

**SUPREME COURT OF NIGERIA**

22ND JUNE, 2001. SC. 202/1994

**CORAM:- A. G. KARIBI-WHYTE, I. L. KUTIGI,  
U. MOHAMMED, O. ACHIKE, E. O. AYoola, JJSC**

1. CHIEF MUNALAYEFAASEIMO

& 2 OTHERS ..... PLAINTIFFS/APPELLANTS  
(For themselves and as Representing  
the people of Otuogori Community  
of Ogbia District Brass Local Govt.)

AND

CHIEF TARIABRAHIM

& 13 OTHERS ..... DEFENDANTS/RESPONDENTS  
(For themselves and as representing  
the people of Onuebum Community  
of Ogbia District in Brass Local Govt.)

AND

CHIEF TARIABRAHIM

AND 3 OTHERS ..... PLAINTIFFS/RESPONDENTS  
(For themselves and as representing  
Onuebum Community of Ogbia District in  
Brass Local Govt.

AND

CHIEF MUNALAYEFAASEIMO

AND 7 OTHERS ..... DEFENDANTS/APPELLANTS  
(For themselves and as representing  
Otuogori Community of Ogbia  
District in Brass Local Govt.)

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*APPEALS - Concurrent findings of fact - As they are supported by adequately evaluated evidence - They are not perverse - And will not be interfered with by the Supreme Court (H 5)*

*APPEALS - Concurrent findings of fact - Will not be interfered with by*

*the court - Except they are shown to be perverse (H 4)*

**JURISDICTION** - Land law - Customary right of occupancy - The High court has jurisdiction - To entertain a claim in respect of customary right of occupancy - As was rightly held by the court below (H 1)

**LAND LAW** - Boundaries - Injunction - Where the court below - Finds that the boundaries are certain - Its order of injunction can only be challenged - If it is established that its finding is wrong - As regards identity of the land (H 7)

**LAND LAW** - Title - Proof by traditional evidence - What the plaintiff must prove - And how to resolve conflicting and rival traditional histories - By evidence of recent facts (H 2)

**LAND LAW** - Title - Proof - By traditional evidence and acts of ownership - The court is entitled to enquire - Into the sufficiency of the acts of ownership (H 3)

**PARTIES** - Inaction of a party - Where a party fails to exercise his right - To anticipate the case of a his opponent of which he had notice - He cannot complain on appeal - Of his own inaction (H 6)

### **FACTS**

The appellants as plaintiffs sued the respondents as defendants in the High Court of Rivers State claiming a declaration of title to the land in dispute, damages for trespass and injunction. The defendants had also in a cross-action sued the plaintiffs for the same reliefs in respect of the same parcel of land. The suits were therefore consolidated.

The parties both relied on traditional history and acts of ownership and at the trial led evidence as to their rival traditional histories. The trial judge preferred the evidence of the defendants to that of the plaintiffs in regard to traditional history and acts of ownership and so dis-

missed the plaintiffs' claim and entered judgment for the defendants.

The plaintiffs appealed to the Court of Appeal which unanimously dismissed their appeal and they have further appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

1. *“Whether the High Court has jurisdiction to entertain a claim in respect of Customary Right of Occupancy.”*

2. *“Whether the Lower Court having accepted that the appellants were in possession could have found them to be in trespass so as to award damages.”*

3. *‘Whether a Declaration and Injunction can be granted where the area of land in dispute are not adequately identified and when there are disputes about the features of the boundaries.’*

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

### ***Jurisdiction - Customary right of occupancy***

1. By the time this appeal was heard it is evident that the first issue to which learned counsel for plaintiffs had devoted two-thirds of his argument in the written brief must be resolved against the plaintiffs in view of the decision of this court in Adisa v. Oyinwola Ors [2000] 10 NWLR (Pt. 674) 116 where this court held that the High Court has jurisdiction to entertain a claim in respect of customary right of occupancy. The decision of the court below that the trial court had jurisdiction to entertain the cross-action must therefore be affirmed. (p. 2133 C)

### ***Title - Proof by traditional evidence***

2. Where a party had set out to establish title by traditional history all he needs do is to prove his title by conclusive and cogent evidence of tradition. (See, Iriri v Erhurhbara [1993] 3 NWLR (Pt 123) 252, Dike v. Okoloedo (1999) 10 NWLR (Pt. 624, 359). Where the traditional histories are in conflict the probability of the rival histories is tested by evi-

dence of recent facts (see Kojo 11 v Bonsie (1975) 1 WLR 1223).  
(p. 2135 C)

