

SUPREME COURT OF NIGERIA
FRIDAY 11TH JANUARY, 2002. SC. 34/1996
CORAM:- S. M. A. BELGORE, I. L. KUTIGI, A. I. IGUH,
A. I. KATSINA-ALU, E. O. AYOOLA, JJSC

AKANBI AGBEJE & 2 ORS APPELLANTS
AND
CHIEF AGBA AKIN JOSHUA
AJIBOLA & 2 ORS RESPONDENTS

JUDGMENTS - Confinement to issues - Judgments must be confined to issues raised by parties - As court cannot make case for parties - And deliver judgment on same (H1)

APPEALS - Technicality - Appellate courts must not be strict with technicality - As the object of a trial - Is to fairly adjudicate upon dispute between parties (H2)

APPEALS - Judgments - Use of the phrase “counter claim” - Is not fatal to judgment of the Court of Appeal - So long as it did not occasion miscarriage of justice (H3)

APPEALS - Judgments – Slip-error - Effect - It is not every slip in judgment that results in allowing of appeal - The slip must occasion a miscarriage of justice (H4)

LAND LAW - Title - Identity of land - Survey plan - Plaintiff must prove identity of the land in dispute - And may rely on survey plan - Where difficulty exists in identifying the land (H5)

EVIDENCE - Evaluation - Where trial court has properly evaluated and ascribed probative value to evidence - Appellate court will not interfere (H6)

JUDGMENTS - Land law - Concurrent decisions - Decisions of lower court arrived at after fair hearing on evidence - Should not to be disturbed - Except if proved to be wrong (H7)

APPEALS - Findings of trial court - Interference - Justification - Appellate court will interfere - Where findings are perverse - And are not supported by credible evidence (H8)

FACTS

Before the Upper Area Court, Omu-Aran, Kwara State, plaintiffs/respondents brought this action for themselves and as representing Idofin Odo-Ase Community against defendants/appellants as representing Orodo family in Idofin Odo-Ase community. The cause of action was in respect of five parcels of Land over which respondents claimed ownership contending that appellants were strangers on the Land. In the course of trial, appellants conceded to respondent's claim in respect of four out of the five parcels of Land. Appellants claimed ownership of the fifth remaining plot by virtue of first settlement of their ancestors on the land. Respondents on the other hand claimed their ancestors were the original founders of the land and that ownership rested on them by devolution through their ancestors.

Both parties tendered survey plans of the land in dispute and court conducted an inspection of the locus in quo. In its judgment, the court found for respondents on the ground that their account of ownership was more reliable. Dissatisfied, appellants lodged an appeal at the appellate division of the High Court of Kwara State. The court allowed the appeal on grounds of "uncertainty of the description of the Land" and "*perverse findings*" by the Upper Area Court that occasioned a miscarriage of justice. Aggrieved, respondents appealed to the Court of Appeal, Ilorin Division. The court allowed the appeal and restored the decision of the Upper Area Court. Being dissatisfied, appellants filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

"Issue No. 1 - Whether the Court of Appeal was right when it re-evaluated the evidence at the trial Court when the 1st ground of Appeal before it and the issue No. 1 formulated by the Appellants was whether the issue of certainty of land arose at the High Court.

Issue No. 2 - Whether the Appeal Court was right in saying that the Respondents counter-claimed at the trial Court.

Issue No. 3. - Whether the Appeal Court was right to say that identity of the land was not in dispute but the feature and land marks.

Issue No. 4. - Whether the Appeal Court was right to conclude

that the alleged contradictions were not material to the main issue.”

HELD (Unanimously dismissing the appeal per **IGUH JSC**)

Courts - Need to confine to issues

1. In this regard it ought to be observed that it is an elementary principle of the determination of disputes between parties that judgment must be confined to the issues raised by the parties and it is not competent for the court suo motu to make a case for either or both of the parties then proceed to give judgment on the case so formulated contrary to the case of the parties before it.

