

**SUPREME COURT OF NIGERIA**  
FRIDAY 10TH MAY, 2002. SC. 139/1997  
**CORAM:- S. M. A. BELGORE, E. O. OGWUEGBU,**  
**U. MOHAMMED, S. O. UWAIFO, A. O. EJIWUNMI, JJSC**

1. ADEBIYI LAYINKA  
2. MR. ADENIHUN LAYINKA ..... APPELLANTS  
(For themselves and on behalf  
of Layinka Family)  
AND  
ADEOLA MAKINDE  
& 5 OTHERS .....RESPONDENTS  
(For themselves and on behalf  
of Osanyindina family)

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ACTIONS - Civil cases - Proof - Onus of - Onus is always on plaintiff  
to prove his case - To the satisfaction of trial court (H1)

APPEALS - Concurrent findings - Appellate court should not disturb  
such findings - Unless the findings are perverse - Or are based on  
wrong proposition of law (H2)

**FACTS**

This case commenced since 1944 and was previously litigated and decided upon by various native and district courts. In all of the courts, appellants lost their claim over the disputed vast track of land. The decision in all those courts went in favour of respondents who had all along been in possession of the said land. After about fifty years, descendants of appellants took out new writ at the High Court of Oyo State, Ibadan, wherein they claimed inter alia, grant of statutory rights of occupancy, general damages for trespass and injunction restraining respondents from committing further acts of trespass on the said land.

Respondents raised the issue of estoppel per rem judicatam by relying on the 1944 action that ended finally in Colonial Governor's court and submitted that the suit was an abuse of court process and should be dismissed. The trial judge ruled against the preliminary objections. The matter thus proceeded to trial. At the

conclusion of evidence, the learned trial judge came to the conclusion that appellants' case was not proved. Appellants thereupon appealed to the Court of Appeal, Ibadan. The court upheld the decision of trial court and also dismissed the appeal. Appellants have finally appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

1. *Whether the lower court made proper use of Exhibits E, F, G, H, J, K, L, M, R, BE, U1 and U2 along with the oral evidence of the appellants in resolving the issue of acts of possession and ownership as between the plaintiffs and the defendants before resolving the same in favour of the defendants/respondents.*

2. *Whether the learned justices of the lower court were right while considering the acts of possession of the appellants in the use they made of Exhibits E, F, G, H to the effect that (1) Layinka was not adjudged as owners of the land but a caretaker (2) He was a trespasser (3) the boundary of the land allotted to him was not ascertained.*

3. *Whether the lower court was right in holding that the trial court gave proper consideration to Exhibit "R" i.e. D.O's report of 1933 when in fact the trial court considered only paragraph 4 out of the 19 paragraphs of the report*

4. *Whether the lower court was right in holding that the appellants were claiming special damages against the defendant which has not been proved.*

5. *Whether the lower court was right in holding that the trial court exercised his discretion judiciously and judicially in awarding a heavy cost of N14,000.00 against the appellants in a simple land matter."*

**HELD** (Unanimously dismissing the appeal per lead

judgment of **BELGORE JSC**)

*ACTIONS - Civil cases - Proof - Onus of*

**1. In all cases, especially civil ones, the onus is always on the plaintiff to prove his case to the satisfaction of the trial court.**

(p. 1302 G)

*APPEALS - Concurrent findings*

**2. In sum total, this matter on appeal is based entirely on concurrent findings of the two lower courts on facts. No appellate court should disturb the concurrent findings like these unless those findings are perverse or are based on wrong proposition of law or inadmissible evidence or no evidence at all. Going through a line of decisions this Court will not disturb a clear finding of fact by lower courts.** (p. 1302 H)

**NOTABLE POINTS OF INTEREST****UWAIFO JSC*****1. Award of cost is at court's discretion***

The award of costs is always at the discretion of court exercised reasonably. It is however well settled that costs follow the event which means that a successful party is entitled to costs unless there is any disenabling circumstance to deprive him of that entitlement. (p. 1310 B)

***2. Cost are not awarded as a punitive measure against the losing party***

Costs are not awarded as a punitive measure against the losing party but for the purpose of meeting the legitimate expenses of the successful party either wholly or partially as the court may see fit. When costs are awarded on that basis, i.e. judicially and reasonably to compensate a successful party, an appellate court will be quite wary to interfere with the discretion of the court as to the amount of costs. On the other hand, if the award is made against established principles, it will be set aside by an appellate court. As that is not the case here, I answer issue 5 in the affirmative. (p. 1310 D)

