

SUPREME COURT OF NIGERIA
FRIDAY 24TH MAY, 2002. SC. 183/1997
CORAM:- M. L. UWAI, I. L. KUTIGI, A. I. IGUH,
A. I. KATSINA-ALU, E. O. AYOOLA, JJSC

AUGUSTINE NDULUE PLAINTIFF/APPELLANT
AND
NWANKWO IBEZIM
ROSALINE IBEZIM
(suit No AA/25/74)
AUGUSTINE NDULUE
AND
OKAFOR IGWALAZI-OKWE
(suit No AA/26/74)
IN RE: CHIEF GODFREY
ONYEKWULUNNE
AND
CHIEF CYRIL ORAGUDOSI RESPONDENTS
IN RE: CHIEF EMMANUEL
CHINYELUGO ONUGBU
(Councilor)

APPEALS - Fresh issue - Failure to obtain leave - Fate - Appellant cannot validly appeal against exercise of Court of Appeal's discretion - Since he neither sought nor obtained leave to do so (H1)

INJUNCTIONS - Perpetual injunction - Grant of - Propriety - No basis exists for the order made against Oraukwu people - Since no evidence or averment in pleadings exist that they are parties to the suits - Or that they are servants of defendants (H2)

LAND LAW - Trespass - Liability - Scope of - Where party asserts title of community - And the community supported him - Trespass of such a party could be said to be trespass of the community - But the position is different in this case (H3)

ACTIONS - Estoppel by standing by - Application - Person who stands by and sees his battle fought by others - Instead of applying to be

1314 Ndulue v. Igwalazi-Okwe (2002) 5 KLR (pt. 139) 1313; (2002) 12

joined as defendant - Is bound by the result arising therefrom - And estopped from reopening issues determined therein (H4)

ACTIONS - Representative action - Authorization - Authority to sue or to defend in such capacity - Must be given by other persons interested in suing or defending - Otherwise the action stands in personal capacity (H5)

ACTIONS - Representative action - Essential feature - Essence of such action is that representative and persons represented - Must be shown to have common interest in subject matter of the suit (H6)

ACTIONS - Representative action - Authorization - Proof - There must be evidence of authority to sue or defend - Given by persons being represented in the suit (H7)

JUDGMENTS - Delivery - Against nonparty - Fate - Judgment obtained against a nonparty to proceedings - And is also not caught by estoppel by standing by - Smacks of injustice and ought not to be allowed (H8)

COURTS - Reliefs - Grant of - Limit - Court does not grant to party - Relief which he has not sought - Or which is more than he has claimed (H9)

JUDICIAL PRECEDENTS - Actions - Ekwuno v. Ifejika - Decision reached - Supreme Court did not decide that a number of natural persons - Are not legal personae - And cannot therefore be subject matter of an order of court (H10)

ORDERS OF COURT - Injunction - Scope - The order was directed against entire people of Oraukwu - And was not made against non-juristic persons (H11)

COURTS - Appeals - Academic issues - Fate - Where a question before court is entirely academic or speculative - Appellate court will decline to decide the point (H12)

JUDGMENTS - Appeals - Issues - Determination - Appellate court decides if a decision is right and not reasons for same - Hence misdirection that occasions no injustice is immaterial (H13)

APPEALS - Judgments - Mistake - Effect - It is not every error in judgment - That results in appeal being allowed - As it is only when such error has occasioned a miscarriage of justice - That appellate court can interfere (H14)

FAIR HEARING - Breach - Since respondents were not given opportunity to defend themselves - Injunctive order made against them - Violated their right to fair hearing - As enshrined in 1979 Constitution s. 31(1) (H15)

FACTS

Plaintiff/appellant (acting in a representative capacity) instituted suit nos. AA/25/74 and AA/26/74 at the High Court of Anambra State, Awka against defendants, claiming damages for trespass and perpetual injunction restraining defendants and their agents from further trespass on a disputed piece of land. The suits were later consolidated. At the hearing, the parties testified on their own behalf and called witnesses in support of their claim over the disputed land. At the end of trial, the court entered judgment for appellant in each of the consolidated suit, as per the reliefs claimed. The court further granted perpetual injunction against defendants and against all persons from Oraukwu from further acts of trespass into the land. Defendants' appeal and further appeal to the Court of Appeal, Enugu and Supreme Court respectively, were dismissed by the courts.

Meanwhile, the people of Otta and Amada villages of Oraukwu and entire Oraukwu community were dissatisfied with the order of perpetual injunction issued by the trial High Court. Hence, they separately applied through their accredited representatives for leave to appeal as interested persons. The leave was granted and the appeals were consolidated by the Court of Appeal, Enugu Division. The appeals were allowed and that portion of the order of perpetual injunction granted by the trial court in so far as it affected all persons from Oraukwu was set aside. Appellant was aggrieved by this decision. Thus, he filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

1. *Whether in the light of the pleadings and evidence before the court of trial, the Court of Appeal was right to have set aside the order of injunction made against the entire people of Oraukwu town who were neither parties, nor represented in the suit.*

B 2. *Whether the order against “all people of Oraukwu” or “all persons from Oraukwu” was an order made against non juristic persons.*

C 3. *Whether the order made violated the respondents’ right to fair hearing guaranteed to every Nigerian by section 33 of the 1979 Constitution and, if it did, what is the effect?”*

HELD (Unanimously dismissing the appeal per lead

D judgment of **IGUH JSC**)

