

**SUPREME COURT OF NIGERIA**  
FRIDAY 31ST JANUARY, 2003. SC. 44/1997  
**CORAM:- I. L. KUTIGI, M. E. OGUNDARE, U.**  
**MOHAMMED, U. A. KALGO, A. O. EJIWUNMI, JJSC**

TIAMIYU ADEWOLE ..... APPELLANT  
AND  
JOSEPH POPOOLA DADA ..... RESPONDENT

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APPEALS - Concurrent findings - Supreme Court does not interfere  
- Save when such findings are perverse - Or have occasioned a mis-  
carriage of justice (H1)

LAND LAW - Trespass - Claim for - Scope - Claim for trespass is not  
dependent on claim for title - As issue in trespass is whether plaintiff  
has established actual possession of the land (H2)

LAND LAW - Injunction - Claim for - Sustainability - Claim for in-  
junction is not necessarily to fail after claim for title fails - Provided  
area of land in respect of which injunction is sought is clearly defined  
(H3)

LAND LAW - Possession - Trespass - A person can be in possession  
through a third party - And possession of a predecessor-in-title is  
deemed to be continued by his successor (H4)

**FACTS**

Plaintiff/respondent sued defendant/appellant in the High Court  
of Oyo State, holden at Ibadan, claiming damages for trespass and  
injunction. Respondent's case is that the land in dispute forms part of  
a large tract of land originally belonging to one Fijabi by settlement.  
Fijabi made an absolute grant of the portion in dispute to Alade, the  
great grand-father of the respondent. He thus traced his root of title  
to his great grand-father. In contrast, the case of appellant is that the  
disputed land never belonged to any Fijabi but rather to one  
Abodunde Ajagbe Igo, appellant's grand-father, who acquired same  
by settlement and that the property subsequently devolved in him  
by inheritance. According to him, it was the said Abodunde who

allotted part of the disputed land to Dada, respondent's grand-father and not Alade as contended by respondent.

At conclusion of trial, the learned trial judge found for respondent, preferring his traditional history to that of appellant. Consequently, he held that the only portion granted to appellant's grand-father was as per the plan of respondent. And that appellant having gone beyond that portion to other area of the land was liable for trespass. Dissatisfied, appellant appealed to the Court of Appeal, Ibadan Division. The court dismissed his appeal and affirmed the judgment of the trial court. Appellant has brought this further appeal to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(a) Whether the Plaintiff who failed to prove his title to the land in dispute could sustain his claim for trespass against the Defendant in the circumstances.*

*(b) Whether on the pleadings and facts before the Court, the Defendant committed any act of trespass against the Plaintiff.*

*(c) Whether an appellate court could go outside issues formulated before it to dismiss an appeal.*

*(d) Whether justice of the case warranted the grant of an injunction against the Defendant.”*

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

*APPEALS - Concurrent findings*

**1. As I have said already these issues relate to the findings of fact of acts of trespass on the part of the defendant by both the trial High Court and the Court of Appeal and, the consequent award of damages for trespass and the grant of an order of injunction restraining the Defendant from committing further acts of trespass on the disputed land. It was the same argument in the Court of Appeal as well as in this Court. The short answer is that this Court ought not to disturb or lightly depart from concurrent findings of fact of the two lower Courts as it has no opportunity of seeing and listening to the witnesses testify unless in exceptional circumstances when it is**

**shown that such concurrent findings were perverse or based on a wrong perspective of the whole case, which if uncorrected will lead to a miscarriage of justice.**

**Defendant's counsel in his brief has not been able to show that the finding of trespass against the Defendant by the two lower Courts was perverse. The record which I have read clearly established that the finding was supported by evidence before the trial Court. (p. 89 A)**

*Trespass - Claim for - Scope*

**2. It is settled law that a claim for trespass as in this case, is not dependent on the claim for a declaration of title because the issues to be decided on the claim for trespass are whether the plaintiff has established his actual possession of the land and the Defendant trespassed on it, as was done in this case. These are separate and independent issues from that in a claim for a declaration of title. (p. 89 F)**