The court below, in no mistakable terms, therefore, was prepared to uphold the contention of the defendants, as appellants, before it. It proceeded further to examine the totality of the evidence led before the trial Upper Area Court and the findings of that court thereupon and came to the conclusion, quite rightly in my view, that the issue of the identity of the land in dispute was well known to the parties and was established by the appellants, as plaintiffs, before the trial court. In my view, the complaint of the appellants as reflected under issue 1 seems to me a storm in a tea cup if not an attempt by the appellants to make a mountain out of a mole hill. Issue 1 is accordingly resolved against the appellants. (pp. 88 F/90 C)

APPEALS - Practice & procedure - Technicality

2. In considering issue two, I think it ought to be pointed out that the proceedings on appeal are in respect of a matter from an Upper Area Court. In dealing with appeals from native or customary tribunals which include the Area or Upper Area Courts, appellate courts must not be too strict with regard to matters of procedure or technicality as the whole object of such trial is that the real dispute between the parties should fairly be adjudicated upon. (p. 91 C)

Judgments - Use of the phrase “counter claim” - Effect

3. I cannot myself identify any area or passage of the judgment of the Court of Appeal in respect of which it can be accused of the application of wrong onus of proof and our attention was not drawn to any either by learned counsel for the appellants in the course of the hearing of this appeal. The mere fact that the Court of Appeal used the word “counter-claim” in describing the appellants’ assertion of title to or ownership of the land in dispute without more cannot be regarded as fatal to its decision so long as it is clear that no miscarriage of justice was occasioned thereby. (p. 92 F)

Judgments – Slip error - Effect

4. In this regard, the point must be made that it is not every mistake, error or slip of the pen in a judgment that will result in the appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. What an appellate court ought to decide is whether the decision of the trial court was right and not whether its reasons were and a misdirection not occasioning injustice is immaterial.

In my view, therefore, the answer to issue 2 must be that although the Court of Appeal was not right, strictly speaking, to say that the respondents “counter-claimed” before the trial court, that observation occasioned no miscarriage of justice and may be said to be completely immaterial and of no relevance in the decision of the court below. (pp. 92 H/94 C)

Title - Identity of land - Proof

5. It is equally well settled that the onus lies on a plaintiff who seeks a declaration of title to land to show clearly and with certainty the area of land to which his claim relates. This may be done by filing a survey plan reflecting all the features of the land and showing clearly the precise boundaries thereof. The filing of a survey plan is not however necessary in all cases of declaration of title to land. Where there is no difficulty in identifying the land in dispute, a declaration of title may be made without it being based on a survey plan.

In the present case, however, it is quite clear from the evidence on record that the land in dispute in respect of which the parties joined issue is well known to both parties. Both parties filed and tendered in evidence at the hearing their survey plans of the land in dispute. Additionally the court with the parties and their respective counsel actually inspected the land in dispute as much as they could. It seems to me strange, if I may say with respect, that despite the above, the Appellate High Court was still able to allow the defendants' appellants' appeal before it on the ground of uncertainty of the land in dispute. (p. 94 E) B
C

EVIDENCE - Evaluation

6. It is long settled that the evaluation of evidence and the ascription of probative value to such evidence are the primary functions of a court of trial which heard and assessed the witnesses. Where a court of trial unquestionably evaluates the evidence and justifiably appraises the facts, it is not the business of the Court of Appeal to substitute its own views for those of the trial court. What the Court of Appeal ought to do is to find out whether there is evidence on which the trial court could have acted. Once there is sufficient evidence on record from which the trial court made its findings, the appellate court cannot interfere. (p. 96 A) D
E
F

Land law - Concurrent decisions

7. Attention may be drawn finally to the well recognized principle of law that decisions of customary courts or tribunals and these include their counterparts, the Area Courts, on land cases arrived at after a fair hearing on relevant evidence should not be disturbed without very clear proof that they are wrong. (p. 96 F) G

APPEALS - Findings of trial court - Interference - Justification H

8. A trial court, such as the Upper Area Court, having had the opportunity of hearing witnesses at the trial and watching their demeanour in the witness box, is entitled to select witnesses to believe or facts established and an appellate court should

not ordinarily interfere with such findings of fact except in certain circumstances. Such circumstances include where the trial court has not made a proper use of the opportunity of seeing and hearing the witnesses at the trial or where it has drawn wrong conclusions from accepted credible evidence or has taken an erroneous view of the evidence adduced before it or its findings of fact are perverse in the sense that they are unsupported by evidence or do not flow from the evidence accepted by it. None of these circumstances has manifested itself in any of the findings of the Omu - Aran Upper Area trial court and I cannot see my way clear to fault any of them.
 (p. 96 G)

REPRESENTATION

D Chief P. A. O. Olorunisola, SAN with G. S. Jibril Esq., for Appellants
 J. O. Ijaodola Esq. for the Respondents