APPEALS - Fresh issue - Failure to obtain leave - Fate

1. In the present case, however, the appellant failed to appeal against the said decision of the court below in the exercise of its discretion. It seems to me that as the decision was not appealed against timeously and it is an appeal that required leave, but no such application for extension of time to seek leave to appeal etc. having been made or granted, the appellant cannot now raise the matter as an issue in this appeal. In the circumstance, issue 4 in the appellant’s brief of argument is hereby struck out. (p. 1325 H)

Perpetual injunction - Grant - Propriety

G **2. In my view, the court below was right in holding that there was no basis for the order of perpetual injunction made against the entire people of Oraukwu by the trial court in the suits. This is because, they were neither parties to the suits nor was it averred in the pleadings and established by evidence that they were servants and /or agents of the defendants.**
H (p. 1329 H)

Trespass - Liability - Scope of

3. The law is settled that where a party asserts the title of a

community and the community supported him, the trespass of such a party could be said to be the trespass of the community. In the present case, however, there is no iota of evidence nor was it pleaded that the respondents were in any way parties to or that they in any way supported or authorized the named defendants in their unlawful acts of trespass on the appellant's land. They may not therefore be rightly connected with the said defendants' acts of trespass. (p. 1330 A) B

Estoppel by standing by - Application

4. It is also settled that where a person was content to stand by and see his battle fought by some one else in the same interest instead of applying to be joined as a defendant in the case, he is bound by the result in that case and estopped from reopening the issues determined therein. Again, in the present case, there is neither a scintilla of evidence nor was it pleaded by the appellant in his Statement of Claim that the respondents had any battle to fight in the consolidated suits but stood by to see such a battle fought by the defendants in the same interest. The appellant's causes of action were purely personal against the defendants and neither concerned nor were they connected with any other interests which involved the respondents. Under such circumstances, it is difficult to fault the decision of the court below to the effect that the respondents were in no way connected with the defendants' unlawful acts of trespass on the land in dispute to justify the extension of the order of perpetual injunction against the defendants to cover the said respondents. (p. 1330 D) C
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Representative action - Authorization G

5. It is plain that under the above Rule of Court, while the approval of the court is required for a party to sue or to defend a suit in a representative capacity, the authorization to sue or to defend in such a representative capacity is to be given by the other persons interested to sue or to defend. In other words, the authorization for a person to sue on behalf of others must be given by the other persons or community interested in suing, and the authorization for a person to de- H

pend on behalf of others must be given by the persons or community interested in defending in such a suit for the benefit of or on behalf of all the parties so interested. If the authorization does not come from the other persons or community interested to sue or to defend, the action must stand in their personal capacity. (p. 1331 B)

Representative action - Essential feature

6. In the second place, it cannot be over emphasized that it is the very essence of a representative action, whether as plaintiffs or as defendants, that the representative and the persons represented must be shown to have a common interest in the subject matter of the suit. In the present cases, no facts were pleaded in the appellant's Statement of Claim which showed such a common interest between the defendants and the respondents with regard to the acts of trespass which constituted the causes of action in these proceedings. (p. 1331 H)

Representative action - Authorization - Proof

7. It ought also to be borne in mind that for the fact of authorization to sue or to defend on behalf of the respondents to be established, there must be evidence of some authorization given by the said respondents, the persons or the community to be represented in the suit. No such authorization was pleaded either or testified to in the present case. (p. 1332 B)

Judgments - Delivery - Against nonparty - Fate

8. It is my view also that a judgment obtained against a person who was not a party to the proceedings and is not caught by the doctrine of estoppel or standing-by smacks of injustice and ought not be allowed to stand. (p. 1332 E)

COURTS - Reliefs - Grant of - Limit

9. In this regard it is settled law that a court of law must not grant to a party a relief which he has not sought or which is more than he has claimed. In my view, the trial court had no jurisdiction and ought not to have made the injunctive order that was never claimed or asked for by the appellant when the

respondent were neither parties nor concerned, no matter how remotely, with the causes of action against the defendants in the consolidated suits. Issue 1 is accordingly resolved against the appellant. (p. 1333 E)

Ekwuno v. Ifejika - Decision reached B

10. With the greatest respect to the Court of Appeal, it does not seem to me that the decision of this court in Ekwuno v. Ifejika (supra) it relied on supports the conclusion it reached as stated above. In that case, some members of Obosi community were sued and, after their names was added “all of Obosi”. The issue that fell for determination before this court was whether the action was instituted against the Obosis in a representative capacity or against the named defendants personally. This court did not decide that a number of natural persons are not “legal personae” and cannot therefore be the subject matter of an order of court. (p. 1334 D) C

Injunction - Scope

11. It is crystal clear that the order of injunction as framed was binding on every man, woman and everybody from Oraukwu, each of whom is a legal persona represented in these proceedings by the respondents. The injunction was directed against “the entire people of Oraukwu” or “all persons from Oraukwu” and was not an order made against non-juristic persons. Happily, both learned Senior Advocates for the parties are, quite rightly in my view, in agreement on this point. (p. 1334 G) E

Appeals - Academic issues - Fate G

12. Where a question before the court is entirely academic or speculative, the appellate court in accordance with the well settled principle of this court will decline to decide the point. (p. 1335 B) F

Appeals - Issues - Determination

13. I should, perhaps add that what an appellate court has to decide is whether a decision appealed against is right and not

whether the reasons are and a misdirection not occasioning injustice is immaterial and need not affect the decision appealed against. (p. 1335 E)

