

SUPREME COURT OF NIGERIA
FRIDAY 19TH APRIL, 2002. SC. 93/1997
CORAM:- I. L KUTIGI, E. O. OGWUEGBU,
U. MOHAMMED, S. O. UWAIFO, A. O. EJIWUNMI, JJSC

ALHAJI EMIOLA AMUSA ADELEKE APPELLANT
(For himself and on behalf of
Akinlade family)
AND
1. BAYO ASANI
(For himself and on behalf of
Adesina family)
2. WAHABI ABASI RESPONDENTS
(For himself and on behalf of
Aleshinloye family)

APPEALS - Grounds - Framing - Appellant must clearly set out his grounds - So as to enable opposite party and court - To appreciate his complaint (H1)

APPEALS - Concurrent findings - Supreme Court does not interfere - Save the findings are found to be perverse - Or has caused a mis-carriage of justice (H2)

FACTS

Plaintiff/appellant brought this action on behalf of himself and members of the family of Akinlade against defendants/respondents (also in representative capacity) at the High Court of Oyo State, Ibadan. Appellant claimed for a declaration of title over a piece of land situate at Ibadan, N1,000 damages for trespass by respondents and an injunction restraining respondents from committing further acts of trespass on the said land. Appellant relied on traditional history and evidence of long possession as basis for his root of title.

1st respondent averred that appellant has no claim to the land. He also relied on his own traditional history in proof of his title over the land. At the conclusion of hearing, the court held that as appellant's traditional evidence had failed, the evidence of long possession and any claim for trespass and injunction based on the traditional evi-

dence must collapse with the claim for title. The court therefore dismissed appellant's claim over the land. Dissatisfied, appellant appealed to the Court of Appeal, Ibadan Division. The court dismissed the appeal. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

“(1) Whether grounds 4 & 7 of the grounds of appeal to the Court of Appeal were vague and ought to be struck out.

(2) Whether the Court of appeal was right to hold that evidence of the plaintiff's witnesses conflict with his root of title as pleaded and that his claim might be dismissed.

(3) Whether the issue as to whether Atannagbowo was a rich farmer and money lender or palm wine tapper/farm labourer is irrelevant.

(4) Whether the Court of Appeal was right in confirming trial judge's findings that Atannagbowo came on to the land in dispute by way of pledge rather than by inheritance.

5. Whether the Court of Appeal was right in holding that the trial court had faithfully summarized the evidence in the case and had adequately considered the appellant's case.”

HELD (Unanimously dismissing the appeal per lead

judgment of **EJIWUNMI JSC**)

APPEALS - Grounds - Framing

1. It is clear, notwithstanding the relaxation of the rule for the appellant in the framing of his grounds of appeal, that the burden lies on the appellant to frame his grounds of appeal with such clarity as would enable the opposite party and the Court to appreciate his complaint. In the instant case, I have carefully considered the two grounds of appeal, which the Court below struck out as vague, and I cannot fault the Court for reaching that conclusion. I will therefore for all the reasons stated above resolve this question against the appellant. Grounds (4) and (7) of the grounds of appeal below were rightly struck out as incompetent and I so hold. (p. 985 D)

APPEALS - Concurrent findings

2. The law is that where there are concurrent findings of fact by the two lower courts, the Supreme Court will not interfere with them unless those findings are: (1) found to be perverse, or (2) not supported by evidence, (3) reached as a result of a wrong approach to evidence (4) a result of a miscarriage of justice or a violation of some principles of substantive or procedural law. (p. 985 H)

NOTABLE POINTS OF INTEREST**EJIWUNMI JSC*****1. Composite grounds of appeal may be filed***

It is of course not now in dispute supported by a long line of cases that composite grounds of appeal which included particulars of errors and/or misdirection may be filed and would not be struck down as incompetent. (p. 985 B)

OGWUEGBU***2. Contents of ground of appeal***

To allege “*error in law*” or “*erred in law and on the facts*” is insufficient. The ground of appeal must allege and fully set out what facts the appellant alleges ought to have been found or what error has been made in point of law and if improper admission or rejection of evidence is alleged, the evidence must be specified. The ground of appeal should also state in what manner the trial judge committed the error. (p. 988 A)