**REPRESENTATION**

Alhaji A. I. Gbenla for the Appellant

Y. A. Agbaje, SAN with T. O. Ladipo, O. Akoni Adoba A, for 1st to 5th Respondent

Oluyele Delano for 6th Respondent

**CASES REFERRED TO**

- Adebayo v. Ighodalo (1996) 5 NWLR (Pt. 450) 507  
 Oko v. Ntukidem (1993) 2 NWLR (Pt. 274) 124  
 Esiegbe v. Agholor (1993) 9 NWLR (Pt. 316) 128  
 Badmus v. Abegunde (1999) 11 NWLR (Pt. 627) 493  
 B Omoregie v. Idugiemwanye (1985) 2 NWLR (Pt. 5) 41  
 Ugo v. Obiekwe (1989) 1 NWLR (Pt. 99) 566  
 Coker v. Oguntola (1985) 2 NWLR (Pt. 5) 87  
 Ezewani v. Onwordi (1986) 4 NWLR (Pt. 33) 27  
 C Magaji v. Cadbury Ltd. (1985) 2 NWLR (Pt. 7) 393  
 Ayanwale v. Atanda (1988) 1 NWLR (Pt. 68) 22  
 Agidigbi v. Agidigbi (1996) 6 NWLR (Pt. 454) 300  
 Rewane v. Okotie-Eboh (1960) SCNLR 461  
 Akinbobola v. Plisson Fisco Nig. Ltd (1991) 1 NWLR (Pt. 167) 270  
 D Adenaiya v. Governor-in-Council (1962) 1 SCNLR 442  
 Obayagbona v. Obazee (1972) 5 SC 247

**LEAD JUDGMENT BY BELGORE JSC**

- This appeal is in respect of the decision of Court of Appeal  
 E Ibadan Branch. The action which led to the appeal in that Court, on  
 a cursory look, appears to have started in the High Court. But that is  
 actually not the true story. The case actually started in 1944 in the  
 Native Court, it went on appeal to District Officer's Court then to  
 Residents' Court in which the present appellants lost all their claims  
 F to the vast track of land in issue. They similarly lost appeal in  
 Governor's court. The decisions in all those courts went in favour of  
 the respondents who had all along been in possession. After about  
 fifty years, the descendants of the original losers, Layinka Family, in  
 G 1987, took out a new writ and claimed as follows:

***"1. AGAINST ALL THE DEFENDANTS***

- (A) DECLARATION that members of Layinka family of Ibadan  
 are the persons entitled to a grant of Statutory rights of occupancy in  
 respect of a piece or parcel of land situate, lying and being at Abanla  
 H area (formerly known as Ikeja Layinka) via Idi Ayunro excepting the  
 areas granted by the plaintiffs absolutely and which same is more  
 particularly described and edge RED on PLAN NO. OG17/88 of 23rd  
 day of May, 1988 drawn by S. Akin Ogumbiyi Licensed Surveyor of  
 Ibadan.*

(b) Fifty thousand Naira (50,000.00) being general damages for Trespass being committed by the defendants on the said land.

(c) INJUNCTION restraining the defendants their agents, Servants and all manner of persons from committing further or any act of trespass on the said land.

## 2. AGAINST THE 1ST TO 5TH DEFENDANTS B

An order of forfeiture of the interest or rights of the first to fifth defendants in the area verged BLUE marked A & B in the said plan with Injunction restraining them, their servants, agents and all those claiming through them from entering the areas. C

## 3. AGAINST THE 6TH DEFENDANT ONLY

The sum of one hundred thousand Naira (N100,000.00) per day from the 1st day of April, 1987 being the daily net value of the stones, hardcore, gravels and properties of the plaintiffs being removed and sold daily by the 6th defendant on the area edge YEL- D  
LOW on the plan referred to above."