Judgments - Mistake - Effect

- B **14. In other words, it is not every mistake or error 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.** (p. 1335 F)

FAIR HEARING - Breach

- D **15. Issue 3 deals with whether the order of injunction in issue in this appeal violated the respondents' right to fair hearing guaranteed under Section 33 of the 1979 Constitution. It is the contention of the respondents in this regard that they were denied fair hearing in that before the injunctive order was made against them they were not informed or given notice of the consolidated suits nor were they heard or accorded any opportunity to defend themselves or to be represented at the hearing of the suits. They argued that these denials amounted to flagrant violations of the provisions of Section 31(1) of the 1979 Constitution which guaranteed the right of fair hearing to all persons.**

- F **The Court of Appeal described the above contentions of the respondents as "serious violations of the provisions of Section 31 (1) of the 1979 Constitution which enshrine the right of fair hearing". I think the Court of Appeal is perfectly right in this conclusion and issue 3 must be resolved in favour of the respondents.** (p. 1336 A)

REPRESENTATION

Appellant absent - unrepresented but served.

- H Chief A. O. Mogboh, SAN for the respondents with him Messrs B. O. Eze and A. O. Obi.

CASES REFERRED TO

Obasi & Ors v. Oti & Anor (1966) 1 All NLR 282

Emegokwue v. Okadigbo (1973) 4 SC 113

Akinloye v. Eyiola (1968) NMLR 92

Dokubo & Anor v. Davies Bob-Manuel & Ors (1967) 1 All NLR 113

Disu & Ors v. Kalio (1964) 1 All NLR 89

Obasi & Ors v. Oti & Anor (1966) 1 All NLR 282

Adegbite & Ors v. Lawal & Ors (1948) 12 WACA 398

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Arowolo v. Adimula (1991) 8 NWLR (Pt. 212) 753

Akpata & Anor v. Ekem Obo & Anor (1960) SCNLR 103

Ukagu & Ors v. Ukachi (1961) 1 All NLR 36

Anyanwu v. Mbara (1992) 5 NWLR (Pt. 242) 386

C

Azuetonwa Ike v. Ugboaja (1993) 6 NWLR (Pt. 301) 539

Onajobi v. Olanipekun (1985) 4 SC

Adeyemi v. A-G Oyo State (1984) 2 SCNLR 525

Ukejianya v. Uchendu (1950) 13 WACA 45

D

STATUTE & RULES REFERRED TO

Constitution of Federal Republic of Nigeria 1979, ss.222, 31(1) & 33

High Court Rules Cap 61 Laws of Eastern Nigeria 1963, O. 4 r. 3

Supreme Court Rules 1985, O. 6 r. 8(6)

E

LEAD JUDGMENT BY IGUH JSC

The proceedings leading to this appeal were first initiated in the High Court of Justice of the now defunct East Central State of Nigeria, Awka/Amawbia Judicial Division, holding at Awka. Two suits were involved.

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In suit No. AA/25/74, the plaintiff, suing in a representative capacity for himself and on behalf of the people of Umuori, Neni filed the action against two defendants, a man and his wife who hailed from Amada village, Oraukwu claiming N600.00 damages for trespass and perpetual injunction. In the second suit No. AA/26/74, the same plaintiff in the same representative capacity as in suit AA/25/74 instituted the action against another defendant, also from Amada village, Oraukwu claiming N400.00 damages for trespass and perpetual injunction in respect of the same piece of land in dispute.

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It is important to note that one common feature in both suits is that the plaintiff, although suing in a representative capacity, expressly sued the defendants in their personal capacities. Both actions were on the application of the parties consolidated for the purpose of hear-

ing after pleadings were ordered in the suits and were duly settled, filed and exchanged.

The consolidated suits accordingly proceeded to trial and the parties testified on their own behalf and called witnesses. At the end of the trial, the learned trial Judge, Awogu, J. as he then was, entered judgment for the plaintiff against the defendants in each of the consolidated suits. He declared :-

“In conclusion, the claim of the plaintiff in AA/25/74 as well as in AA/26/74 succeeds. I award the sum of N600.00 as damages for trespass against the defendants, jointly and severally, in AA/25/74. I also award the sum of N400.00 as damages for trespass against the only defendant in AA/26/74. In addition, I grant a perpetual injunction against the defendants in AA/25/74 and the defendant in AA/26/74 as well as against all persons from Oraukwu, by themselves, their servants and agents, from further acts of trespass into the land of the plaintiff shown verged YELLOW in Exhibit E in these proceedings.”

The defendants' appeals to the Court of Appeal, Enugu Division in Appeal No. CA/E/31/88 against the said judgment of the trial court were dismissed on the 14th day of November, 1991. Their further appeals to this court in Appeal No. SC. 245/93 were also dismissed on the 28th day of March, 1995.

As will be observed above, the learned trial Judge after entering judgment for the plaintiff in each of the consolidated suits proceeded additionally to order a decree of perpetual injunction against *“all persons from Oraukwu”* town by themselves, their servants and agents from further acts of trespass into the said land of the plaintiff shown verged yellow in his plan, Exhibit E.