REPRESENTATION

R. A. Sarumi, Esq. with Alhaji A.A. Yesufu, Esq. for the appellant
Mrs. O. Adekoya Esq. for the respondents

CASES REFERRED TO

Igwego v. Ezeugo (1992) 6 NWLR (Pt. 249) 561
Eze v. Atasie (2000) 10 NWLR (Pt. 676) 470
Shyllon v. Asein (1994) 6 SCNJ 267
Nsirim v. Nsirim (1990) 5 SCNJ 174
Enang v. Adu (1981) 11-12 SC 25

- Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718
 U.B.A v. Achora (1990) 10 SCNJ 17
 Ohunyon v. The State (1996) 2 SCNJ 280
 Onwugbufor v. Okoye (1996) SCNJ 1
 Koya v. UBA (1997) SCNJ 1
 B N.I.P.C v. Thompson Organization (1969) 1 ANLR 138
 Ivienagbor v. Bazuaye (1999) 9 NWLR (Pt. 620) 552
 Pfeiffer v. The Midland Rly Co. (1886) 18 QBD 243
 Okorie & Ors. v. Udom & Ors (1960) 5 FSC 162
 C Akelozi v. The State (1993) 10 LRCN 264

RULES REFERRED TO

Court of Appeal Rules, O. 3 r. 2 (7), O. 3 r. 2 (20)

LEAD JUDGMENT BY EJIWUNMI JSC

- D This action which has resulted in this appeal was commenced by the plaintiff on his own behalf and the Akinlade family by a writ of summons in Suit No.1 / 567/84 against S. A. Aremu. Following the death of S. A. Aremu, Bayo Asani was substituted for him and who became the 1st defendant/respondent in this appeal. He defended the action on behalf of himself and the Adesina family. Later in the proceedings, Alhaji Wahabi Abasi was with the leave of the trial court joined as the 2nd defendant and he defended the action on behalf of himself and the Abasi Aleshinloye family.

- F By paragraph 26 of the plaintiff's amended Statement of Claim, his claim read as follows:-

- "Wherefore the plaintiff claims against the defendants for*
 (i) *A declaration that the plaintiff's family, Akinlade family of Popoiyemoja, Ibadan, are entitled to the statutory Right of Occupancy in respect of the land in dispute, lying and being at Odo-Ona Elewe area, Ibadan bounded on the first side by Olugbesan family land, on the third side by Ojesola family land and on the fifth side by Eniyitan family land.*
 G
 H (ii) *N1,000 damages for continuing trespass committed by the defendant and other members of his family (Adesina family), their servants and agents on the said land since February, 1984.*
 (iii) *Injunction to restrain the defendant and members of his family, their servants, agents, privies, and those claiming through*

them from committing further acts of trespass on the land in dispute.”

The parties, who duly filed and exchanged pleadings, also gave evidence through their respective witnesses. In order to appreciate the case of the parties, the relevant portions of their pleadings would be set down. B

By the plaintiff’s amended statement of claim, it was averred *inter alia* in paragraphs 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 20, 21 & 22.

“4. The land in dispute is at Odo-Ona Elewe, Ibadan, bounded by Olugbeson, Okulu, Eniyitan or Oniyitan, Ojesola and Olalere Adegoke family lands. It is verged red on Plan No. OG20/85 prepared by Chief Ogunbiyi, Licensed Surveyor and dated 15/2/85. C

5. The plaintiff avers that Akinlade was a warrior and a farmer. He acquired the land described above by settlement under the native law and custom about 120 years ago during the reign of Bashorun Ogunmola (1865-1867) and thereby became the absolute owner thereof.

6. Akinlade farmed on his land and planted kolanut, palm trees, orange trees, yams, maize and other crops on the land. His slaves and children helped him also to farm on the land. He also built a village house, which had now gone into ruins on the land. The site is shown on the plaintiff’s plan.