At the High Court in this new suit, the respondents as defendants raised issue of estoppel per rem judicatam by relying on the 1944 action that ended finally in colonial Governor's court against the predecessors of the plaintiffs/appellants in this case. The respondents submitted that the suit was an abuse of court process and that it be dismissed. There was also the plea of statute of limitation raised by respondents. The trial judge ruled against all these defences in a preliminary decision and got the case to trial. However, the respondents, as defendants, after extensive search at National Archives, amended their Statement of Defence and indicated all the Native Courts in Ibadan, particularly the ones dealing with land matters between 1937 and 1944 and the relevant appellate fora in accordance with the then existing laws. E  
F  
G

At the conclusion of all the evidence for the parties learned trial judge, Oluborode J. (as he then was) in a thoroughly reviewed evidence based on the pleadings, came to the conclusion that the plaintiffs' case was not proved. Looking at the traditional evidence of the parties, he rightly took refuge in Lord Denning's principle in *Kojo II v. Bonsie* (1957) 1 WLR 1223, 1226 that where traditional histories of the parties are divergent, it is not safe for trial court to simply or thereby hold that it believed one or rejected the other. The parties in such cases rely on histories handed down by their predecessors H

and however unlikely such histories, the parties honestly believe them. The court must then look to what other evidence available for help. Such evidence may be recent history on the land. Those in unchallenged possession and exercising control over the land may be rightful owners. The recent history may be a matter of many years and control may be physical possession and giving out lease etc. on the land. Learned judge found that the respondents were not only in complete possession of the land, but also gave out quarrying rights on the rocks on the land. It is always the plaintiff who asserts that carries the onus of proving his assertion. The test is to find, in failure of traditional history to shed proper light on the true owner, who in recent times has exercised exclusive acts of ownership on the land in question over a reasonable length of time in a positive and unhidden manner numerous enough to exclude any other inference than that that person is the owner. See *Eri v. Erhunlobara* (1991) 2 NWLR (pt. 173) 253, 263; *Abudu Fajube Karimu v. Daniel* (1968) NMLR 151, 153; *Oloriode v. Oyebi* (1984) 5 SC 1, 17, 18; *Balogun v. Akunji* (1988) 1 NWLR (pt. 70) 301, 323; *Adeyemo v. Popoola* (1987) 4 NNLR (pt. 66) 518; and *Ekpo v. Ita*, XI NLR 68).

Learned trial judge in some instances found pieces of evidence proffered by the plaintiffs (now appellants) at variance with their pleadings. He never found any evidence to support Layinka's control of the disputed land at any time. He found Osayindina (respondents' predecessor) to be in control of the land and his present ancestors (respondents) have all along been in possession and continuous control. The plaintiffs as a result lost at the trial court.

The Court of Appeal had no reason to interfere with the decision of trial court in the face of the clear evidence on the record. It upheld the trial court's decision.

***In all cases, especially civil ones, the onus is always on the plaintiff to prove his case to the satisfaction of the trial court.*** (*Kodilinye v. Mbanefo* (1935) II WACA 336; *Umojiaka v. Ezenamuo* (1990) NWLR (pt. 126) 253, 272; *Onyido v. Ajeumba* (1991) 4 NWLR (pt. 184) 203, 227). It is clear all through 1944 to this day the appellants had come up with various suits and lost to the respondents or their privies or agents.

***In sum total, this matter on appeal is based entirely on concurrent findings of the two lower courts on facts. No ap-***

***pellate court should disturb the concurrent findings like these unless those findings are perverse or are based on wrong proposition of law or inadmissible evidence or no evidence at all. Going through a line of decisions this Court will not disturb a clear finding of fact by lower courts.*** See Coker v. Oguntola (1985) 2 NWLR (pt. 5) 87; Ezewani v. Onwordi (1986) 4 NWLR (pt. 33) 27; Magaji v. Cadbury Ltd. (1985) 2 NWLR (pt. 7) 393; Ayanwale v. Atanda (1988) 1 NWLR (pt. 68) 22; Onwuka v. Ediala (1989) 1 NWLR (pt., 96) 182; Western Steel Works v. Iron & Steel Workers Union (1987) 1 NWLR (pt. 49) 284; Akalezi v. State (1993) 2 NWLR (Pt. 273) 1; Anaeze v. Anyaso (1993) 5 NWLR (pt. 291) 1; Okonkwo v. Okagbue (1994) 9 NWLR (pt. 368) 301; Otitoju v. Governor Ondo State (1994) 4 NWLR (pt. 340) 518.

It is therefore clear that this appeal entails this Court being asked to re-look at the concurrent findings of fact by the two lower courts without assigning any cogent reasons or special circumstance why this Court will embark on such course of action. I find no merit in this appeal and I find the lower courts were right in dismissing the plaintiffs' claim and upholding the counter-claim. I dismiss this appeal and uphold the decision of Court of appeal which affirmed the decision of trial court.