The people of Otta and Amada villages of Oraukwu being dissatisfied with this decision applied through their respective representatives for and were granted leave to appeal as interested or affected persons to the Court of Appeal against this order of perpetual injunction clamped against the entire Oraukwu town. Similarly the Oraukwu community as a whole through their representative also applied as affected persons and were granted leave to appeal to the Court of Appeal against the same judgment of the trial court in so far as it pertained to the gratuitous order of perpetual injunction granted against *“all persons from Oraukwu.”*

The said people of Otta and Amada villages of Oraukwu town

together with the Oraukwu community duly filed their respective appeals which were subsequently consolidated for the purpose of hearing by the Court of Appeal, Enugu Division. The appeals were at the conclusion of hearing allowed and that portion of the order of injunction granted by the trial court in so far as it affected “all persons from Oraukwu” was set aside. It is against this decision of the Court of Appeal that the plaintiff has now appealed to this court. I shall hereinafter refer to the plaintiff, of the one part, and the representatives of the people of Otta and Amada villages of Oraukwu, together with the representative of the Oraukwu community as a whole, of the other part, as the appellant and respondents respectively.

Five grounds of appeal were filed by the appellant against this decision of the Court of Appeal. These grounds of appeal, without their particulars, are as follows:-

“1. *The learned Justices of the Court of Appeal erred in law when they held in effect that the Order of Injunction made by the learned trial Judge binding all persons from Oraukwu when the defendants were sued in their personal capacities was incompetent in the absence of pleadings and evidence involving Oraukwu people and showing the defendants as fronts of Oraukwu people.*”

2. ERROR IN LAW:

The learned Justices of the Court of Appeal erred in law when they held that the order of the trial Justice against “all persons from Oraukwu” was made against a non legal entity.

3. *The learned Justice of the Court of Appeal erred in law when they held that the finding by the learned trial Judge that the defendants in the consolidated suits were fronts of the respondents was not based on the pleadings and evidence before him, but was a carry-over from the findings of various Judges in the previous suits between the appellants and various persons of Oraukwu community.*

4. *The learned Justices of the Court of Appeal erred in law when they held in effect that the principle “interest republicae ut sit finis litium” is inapplicable to justify the injunction against Oraukwu people.*

5. *The learned Justices of the Court of Appeal erred in law when they held that the injunction granted by the learned trial Judge is violative of Section 31 (1) of the 1979 Constitution.”*

Pursuant to the Rules of this Court, the parties, through their respective counsel, filed and exchanged their written briefs of argument.

The four issues submitted on behalf of the appellant for the determination of this appeal are set out as follows:-

B *“(1) Whether the Court of Appeal was right in setting aside the Order of injunction made by the trial Judge on the pleadings and evidence before him against the Respondents notwithstanding that the suits were instituted against the Respondents in their personal capacity, and notwithstanding that the said Order was not specifically*
C *asked for, and whether the said Order of injunction so made was violative of the principle of fair hearing, despite also of the Respondents’ awareness of the suits.*

D *(2) Whether the Order of injunction made against “all people from Oraukwu” or “all persons from Oraukwu” was an order against none legal persons warranting the setting aside of the said order by the Court of Appeal.*

E *(3) Whether the Court of Appeal was right in setting aside the injunction extended to the Respondents by the trial Judge in the light of the pleadings and evidence before him, which brought to an end repeated and incessant litigations between the parties as a result of the incessant encroachment of the Appellant’s land by the Respondents, their reckless disregard and characteristic defiance of court judgments and orders for decades.*

F *(4) Whether the Respondents are “persons having interest” in the matter under Section 222(a) of the 1979 Constitution as legally defined, to entitle them obtain leave to appeal to the Court of Appeal against the order of the learned trial Judge.”*

G The respondents, on the other hand, are of the view that having regard to the appellant’s grounds of appeal, only three issues arise for the determination of this appeal. These are framed thus:-

H *“1. Whether in the light of the pleadings and evidence before the court of trial, the Court of Appeal was right to have set aside the order of injunction made against the entire people of Oraukwu town who were neither parties, nor represented in the suit.*

2. Whether the order against “all people of Oraukwu” or “all persons from Oraukwu” was an order made against non juristic persons.

3. Whether the order made violated the respondents' right to fair hearing guaranteed to every Nigerian by section 33 of the 1979 Constitution and, if it did, what is the effect?"

With regard to the appellant's issue 4, it is the contention of the respondents' learned counsel in his brief of argument that the same is incompetent and should be struck out. It was argued that the issue depended on a point that ought to have been appealed against by the appellant but was not. Learned counsel submitted that the issue was never raised or canvassed before the court below, that the order sought to be challenged was within the competence and jurisdiction of the Court of Appeal and that the appellant, if he was dissatisfied with the said order, ought to have timeously appealed against it. This, he failed to do. He urged the court to strike out the appellant's issue 4.

It is evident that the appellant's issue 4 has arisen directly from the order of the Court of Appeal upon applications on notice granting leave to the respondents to file appeals to the court below against that part of the judgment of the trial court which extended the order of perpetual injunction granted against the defendants in the consolidated suits to include "all persons from Oraukwu" town. The case of the respondents is that the order complained of directly affected them even though they were neither parties to the suits nor privies to the defendants in the consolidated suits.