7. On the death of Akinlade, the land became Akinlade Family land and was inherited by his children.

8. Akinlade begot: (i) Salami Adeoshun, alias Salami Atannagbowo, (ii) Lawani Adeleke and (iii) Salawu Okunola – Atannagbowo begot only Morawo, Lawani Adeleke begat Owoola Mariamo, the plaintiff, Raimi Adeleke, Ganiyu Adeleke and Mrs. Sidikatu Bakare, Salawu Okunola had no issue. F

9. Salami Atannagbowo, Lawani Adeleke, Salawu Okunola and Moriamo had died.

10 Both Salami Atannagbowo and Lawani Adeleke farmed on the land after the death of their father. While Salawu Okunola farmed at Podo, on another farm of Akinlade. They engaged the services of Igbira to help them on the land in dispute; among the Igbira who farmed on the land with their children were Ekun, Sadiku, Onipe, Mathew and Jimoh and others died. When Ekun died he was buried on the land. G

12. *On the death of Messrs Salami Attannagbowo and Lawani Adeleke about 17 & 13 years ago respectively, the said land was put in charge of Alhaji Ibrahimoh Onipe, an Igbira man, who used to pay #3 per annum for his use of the land to the plaintiff, who had since the death of Lawani Adeleke became the head of the family.*

B 13. *In 1975, the plaintiff caused the land to be surveyed by J. F. Ososami, Licensed Surveyor who produced Plan No. JF 07847 dated 10/1/76. The land was not surveyed up to Seleru stream at that time.*

C 14 *Sometime in 1977, the plaintiff sold two plots of the land to Alawi verged 'yellow' and marked 'A' on the plaintiff's plan, one plot to Ganiyu Agboola verged 'blue' and eight plots to Mr. Omotunde marked 'C' and verged 'orange' on the plaintiff's plan. The purchasers had since remained in undisturbed possession of the*
D *holdings. The area of the land trespassed upon by the defendants is verged 'green' on the plan.*

20. *Sometime in February 1984, the defendant broke and entered the land in dispute, damaged many of the survey pillars buried to demarcate the plots of the layout, the boundary walls. He also*
E *claimed ownership of the land in dispute for his family.*

21. *The defendant also between April and May 1984 carved out an area measuring about 350 ft by 225 ft, and built a wall about 5 ft high to mark it out on the land. He also caused buildings to be*
F *started on the land. The areas of the defendant's trespass are verged 'green' within the land in dispute.*

22. *The defendant refused to remove the offensive structure on the land in spite of repeated warnings to the defendant verbally and in writing by the plaintiff. The plaintiff then sued the defendant*
G *to the court."*

The 1st defendant filed a 33 paragraph Statement of Defence, the thrust of his defence is that the plaintiff has no claim to the disputed land. Hence by the 1st paragraph of the said statement of defence, all the averments made in the claims of the plaintiff were
H denied seriatim and in toto, and therefore put the plaintiff to the strictest proof thereof. The defendant further pleaded in paragraphs 4, 5, 6, 7, 8 of his Statement of Claim that the land in dispute belonged originally to Adesina, the grandfather of the defendant, who had acquired the land by settlement under native law and custom

during the reign of Oba Oluyole. Defendant further averred that Aiyerina, a brother of Adesina also came from Ogbomosho to settle with him on the disputed land. Defendant also traced the family from Adesina and identified the children of Adesina and Aiyerina who succeeded them as the owners of the disputed land. The defendant identified himself as the son of the first son of Adesina, the founder of the land. Defendant also pleaded the relationship between his family and Salami Atannagbowo in paragraphs 14, 15, 16, 17, 18, 19 & 20 of his Statement of Defence, thus:

“14. With reference to paras. 10 & 11 of the plaintiff’s Statement of Claim, the defendant avers that Salami Attannagbowo was a farm labourer who ran away from Podo, his father’s farm, a day previous to the time he was to get married and came to stay with the members of Aleshinloye family whose family land is adjacent to the land in dispute.

15. The defendant says that Salami Atannagbowo who specialized in palm wine tapping was engaged by many people around the land in dispute to help them tap their palm trees.

16. The defendant further states that Salami Attannagbowo who was in the habit of going round the village at night to demand for money owed him by people for whom he tapped wine became known around the villages as Salami “Atannagbowo” (meaning – Salami who demands debt with lighted lamp) instead of Salami Adeosun his original name.

17. The defendant avers that sometime in 1958 Adesina family found Salami Atannagbowo on Adesina family land over which Joseph of Siba’s compound was made a caretaker.