I award N10,000.00 as costs in favour of the 1st - 5th respondents N10,000.00 in favour of 6th respondent against the appellants.

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### **OGWUEGBU JSC**

I have had a preview in draft of the judgment just delivered by my learned brother Belgore JSC, and I am in full agreement that the appeal be dismissed as there are no cogent reasons advanced by the appellants to warrant an interference with the concurrent findings of fact by the courts below. I also award N10,000.00 costs in favour of each set of respondents against the appellants.

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### **MOHAMMED JSC**

I have had a preview of the judgment of my learned brother, Belgore JSC, in draft, and I agree with him that the appeal has no

merit at all. The history of failures of the appellants in many courts since 1944 has established that their claim has no substance and the courts below were right in dismissing it. The appellants have failed to identify any ground warranting interference with the concurrent findings of fact. I dismiss the appeal and affirm the judgment of the Court of Appeal. I award N10,000.00 in favour of the respondents.

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**UWAIFO JSC**

I have had the opportunity of reading in advance the judgment of my learned brother Belgore JSC, and agree with it that the appeal lacks merit.

This action was fought by the parties upon a large body of evidence both oral and documentary. The plaintiffs and 1st - 5th defendants are two families, namely Layinka family of Ibadan and Osanyidina family respectively. Some of the documents relied on by the plaintiffs were largely found by the learned trial judge not to have supported their case. On the other hand, judgments upon which the defendants based their special defence of *res judicata* were found by him to have been given without jurisdiction and accordingly he ruled that that defence was without foundation. That ruling has not been appealed and no comment thereon is necessary.

In the main action by the plaintiffs, they claimed against all the defendants for (a) a declaration of title to a vast area of land, (b) N50,000.00 general damages for trespass and (c) injunction to restrain further trespass. As against the 1st - 5th defendants forfeiture of a specified portion of the land; and as against the 6th defendant, N10,000.00 per day from April 1, 1987 as damages being the value of the quarrying from the land. And or in the alternative: (i) a declaration that the 1st - 5th defendants have no right to alienate any part of the land, (ii) an order to render account of the quarrying from the land, (iii) an order setting aside all agreement entered into by the defendants in respect of the said land, and iv) injunction against the 6th defendant from entering the land.

The 1st - 5th defendants counterclaimed for a declaration to a customary right of occupancy to the parcel of land in dispute and for perpetual injunction to restrain the plaintiffs from the said land.

Following the decisions of the two courts below, this appeal



has come to this court. What has been brought before this court by the appellants is basically for us to consider the concurrent findings of fact made by the two Courts below in this case in resolving the appeal. In their brief of argument, the appellants acknowledged this when they said:

*"In this appeal the appellants are faced with concurrent findings of the trial court and the lower court both on the issue of traditional evidence and acts of possession and ownership positive and numerous to entitle the plaintiff to be declared as the owners of the land in dispute."* B

*It is trite law that the Supreme Court will not interfere with the concurrent findings of fact made by both the trial court and the Court of Appeal where there is sufficient evidence in support of such findings and where there is no substantial error on the record to show any miscarriage of justice."* C

The suit was instituted at the High Court, Ibadan. There was a counterclaim by the 1st - 5th defendants. The contest between the parties was upon a large body of evidence both oral and documentary based upon issues joined by the parties on their pleadings. On 19 August, 1991, the learned trial judge (Oluborode, J.) in a reserved judgment dismissed the plaintiffs' claim and allowed the 1st - 5th defendants' counterclaim with costs as contained in the enrolled order as follows: D

*"The Plaintiffs' case is dismissed in its entirety against all the defendants while the Court grants the relief in the counter-claim of the 1st - 5th defendants."* E

*The 1st - 5th defendants having succeeded in their counter-claim this court accordingly grant the following reliefs.*

*(1) Declaration of Customary right of occupancy to all that piece or parcel of land situate, lying and being at Abanla area which is verged Red on Plan No. RADS/1418/88 and*

*(2) Perpetual injunction restraining the plaintiffs, their servants, agents or privies from interfering, in any manner with the rights of the 1st - 5th defendants on the said land in dispute."* F

*(3) A cost of N12,000.00 is hereby awarded in favour of the 1st to 5th defendants while I assess the 6th defendant's costs at N2,000.00 against the Plaintiffs."* G

