paragraph 39 referred to transactions in 1943 and 1945 only and paragraph 34 was even silent on the year of grant or sale of the land. **This, in my judgment means that the facts pleaded in paragraphs 29, 34 and 39 of the further amended**

Statement of Defence of the respondents did not support Exhibit 12 and 12A. It therefore means that the decisions in Azubuike and Ogbeiwi cases relied upon by respondents' counsel to support the admission of Exhibits 12 and 12A are not applicable in this case and I so hold.

On the question of the admission of Exhibits 12 and 12A in evidence without objection by the appellants this court in a similar situation in the case of Oseni v Dawodu (1994) 4 NWLR (pt. 339) 390 at p.404 held that:-

“On the issue that the admissibility of the said survey plans before the trial court was justified on the ground that they were admitted in evidence without objection, it must firstly be observed that neither a trial court nor the parties have the power to admit without objection, a document that is in no way or circumstances admissible in law. See Idowu Alase & others v Sanya Olori Ilu & Others (1965) NMLR 66 at 77 and Salau Jagun Okulade v Abolade Agboola Alade (1976) All NLR (pt. 1) 67. Indeed if a document is wrongly received in evidence before the trial court, an appellate court has an inherent jurisdiction to exclude it although counsel at the lower court did not object to its going in. see Mallam Yahaya v Mogoga (1947) 12 WACA 132 at 133 and Alase v Ilu (1965) NMLR 66 at 77”

I agree and accept this principle and apply it to the circumstances of this case. I hold that exhibits 12 and 12A were wrongly admitted in evidence at the trial and wrongly upheld by the Court of Appeal as properly admitted. I answer issue 2 in the negative.

This is not the end of the matter. The issue 2 went on to say that if the answer to it is No, whether the admissibility of Exhibits 12 and 12A did not occasion a miscarriage of justice. In other words, what the learned counsel for the appellants was saying in his brief was that the decision of the trial court would have been different without Exhibits 12 and 12A, and since the learned trial judge relied heavily on the said exhibits, learned counsel submitted that as these exhibits are now expunged, there is no other credible evidence to support the decision in favour of the respondents.

There is no doubt that the learned trial judge had placed high probative value on Exhibits 12 and 12A. This can clearly be seen on page 291 of the record of appeal. In the case of the Court of Appeal, although it agreed with the trial court on the probative value of Exhibits 12 and 12A, it examined the evidence of the witnesses on record and had this to say on p. 434 per Mukhtar JCA:-

“even though the exhibits may have affected the decision of the lower court, my opinion is that the decision would have been the same if they were not admitted.”

I entirely agree with the opinion expressed by the Court of Appeal in the circumstances of this case.

It is common ground that both parties in this case relied on traditional evidence in proving their respective claims and title to the land in dispute. It is one of the 5 ways of proving title to land as enunciated by this court in the case of Idundun v Okumagba (1976) 1 NMLR 200 at 210; (1976) SC 227 at 246.

The learned trial judge who saw and heard the evidence of the witnesses preferred the evidence proffered by the respondents. He said on page 296 of the record:-

“I find so many inconsistencies and untruth in the evidence of the plaintiffs (appellants) which make it legally impossible for me to give judgment to the plaintiffs. When the story of the plaintiffs is put side by side the story of defendants (respondents) there is no doubt that they are conflicting and competing. Using the guidelines as suggested in Kojo v Bonsie (1957) 1 WLR 1 227 in deciding which of the two competing traditional histories is the more probable, I will readily opt for the story of the defendants. I therefore reject the traditional history put up by the plaintiffs as being untrue.”

Earlier on (in) the judgment, the learned trial judge gave his reasons for preferring the historical or traditional evidence of the respondents when on page 289 –290 he held that:-

“The first plaintiff in his evidence in chief told me that Ige Elerinko and Owolabi first settled on the land in dispute and that is also contained in paragraph 7 of the Amended Statement of Claim – dated 24th

June, 1985. Nowhere, - either in the Amended Statement of Claim or in the evidence of the plaintiffs was it ever explained what later happened to the said Owolabi who jointly settled on the land in dispute with Ige Elerinko and what happened to the descendants of the said Owolabi.

Also in paragraph 12 of the Amended Statement of Claim dated 24th June, 1985, the plaintiffs pleaded that 'Ige adopted Ogundare and Ojomo as his male children and in return for their services gave the area edged red.' The said area edge red is the whole area in dispute being claimed by the plaintiffs and being counter-claimed by the respondents. All the traditional evidence given by the plaintiffs only relate to Ojomo and the plaintiffs are even claiming to be the direct descendants of Ojomo according to paragraph 14 of the Amended Statement of Claim supported with their evidence.

What the plaintiffs also said was that Ige Elerinko had no male issue but a daughter Subuola who married Ogundare. Nothing was said by the plaintiffs about the descendants of Ogundare who allegedly married Subola the only daughter of Ige Elerinko who jointly allegedly settled on the land in dispute with Owolabi, and yet the plaintiffs purported to take this action for themselves and on behalf of Ogundare and Ojomo families of Otta. As to who the descendants of Ogundare who married Subola the only daughter of Ige Elerinko are, nothing was offered by the plaintiffs by way of evidence in court."