18. The defendant states that when Salami Attannagbowo was challenged by members of Adesina family he, Attannagbowo informed the family that Joseph, the family’s caretaker pledged the farm to him for a loan of N15.00 (fifteen naira) borrowed by the said Joseph.

19. As a result of the facts stated in para. 18 above, members of Adesina family refunded the sum of N15.00 borrowed from him by Joseph and demanded for a receipt which was given by Salami Attannagbowo to members of Adesina family. The defendant shall found on the said receipt at the hearing of this case.

20. That after members of Adesina family had refunded to

Salami Attannagbowo the money owed him by Joseph, and after Adesina family had regained possession of the family land (sic) from Salami Atannagbowo, the family decided to sell a portion of the land."

As part of his defence, the defendant also challenged the authenticity of the survey plan pleaded by the plaintiff when he averred thus in paragraphs 2 & 4, thus:-

"2. With reference to para. 4 of the plaintiff's statement of claim, the defendant avers that the plan No. OG20/85 dated 13/2/85 prepared by Chief S. Akin Ogunbiyi Licensed Surveyor, is not correct because it does not accurately show the position of the land in dispute viz- a – viz the extent of the defendant's family land.

4. With reference to para. 13 of the plaintiff's statement of claim, the defendant says that he does not know anything about the plan said to have been drawn by one J.F. Ososami. At any rate, the said plan is not the same with the plan of the land now in dispute and does not show the land now in dispute in this case."

The 2nd defendant also filed his statement of defence in which he denied all the averments of the plaintiff seriatim and in toto. He also in the said statement of defence specifically denied paragraph 4 of the plaintiff's statement of claim and pleaded in paragraphs 2,3 & 4 of his pleadings, thus:-

"2. With reference to paragraphs(sic) 4 of the plaintiff's statement of claim the defendant avers that the plan No. OG20/85 dated 13/2/85 prepared by Chief S. A. Ogunbiyi Licensed Surveyor, is not correct because it does not accurately show the position of the land in dispute viz- a – viz the extent of the defendant's family land.

3. With further reference to paragraph 4 of the statement of claim, the defendant avers that the area within beacons YH6112, AF6110, ZL1906, ZL1906, ZL1912, ZL1911, AU5701, YH2870 and AF6110 on the plaintiff plan No. OG 20/85 of 13/2/85 is part of the defendant's landed property situate lying and being at Odo Ona Elewe off Lagos Road, Ibadan.

4. The defendant avers that the land referred to in paragraph 3 above forms part of Aleshinloye family land within the area in dispute and is bounded by Adesina, Olugbesan Adio Enitan, and Adio family lands, it is shown north of the 1st defendant Plan No. LSAT/Y.70 of 11/12/85."

The defendant also claimed that the land in dispute belonged

originally to Okunola Abasi, the grandfather of the defendant who settled on the land immediately on his return from Ijaiye war where he fought alongside Bashorun Oluyole.

It must be noted in respect of the Statement of Defence filed respectively by the two defendants, the plaintiff with the leave of Court filed replies to each of them. B

At the conclusion of the hearing, it became manifest following addresses by learned counsel that the central issue for determination was whether the plaintiff established his claim for declaration of title to the disputed land. The learned trial judge then resolved the question against the plaintiff thus:- C

“It is settled law that where as in this case a plaintiff predicates his claim for declaration of title on traditional evidence and the traditional evidence fails any evidence of long possession based on the traditional evidence and any claim for trespass and injunction based on it must also collapse with the claim for title. See Ogungbemi v. Asamu (1983) 3 NWLR p. 161 at 172.” D

The claim of the plaintiff was therefore for the above reasons dismissed. Being dissatisfied with that judgment of the trial court, he appealed to the Court below. He lost his appeal to that Court, and this is a further appeal to this Court. Thereafter, and in accordance with the rules of this Court, briefs were filed and exchanged. In the brief filed on behalf of the appellant, the following issues were identified for determination of the appeal: E

“(1) Whether grounds 4 & 7 of the grounds of appeal to the Court of Appeal were vague and ought to be struck out.” F

“(2) Whether the Court of appeal was right to hold that evidence of the plaintiff’s witnesses conflict with his root of title as pleaded and that his claim might be dismissed.” G

“(3) Whether the issue as to whether Atannagbowo was a rich farmer and money lender or palm wine tapper/farm labourer is irrelevant.”