CASES REFERRED TO

Adeniji v. Adeniji (1972) 1 All NLR (Pt. 1) 278
 E Onajobi v. Olanipekun (1985) 4 SC (Pt. 2) 156
 Oje v. Babalola (1991) 4 N.W.L.R. (Pt. 185) 267
 Azuetonma Ike v. Ugboaja (1993) 6 NWLR (Pt. 301) 539
 Anyanwu v. Mbara (1992) 5 NWLR (Pt. 242) 386
 Udeze v. Chidebe (1990) 1 NWLR (Pt. 125) 141
 F Ezeokeke v. Uga (1962) 1 All NLR 482
 Udofia v. Afia (1940) 6 WACA 216
 Udekwe Amata v. Modekwe (1954) 14 WACA 580
 Okpiri v. Jonah (1961) All NLR 102
 G Maja v. Stocco (1968) 1 All NLR 141
 Woluchem v. Gudi (1981) 5 SC 291
 Akinloye & Anor v. Eyilola & Ors (1968) NMLR 92
 Enang v. Adu (1981) 11-17 SC 25
 Maja v. Stocco (1968) 1 All N.L.R. 141
 H

LEAD JUDGMENT BY IGUH JSC

This land case was initiated at the Upper Area Court, Omu-Aran. In that court, the plaintiffs, for themselves and as representing the Idofin Odo-Ase Community, claimed against the defendants, as

representatives of Irodo family in Idofin Odo-Ase, as Follows:-

“(i) A declaration that the plaintiffs are, according to native law and custom, owners of pieces of farmlands known and called Obani land, Omipa land, Olojola land, Okingo land and Igbo-Irodo land respectively in Idofin Odo-ase in Irepodun Local Government Area of Kwara State and the said lands are to be set out in plans to be filed later.

“(ii) A declaration that the defendants as customary tenants of the plaintiffs have forfeited their rights and interest to enter and farm in the said pieces of farmlands in that they have claimed to be the owners thereof.

“(iii) Injunction restraining the defendants from further trespassing on the plaintiff’s lands described above.”

At the subsequent trial, both parties testified on their own behalf and called witnesses. Although the reliefs claimed were in respect of five distinct pieces or parcels of land, the defendants in the course of the trial conceded to the plaintiffs’ claim to ownership in respect of four of the five pieces of land claimed. These four pieces of land comprised Obani Land, Omipa land, Olojola land and Okingo land. The plaintiffs’ claims in respect of the remaining one parcel of land called Igbo Ireto Land, otherwise also referred to as Igbolodo or Igborodo land, were resisted by the defendants who asserted their ownership thereto by virtue of first settlement on the part of their ancestors. The Plaintiffs, for their part, also claimed that their forefathers were the original founders of the land and that as owners thereof they settled the defendants who are strangers in Odofin on the land. It was the plaintiffs’ case that the ownership of the land in dispute was vested in them by devolution from their ancestors who were original founders thereof. They emphasized that the defendants were mere strangers in Odofin and could not therefore lay any claim to the land dispute.

In the course of the proceedings, both parties tendered their survey plans of the land in dispute and the trial court conducted an inspection of the locus in quo. At the conclusion of hearing, the trial court after a meticulous and painstaking review of the entire evidence placed before it found for the plaintiffs. Said the Upper Area Court:-

“From the evidence before us, the following points are in-dis-

putably clear, that:-

1. *There are four towns that comprise Idofin – namely (a) Idofin Ayekale (b) Idofin Ehin Afo (c) Idofin Odo-Aga and (d) Idofin Igbana.*

B *2. Idofin Ayekale, Idofin Ehin Afo and Idofin Odo-aga are known and called Idofin Odo-Ase having a common Oba.*

C *3. The Irodo family (defendants) are not true sons and daughters of Idofin Odo-Ase neither do they belong to Idofin Igbana. They have never held any chieftaincy title of Egungun Chief. They are strangers in Odo-Ase though they pay taxes there.*

4. The PW1's ancestors are of Tapa (Nupe) origin from Lafiagi side. They are warriors and the 3rd defendant conceded to that fact."

It went on:-

D *"We therefore have no reason to doubt the fact the plaintiffs' forefathers did settle the defendants' forefathers on the disputed Igbolodo or Igborodo land."*

It concluded:-

E *"On the preponderance of evidence before us, we are of the opinion that the account of the plaintiffs as to the ownership of the disputed land is more reliable than that of the defendants and in the final analysis the plaintiffs claim succeeds with the following orders.*

F *1. The Igbolodo or Igborodo land is hereby awarded to the plaintiffs in its entirety.*

2. The Omipa, Olojola, Okingo and Obami lands, though not disputed by the defendants, are similarly awarded to the plaintiffs.