***Proof - By traditional evidence and acts of ownership***

B 3. Where a party relies on evidence of traditional history, and, in the alternative, on acts of ownership to prove the title he claims the court is entitled to proceed on an inquiry into the question whether a party has proved acts of ownership over a sufficient length of time, numerous and positive enough to lead to an inference that he is the owner of the land in line with the principle enunciated in Ekpo v Ita 11 NLR 68. Where acquisition of title by settlement is pleaded, that perhaps is all that the plaintiff will be required to prove to succeed, with the traditional history as to who first settled on the land providing fitting background to the evidence of length of time acts of ownership had been taking place on the land. It is right, of course, to use recent facts as a test of the probability of traditional history, but such recent facts must be of such quality and character as would lead to the probability of traditional history.

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E In this case the trial judge duly took note of the fact that the parties relied on traditional history and acts of ownership. He found the evidence in respect of both inadequate in support of the plaintiffs' case and adequate in support of the defendants' case. (p. 2135 D)

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***Concurrent findings of facts - That are not perverse***

4. These findings made by the trial judge were affirmed by the Court of Appeal. There were, thus, a concurrent findings of fact. That this court will not interfere with concurrent findings of fact of the trial court and the Court of Appeal unless such findings are perverse is supported by ample case law. (p. 2136 D)

***Concurrent findings - Adequately evaluated evidence***

H 5. A finding supported by adequately evaluated evidence cannot be said to be perverse. The findings by the trial court were made after an adequate evaluation of the evidence. The Court of Appeal did not itself neglect to consider the evidence on record., the effort of the counsel for

the plaintiffs directed at persuading this court to interfere with the findings of fact made by the trial Judge in regard to title to the land is, in the circumstances, futile. The trial judge clearly found tortuous entry on the land by the plaintiffs. The Court of Appeal holding that that finding was supported by credible evidence refused to interfere with it. Nothing has been usefully urged on this appeal to justify any conclusion that the learned Justices of the Court of Appeal were wrong. (p. 2136 F)

***Parties - Inaction of the plaintiff***

6. It is clear that nothing stops a plaintiff in the course of presenting his own case, from anticipating the case of his opponent of which he has notice. In this case, the plaintiffs had notice of the plan on which the defendants intended to rely. They had ample opportunity, were they minded so to do, to lead evidence in anticipation of the defendants tendering the plan as evidence, or to seek to lead rebuttal evidence. They did neither. It is now too late for them to complain of a situation brought about by their own inaction. (p. 2137 F)

***Land Law - Boundaries - Injunction***

7. The issue raised by the plaintiffs was that injunction should not have been granted to land the boundaries of which are not certain. Where the court below has found, as in this case, that the boundaries are certain, the order of injunction can be challenged on the ground of an uncertainty of the land in dispute, only if it is first established that the finding of the court below as to the identity of the land was erroneous. There is nothing in the arguments advanced by counsel on behalf of the plaintiff that can be held to be a valid challenge to the findings of the court below in that regard. (p. 2138 F)

**NOTABLE POINTS OF INTEREST**

**AYOOLA JSC**

***1. Brief writing - Counsel should not argue outside the issues***

The only apparent complication in an otherwise straight forward appeal is the rather inept way in which the remaining issues have been argued in

the appellants’ brief of argument. While the second and third issues, as formulated implied that certain findings of fact have been made and accepted, and that the only issues were as to the legal consequences that should attend such findings, counsel for the plaintiffs proceeded to argue the issue for determination on the basis that those very findings should be rejected. Thus, although the second issue raised the question whether in view of a finding that the plaintiffs were in possession of the land, they could be rightly held to be trespassers; and, although the third issue was based on an assumption that there was a finding that the area of land in respect of which injunction was granted had not been adequately identified, counsel for the plaintiffs proceeded to argue, on the second issue, as if the question raised was as to the title of the respective parties to the land; and, on the third issue, as if there was no settled finding as to the identity of the land in dispute. That is wrong. To compound the matter, much of submissions made in the appellants’ brief are incomprehensible, disjointed and unrelated to the issues formulated.