“(4) Whether the Court of Appeal was right in confirming trial judge’s findings that Atannagbowo came on to the land in dispute by way of pledge rather than by inheritance.” H

5. Whether the Court of Appeal was right in holding that the trial court had faithfully summarized the evidence in the case and had adequately considered the appellant’s case.”

For the respondents however, three issues were set down in their brief for determination of the appeal. They are as follows:

“(1) *Whether the Court below was right in striking out grounds 4 & 7 of the appeal before it, and if the Court below was wrong, what is the consequence of same on the totality of the appellant’s case.*”

(2) *Whether the court of appeal was right in confirming the finding of the trial Court that the appellant has failed to establish his root of title as pleaded.*

(3) *Whether the Court of Appeal was right in holding that the trial court has faithfully summarized and adequately considered the totality of the evidence before him, before arriving at his decision.”*

As the issues raised in the respective briefs of the parties are not dissimilar with regard to the questions raised therein, I will however, consider the merits of the appeal in accordance with the issues as raised for the appellant in his brief.

Issue 1

By this issue, appellant questions whether the Court of Appeal was right to have struck out grounds 4 and 7 of the grounds of appeal before that Court because the said grounds are vague. It is however argued for the appellant that the Court below was wrong to have struck out the grounds for that reason. It is further argued for the appellant that the Court below was wrong to have formed that view of the grounds of appeal because the appellant failed to allege particulars and nature of the errors complained of in the said grounds of appeal. On this point, the contention appears to be that it is not necessary to state in a ground of appeal, the pages where errors in a judgment are to be found. These, it is contended will be referred to during argument at the hearing of the appeal.

It is further argued for the appellant that it is not in every ground of appeal that the particulars of errors are separately set out: the particulars of errors in respect of such grounds of appeal are in-built. This, it is argued is a practice which the Courts have found acceptable. The whole purpose of a ground of appeal, learned counsel submitted, was to give notice to the other side of the case they have to meet.

In support of the position so taken for the appellant, he referred to several authorities, namely, *N.I.P.C v. Thompson Organiza-*

tion (1969) 1 A.N.L.R. 138 at 142; Afuye v. Ashamu (1987) 1 N.W.L.R (Pt. 49) 267 at 282; Shyllon v. Asein (1994) 6 S.C.N.J. 267 at 295; Nsirim v. Nsirim (1990) 5 S.C.N.J. 174 at 182; U.B.A v. Achora (1990) 10 S.C.N.J. 17 at 36; Koya v. U.B.A (1997) S.C.N.J. 1 at 21.

Learned counsel for the appellant, placing reliance upon those authorities, then submitted that as his grounds 4 and 7 were framed as the grounds of appeal considered and approved of in the cases to which our attention have been drawn, grounds 4 and 7 should also be upheld as valid grounds of appeal. The Court of Appeal's decision, striking out the said grounds of appeal, should therefore be overturned. It is further submitted for the appellant that the wrongful exclusion of the appellant's grounds '4' and '7' of his grounds of appeal before the Court below, affected the case of the appellant, and had therefore occasioned a miscarriage of justice.

In his response for the respondents in their brief on this issue, their learned counsel submitted that the underlying principle from the line of authorities to which reference was made by the appellant is based upon the well-known doctrine of *audi alteram partem*. This he argued is meant to emphasize the need to furnish particulars in respect of grounds of appeal complaining of error or misdirection. He therefore submits that any ground of appeal alleging such complaint without the necessary particulars will not only violate Order 3 Rule 2(4) of the Court of Appeal Rules, but will also offend the *audi alteram* principle. Learned counsel for the respondents concedes it that as held in *Atuyeye v. Ashamu* (supra), the particulars need not be separately stated, but has submitted that in respect of the particular grounds (4) & (7) in this appeal, that principle cannot apply. He then invited the attention of the Court to the rule laid down in *Globe Fishing Industries Ltd. v. Coker* (1990) 7 N.W.L.R. (Pt 162) 265 at 300, that particulars of error are to be couched in the manner that will bring out the basis of the complaint in the ground. It is also submitted for the respondents that even if this Court should hold that the Court below was wrong to have struck out grounds '4' and "7", the appellant's case would still fail as the essential point against the Appellant was that the evidence of his witness contradict each other. For that reason, the appellant as plaintiff was held to have failed to establish his claim.