Before reaching a decision, the learned trial judge made the H

following findings amongst others: (1) On the traditional history relied on by each side, he was unable to determine which was more probable and therefore had to test each by reference to recent acts of possession and ownership in line with the principle laid down in *Kojo II v. Bonsie* (1957) 1 WLR 1223. (2) There was no clear identity of the area said to have been partitioned to Layinka in relation to the land in dispute since after the alleged partition, dispute continued between both parties and that Layinka was adjudged a trespasser and fined on each occasion as per exhibits F and G. (3) Osanyindina died in 1905, his children and grandsons occupied portions of land in dispute not as tenants but as inheritors. (4) The evidence of witnesses, particularly p.w. 4, called as tenants by the plaintiffs has no credibility. This is because although Alabi and Ogunrinde (children of Layinka) instituted action against Makinde and Ladipo (grandchildren of Osanyindina) in 1944 for allegedly preventing them from collecting Ishakole from tenants since 1930 the year Layinka died, p.w.4 testified he continuously paid Ishakole. Furthermore, p.w.4 said he had stopped paying Ishakole to the plaintiffs' family after the death of Alabi and Ogunrinde but p.w.10 said their tenants including p.w.4 were still paying Ishakole to their family till date. (5) Evidence by the plaintiffs of receipt of Ishakole from tenants in respect of the land in dispute was regarded as untrue while that given by the defendants was accepted. (6) In 1974 the plaintiffs claimed as joint owners of the entire area including the land in dispute whereas in the present suit they claim to be sole owners. That makes their claim incredible. (7) The plaintiffs have failed to show that they are in exclusive possession of the land in dispute. (8) Having regard to the recent acts of possession and ownership on the land in dispute, the traditional history of the defendants is more probable than that of the plaintiffs.

The Court of Appeal, Ibadan Division, considered each of the complaints against the findings of fact by the trial court and came to the conclusion that those findings were justified. On 26 June, 1995, in a reserved judgment, that court dismissed the appeal and upheld the judgment of the trial court both in regard to the main claim and the counterclaim as well as the costs awarded.

The further appeal to this court is fought upon the five issues raised for determination as follows:

*"4.01. ISSUE NO. 1 BASED ON GROUNDS 1,2,5 AND 6*

*Whether the lower court made proper use of Exhibits E, F, G, H, J, K, L, M, R, BE, U1 and U2 along with the oral evidence of the appellants in resolving the issue of acts of possession and ownership as between the plaintiffs and the defendants before resolving the same in favour of the defendants/respondents.*

#### 4.02. ISSUE NO.2 BASED ON GROUND 3

B

*Whether the learned justices of the lower court were right while considering the acts of possession of the appellants in the use they made of Exhibits E, F, G, H to the effect that (1) Layinka was not adjudged as owners of the land but a caretaker (2) He was a trespasser (3) the boundary of the land allotted to him was not ascertained.*

C

#### 4.03. ISSUE NO. 3 BASED ON GROUND 4

*Whether the lower court was right in holding that the trial court gave proper consideration to Exhibit "R" i.e. D.O's report of 1933 when in fact the trial court considered only paragraph 4 out of the 19 paragraphs of the report.*

#### 4.04. ISSUE NO. 4 BASED ON GROUND 7

*Whether the lower court was right in holding that the appellants were claiming special damages against the defendant which has not been proved.*

E

#### 4.05. ISSUE NO. 5 BASED ON GROUND 8

*Whether the lower court was right in holding that the trial court exercised his discretion judiciously and judicially in awarding a heavy cost of N14,000.00 against the appellants in a simple land matter."*

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The appellants have not been able to show in what way the findings of fact are not supported by evidence. An appellate court has a limited function in the determination of a dispute between the parties. It does not try a case; it does not see and hear witnesses testify; as a result it does not experience the subtle and often influencing nuances of seeing and hearing witnesses give account of facts upon which findings are based by a trial court. An appellate court upon complaints made to it is concerned with seeing whether a trial court has or has not made some substantive or procedural errors, or has or has not failed to make any or proper findings which the evidence available deserves, and accordingly to take such decisions in the interest of justice by way of correction or confirmation of the decision of the trial court: See *Igboke Oroke v. Chuka Ede* (1964)

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NNLR 118 at 119-120; Ajadi v. Akenihun (1985) 1 NWLR (pt.1 3) 484 at 492; Nwokoro v. Onuma (1999) 12 NWLR (pt. 631) 342 at 355 - 356.