G *3. As to the forfeiture of rights to enter and farm on above land by the defendants, we decline to make any order in that they are doing their farming on them for their living.*

H *We however observe that even though the defendants were strangers, they have been assimilated into Idofin Community and they, in one word, are natives of Idofin. We therefore feel that nothing should be allowed to disturb the peaceful co-existence of both parties in Idofin Community. The defendant should continue to enjoy their right of existence and means of living in Idofin. Any aggrieved party may appeal to the High Court of Justice, Omu-Aran within thirty (30) days from today."*

Dissatisfied with the said judgment of the Upper Area Court, Omu-Aran, the defendants lodged an appeal against the same to the Appellate Division of the High Court of Justice, Kwara State, holden at Omu-Aran. That court, in a unanimous decision, allowed the appeal on the grounds of “*uncertainty of description*” of the land in dispute and “*perverse findings*” by the trial court which occasioned a miscarriage of justice. Accordingly it proceeded to set aside the decision of the trial court and dismissed the plaintiff’s case in its entirety. B

Aggrieved by this decision of the Omu-Aran Appellate High Court, the plaintiffs lodged an appeal against the same to the Court of Appeal, Kaduna Division. That Court, Again in an unanimous decision, allowed the appeal of the plaintiffs. The judgment of the Kwara State High Court of Justice was set aside and the decision of the trial Omu-Aran Upper Area Court was restored. Being dissatisfied with this decision of the Court of Appeal, the defendants have appealed D to this court. I shall hereinafter refer to the Plaintiffs and the defendants in this judgment as the respondents and the appellants respectively. The grounds of appeal were filed by the appellants against this decision of the Court of Appeal. It is unnecessary to reproduce them in this judgment. It suffices to state that the appellants Pursuant to the Rules of this Court filed their brief of argument in which four issues were identified for the determination of this appeal. These issues run as follows:- E

“Issue No. 1 - Whether the Court of Appeal was right when it re-evaluated the evidence at the trial Court when the 1st ground of Appeal before it and the issue No. 1 formulated by the Appellants was whether the issue of certainty of land arose at the High Court. F

Issue No. 2. - Whether the Appeal Court was right in saying that the Respondents counter-claimed at the trial Court. G

Issue No. 3. - Whether the Appeal Court was right to say that identity of the land was not in dispute but the feature and land marks.

Issue No. 4. - Whether the Appeal Court was right to conclude that the alleged contradictions were not material to the main issue.” H

The respondents, for their part, adopted the four issues set out by the appellants for the determination of this appeal.

At the oral hearing of the appeal learned counsel for the appellants, Chief P. A. O. Olorunisola, S.A.N. adopted the appellants’

brief of argument and made oral submissions in amplification thereof. His contention under issue 1 was that the Court of Appeal was in error by treating that issue as if it was a question of whether or not the land in dispute was certain when the real issue raised was whether the certainty of the land in dispute was raised at all before the trial court. Learned Senior Advocate argued that the Court below misdirected itself by a consideration of whether the land in dispute was certain as no complaint to that effect was before it. Citing the decisions in *Sagay v. New Independence Rubber Co. Ltd. And Another* (1977) 5 S.C. 143 and *Adenuga v. Ilesanmi Press* (1991) 5 N.W.L.R. (Part 189) 82 at 98, learned Senior Advocate submitted that the Court ought not to substitute or formulate a new claim or defence for parties.

Learned counsel for the respondents, J. O. Ijaodola Esq. In his reply submitted that the question of the certainty of the land in dispute did not properly arise at the Omu-Aran Appellate, High Court as no such issue was raised or was in contest between the parties before the trial court. He dismissed the argument of the learned Senior Advocate on the issue as “*hair-splitting*” and an engagement in “*semantics*”. He argued that the question whether or not the certainty of the land in dispute was raised at the trial court or was established by the respondents, as plaintiffs, at the trial essentially deal with the same subject matter. The importance of the issue, in his view, is that there is abundant evidence on record in proof of the certainty of the land claimed which the respondents, to succeed in their claims, must establish.

In this regard it ought to be observed that it is an elementary principle of the determination of disputes between parties that judgment must be confined to the issues raised by the parties and it is not competent for the court suo motu to make a case for either or both of the parties and then proceed to give judgment on the case so formulated contrary to the case of the parties before it. See Commissioner for Works, Benue State and Another v. Devcon Development Consultants Ltd. And Another (1988) 3 N.W.L.R. (Part 83) 407, *Ochonma v. Ashirim Unosa* (1965) N.W.L.R. 321, *Nigerian Housing Development Society Ltd v. Yaya Mumuni* (1977) 2 S.C. 57, *Adeniji and others v. Adeniji and others* (1972) 1 All N.L.R. (Part 1) 278. With this principle of law in

mind, I ask myself in what respect the court below contravened the same. I ask myself how relevant the appellants' issue 1 is in the context of the said principle of law. Learned counsel for respondents has submitted that the appellants' argument on issue 1 are an exercise in semantics and I appear to agree with him. True enough, all that issue 1 before the court below entailed was whether or not the question of the of certainty of the land in dispute properly arose before the Appellate High Court. The Court of Appeal clearly appreciated the point and indeed resolved the same when it stated as follows:-