At the conclusion of the hearing of the applications, the Court of Appeal, based on the materials before it and in the exercise of its discretion, granted the same on the 10th day of December, 1996. This order granting leave to the respondents to appeal as persons interested under Section 222 of the 1979 Constitution is one which the Court of Appeal had the jurisdiction, competence and power to make. It was also an appealable order or decision which that court made in the exercise of its judicial discretion. The law is settled that unless such a discretion is shown to have been wrongly exercised or exercised upon some erroneous principles or that the exercise was tainted by some illegality or substantial irregularity, this court, on principle, will not interfere with the exercise of that discretion. See *Anyah v. A.N.N Ltd.* (1992) 6 N.W.L.R. (Part 247) 331.

In the present case, however, the appellant failed to appeal against the said decision of the court below in the ex-

ercise of its discretion. It seems to me that as the decision was not appealed against timeously and it is an appeal that required leave, but no such application for extension of time to seek leave to appeal etc. having been made or granted, the appellant cannot now raise the matter as an issue in this appeal. In the circumstance, issue 4 in the appellant's brief of argument is hereby struck out.

I have examined the two sets of issues identified in the respective briefs of argument of the parties and it seems to me that having regard to the grounds of appeal filed, the three issues formulated on behalf of the respondents clearly cover those set out on behalf of the appellants are enough for the determination of this appeal. I shall therefore adopt the issues identified on behalf of the respondents for my determination of this appeal.

At the oral hearing of the appeal before us, both the appellant and G. E. Ezeuko, Esq S.A.N. the learned Senior Advocate of Nigeria who settled his brief of argument were absent although duly served with hearing notice in respect of the appeal. Learned Senior Advocate of Nigeria, Chief A. O. Mogboh at the hearing of the appeal appeared on behalf of the respondents. Both parties having filed and exchanged their respective briefs of argument in respect of the appeal, the court was obliged pursuant to the provisions of Order 6 Rules 8(6) of the Supreme Court Rules, 1985, as amended, to treat the appeal as having been argued on behalf of the appellant and was considered as such. Learned respondents' counsel, however, expressly adopted his brief of argument and proffered additional submissions in amplification thereof.

The first issue raised by both parties in their respective briefs of argument concerned the question whether in the light of the pleadings and evidence of the parties before the trial court, the Court of Appeal was right to have set aside the order of perpetual injunction made against the "*entire people of Oraukwu*" town who were neither parties to the action nor represented in whatever manner in the suits.

In this regard, the main contention of Mr. Ezeuko, S.A.N. in his appellant's brief of argument is that in the light of the pleadings, the evidence and the findings of the learned trial Judge, the order of injunction made against the respondents was justified. In his view the

defendants in the consolidated suits were found to have acted as fronts for the respondents, namely, the Oraukwu Community and the court under such circumstance was entitled to grant the order of perpetual injunction against the entire members of Oraukwu town. Relying on the decision of this court in *Kalu Obasi and Ors. v. Chief Okereke Oti and Another* (1966) 1 All N.L.R. 282 at 286, learned Senior Advocate submitted that where a party asserts the title of a community and the community supported him, the trespass of such a party could be said to be the trespass of the community. He argued that the Oraukwu community having supported and encouraged the defendants in their acts of trespass must, as it were, be properly regarded as parties or the privies of the defendants in the suits. He contended that although no permanent injunction was specifically claimed in the suits against the respondents, they were, as privies, included in and bound by the injunction granted against the defendants. He therefore submitted that the appeal by the respondents attacking the injunction ordered against them ought to have been dismissed by the court below.

Learned counsel for the respondents, Chief A. O. Mogboh S.A.N., on the other hand, submitted that the appellant in the two consolidated suits expressly pleaded and this was admitted by the defence that each of the three defendants was sued personally and not in a representative capacity. Consequently, he contended that the order of injunction clamped against “*all persons from Oraukwu*” who were not a party to the proceedings is patently wrong. He argued that it was not averred by the appellant in any of the consolidated suits that the Oraukwu community participated in, authorized or ratified the tort of trespass for which the defendants were sued personally. In this connection, learned counsel referred to the decision in *Emegokwue v. Okadigbo* (1973) 4 S.C 113 at 117 and *Akinloye v. Eyiola* (1968) N.M.L.R. 92 and stressed that evidence, if any, that is neither pleaded nor in line with facts averred in the pleadings goes to no issue and must be discountenanced. He pointed out that the question of representation by parties is not a matter of presumption or speculation but an issue of fact. He stressed that in the absence of clear averments to show that the named defendants acted on behalf of or as representative of or “front” for the Oraukwu community in the suits and had been duly authorized to defend in

such representative capacity, there would be no legal justification to extend to the respondents the order of injunction which is the subject matter of this appeal. In support of this contention, learned counsel drew the attention of the court to decisions of this court in *Dokubo and Another v. Davies Bob-Manuel and others* (1967) 1 All N.L.R. B 113 and *Habib Disu and others v. Daniel Kalio* (1964) 1 All N.L.R. 89. He submitted that in-as-much-as the defendants were sued personally by the appellant in the consolidated suits and not in any representative capacity for and on behalf of the respondents, the order C of permanent injunction made against them was totally indefensible and unjustifiable.

It seems to me clear that what falls for determination under issue 1 is whether or not the court below was right in holding that there was no justification on the part of trial court to impose the D injunctive order it issued against the defendants in the consolidated suits to cover each and every person from Oraukwu town, otherwise called the Oraukwu community. This order of the trial court would be justifiable if the respondents are parties to the suits or if from establish evidence as pleaded, they are otherwise servants, agents or E privies of the defendants in these suits.