For his part, counsel for the defendants followed the plaintiffs’ counsel into error to argue the issues on the same lines as did counsel for the plaintiffs. The Court is thus faced with a situation in which parties proceeded to argue outside the agreed issues. (p. 2133 E)

2. *Brief writing - Argument is to flow from the issues or grounds*

As a matter of form a brief must contain the issue or issues for determination on an appeal. However, the importance of formulation of issues transcends a mere matter of form. The issues for determination are the questions which the parties submit to the court for its decision. The final determination of an appeal depends on how the material questions in the appeal are answered. The issues themselves must arise from the grounds of appeal. To decide an appeal on questions that neither arise from the grounds of appeal nor from the issues arising therefrom is contrary to our appellate justice system – it makes nonsense of the brief system for parties to argue an appeal as if they are untrammelled by the grounds of appeal and the issues formulated therefrom. In this case it is only a matter of grace that the arguments are considered at all. Perhaps, our

appellate courts will be doing the needful by showing less indulgence in matters concerning presentation of briefs. (p. 2134 B)

**REPRESENTATION**

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B. R. Makanju For Appellants.

Chief Kola Babalola (Alhaji F. O. Osho with him) for the Respondents.

**CASES REFERRED TO**

C

Adisa v. Oyinwola Ors [2000] 10 NWLR (Pt. 674) 116

Iri v Erhurbara [1993] 3 NWLR (Pt 123) 252

Dike v. Okoloedo (1999) 10 NWLR (Pt. 624, 359)

Kojo 11 v Bonsie (1975) 1 WLR 1223

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Ekpo v Ita 11 NLR 68

Odonigi v Oyeleke (2001) 84 LRCN 658

Aromire and ors v. Awoyemi (1972) 1 ALL NLR (Pt 1) 101, 113

Makanjuola v. Balogun (1983) NWLR (Pt 108) 192 at 204

E

KWADZO VS ADJEI 10 WACA 274

AMATA VS MODEKWU 14 WACA 580 AT 582.

CHINEDU VS. MBAMALI (1980) 3-4 S.C 31

IBODO & ORS VS ENAROFIA & ORS (1980 5-7 S.C 42)

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**LEAD JUDGMENT AYoola JSC**

This is an appeal from the judgment of the Court of Appeal (Katsina-Alu, JCA, (as he then was), Edozie and Onalaja, JJCA) dismissing the present appellants' appeal from the decision of the Rivers State High Court (Opene, J., as he then was) whereby the present appellants' claim was dismissed and judgment entered for the present respondents in their cross-action.

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There were in the High Court, suit No. DHC/31/83 in which the present appellants (referred to in this judgment as "the plaintiffs") sued the present respondents (here referred to as "*the defendants*") claiming

a “declaration of title to land known as “Igogo” situate in Utowogori Town”; damages for trespass; and, injunction; and, a cross-action, suit No. DHC/33/83 in which the defendants sued the plaintiffs seeking a declaration of customary right of occupancy to the same land called B “Igogo”, this time described as “situated at Onuegbum Community in Ogbia District”; damages for trespass; and, injunction. The suits were consolidated. The parties sued and defended their respective suits in representative capacities for themselves and as representing the people of their several communities. Both of them relied on traditional history C and acts of ownership.

The plaintiffs told the story that their ancestor, one Ogori, founded Otugori in the 16<sup>th</sup> Century. Their case was that since then the people of Otugori had been using the land, harvesting palm fruits therefrom and D fishing in the creeks around. It is not necessary to set out the details of the rival traditional histories narrated by the respective parties. It suffices to note that the trial judge had before him rival traditional histories. At the end of the day, he preferred the evidence led by the defendants to E that led by the plaintiffs both in regard to traditional history and to acts of ownership. It was for these reasons that he dismissed the plaintiffs; case and gave judgment for the defendants.

Before the Court of Appeal, the main questions, on the plaintiffs’ F appeal, were as to the jurisdiction of the trial court, the identity of the land in dispute; and, the validity of the award of damages for trespass against the defendants. Edozie, JCA, who delivered the leading judgment of the Court of Appeal in a well reasoned judgment disposed of these issues after a careful consideration of the judgment of the trial Judge in G the light of the evidence accepted by the judge. He came to the conclusion that the High Court had jurisdiction to entertain the suit; that the weight of credible and admissible evidence preponderated in favour of the defendants; and, that the plaintiffs were rightly found liable to the H defendants in trespass. In the event, the court below unanimously affirmed the judgment of the trial court. There are thus before us concurrent findings of fact by the trial court and the court of first appeal.