"It is indeed correct as argued in the respondents' brief that the issue as to the identity of the land in dispute was raised at the trial court when the parties filed two different plans in respect of the land in dispute and could not agree on the respective features thereon." But that court did not, however, stop there. It went on:-

"One thing however is quite clear from the evidence on record and that is that the 5 parcels of land claimed by the appellants against the respondents at the trial court are well known to both parties by their respective names of Omipa, Olojola, Obani, Okingo and Igbo-Irodo or Igbolodo or Igborodo as the case may be. In fact at the end of the case for the appellants, as plaintiffs, on their claim to the 5 named parcels of land, When the trial court called on the respondent to open their case as the defendants, the 3rd respondent/defendant who testified as DW1 virtually confirmed the appellants' claim to 4 out of the 5 parcels of land, namely, Omipa, Olojola, Obani and Okingo. The witness who identified the 4 parcels of land by their respective names and confirmed that the respondents had their farms thereon, claimed that the 5th parcel of land also claimed by the appellants belonged to his father... The sixth witness for the defendants/respondents, David Adeniyi, testifying as DW6 said at page 50 of the record as follows:-

"I am a member of Orodo family and I know the land in dispute very well. I went there last year." It is therefore quite clear that the land in dispute on which the defendants/respondents proceeded to defend the claim of the appellants is well known to both parties... In fact from the evidence on record, what was really in dispute between the parties at the trial court was not the identity of the land in dispute in relation to its size or area but the features or land marks each of the parties claimed to have left on the land in dispute.

This was what prompted the lower court to visit the locus in order to clear any doubt and resolve the conflicting claims of the parties with regard to features like the grinding stones, indigo pots, Balogun Soja pond, grave of one of the Obas of the respondents' family, Oba Ajolemojoye and also the respondents' Epa Shrine and palm trees.

B From the report of the visit to the locus at pages 55 to 57 of the record and the findings of the trial court thereon, it is quite clear that the land in dispute Igbolodo or Igborodo is well known to the parties... There is no doubt therefore that the land in dispute in the present appeal is well known to both parties and the trial court. In
C circumstances such as this, the land in dispute is clearly ascertainable."

The court below, in no mistakable terms, therefore, was prepared to uphold the contention of the defendants, as appellants, before it. It proceeded further to examine the total-
D ity of the evidence led before the trial Upper Area Court and the findings of that court thereupon and came to the conclusion, quite rightly in my view, that the issue of the identity of the land in dispute was well known to the parties and was established by the appellants, as plaintiffs, before the trial
E court. In my view, the complaint of the appellants as reflected under issue 1 seems to me a storm in a tea cup if not an attempt by the appellants to make a mountain out of a mole hill. Issue 1 is accordingly resolved against the appellants.

F Issue 2 poses the question whether the court below was right in its observation that the respondents at the trial below was right in its observation that the respondents at the trial counter-claimed and asserted their ownership to the land in dispute. The argument of the learned Senior Advocate was that as the respondents, as defendants
G before the trial court, filed no formal counter-claim against the plaintiffs/appellants, it was a misconception on the part of the Court of Appeal to have used the term "*counter-claim*" to describe the respondents' defence which was ownership of the land in dispute. He argued that by stating that the respondents counter-claimed when in
H fact they did not, the Court of Appeal placed a wrong onus on them in the consideration of the appeal before it and that this course of action had occasioned a miscarriage of justice.

Mr. Ijaodola, for his own part, explained that the respondents' claim of ownership to the land in dispute was what the Court

of Appeal loosely alluded to when it pointed out that the respondents “*counter-claimed*” and asserted their ownership of the land in dispute by virtue of first settlement on the part of their ancestors. He pointed out that the term “*counter-claimed*” was used by the Court of Appeal as it was reviewing the case as presented by the parties and that it was never used in its technical sense as the appellants claimed no relief in the suit against the respondents. He stressed that this case, after all, emanated from an Upper Area Court which is the equivalent of Native or Customary Courts and that issues of technicality must not be allowed to becloud decisions from such courts and the appeals therefrom. In his view, the appellants having asserted their ownership of Ogbolodo or Igborodo land in dispute may be said in a non-technical sense to have “*counter-claimed*” in respect thereto.