In this regard, the term “*parties*” has been defined to include not only those named in the record of proceedings but also those who had direct interest in the subject matter of the dispute and had F an opportunity to attend the proceedings and to join as a party in the suit but chose not to do so but were content to stand-by and see the battle in which their interest is directly in issue fought by somebody else or let witnesses testify as to their title to or interest in the subject matter of the action. See *Olowo Okukuje v. Odejeninia Akwido* (2001) G 3 N.W.L.R. (part 700) 261; *Odua Esiaka and others v. Vincent Obiasogwu and others* (1952) 14 W.A.C.A. 178 at 180; *Re Lart Wilkinson v. Blades* (1896) 2 Ch. 788. Against this background, it is now necessary to determine whether from the pleadings and the evidence led, the respondents in the present proceedings can be said H to be parties or the servants, agents or privies of the defendants in the suits. I will examine the claims and the pleadings first.

As I have already observed, the two suits under consideration were initiated at the Awka High Court as suits numbers AA/25/74 and AA/26/74. The plaintiff, now the appellant in both suits, is one

Augustine Ndulue who prosecuted both actions for himself and on behalf of the Umuori people of Neni. The two defendants in the first suit are said to be Nwankwo Ibezim and Rosaline Ibezim, a husband and wife described as natives of Oraukwu. They were both sued personally and the claims against them jointly and severally were for:-

“(a) N600.00 damages for trespass. B

(b) *Injunction to restrain the defendant, their servants and agents from further quarrying of the stones without the consent of the plaintiff and his people.”*

The sole defendant in the second suit, Okafor Igwalazi-Okwe, C also said to be a native of Oraukwu was sued personally for :-

(a) N400.00 damages for trespass.

(b) *Injunction to restrain the defendant, his servants and agents from further interference with the said tombo grove and swamps and palm trees and utilizing them thereof.”* D

The claims against all three defendants in the consolidated suits were not only prosecuted in their personal capacities, it was further pleaded in paragraph 2 of the appellant’s amended statement of claim in each suit and admitted in the defendants’ Statement of Defence that the said defendants were “*sued personally*”. No issue was therefore raised in the pleadings in both suits as to the capacity in which the defendants were sued. Admittedly, they were sued in their personal capacities and not in any representative capacity whether for and on behalf of the respondents or, for and on behalf of any other group or community. E F

It is also pertinent that no averment of whatever nature was made in the appellant’s Statements of Claim against the defendants or any other member of Oraukwu Community in connection with the acts of trespass which constituted the subject matter of the appellant’s causes of action in the present suits. Neither was it averred that apart from the defendants, the respondents or any other persons from Oraukwu Community committed or threatened to commit any unlawful acts of trespass on the land in dispute unless restrained by an order of injunction. It is clear to me that what were before the court were purely personal actions against the defendants in their personal capacities. ***In my view, the court below was right in holding that there was no basis for the order of perpetual injunction made against the entire people of Oraukwu by the*** G H

trial court in the suits. This is because, they were neither parties to the suits nor was it averred in the pleadings and established by evidence that they were servants and/or agents of the defendants.

The law is settled that where a party asserts the title of a community and the community supported him, the trespass of such a party could be said to be the trespass of the community. See Kalu Obasi and others v. Chief Okereke Oti and Another (1966) 1 All N.L.R. 282 at 286. **In the present case, however, there is no iota of evidence nor was it pleaded that the respondents were in any way parties to or that they in any way supported or authorized the named defendants in their unlawful acts of trespass on the appellant's land. They may not therefore be rightly connected with the said defendants' acts of trespass.**

It is also settled that where a person was content to stand by and see his battle fought by someone else in the same interest instead of applying to be joined as a defendant in the case, he is bound by the result in that case and estopped from reopening the issues determined therein. See Olowo Okukuje v. Odejeninia Akwido (2001) 3 N.W.L.R. (Part 700) 261. **Again, in the present case, there is neither a scintilla of evidence nor was it pleaded by the appellant in his Statement of Claim that the respondents had any battle to fight in the consolidated suits but stood by to see such a battle fought by the defendants in the same interest. The appellant's causes of action were purely personal against the defendants and neither concerned nor were they connected with any other interests which involved the respondents. Under such circumstances, it is difficult to fault the decision of the court below to the effect that the respondents were in no way connected with the defendants' unlawful acts of trespass on the land in dispute to justify the extension of the order of perpetual injunction against the defendants to cover the said respondents.**

Reverting once again to the question of representation and whether or not the defendants defended the consolidated suits in a representative capacity for themselves and on behalf of the respondents or anyone else, attention must be drawn to the provisions of

Order 4 Rule 3 of the High Court Rules Cap 61 of the Laws of Eastern Nigeria, 1963 which were applicable at all times material to the trial of the consolidated suits. These provide as follows:-

“Where more persons than one have the same interest in one suit one or more of such persons may, with the approval of the court, be authorized by the other persons interested to sue or to defend in such suit, for the benefit of or on behalf of all parties so interested”.