Hence it is said that a trial court has the primary function of assessing the quality of the evidence received by it, by giving credence to or expressing doubt about witnesses whom it had the advantage of seeing and hearing testify, weighing the evidence of one witness against that of another where appropriate, making findings of fact and finally deciding, in a civil case, which side of the case presented to prefer: see Ebba v. Ogodo (1984) 3 SC 84 at 98; Atanda v. Ajani (1989) 3 NWLR (pt. 111) 511 at 524. It is not the function of an appellate court to retry a case on the notes of evidence and to set aside the decision of the trial court merely because the appellate court would have reached different conclusions on some or even all of the facts. What is important is that if there was evidence before the trial court from which its findings can reasonably be supported, its decision ought not to be disturbed; see Omoregie v. Idugiemwanye (1985) 2 NWLR (pt. 5) 41; Ugo v. Obiekwe (1989) 1 NWLR (pt.99) 566; Onifade v. Olayiwola (1990) 7 NWLR (pt. 161) 130.

But when an appellate court is satisfied that the trial court had failed to draw the correct inferences from proved or accepted facts or has wrongly assessed the probative values of undisputed evidence, it will interfere with the findings, and where appropriate make its own findings, and set aside the improper or wrong decision: see Fashanu v. Adekoya (1974) 6 SC 83 at 91; Oko v. Ntukidem (1993) 2 NWLR (pt. 274) 124 at 135. In the present case there is the question of concurrent findings of fact. Such findings will not be interfered with by this court unless they are shown to be perverse: see Adebayo v. Ighodalo (1996) 5 NWLR (pt. 450) 507; Ivienagbor v. Bazuaye (1999) 9 NWLR (pt. 620) 552. That has not been shown in this case. I accordingly answer issues I, 2, and 3 in the affirmative.

In regard to issue 4, which is whether the damages claimed against the 6th defendant were in the nature of special damages, it is necessary, first, to recite paragraph 52 and 53 of the amended statement of claim as follows:

*“52. The current prices of hard cores, gravels and ordinary sand which are being prospected daily on the land in dispute at the expense of the plaintiffs are N100.00 and N40.00 per ton of each of*

the items respectively.

53. *The 6th defendant had not been making less than a net amount of a hundred thousand naira (N100,000.00) per day as hundreds of tons of these products are produced and sold daily.*”

Then in the relief sought in this regard against the 6th defendant, the damages are stated thus: B

*“The sum of one hundred thousand naira (N100,000.00) per day from the 1<sup>st</sup> day of April, 1987 being the daily net value of the stones, hardcores, gravels and properties of the plaintiffs being removed and sold daily by the 6th defendant on the area edge Yellow on the plan referred to above.”* C

It has been argued by the appellants that this is a claim for general damages. I am unable to accept that argument. The appellants have specifically pleaded what they allegedly lose daily in money value by the activities of the 6th defendant on the land. The distinction between special and general damages is usually a question of pleading and proof, and the mode of assessment. It is what is pleaded that shows in what manner the damages can be calculated and quantified upon strict proof: see *Ijebu-Ode Local Government v. Adedeji Balogun & Co.* (1991) 1 NWLR (pt. 166) 136 at p. 158; *Esiegebe v. Agholor* (1993) 9 NWLR (pt. 316) 128 at p. 145; *Badmus v. Abegunde* (1999) 11 NWLR (pt. 627) 493 at p. 502-503. The two courts below held that the 6th respondent was entitled to rely on the title of the 1st - 5th respondents to exploit the land in dispute. They further held that the N100,000.00 damages per day being a claim for special damages was not strictly proved. I therefore answer issue 4 in the affirmative. D  
E  
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Finally, issue 5 is on the question of costs of N14,000.00 awarded by the trial court against the appellants. The complaint is that the award is too high and was not done in the proper exercise of discretion, no reasons for the award having been given. I must observe that it is not correct to say no reasons were given for the award of costs in this case by the learned trial judge. Learned counsel for the 1st - 5th defendants [Alhaji Agbaje SAN] who also had a counter-claim (which succeeded), asked for N20,000.00 cost. He said that the survey plans they filed cost N10,000.00, several certified copies of documents cost money, and that there had been a total of 50 appearances while the case lasted four years. Learned counsel for G  
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the 6th defendant, Chief Delano, asked for N10,000.00 costs. He said that the 6th defendant paid ledger fee of N3,000.00 and made 20 appearances. Learned counsel for the plaintiffs, Mr. Olanipekun, said that the plaintiffs spent N15,000.00 to produce their survey plans. It was therefore obvious to the learned trial judge that there was basis for award of costs. He awarded N12,000.00 costs to the 1st - 5th defendants and N2,500.00 to the 6th defendant. He took into account (and so stated) the expenses incurred by the successful parties, the number of appearances and the length of time the case occupied. The award of costs is always at the discretion of court exercised reasonably. It is however well settled that costs follow the event which means that a successful party is entitled to costs unless there is any disabling circumstance to deprive him of that entitlement: see *Adenaiya v. Governor-in-Council* (1962) 1 SCNLR 442; *Obayagbona v. Obazee* (1972) 5 SC 247. Costs are not awarded as a punitive measure against the losing party but for the purpose of meeting the legitimate expenses of the successful party either wholly or partially as the court may see fit: see *Akinbobola v. Plisson Fisco Nigeria Ltd* (1991) 1 NWLR (pt. 167) 270. When costs are awarded on that basis, i.e. judicially and reasonably to compensate a successful party, an appellate court will be quite wary to interfere with the discretion of the court as to the amount of costs: see *Rewane v. Okotie-Eboh* (1960) SCNLR 461. On the other hand, if the award is made against established principles, it will be set aside by an appellate court; see *Agidigbi v. Agidigbi* (1996) 6 NWLR (pt. 454) 300. As that is not the case here, I answer issue 5 in the affirmative.