For a proper consideration of the arguments of counsel for

and against the view taken of the grounds of appeal by the Court below, the grounds of appeal need to be reproduced. They read thus: -

Ground 4:

B *“The learned trial judge erred in law and the facts in holding that the boundary men called by the plaintiff are unreliable because of the reasons (a) (b) (c) and (d) stated in the judgment, which are unjustified.”*

Ground 7:

C *“The learned trial judge erred in law and on the facts in admitting Exhibit J in evidence and overruling the objections of the Plaintiff’s counsel thereto for the reasons numbered (1)(2), (a) and (d) on pages 137 and 138 of the records which are not justifiable and thereby came to a wrong decision.”*

D It would be recalled that the complaint of the appellant on this question arose from the view of the Court below that the grounds of appeal set out above are vague. They were struck out accordingly.

E To begin with, there can be no doubt that the Rules of the Court of Appeal, 1981 as amended, permit the Court to strike out any ground of appeal in a Notice of Appeal which the Court considered incompetent, and or vague. See Order 3 Rule 2(7) of the Rules of the Court of Appeal which reads:-

F *“The Court shall have power to strike out a notice of appeal when an appeal is not competent or for any other sufficient reason.”*

Sub-rule 2 of Rule 2, also empowers the Court of Appeal to strike out any ground of appeal which is vague or general in terms or which discloses no reasonable ground of appeal on its own motion or on the application by the respondent.

G In the instant case, it is manifest that the Court of its own motion struck out the two grounds of appeal, namely ‘4’ and ‘7’ on the grounds that they are vague as the particulars of the alleged errors having not been set out as required of the appellant by virtue of Order 3 Rule 2(20), which reads:

H *“If the grounds of appeal alleges misdirection or error in law the particulars and the nature of the misdirection or error shall be clearly stated.”*

It is thus clear that under the Rules, an appellant who alleges in his ground of appeal misdirection and/or errors in law is obliged to

set out the alleged wrongs committed by the Court against whose judgment he is appealing. It is of course the contention of the appellant that in framing grounds of appeal alleging errors either of law or misdirection, the appellant need not set them out separately under the heading particulars of errors. It is sufficient, he argued if the alleged errors were included in the ground of appeal. **It is of course not** B
 now in dispute supported by a long line of cases that composite grounds of appeal which included particulars of errors and/or misdirection may be filed and would not be struck down as incompetent. See Okeke Nnamdi v. Okeke Okoli (1977) 7 S.C. 57 at 63; Mba Nta v. Anigbo (1972) 5 S.C. 156 at 164; Osawaru v. Ezeiruka (1978) 6- C
 7 S.C. 135; Okorie v. Udom (1960) 5 F.S.C 162 at 164; Nsirim v. Nsirim (1990) 2 N.S.C.C. 302 at 310 etc. in all the cases where their particulars of errors were embedded in the grounds of appeal, they are usually so couched that there is no difficulty in identifying the D
 allegation which the appellant is making against the judgment of the Court below. **It is clear, notwithstanding the relaxation of the rules for the appellant in the framing of his grounds of appeal, that the burden lies on the appellant to frame his grounds of appeal with such clarity as would enable the opposite party and the Court to appreciate his complaint. In the instant case, I have carefully considered the two grounds of appeal, which the Court below struck out as vague, and I cannot fault the Court for reaching that conclusion.** E
 The grounds 4 and 7 of the grounds of appeal are a novel way of couching grounds of appeal F
 and it should not be encouraged. It seems clear from the other grounds of appeal filed in the matter by the appellant that the learned counsel for the appellant properly filed the other grounds of appeal with their particulars of errors properly put in place. **I will therefore** G
for all the reasons stated above resolve this question against the appellant. Grounds (4) and (7) of the grounds of appeal below were rightly struck out as incompetent and I so hold.