It is plain that under the above Rule of Court, while the approval of the court is required for a party to sue or to defend a suit in a representative capacity, the authorization to sue or to defend in such a representative capacity is to be given by the other persons interested to sue or to defend. In other words, the authorization for a person to sue on behalf of others must be given by the other persons or community interested in suing, and the authorization for a person to defend on behalf of others must be given by the persons or community interested in defending in such a suit for the benefit of or on behalf of all the parties so interested. See Adegbite and others v. Lawal and others (1948) 12 W.A.C.A. 398. See too Arowolo v. Adimula (1991) 8 N.W.L.R. (Part 212) 753 at 767; Eketek Akpata and Another v. Chief Ekem Obo and Another (1960) S.C.N.L.R. 103; Ukagu and others v. Ukachi (1961) 1 All N.L.R. 36. ***If the authorization does not come from the other persons or community interested to sue or to defend, the action must stand in their personal capacity.*** See Adegbite v. Lawal & others, (supra). Where, however, an action is properly instituted in a representative capacity and/or against persons or a community in a representative capacity, that action is not only by or against the named parties, it is also against and by those the named parties represent. And so, even if all the named parties die, the action still subsists on behalf of or against those they represent but who have not been stated nomine but the action cannot be prosecuted or defended until a living person has been substituted for the named dead party. See Obi Okonji and others v. George Njokanma (1989) 4 N.W.L.R. (Part 114) 161.

In the present case, it was neither pleaded nor was there evidence that the respondents or any other community for that matter authorized the defendants to represent them in the consolidated suits. ***In the second place, it cannot be over-emphasized that it is***

the very essence of a representative action, whether as plaintiffs or as defendants, that the representative and the persons represented must be shown to have a common interest in the subject matter of the suit. In the present cases, no facts were pleaded in the appellant's Statement of Claim which showed
 B **such a common interest between the defendants and the respondents with regard to the acts of trespass which constituted the causes of action in these proceedings.**

It ought also to be borne in mind that for the fact of authorization to sue or to defend on behalf of the respondents to
 C **be established, there must be evidence of some authorization given by the said respondents, the persons or the community to be represented in the suit.** See Olowo Okukuje v. Odejenima Akwido (supra). **No such authorization was pleaded either or**
 D **testified to in the present case.** I fully endorse the observation of Brett, F.J. in the case of Eketé Okpata and Another v. Chief Ekem Obo and Another (1960) S.C.N.L.R. 103 at 110 where he commented thus :-

"... I agree with the Chief Justice that Okpuritonia have identified themselves with the defendants, but I am with regret, unable to agree with him that the court has jurisdiction to grant an injunction against persons who are neither formally parties to, nor represented in a suit" (Underlining supplied for emphasis)

It is my view also that a judgment obtained against a person who was not a party to the proceedings and is not caught by the doctrine of estoppel or standing-by smacks of injustice and ought not be allowed to stand. In my view, the court below was perfectly right when in its judgment it observed as
 F follows:-
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"In the instant case, as earlier observed, the Oraukwu community was not sued in the consolidated suits nor were they joined as a party. There is no evidence in the consolidated suits that anybody was authorized to represent the Oraukwu community in those suits,
 H *or that the defendants were "fronts" for Oraukwu community. On the contrary, the pleadings and evidence on the cold record unequivocally confirmed that the suits were fought by the defendants in their personal capacities, having been so sued in those capacities. There is nothing either from the pleadings or evidence to show that the*

Oraukwu people were a party to the suits. Indeed, these three defendants were individual members of Amada village of Oraukwu and the suits were not even instituted against them as representing the Amada village. Not surprisingly therefore, the learned trial judge was so amazed about the total lack of commitment of Oraukwu people in the consolidated suits that he unreservedly said in his judgment at p. 122 line 33-34, and p. 123 line 1:

“The defendants have not called a single witness from Amada village or from Oraukwu to testify that the land belongs to Amade or Oraukwu. All I have for it is their ipse dixit.”

It is therefore a matter of some serious concern that a judge, having found that the villages of Amada and the Oraukwu community had not only completely distanced themselves from the consolidated suits and demonstrated glaring apathy to the said suits, yet makes an abrupt somersault wherein he clamps an injunctive order on the very unsuspecting people of Oraukwu community upon the fancied notion that the “*enough is enough*” posture would justify that order.”

One final point must be made with regard to issue 1. This is the undisputed fact that the order of perpetual injunction made by the trial court against the respondents was at no time asked for by the appellant in the reliefs he claimed. ***In this regard it is settled law that a court of law must not grant to a party a relief which he has not sought or which is more than he has claimed.*** See Ekpenyong v. Nyong (1975) 2 S.C. 71 at 81-82; Union Beverages v. Owolabi (1988) 2 N.W.L.R. (part 68) 128 at 133; Makanjuola v. Balogun (1989) 3 N.W.L.R. (Part 108) 192 at 206; Olurotimi v. Ige (1993) 8 N.W.L.R. (part 311) 257 at 271 etc. ***In my view, the trial court had no jurisdiction and ought not to have made the injunctive order that was never claimed or asked for by the appellant when the respondent were neither parties nor concerned, no matter how remotely, with the causes of action against the defendants in the consolidated suits. Issue 1 is accordingly resolved against the appellant.***

Issue 2 poses the question whether the order of the trial court against “all persons from Oraukwu” as found by the court below is an order made against non juristic persons to warrant the settling aside of the order of injunction in issue. The Court of Appeal, relying

on the decision of this court in Ekwuno v. Ifejika (1960) S.C.N.L.R. 320 had per the leading judgment of Achike, J.C.A. as he then was, with which Tobi J.C.A. (as he then was) and Ubaezonu J.C.A. agreed concluded as follows :-

B *“the term “all persons from Oraukwu”, in my view, is not a legal entity even though they are a large number of natural persons who can sue and be sued in a representative capacity”.*

C Learned counsel for the appellant, G. E. Ezeuko Esq., S.A.N. had argued in his brief of argument that the order of injunction made by the learned trial Judge was directed against identifiable human beings who are clearly legal persons and may not therefore be faulted. For his own part, Chief A. O. Mogboh Esq., S.A.N. for the respondents conceded that *“all persons from Oraukwu by themselves, their servants and agents”* means *“every man, woman and every body D from Oraukwu, each of whom is a physical person and a legal entity”* together with their servants and agents, that is to say, *“the entire people of Oraukwu”* or *“all persons from Orakwu”*.