In considering issue two, I think it ought to be pointed out that the proceedings on appeal are in respect of a matter from an Upper Area Court. In dealing with appeals from native or customary tribunals which include the Area or Upper Area Courts, appellate courts must not be too strict with regard to matters of procedure or technicality as the whole object of such trial is that the real dispute between the parties should fairly be adjudicated upon. See *Dinsey v. Ossei* (1939) 5 W.A.C.A. 177. The appellants’ complaint, put in a nut-shell, is that the Court of Appeal placed a wrong onus on the appellants in the consideration of their defence and that a miscarriage of justice was thereby occasioned. Learned counsel for the appellants was, however, unable to identify in what respect or area the court below placed a wrong onus on the appellants in the course of its determination of the appeal.

In the first place there was no issue before the Court of Appeal raised by either of the parties touching on the question of onus of proof whether by the trial court or by the Appellate High Court. There is also no doubt from the records that the trial court was patently conscious of the applicable basic principle of law that the onus of proof in this claim was on the plaintiffs/respondents to satisfy the court that they were entitled on the evidence brought by them to the reliefs they claimed and that in this regard, they must rely on the strength of their own case and not on the weakness of the defence. See *Kodilinye v. Mbanefo Odu* 2 W.A.C.A. 336 at 337, *Frempong v.*

Brempong 14 W.A.C.A. 13 etc. The trial Court also meticulously considered the factual issues contested by the parties and appropriately resolved them on the preponderance of evidence in favour of the plaintiffs/respondents. It stated:-

B *“On the preponderance of evidence before us, we are of the opinion that the account of the plaintiffs as to the ownership of the disputed land is more reliable than that of the defendants and in the final analysis the plaintiffs claim succeeds...”*

C Similarly before the Appellate High Court and the Court of Appeal, no single issue was raised, no matter how remotely, in relation to any question touching on onus of proof by either of the parties. Indeed the court below was again quite conscious of the applicable onus of proof in the present case which it accordingly applied in its consideration of the appeal. Said it:-

D *“The first relief claimed by the appellants as plaintiffs at the trial court was a declaration of title under native law and custom to 5 parcels of land identified by their names, namely Omipa, Olojola, Obani, Okingo and Igbo-Irodo. The state of the law is that the onus is on the plaintiff who claims a declaration of title to a piece of land in*
 E *dispute to satisfy the court that he is entitled on the evidence brought by him to the declaration claimed. He must rely on the strength of his own case and not on the weakness of the defendants’ case. If that onus is not discharged the weakness of the defendant’s case will not*
 F *help the plaintiff, and the proper judgment is for the defendant.”*

G This principle of law it religiously applied. ***I cannot myself identify any area or passage of the judgment of the Court of Appeal in respect of which it can be accused of the application of wrong onus of proof and our attention was not drawn to any either by learned counsel for the appellants in the course of the hearing of this appeal. The mere fact that the Court of Appeal used the word “counter-claim” in describing the appellants’ assertion of title to or ownership of the land in dispute without more cannot be regarded as fatal to its decision***
 H ***so long as it is clear that no miscarriage of justice was occasioned thereby.***

In this regard, the point must be made that it is not every mistake, error or slip of the pen in a judgment that will result in the appeal being allowed. It is only when the error is

substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. See Onajobi v. Olanipekun (1985) 4 S.C. (Part 2) 156 at 163, Oje v. Babalola (1991) 4 N.W.L.R. (Part 185) 267 at 282, Azuetonma Ike v. Ugboaja (1993) 6 N.W.L.R. (Part 301) 539 at 556; Anyanwu v. Mbara (1992) 5 NWLR. (Part 242) 386 at 400 etc. **What an appellate court ought to decide is whether the decision of the trial court was right and not whether its reasons were and a misdirection not occasioning injustice is immaterial.** See Ukejianya v. Uchendu (1950) 13 W.A.C.A. 45 at 46, Emmanuel Ayeni and others v. William Sowemimo (1982) 5 S.C. 60 at 73 - 5.

In the present case, it is plain that when the Court of Appeal observed that the defendants/appellants conceded to the plaintiffs/respondents' claim in respect of 4 out of the 5 parcels of land claimed but "*counter-claim the remaining one parcel of land, Igbo-Irodo*" the obvious inference, having regard to the close review of the case by the same court, is that the said defendants/appellants asserted their ownership of the said land. The Court of Appeal in examining these claims observed:-

"It is quite clear from the evidence adduced by both parties that each of the parties rooted its claim to Igborodo land or Igbolodo on the founders and first settlers of the land in dispute. Therefore the central issue for determination before the trial was who among the two contesting parties proved a better title. That issue, in my view, has to be determined first before any other issue can arise for determination."