The above reasons for rejecting the traditional evidence of the appellants are water-tight and clearly based on the evidence at the trial. The Court of Appeal also agreed with the evaluation of the traditional evidence by the learned trial judge. The learned trial judge believed and accepted the evidence of all the witnesses of the respondents especially DW. 1, DW. 3, DW.6, DW. 16 and DW.17 whose evidence established that the respondents are the descendants of Matanmi the first Bale of Ijoko who founded Ijoko and exercised acts of ownership on the land in dispute without any let or hindrance. After reviewing the evidence of the respondents' essential witnesses, the learned trial judge held on page 293 of the record:-

"Having said all these in favour of the defendants (respondents)

and as found by me, I therefore have no cause to doubt the evidence of the other defendants' witnesses who testified to the extent that late Matanmi, the ancestor of the defendants, was the first Bale of Ijoko and before late Ogunsina, the ancestor of the plaintiffs, became Bale of Ijoko. I therefore
 B reject the stories of the plaintiffs and their witnesses on this point and I find them to be untrue."

The Court of Appeal per Mukhtar J.C.A. on page 429 of the record had this to say on the evaluation of evidence by the learned trial judge thus:-
 C "Before I go further on the submission, I think it is very important to look at the learned trial judge's evaluation of the traditional evidence of the parties which he put side by side as he evaluated them and gave reasons for believing those of the defendants (respondents) as against those of the plaintiffs (appellants). I am satisfied that the learned trial
 D judge made a thoroughly good job of it by painstakingly combing them with a fine brush, so to speak."

I entirely agree with the Court of Appeal on this and also agree with them that the decision of the trial court would have been the same even if
 E Exhibits 12 and 12A were not admitted or considered. **I therefore find that the wrong admission and use by the trial court of the documents Exhibits 12 and 12A in this case, did not occasion any miscarriage of justice or affect the decision of that court in any way.** See section 227
 F (1) of the Evidence Act, Cap. 112 of Laws of the Federation 1990. See Ezeoke v Nwagbo (1988) 1 NWLR (pt. 72) 616; Nwaeze v The State (1996) 2 NWLR (pt. 428) 1 at p. 14-15; MCC Ltd v Azubuike (1990) 3 NWLR (pt.136) 74; Ajayi v Fisher (1956) SCNLR 279; Orosunlemi v State (1967) NMLR 278.

G On the whole, I answer issue 2 in the affirmative.
Issue 3

This issue complained of the order of injunction restraining the appellants from disposing off or in any way alienating the land in dispute
 H which was confirmed on the respondents by the trial court. **The order of injunction in this case is a necessary ancillary relief to protect the title of the respondents and to prevent any further infringement of their rights on the land by the appellants. The respondents are**

properly entitled to it in the circumstances of this case and I so hold. I answer issue 3 in the affirmative. I do not think in the light of what I have said and found above, there is any need to consider issue 4 in this case. In fact it was indirectly discussed and answered in issue 2. I therefore see no useful purpose to consider issue 4 separately again. B

In sum, I find that there is no merit in this appeal. I accordingly dismiss it and affirm the decision of the Court of Appeal delivered on 21st March 1996. I award N10,000.00 costs in favour of the respondents. C

BELGORE JSC

The identity of the land in dispute was clear on the evidence before the trial court. Exhibits 12 and 12A unequivocally refer to the agreements on the parts of the land in dispute and were tendered and admitted as evidence at trial without any objection. They form strong points in respondents case. On the injunction to restrain the appellants from alienating or in any way dealing with the land in dispute, it was very necessary in view of the overwhelming evidence in court so as to protect the interests of the respondents. D E

It is for the above reasons that I entirely agree with the judgment of my learned brother, Kalgo, JSC that this appeal lacks any merit. I also dismiss it with N10,000.00 costs to the respondents. F

OGWUEGBU JSC

I have had the privilege of reading in draft the judgment of my learned brother Kalgo, J.S.C. in this appeal. I agree with him that the appeal substantially fails. The complaint against the order of injunction which is formulated as issue (3) in the appellants' brief succeeds. Since the defendants' counter-claim for forfeiture failed, there was no basis for the order of injunction and it is hereby set aside. The respondents are entitled to N10,000.00 costs. G H

ONU JSC

I am in complete agreement with the reasoning and conclusions

arrived at by my learned brother Kalgo, JSC that the appeal herein lacks substance. I too accordingly dismiss it and subscribe to the orders made therein.

B UWAIFO JSC

I read in advance the judgment of my learned brother Kalgo JSC. I agree with him that the appeal fails generally except in regard to the order of injunction given in the face of the claim (raised as counterclaim by the defendants) for forfeiture which was dismissed.

C The plaintiffs’ claim for declaration of entitlement to a right of occupancy in respect of a large parcel of land, forfeiture of whatever interest the defendants may have in the land and an injunction to restrain the defendants from alienating, leasing or doing anything on the land was D dismissed.

The defendants counterclaimed in a similar way for the said three reliefs. The court dismissed the claim for forfeiture but granted a declaration as to right of occupancy and an order of injunction. But the E learned trial judge made the following finding and arrived at a conclusion thus:

“First and foremost, I wish to deal with the question of forfeiture as claimed by the defendants against the interests of the plaintiffs. As F pleaded by the defendants themselves, the portions of land allegedly given to the ancestors of the plaintiffs were absolute grants without any condition being attached which cannot by nature be regarded as customary tenancy. That being so, the defendants in law cannot unmake what their own ancestors had already made and long before the defendants came into G existence. In other words, the defendants will be taken as being bound by the acts of their ancestors.”

It is said that a grant once made absolutely cannot be derogated from by the grantor. The injunction granted to the defendants in their H counterclaim against the plaintiffs excludes the area of the said grant. This is made clear by the learned trial judge later in his judgment. Since that is so, the appellants have no reason to complain. I too will dismiss the appeal with N10,000.00 costs