With the greatest respect to the Court of Appeal, it does not seem to me that the decision of this court in Ekwuno v. E Ifejika (supra) it relied on supports the conclusion it reached as stated above. In that case, some members of Obosi community were sued and, after their names, was added “all of Obosi”. The issue that fell for determination before this court was whether the action was instituted against the Obosis in a F representative capacity or against the named defendants personally. This court did not decide that a number of natural persons are not “legal personae” and cannot therefore be the subject matter of an order of court.

G ***It is crystal clear that the order of injunction as framed was binding on every man, woman and everybody from Oraukwu, each of whom is a legal persona represented in these proceedings by the respondents. The injunction was directed against “the entire people of Oraukwu” or “all persons from H Oraukwu” and was not an order made against non-juristic persons. Happily, both learned Senior Advocates for the parties are, quite rightly in my view, in agreement on this point.***

Learned counsel for the respondents did however add that the respondent's concession on issue 2 does not in any way fault the

decision of the Court of Appeal. He argued that this is because the bone of contention between the parties is not whether or not the respondents are legal personae, capable of suing or being sued but whether the order of permanent injunction made against them was legally justifiable in all the circumstances of the case.

The crucial issue between the parties has already been resolved by me against the appellant under issue 1 and it is sufficient for the determination of this appeal. The position, to a large extent, renders any detailed consideration of issue 2 entirely academic in this appeal. **Where a question before the court is entirely academic or speculative, the appellate court in accordance with the well settled principle of this court will decline to decide the point.** See Nkwocha v. Governor of Anambra State (1984) 6 S.C. 302; Governor of Kaduna State v. Dada (1986) 4 N.W.L.R. (Part 38) 687; Richard Ezeanya and others v. Gabriel Okeke and others (1995) 4 D N.W.L.R. (Part 388) 142 etc. True enough, the decision of the Court of Appeal to the effect that the injunctive order of the trial court made against “all persons from Oraukwu” is an order made against non-juristic persons and therefore liable to be set aside is erroneous on point of law, **I should, perhaps add that what an appellate court has to decide is whether a decision appealed against is right and not whether the reasons are and a misdirection not occasioning injustice is immaterial and need not affect the decision appealed against.** See Ukejianya v. Uchendu. (1950) 13 F W.A.C.A. 45 at 46; Emmanuel Ayeni and others v. Williams Sowemimo (1982) 5 S.C. 60 at 73-75. See too Adeyemi v. Attorney-General, Oyo State (1984) 2 S.C.N.L.R. 525 at 575. **In other words, it is not every mistake or error 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; Azuetonwa Ike v. Ugboaja (1993) 6 N.W.L.R. (part 301) 539 at 556; Anyanwu v. Mbari (1992) 5 N.W.L.R. (Part 242) 386 at 400 etc. But as issue 2 is entirely academic and essentially a matter of no consequence in the determination of this appeal having regard to my resolution of issue 1 in favour of the respondents, I must decline to make further comments thereupon.

Issue 3 deals with whether the order of injunction in issue in this appeal violated the respondents' right to fair hearing guaranteed under Section 33 of the 1979 Constitution. It is the contention of the respondents in this regard that they were denied fair hearing in that before the injunctive order
B ***was made against them they were not informed or given notice of the consolidated suits nor were they heard or accorded any opportunity to defend themselves or to be represented at the hearing of the suits. They argued that these denials***
C ***amounted to flagrant violations of the provisions of Section 31(1) of the 1979 Constitution which guaranteed the right of fair hearing to all persons.***

The Court of Appeal described the above contentions of the respondents as "serious violations of the provisions of
D ***Section 31 (1) of the 1979 Constitution which enshrine the right of fair hearing". I think the Court of Appeal is perfectly right in this conclusion and issue 3 must be resolved in favour of the respondents.***

E In the final result, this appeal fails and it is hereby dismissed with costs to the respondents against the appellant which I assess and fix at N10,000.00.

UWAIS CJN

F I have had the opportunity of reading in draft the judgment read by my learned brother Iguh, JSC. I entirely agree that the appeal lacks merit and that it should be dismissed.

Accordingly, I too hereby dismiss the appeal with N10,000.00
G costs to the Respondents against the Appellant.

KUTIGI JSC

H I read in advance the judgment just rendered by my learned brother Iguh J.S.C. I agree with his reasoning and conclusions. The appeal is clearly without merit and it is accordingly dismissed with costs as assessed. The judgment of the Court of Appeal is confirmed.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother Iguh JSC., in this appeal. I totally agree with it. My learned brother Iguh JSC, had dealt exhaustively with the issue arising for determination that I must confess there is nothing I can usefully add. B

AYOOLA JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother, Iguh, JSC. I agree with him that this appeal should be dismissed and with the reasons he gives. I too dismiss the appeal with N10,000 costs to the respondent. C

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