Issues (2) – (5)

I now go to the main issue in this appeal. The complaint of the H
 appellant amounts to wishing to fault the Court below for upholding the judgment of the trial Court. **The law is that where there are concurrent findings of fact by the two lower courts, the Supreme Court will not interfere with them unless those findings**

are:-

1. *found to be perverse, or*
2. *not supported by evidence,*
3. *reached as a result of a wrong approach to evidence*
4. *a result of a miscarriage of justice or a violation of*

B *some principles of substantive or procedural law.*

See Basil Akelozi v. The State (1993) 10 L.R.C.N. 264 at 268; Enang v. Adu (1981) 11-12 S.C. 25 at 42; Nwadike v. Ibekwe (1987) 4 N.W.L.R. (part 67) 718; Igwego v. Ezeugo (1992) 6 N.W.L.R. (part 249) 561 at 579; Ohunyon v. The State (1996) 2 S.C.N.J. 280 at 287; Western Steel Works & Anor v. Orpm & Steel (1987) 1 N.W.L.R 284; Onwugbufor v. Okoye (1996) S.C.N.J. 1; Koya v. U.B.A. (1997) S.C.N.J. page 1 at 21.

I have considered the questions raised in the appellant's issues D (2) (3), (4) and (5) having regard to the facts which the trial court and the Court below found, it is my humble view that the appellant has not advanced any argument in respect of these issues to persuade me to overturn the judgment of the Court below in the circumstances. In the result this appeal is adjudged by me as lacking in E any merit. It is therefore dismissed by me in its entirety. I award N10,000 costs in favour of the respondents.

KUTIGI JSC

F I read before now the judgment just delivered by my learned brother Ejiwunmi, JSC. I agree with his conclusion that the appeal lacks merit. It is accordingly dismissed with costs as assessed.

OGWUEGBU JSC

G The leading judgment of my learned brother Ejiwunmi, JSC, was made available to me in draft. I agree that the appeal be dismissed.

H The first issue for determination in this appeal arose from the plaintiff's/appellant's complaint that the court below erred in law in striking out grounds 4 and 7 of his grounds of appeal on the ground that they are vague and the failure to supply the particulars of the errors.

The said grounds of appeal read as follows:

“4. The learned trial judge erred in law on the facts in holding that the boundary-men called by the plaintiff are unreliable because of the reasons (a), (b), (c) and (d) stated in the judgment, which are unjustified.

7. The learned trial judge erred in law and on the facts in admitting Exhibit “J” in evidence and overruling the objections of the Plaintiff’s counsel thereto for the reasons numbered (1), (2), (a), (b), (c) and (d) on pages 137 and 138 of the records which are not justifiable and thereby came to a wrong decision.”

The court below struck out grounds 4, 5, 7, 9, and 11 of the grounds of appeal and the issues for determination formulated from them because the said grounds of appeal contravened the provisions of Order 3, rule 2(2) and (4) of the Court of Appeal Rules, 1985 as amended and were therefore incompetent.

Order 3, Rule 2(2) and (4) provides:

“2(2) If the grounds of appeal allege misdirection or error in law the particulars and the nature of the misdirection or error shall be clearly stated.

(4) No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence, and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on the application of the respondent.”

The appellant’s argument is that since the pages of the record where the errors in the judgment occurred were supplied in the ground of appeal, it was not necessary to state the particulars and the nature of the misdirection or error and that it is not in every case that particulars of error are set out in a ground of appeal in that there are grounds of appeal where the particulars are incorporated into the body of the grounds of appeal.

I must confess that the manner in which the appellant couched grounds 4 and 7 of the grounds of appeal against the judgment of the learned trial judge is novel and in clear contravention of the provisions of Order 3, rule 2(2) and (4) of the Court of Appeal Rules set out above. Clearly, both grounds of appeal contain no particulars and the nature of the errors complained of. The particulars cannot

be said to have been incorporated into the body of the grounds of appeal in this case. See *Nsirim v. Nsirim* (1990) 21 NSCC (part II) 302. To allege “*error in law*” or “*erred in law and on the facts*” is insufficient. The ground of appeal must allege and fully set out what facts the appellant alleges ought to have been found or what error
B has been made in point of law and if improper admission or rejection of evidence is alleged, the evidence must be specified. The ground of appeal should also state in what manner the trial judge committed the error. See *Okorie & Ors. v. Udom & Ors* (1960) 5 FSC 162,
C *National Investment & Properties Co. Ltd. v. Thompson Organization Ltd. & Ors.* (1969) 1 All NLR (Pt. 1) 138 and *Pfeiffer v. The Midland Rly Co.* (1886) 18 QBD 243.