On this further appeal by the plaintiffs, learned counsel for the

parties agreed that the three issues for determination are:

1. *“Whether the High Court has jurisdiction to entertain a claim in respect of Customary Right of Occupancy.”*

2. *“Whether the Lower Court having accepted that the appellants were in possession could have found them to be in trespass so as to award damages.”*

3. *‘Whether a Declaration and Injunction can be granted where the area of land in dispute are not adequately identified and when there are disputes about the features of the boundaries.’*

**By the time this appeal was heard it is evident that the first issue to which learned counsel for plaintiffs had devoted two-thirds of his argument in the written brief must be resolved against the plaintiffs in view of the decision of this court in Adisa v. Oyinwola Ors [2000] 10 NWLR (Pt. 674) 116 where this court held that the High Court has jurisdiction to entertain a claim in respect of customary right of occupancy. The decision of the court below that the trial court had jurisdiction to entertain the cross-action must therefore be affirmed.**

The only apparent complication in an otherwise straight forward appeal is the rather inept way in which the remaining issues have been argued in the appellants’ brief of argument. While the second and third issues, as formulated implied that certain findings of fact have been made and accepted, and that the only issues were as to the legal consequences that should attend such findings, counsel for the plaintiffs proceeded to argue the issue for determination on the basis that those very findings should be rejected. Thus, although the second issue raised the question whether in view of a finding that the plaintiffs were in possession of the land, they could be rightly held to be trespassers; and, although the third issue was based on an assumption that there was a finding that the area of land in respect of which injunction was granted had not been adequately identified, counsel for the plaintiffs proceeded to argue, on the second issue, as if the question raised was as to the title of the respective parties to the land; and, on the third issue, as if there was no settled finding as to the identity of the land in dispute. That is wrong. To

compound the matter, much of submissions made in the appellants' brief are incomprehensible, disjointed and unrelated to the issues formulated.

For his part, counsel for the defendants followed the plaintiffs' counsel into error to argue the issues on the same lines as did counsel for the plaintiffs. The Court is thus faced with a situation in which parties  
B proceeded to argue outside the agreed issues.

As a matter of form a brief must contain the issue or issues for determination on an appeal. However, the importance of formulation of issues transcends a mere matter of form. The issues for determination  
C are the questions which the parties submit to the court for its decision. The final determination of an appeal depends on how the material questions in the appeal are answered. The issues themselves must arise from the grounds of appeal. To decide an appeal on questions that neither arise  
D from the grounds of appeal nor from the issues arising therefrom is contrary to our appellate justice system it makes nonsense of the brief system for parties to argue an appeal as if they are untrammelled by the grounds of appeal and the issues formulated therefrom. In this case it is  
E only a matter of grace that the arguments are considered at all. Perhaps, our appellate courts will be doing the needful by showing less indulgence in matters concerning presentation of briefs.

The court below, on the issue of trespass, found that there was evidence in support of the finding that the plaintiffs committed trespass.  
F Edozie, JCA, observed that the witness who gave the relevant evidence was not cross-examined. He was of the further opinion that even if the evidence of possession was insufficient, the court would ascribe possession to the party with better title. Contrary to what was implied in the  
G second issue as formulated that the plaintiff were in possession of the land, there was no such finding.

It has not been argued that the court below was wrong in holding that there was evidence in support of the findings made by the trial  
H judge; or, that the court below was wrong, in the alternative view it held that the law would ascribe possession to the party with better title. Rather, counsel for the plaintiffs argued, first, that failure to succeed in a claim for declaration of title does not automatically lead to failure of a claim for

trespass and injunction; secondly, that: “*The learned trial judge having so found that he could not prefer the traditional history of appellants to that of the respondents ought to follow it up by not deciding the title on traditional history,*” but should have decided it on acts of possession; and, thirdly, that there was no evidence of trespass from the defendants. B  
Learned counsel for the defendants made fitting response to these arguments.