It went on:-

"I think the issue before the trial court was quite simple and straight forward. It is to resolve the conflicting claims of title to Igborodo or Igbolodo land between the parties, since the appellants' claim to the other 4 parcels of land named Obani, Omipa, Olojola and Okingo on which the respondent, though had their farms, agreed were not owners thereof. In keeping with the requirement of the law which placed the onus of proof of title on the party claiming such title, the trial court reviewed the entire evidence before it and based on the issue it identified of "who settled who" between the two contesting parties the trial court came to the conclusion that the appellants were the first settlers of the land in dispute, that the respondents were

settled on the land in dispute by the fore-fathers of the appellants and that when later the respondents abandoned the land in dispute, it reverted under customary law to the appellants."

The consideration of the case presented by the parties and the findings made thereon by the trial court as affirmed by the Court of Appeal appear to me so lucid that I am unable to identify how the appellants' assertion of ownership to the land in dispute, no matter however described, occasioned a miscarriage of justice. Besides, counter-claim or no counter-claim, The appellants' evidence in relation to their claim of ownership to the land in dispute was disbelieved by the trial Upper Area Court. **In my view, therefore, the answer to issue 2 must be that although the Court of Appeal was not right, strictly speaking, to say that the respondents "counter-claimed" before the trial court, that observation occasioned no miscarriage of justice and may be said to be completely immaterial and of no relevance in the decision of the court below.**

Issue 3 is whether the Court of Appeal was right by saying that it is not the identity of the land claimed that was in dispute but the features or land marks thereon. In this regard, it cannot be disputed that it is the piece or parcel of land claimed by the plaintiffs/respondents that constituted the land in dispute in the action. ***It is equally well settled that the onus lies on a plaintiff who seeks a declaration of title to land to show clearly and with certainty the area of land to which his claim relates.*** See *Udeze v. Chidebe* (1990) 1 N.W.L.R. (Part 125) 141, *Onwuka v. Ediala* (1989) 1 N.W.L.R. (Part 96) 182 *Olusannu v. Oshasona* (1992) 6 N.W.L.R. (Part 245) 22 at 36, *Ezeokeke and others v. Uga and others* (1962) 1 All N.L.R. 482 etc. ***This may be done by filing a survey plan reflecting all the features of the land and showing clearly the precise boundaries thereof.*** See *Udofia v. Afia* (1940) 6 W.A.C.A. 216, *Udekwu Amata v. Modekwe* (1954) 14 W.A.C.A. 580, *Okorie v. Udom* (1960) S.C. N.L.R. 326 etc. ***The filing of a survey plan is not however necessary in all cases of declaration of title to land.*** See *Sokpui v. Agbazo* 13 W.A.C.A. 241. ***Where there is no difficulty in identifying the land in dispute, a declaration of title may be made without it being based on a survey plan.*** See *Chief Daniel Ibulaga v. Dikibo* (1976) 6 S.C. 97.

In the present case, however, it is quite clear from the evidence on record that the land in dispute in respect of which the parties joined issue is well known to both parties. While the plaintiffs/respondents called the 5th parcel of land in dispute Igbo-Irodo or Igbolodo, the defendants/appellants called the same land Igborodo. ***Both parties filed and tendered in evidence at the hearing their survey plans of the land in dispute. Additionally the court with the parties and their respective counsel actually inspected the land in dispute as much as they could. It seems to me strange, if I may say with respect, that despite the above, the Appellate High Court was still able to allow the defendants/appellants' appeal before it on the ground of uncertainty of the land in dispute.***

In this regard, the Court of Appeal, as I have earlier stated observed, quite rightly in my view, that from the evidence on record, what was in dispute was not the identity of the land in dispute but the land marks and features thereon. It then concluded:-

"I therefore find substance in the contention of the appellants that the appellants having discharged the onus placed on them in establishing the certainty of the land claimed by them, the Kwara State High Court in exercise of its appellate jurisdiction was wrong in setting aside the decision of the trial Upper Area Court on the ground that the onus of proof was not discharged. I accordingly resolve the first issue in favour of the appellants."

I think the Court of Appeal cannot be faulted in the above conclusion and issue 3 must accordingly be resolved against the appellants.