*LAND LAW - Injunction - Claim for - Sustainability*

**3. The law is equally settled that a claim for an Injunction is not necessarily to fail after a claim for a declaration of title fails provided the area of the land in respect of which an injunction is sought is clearly defined. It is clear from the record that the Plaintiff in this case did not claim for a declaration of title. The Defendant has woefully failed in my view to impugn the judgments of the lower Courts. (p. 90 A)**

*LAND LAW - Possession*

**4. The brief shows that this issue is clearly misconceived. Defendant appeared to be saying that (i) the removal of pillars on the land in dispute and (ii) the chasing away of Plaintiff's tenants away from the land in dispute were not acts of trespass against the Plaintiff but against the tenants who were in physical possession. The Defendant also contended that the removal of pillars was not a continuing trespass. The Defendant no doubt knew that the tenants on the land were put there by the plaintiff. So also were the pillars. And the land belonged to the plaintiff. What else does the Defendant want? Those**

**acts constitute acts of possession on the part of the Plaintiff. A person can certainly be in possession through a third party, such as servant, agent or tenant as in this case. Also possession of a predecessor-in-title is in law deemed to be continued by his successor.** (p. 90 C)

B

**REPRESENTATION**

Chief O. A. Ogundeji, for the Defendant/Appellant  
Lasun Sanusi, for the Plaintiff/Respondent

C

**CASES REFERRED TO**

Aruna v. The State (1990) 6 NWLR (Pt. 155) 125  
Nwadiogbu v. Nkwocha (2001) FWLR (Pt. 61) 1625  
Dibiamaka v. Osakwe (1989) 5 S.C. 53

D

**LEAD JUDGMENT BY KUTIGI JSC**

In the High Court of Justice holden at Ibadan the Plaintiff claimed against the Defendant as follows -

E      “1. *N1,000.00 representing damages for trespass committed and still being committed by the defendant by himself and through his agents on the Plaintiffs land situate, lying and being at Idi-Ogun Awotan via Ibadan.*

F      2. *INJUNCTION restraining the Defendant by himself, his agents, servants and or privies or otherwise however from committing further acts of trespass on the said land.”*

G      The pleadings ordered were duly filed and exchanged between the parties. These were later amended by leave of Court. At the hearing both the Plaintiff and the Defendant gave evidence and called witnesses to support their respective claims.

H      Briefly stated the Plaintiff’s case is that the land in dispute forms part of a large tract of land originally belonging to one Fijabi by settlement. In his life time Fijabi granted absolutely a portion of his land to Alade, the great grand-father of the Plaintiff. Alade gave birth to two children, Dada (male) and Iyabode (female). Iyabode died without issue and Dada inherited Alade’s landed property. The grant devolved on Dada’s children including the Plaintiff’s father who exercised various acts of ownership and possession on the land right from the grant including for example a grant made by Dada to one Fagbemi, the

father of the Defendant for building and farming purposes. The area granted to Fagbemi by Dada is verged yellow in the Plaintiff's Plan, Exhibit A in the proceedings. The Defendant had built houses on the area granted to his father and the Plaintiff is not claiming that portion of the land edged yellow.

On the other hand the Defendant claimed that the land in dispute did not at any time form part of the land originally owned by Fijabi. He said one Abodunde Ajagbe Igo, his grand-father acquired same by settlement and that the property had devolved on him by inheritance. He claimed that it was Abodunde Ajagbe who made an allotment of part of the land in dispute to Dada, Plaintiffs grand-father and not to Alade, Plaintiff's great grand-father, and that it was on the basis of payment of Ishakole or tribute by Dada.