It is manifest that learned counsel for the plaintiffs neither quite understood the reasoning of the learned trial judge nor appreciated the applicable principles. **Where a party had set out to establish title by C  
traditional history all he needs do is to prove his title by conclusive and cogent evidence of tradition. (See, Irimi v Erhurhbara [1993] 3 NWLR (Pt 123) 252, Dike v. Okoloedo (1999) 10 NWLR (Pt. 624, 359). Where the traditional histories are in conflict the probability D  
of the rival histories is tested by evidence of recent facts (see Kojo 11 v Bonsie (1975) 1 WLR 1223). Where a party relies on evidence of traditional history, and, in the alternative, on acts of ownership to prove the title he claims the court is entitled to proceed on an E  
inquiry into the question whether a party has proved acts of ownership over a sufficient length of time, numerous and positive enough to lead to an inference that he is the owner of the land in line with the principle enunciated in Ekpo v Ita 11 NLR 68. Where acquisition of title by settlement is pleaded, that perhaps is all that the F  
plaintiff will be required to prove to succeed, with the traditional history as to who first settled on the land providing fitting background to the evidence of length of time acts of ownership had been taking place on the land. It is right, of course, to use recent facts G  
as a test of the probability of traditional history, but such recent facts must be of such quality and character as would lead to the probability of traditional history.**

In this case the trial judge duly took note of the fact that H  
the parties relied on traditional history and acts of ownership. He found the evidence in respect of both inadequate in support of the plaintiffs’ case and adequate in support of the defendants’ case. He

made essential findings thus:

1. *“In respect of their traditional history, the plaintiffs said that they gave the defendants the land that they settled but they are not able to show the extent of the land that they gave to the defendants and the condition under which they settled the defendants on the said land.”*

2. *“The defendants have adduced evidence to show that the bush was named after their ancestor Igogo who was the first settler in that bush, that he was buried there and that a life tree Ogberena was planted at his grave and that they make an animal sacrifice at the foot of this powerful tree.”*

3. *“As for the acts of ownership, the two tenants of the plaintiffs P.W. 2 and P.W. 4 gave a very contradictory evidence and the evidence of P.W 2 shows that the land that he is carving canoe is in the land east of Atubu creek which was won by the plaintiffs in 1955 case and not in Igogo land which is west of Atubu creek.*

**These findings made by the trial judge were affirmed by the Court of Appeal. There were, thus, a concurrent findings of fact. That this court will not interfere with concurrent findings of fact of the trial court and the Court of Appeal unless such findings are perverse is supported by ample case law.**

In the recent case of Odonigi v Oyeleke (2001) 84 LRCN 658, Kalgo, JSC, made a useful collection of some of the cases in support of the principle. **A finding supported by adequately evaluated evidence cannot be said to be perverse. The findings by the trial court were made after an adequate evaluation of the evidence. The Court of Appeal did not itself neglect to consider the evidence on record., the effort of the counsel for the plaintiffs directed at persuading this court to interfere with the findings of fact made by the trial Judge in regard to title to the land is, in the circumstances, futile. The trial judge clearly found tortuous entry on the land by the plaintiffs. The Court of Appeal holding that that finding was supported by credible evidence refused to interfere with it. Nothing has been usefully urged on this appeal to justify any conclusion that the learned Justices of the Court of Appeal were wrong.**

On the question of the identity of the land in dispute, Edozie, JCA, stated:

*“The law is well settled that where the parties by the evidence adduced both oral and documentary are ad idem on the identity of the land in dispute, the fact that different names are ascribed to it or that the area where it is located is called different names is not fatal to the case of the party claiming. See Aromire and ors v. Awoyemi (1972) 1 ALL NLR (Pt 1) 101, 113 Makanjuola v. Balogun (1983) NWLR (Pt 108) 192 at 204. I am of the view that the contention that the respondents did not establish the identity of the land in dispute is not well founded.”*

He went on to state the factual reasons for that view and concluded:

*“In the instant case where both parties had in the 1955 case of Anyama Native court litigated upon the land east of Atubu creek and the land presently in dispute lies to the west of the said Atubu creek and is known and referred to by them as Igogo land, it cannot be seriously contended that the identity of the land in dispute in this case is not known to both parties. As the land is described by name accepted by both parties as attaching thereto a declaration of right of occupancy can be granted: See Makanjuola v. Balogun (supra) at p. 192.”*