There is finally issue 4 which questions whether the Court of Appeal was right to hold that some alleged contradictions in the evidence of the Plaintiffs/respondents are not material to the main issue in controversy between the parties. I have myself carefully studied the alleged contradictions in the evidence adduced on behalf of the plaintiffs/respondents and cannot see how they are material to the main issue before the trial court. This main issue was which of the appellants and the respondents were the first or original settlers of the land in dispute. The question is entirely one of facts. The trial court meticulously considered the entire evidence adduced on behalf of the parties and came to the conclusion that the plaintiffs'/

respondents' ancestors were the first settlers on the land in dispute and are therefore owners thereof.

In this regard ***it is long settled that the evaluation of evidence and the ascription of probative value to such evidence are the primary functions of a court of trial which, heard and assessed the witnesses. Where a court of trial unquestionably evaluates the evidence and justifiably appraises the facts, it is not the business of the Court of Appeal to substitute its own views for those of the trial court.*** See at 39, *Woluchem v. Gudi* (1981) 5 S.C. 291 at 320 etc. ***What the Court of Appeal ought to do is to find out whether there is evidence on which the trial court could have acted. Once there is sufficient evidence on record from which the trial court made its findings, the appellate court cannot interfere.*** See *Akpagbue v. Ogu* (1976) 6 S.C. 63, *Odofin v. Ayoola* (1984) 11 S.C. 72, *Amadi v. Nwosu* (1992) 5 N.W.L.R. (Part 241) 273 at 280 etc.

In the present case, the Omu Aran Upper Area Court having carefully listened to the case of the parties, inspected the land in dispute *Akinloye and Another v. Eyilola and others* (1968) N.M.L.R. 92 at 95, *Enang v. Adu* (1981) 11-17 S.C. 25 and thoroughly evaluated the evidence accepted the case of the plaintiffs/respondents that they are the owners of the land in dispute by first settlement and that the defendants/appellants are mere strangers in the area. There is abundant evidence on record in support of the said findings. I cannot conceive that it is the business of the Appellate High Court to interfere with the said findings.

Attention may be drawn finally to the well recognized principle of law that decisions of customary courts or tribunals and these include their counterparts, the Area Courts, on land cases arrived at after a fair hearing on relevant evidence should not be disturbed without very clear proof that they are wrong. See *Kwansa Efi v. Enyinful* 14 W.A.C.A. 424. ***A trial court, such again as the Upper Area Court, having had the opportunity of hearing witnesses at the trial and watching their demeanour in the witness box is entitled to select witnesses to believe or facts established and an appellate court should not ordinarily interfere with such findings of fact except in certain circumstances.*** See *Kodilinye v. Mbanefo Odu* 2

W.A.C.A. 336 at 338. **Such circumstances include where the trial court has not made a proper use of the opportunity of seeing and hearing the witnesses at the trial or where it has drawn wrong conclusions from accepted credible evidence or has taken an erroneous view of the evidence adduced before it or its findings of fact are perverse in the sense that they are unsupported by evidence or do not flow from the evidence accepted by it.** See Okpiri v. Jonah (1961) All N.L.R. 102 at 104, Maja v. Stocco (1968) 1 All N.L.R. 141 at 149, Woluchem v. Gudi (1981) 5 S.C. 291 at 295 - 296 etc. **None of these circumstances has manifested itself in any of the findings of the Omu - Aran Upper Area trial court and I cannot see my way clear to fault any of them.** Having regard to all I have said above, issue 4 must be resolved against the appellants.

In the final result, this appeal is without substance and it is hereby dismissed with costs to the respondents against the appellants which I assess and fix at N10,000.00.

BELGORE JSC

The appellants' case as defendants at the trial had no substance in the face of evidence marshaled by the Plaintiffs now respondents. It is therefore not surprising that the Court of Appeal dismissed the appellants' appeal. In this Court I find no substance in defendants' appeal either. I therefore adopt as mine the full reasons and conclusion in the judgment of Iguh JSC in dismissing this appeal with N10,000.00 costs to respondents.

KUTIGI JSC

I read in advance the judgment just delivered by my learned brother Iguh, J.S.C. I agree with his reasoning and conclusion. The trial Upper Area Court and the Court of Appeal properly found for the Plaintiffs who clearly established their title to the lands in dispute coupled with the fact that the Defendants on their own conceded ownership of four out of the five pieces of land claimed in favour of the Plaintiffs. The appeal lacks substance. I dismiss it with costs as assessed.

KATSINA-ALU JSC

I have read in advance the judgment of my learned brother IGUH JSC in this appeal. I agree that there is no merit in this appeal, and for the reasons he gives, I too, would dismiss the appeal.

B _____

AYOOLA JSC

I agree that there is no merit in this appeal. For the reasons given in the judgment of my learned brother Iguh, JSC, which I have read in advance, I too would dismiss the appeal with costs as ordered by him.

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