At the conclusion of evidence counsel on both sides addressed the Court. The learned Trial Judge in a reserved judgment carefully considered the facts of the case and the issues raised before him and found for the Plaintiff when he concluded his judgment as follows:-

*"Having accepted the Plaintiff's case - the grant to his ancestor, I hold that the only portion granted by his grand-father to Fagbemi was that area edged yellow to which the Defendant was called and on which the Defendant had built three houses. The Defendant, having been found on other area of the land in dispute as testified truthfully in my view by 7th Plaintiff witness, has committed acts of trespass for which he should pay damages, assessed at N200.00 (Two Hundred Naira). As the leg of trespass of the plaintiff's claim has succeeded, an order of injunction should follow as the Plaintiff is not prepared on the evidence before me to entertain the Defendant's presence on the land in dispute, as distinguished from the area conceded to the Defendant's family. See Obonor v. Obonor (1976) 1 All NLR 39 at 43.*

*In conclusion the Defendant, his agents, servants and or privies or otherwise howsoever are restrained from committing further acts of trespass on the land in dispute."*

Dissatisfied with the judgment of trial High Court, the Defendant appealed to the Court of Appeal holden at Ibadan. The following issues were formulated for determination in that court -

*"1. Whether the Plaintiff proved title to the land in dispute by was grant to Alade by Fijabi by credible evidence of the Plaintiffs 3rd*

and 5th witnesses.

2. *Whether on the evidence before the learned trial Judge the Defendant committed and was still committing acts of trespass on the land in dispute by himself and through his agents.*

3. *Whether the Plaintiff was entitled to the order of injunction against the Defendant in respect of the land in dispute.”*

The Court of Appeal, (Coram Ogundare, Ogwuegbu and Salami, JJCA.), carefully considered each and everyone of the above issues and found against the Defendant on each of them. Salami, JCA., in the lead judgment (which was concurred in by the other Justices) concluded as follows-

*“All the Grounds of Appeal canvassed on behalf of the appellant (meaning Defendant) fail and are dismissed. Accordingly the appeal fails and it is dismissed by me. The Respondent (meaning Plaintiff) is entitled to the costs of this appeal which I assess at N300.00.”*

Still dissatisfied with the judgment of the Court of Appeal, the Defendant has now further appealed to this Court. In obedience to the Rules of Court, counsel on both sides have filed and exchanged their briefs of argument in the appeal. These were adopted and relied upon at the hearing.

Chief Ogundeji, learned counsel for the Defendant, had identified the following issues as arising for determination in this appeal -

*“(a) Whether the Plaintiff who failed to prove his title to the land in dispute could sustain his claim for trespass against the Defendant in the circumstances.*

*(b) Whether on the pleadings and facts before the Court, the Defendant committed any act of trespass against the Plaintiff.*

*(c) Whether an appellate court could go outside issues formulated before it to dismiss an appeal.*

*(d) Whether justice of the case warranted the grant of an injunction against the Defendant.”*

A careful reading of the issues above will clearly reveal that issues (a) and (b) are both rooted in the finding of trespass against the Defendant. These issues are therefore the same as issue (2) in the Court of Appeal. Issue (d) here now is the same as issue (3) in the Court of Appeal as they both relate to the grant of an injunction against the Defendant. The only new issue before this Court now is therefore issue (c). I therefore intend to consider issues (a), (b) and

(d) together and issue (c) separately.

Issues (a), (b) and (d)

***As I have said already these issues relate to the findings of fact of acts of trespass on the part of the defendant by both the trial High Court and the Court of Appeal and, the consequent award of damages for trespass and the grant of an order of injunction restraining the Defendant from committing further acts of trespass on the disputed land. It was the same argument in the Court of Appeal as well as in this Court. The short answer is that this Court ought not to disturb or lightly depart from concurrent findings of fact of the two lower Courts as it has no opportunity of seeing and listening to the witnesses testify unless in exceptional circumstances when it is shown that such concurrent findings were perverse or based on a wrong perspective of the whole case, which if uncorrected will lead to a miscarriage of justice*** (see for example *Ebba v. Ogodo* (1984) 4 S.C. 84; *Dibiamaka v. Osakwe* (1989) 5 S.C. 53; (1989) 3 NWLR (Pt.107) 101; *Aruna & Anor. v. The State* (1990) 6 NWLR (Pt. 155) 125.