In the circumstances, I too find no merit in this appeal and therefore dismiss it with N10,000.00 costs to 1st - 5th respondents and N10,000.00 costs to the 6th respondent against the appellants.

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### ***EJIWUNMI JSC***

I was privileged to have read in advance the judgment just delivered by my learned brother Belgore, JSC in its draft form. In the said judgment, he had reviewed the facts of the issues raised thereon and had properly come to the conclusion that the appeal lacks merit. It is evident that this appeal is against the concurrent findings and facts made by the two Courts below. For the appeal to succeed in the

circumstances, the appellants must show from the arguments advanced in their favour that the Courts below in making the findings which were made by them, have proceeded upon improper or wrong valuation of the offence thereby reaching the wrong conclusions in respect of their finding. This is because this Court is very wary to interfere with decisions of the Court below, moreso where as in the instant case the appeal flows upon concurrent findings of the two Courts below. See *Adebayo v. Ighodalo* (1996) 5 NWLR (pt. 450) 507, *Oko v. Ntukidem* (1993) 2 NWLR (pt. 274) 124 at 135. B

Another point which deserves to be mentioned is with regard to issue 4 which is, whether the damages claimed against the 6th defendant were in the nature of special damages. A perusal of the Amended Statement of Claim shows quite clearly that the appellants cannot be right in claiming that the damages awarded in favour of the 6th respondent was in the nature of general damages. In disagreeing with that view, it must be borne in mind that special and general damages are treated differently. Where special damages are claimed as in this case, there must be evidence that strictly require to prove the nature of the damages being claimed. See *Esiegbe v. Agholor* (1993) 9 NWLR (pt. 316) 128 at page 145. Therefore it follows that in the instant case, the appellants must prove strictly those items of their claims for special damages to succeed. The trial Court below after a due consideration of the evidence, held that they failed to prove their claims as required of them. The Courts below affirmed this view of the trial Court. I have after a careful consideration of the evidence, also have no reason to depart from the considered views of the Courts below. The Courts below also held that the 6th respondent having obtained from the 1st - 5th respondents the right to the disputed land, were properly thereon and entitled to use same for its benefit. As I agree with that conclusion, I must resolve issue 4 against the appellant. The question raised in respect of issue 5 is very clearly upon the evidence before the Court. C D E F G

The question raised with where the costs awarded by the trial court against the appellants in the sum of N14,000.00 must clearly be resolved against the appellants. It is manifest from the facts which the learned trial judge duly considered that the costs awarded against the appellants were properly considered and like the court below, I have no reason to disturb the award of costs so made. H

In the result, I dismiss this appeal in its entirety upon the few reasons given above and the fuller reasons given in the judgment of my learned brother, Belgore JSC. I award the sum of N10,000.00 against the 5th respondent and also costs in the sum of N10,000.00 to the 6th respondent.

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