Having examined the two grounds of appeal, I am satisfied that the court below was not in any error when it exercised its power
D under Order 3, rule 2(7) of the Court of Appeal Rules and struck out the said grounds of appeal as incompetent.

On the other issues which arose from complaints on evaluation of evidence and findings of facts of the learned trial judge which the court below affirmed, it should be stressed that those issues are
E based on concurrent findings of facts by the trial court and the Court of Appeal. I see no reason to interfere with the findings.

For the above reasons and the fuller reasons contained in the judgment of my learned brother, Ejiwunmi, JSC, I too dismiss the
F appeal with #10,000.00 costs to the respondents.

MOHAMMED JSC

I agree that this appeal is devoid of any merit as explained in
G the opinion of my learned brother, Ejiwunmi, JSC. It is an appeal from two concurrent findings of fact and the appellant has failed to make any dent on those findings for me to think of disturbing them. The appeal is dismissed with N10,000.00 costs in favour of the respondents.

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UWAIFO JSC

I read in advance the judgment of my learned brother Ejiwunmi JSC and agree with it that the appeal lacks merit.

The case rests essentially on the evaluation of the evidence by the learned trial judge. Each party relied on traditional history. The learned trial judge held that the evidence on the traditional history put forward by the plaintiff suffered from internal conflict. He said: “*I must agree straight away with the learned counsel for the 2nd defendant that the evidence of the traditional history of the plaintiff’s root of title to the land in dispute... particularly evidence of the p.w. 2 and p.w. 9 clearly conflict with that of the plaintiff and particularly with the plaintiff’s pleading at paragraph 5 of his amended statement of claim.*” He therefore held that the root of title failed.

It would appear the learned trial judge preferred the case presented by the defendants when he observed: “*The two defendants’ case is that their ancestors had settled on the land in dispute before the reign of Bashorun Ogunmola when the plaintiff’s Akinlade or Lawani Adeleke or Atannagbowo claimed to have settled on the land. Since the defendants had settled on the land in dispute before the reign of Ogunmola there would be nothing left for the plaintiff’s ancestors to settle on during the reign of Ogunmola.*” As to how Atannagbowo got involved with the land in dispute, he said: “*I accept the submission of the learned counsel for the 1st defendant that exhibits D1 and D3 are evidence that Atannagbowo took pledges of land in respect of the loan transactions to which both exhibits relate and that increases the probability of the 1st defendant’s evidence that Atannagbowo took the land in dispute from Joseph of Siba on lending him 7.10 as a pledge.*”

The Court of Appeal, Ibadan Division, upheld the above findings of the learned trial judge. In regard to the internal conflict in the evidence on traditional history, R. D. Mohammed JCA, who read the leading judgment, said:

“*The evidence of the plaintiff’s witness conflict with his root of title pleaded. A party, who adduces conflicting histories of his ownership in support of his claim, has failed to make out the case he set out to make. His claim must be dismissed.*”

In regard to the pledge, the learned Justice of the Court of Appeal held that the learned trial judge found that there was sufficient nexus between exhibit D (i.e. the document of pledge) and the land in dispute. The court below concluded that the relevant findings made by the trial court were not perverse.

I have read the record of appeal and considered the evidence along with the findings. I am satisfied that the concurrent findings are not perverse. Accordingly this court will not be justified in interfering with them: see *Igwego v. Ezeugo* (1992) 6 NWLR (pt. 249) 561; *Ivienagbor v. Bazuaye* (1999) 9 NWLR (pt. 620) 552. Obviously, there was internal conflict in the evidence of traditional history and also the evidence led conflicted with the history pleaded. In that situation, the traditional history collapsed: see *Eze v. Atasie* (2000) 10 NWLR (pt. 676) 470.

I, too, find no merit in this appeal and dismiss it with N10,000.00 costs to the respondent.

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