***Defendant's counsel in his brief has not been able to show that the finding of trespass against the Defendant by the two lower Courts was perverse. The record which I have read clearly established that the finding was supported by evidence before the trial Court.***

As regards issue (a), I ought to add that ***it is settled law that a claim for trespass as in this case, is not dependent on the claim for a declaration of title because the issues to be decided on the claim for trespass are whether the plaintiff has established his actual possession of the land and the Defendant trespassed on it, as was done in this case. These are separate and independent issues from that in a claim for a declaration of title*** (see for example *Oluwi v. Eniola* (1967) NMLR. 339). The case of *Nwadiogbu & Anor v. Nkwocha & Anor* (2001) FWLR (Pt.61) 1625 which the Defendant's counsel said is on all fours with this case is not correct. The facts are completely different in the two cases. In that case the Plaintiff did not only fail to prove title to the land in dispute, he also failed to prove that he was in exclusive possession. In the present case the plaintiff has exclusive possession.

***The law is equally settled that a claim for an Injunction is not necessarily to fail after a claim for a declaration of title fails provided the area of the land in respect of which an injunction is sought is clearly defined (see OLUWI v. ENIOLA (supra)). It is clear from the record that the Plaintiff in this case did not claim for a declaration of title. The Defendant has woefully failed in my view to impugn the judgments of the lower Courts.***

Issues (a), (b) and (d) are therefore each resolved against the Defendant.

Issue (c)

***The brief shows that this issue is clearly misconceived. Defendant appeared to be saying that (i) the removal of pillars on the land in dispute and (ii) the chasing away of Plaintiff's tenants away from the land in dispute were not acts of trespass against the Plaintiff but against the tenants who were in physical possession. The Defendant also contended that the removal of pillars was not a continuing trespass. The Defendant no doubt knew that the tenants on the land were put there by the plaintiff. So also were the pillars. And the land belonged to the plaintiff. What else does the Defendant want? Those acts constitute acts of possession on the part of the Plaintiff (See for example Alatishe v. Sanyaolu (1964) 1 All NLR 398, Mogaji v. Cadbury (1972) 2 S.C. 97. A person can certainly be in possession through a third party, such as servant, agent or tenant as in this case. Also possession of a predecessor-in-title is in law deemed to be continued by his successor.***

It must be noted that neither the trial High Court nor the Court of Appeal went outside the issues placed before them to dismiss Defendant's case. And the argument in the brief on the issue shows that it is clearly a misconception on the part of the Defendant.

Issue (c) also fails

All the issues having failed, the appeal must also fail. It is accordingly dismissed with N10,000.00 costs in favour of the Plaintiff.

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**OGUNDARE JSC**

I agree entirely with the judgment of my learned brother, Kutigi,

JSC., just delivered. This appeal is completely bereft of any merit. I have no hesitation in dismissing it. There are concurrent findings of fact of the two courts below which have not been shown to be perverse. As these findings are supported by the evidence on record, I see no reason to interfere with them.

I dismiss the appeal with costs as assessed by my learned brother, Kutigi, JSC. B

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**MOHAMMED JSC**

I agree that this appeal has failed. I have the privilege of reading the draft judgment of my learned brother, Kutigi, JSC., in which he dismissed this appeal. I do not intend to add to what my learned brother explained as his reason for dismissing the appeal. I concur to dismiss it too. I also award N10,000.00 in favour of the respondent. D C

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**EJIWUNMI JSC**

I have had the opportunity of reading in advance the draft of the judgment just delivered by my learned brother, Kutigi, JSC. For the reasons given in the said judgment, he dismissed the appeal and the appeal is also dismissed by me. I abide with the other orders made in the said judgment. E

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**KALGO JSC**

I have read in advance the judgment of my learned brother, Kutigi, JSC., just delivered in this appeal. I entirely agree with his reasoning and conclusions reached therein, which I fully adopt as mine. I therefore find no merit in the appeal. The appeal fails and I dismiss it with N10,000.00 costs in favour of the Plaintiff/Respondent. F G