Learned counsel for the plaintiffs submitted that, *“The evidence of DW 2 at age 147, shows that the plan tendered in the case was not admitted as exhibit but as 1D2 and at the time he gave evidence the plan which was later tendered by the Surveyor as exhibit D3 at page 154 could not be made use of by vital witnesses for the appellants.”* **It is clear that nothing stops a plaintiff in the course of presenting his own case, from anticipating the case of his opponent of which he has notice. In this case, the plaintiffs had notice of the plan on which the defendants intended to rely. They had ample opportunity, were they minded so to do, to lead evidence in anticipation of the defendants tendering the plan as evidence, or to seek to lead rebuttal evidence. They did neither. It is now too late for them to complain of a situation brought about by their own inaction.** Proceeding further, learned counsel for the plaintiffs referred to the evidence of DW3 that *“Iyi Atokena Creek is a boundary between their own land and the*

plaintiff/appellants land". Jumping from that statement, counsel referred to the judge's finding that, "*On examination of the plaintiffs (sic) plan exhibit '5' it can be seen that Otuogori/Otuaka road form northern boundary of the land in dispute... It is clear from the foregoing that it is in the same road which the defendants call Okeso Path that the plaintiffs call Otuogori/Otuaka Road.*" He finally submitted as follows:

*"it is submitted that since the plan formed part of the document at the trial, evidence should have been led to bring out the issue of where is Iyiebena lake and Ebhaikpo Stream. If this is done the trial Judge would have accepted the boundary pleaded and upon which evidence was adduced by the Appellants.*

*"It is submitted that since the area claimed by the Respondents are doubtful and cannot be ascertained. It is trite law that a party who seeks a declaration of title or interest in land must be able to prove the area to which the declaration is sought with certainty, otherwise he will not be entitled to such Declaration. KWADZO VS ADJEI 10 WACA 274, AMATA VS MODEKWU 14 WACA 580 AT 582."*

Learned counsel for the defendants tried to make sense of these disjointed submissions and submitted that the Court of Appeal did find that the northern boundary of the land in dispute was amply defined by conspicuous natural features and that the identity of the land was well known to the parties.

**The issue raised by the plaintiffs was that injunction should not have been granted to land the boundaries of which are not certain. Where the court below has found, as in this case, that the boundaries are certain, the order of injunction can be challenged on the ground of an uncertainty of the land in dispute, only if it is first established that the finding of the court below as to the identity of the land was erroneous. There is nothing in the arguments advanced by counsel on behalf of the plaintiff that can be held to be a valid challenge to the findings of the court below in that regard.**

It is clear that the rest of the appeal after disposing of the issue of jurisdiction is all on facts. Nothing has been usefully urged to justify any interference with the concurrent findings of fact made by the court

of first instance and the Court of Appeal.

In the result, I dismiss this appeal with N10,000 costs to the respondents.

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**KARIBI-WHYTE JSC**

I have had the privilege of reading before now, the leading judgment in this appeal of my learned brother Ayoola, JSC just read. I agree entirely with the decision that the appeal lacks merit and should be dismissed. I also will and hereby dismiss the appeal.

Appellants shall pay costs to this appeal, which I assess at N10,000.

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**KUTIGI JSC**

I read in advance the judgment just delivered by my learned brother Ayoola J.S.C. I agree with his reasoning and conclusions. The appellants have completely failed to show that the concurrent findings of fact by the two lower courts were perverse and consequently this court cannot interfere with them (see for example CHINEDU VS. MBAMALI (1980) 3-4 S.C 31 IBODO & ORS VS ENAROFIA & ORS (1980 5-7 S.C 42). The appeal therefore fails. It is hereby dismissed with costs as assessed.

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**MOHAMMED JSC**

This appeal is from concurrent findings of fact. The findings are, in my view, supported by adequately evaluated evidence. The appellants have not identified or referred to any issue which would warrant the interference of this court with such concurrent findings of fact made by the trial court and the Court of Appeal. I therefore agree with the opinion of my learned brother, Ayoola, JSC, in the judgment which I read in draft. The appeal is dismissed. I abide by the order made in the lead judgment on costs.

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**ACHIKE JSC**

I have had the privilege of reading the leading judgment of my learned brother Ayooa, J.S.C. I agree with his reasoning and the conclusion that the appeal lacks merit and the same ought to be dismissed. According, I too would dismiss the appeal with costs as assessed.

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