

SUPREME COURT OF NIGERIA
FRIDAY 31ST JANUARY, 2003. SC. 121/1997
CORAM:- M. L. UWAIS CJN, M. E. OGUNDARE,
A. I. KATSINA-ALU, S. U. ONU, N. TOBI, JJSC

CHIEF THOMAS OKPALA

CHIEF OMDEDE AKPE

CHIEF UKPE ONI

..... APPELLANTS

(For themselves and on behalf of the
whole Etua people living in Nsukka
land)

AND

M. U. OKPU

CHIEF G. O. OLOAMIWE

..... RESPONDENTS

CHIEF J. N. UFOH

(For themselves and on behalf
of the whole people of Nsukka)

LANDLORD & TENANT - Customary tenancy - Breach - Effect -
Breach of the obligations which are incidental to the tenancy - Is
capable of visiting the tenant with punishment of forfeiture (H1)

LANDLORD & TENANT - Customary tenancy - Forfeiture - Mean-
ing - It means taken from one by law as a punishment for wrongdo-
ing - And is a usual mode to determine customary tenancy (H2)

LANDLORD & TENANT - Customary tenancy - Recognition of right
of overlord - Where tenant denies the allodial right of overlord -
Tenancy will be determined by the overlord (H3)

LANDLORD & TENANT - Customary tenancy - Breach - Instances
of - Such tenancy may inter alia be forfeited - Where tenant goes
beyond area granted - Or alienates portion of land to 3rd party with-
out consent of overlord (H4)

APPEALS - Legal practitioners - Parties - Briefs - Binding nature -
Submission not made in brief is of no moment - As parties are bound
by their briefs (H5)

JUSTICE - Actions - Pleadings - Parties should place their case on the table of justice - So that the adverse party can arrange adequate defence (H6)

JUDICIAL PRECEDENTS - Binding nature - Decided case by Supreme Court represents the state of law - And will receive the adoration of lower courts - Until it is overruled (H7)

FACTS

Following their eventual defeat in Supreme Court judgment in suit No. SC.106/1996, defendants/appellants approached plaintiffs/respondents for some negotiation in respect of the disputed property. The negotiation was centred on respondents accepting appellants as customary tenants. Two specified areas of land were thus given to appellants for use. However, appellants moved beyond the specified areas. Consequently, respondents filed suit No. 0/15/85, seeking inter-alia the sum of N1,000,000 (One Million Naira) being damages for various acts of trespass committed on the area not granted to appellants.

At the end of hearing, the learned trial Judge entered judgment in favour of respondents. He ordered forfeiture of appellants' interest in the areas claimed by respondents, payment of the sum of N2, 000.00 as general damages for trespass, possession of the said land and an order of perpetual injunction against appellants. Aggrieved, appellants filed appeal in the Court of Appeal which was allowed in part. The court set aside the sum of N2, 000.00 awarded to respondents. The appeal was dismissed against forfeiture. Dissatisfied, appellants have now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“3.02 Whether the court below was right to have confirmed the judgment of the learned trial Judge who failed to exercise his discretion judiciously and judicially in refusing appellants' plea for relief against forfeiture having regard to all the special circumstances of the case.

3.03 Whether the court below was right in affirming the decision of the trial Judge who held that he was bound by Asani Taiwo & 3 Ors. v. Adamo Akinwumi & 2 Ors. (1975) 4 SC 143 and without

reference to the Bendel State Civil Procedure Rules Edict No. 10 of 1998, before deciding the case on the point."

HELD (Unanimously allowing the appeal per **TOBI JSC**)

Customary tenancy - Breach - Effect

1. While customary tenancy vests in the tenant the right of perpetuity of tenure or tenancy and therefore peaceable enjoyment, the chain of perpetuity of tenure and peaceable enjoyment will be broken once there is a breach of the incidents of the tenancy. In law a breach of any of the obligations which are incidental to the tenancy, on the part of the tenant, is capable of visiting the tenant with the punishment of forfeiture of the tenancy. (p. 181 F)

Customary tenancy - Forfeiture - Meaning

2. Forfeiture derives from the word 'forfeit'. The word means forfeiting or being forfeited. The word 'forfeit' in one sense and in the sense of this appeal means taken from one because an agreement or rule has been broken, or taken from one by law as a punishment for wrong doing. In the context of this appeal, forfeiture precisely is the usual way or mode by which a customary tenancy may be determined in law. (p. 181 H)

Customary tenancy - Recognition of right of overlord

3. The major incident of customary tenancy is the recognition of the rights of the overlord to the title of the property, an incident which carries all other appurtenances in respect of the allodial right of the overlord to the property. The customary tenant remains undisturbed qua the payment of tribute or rent, but the moment he threatens or denies the allodial right of the overlord, the tenancy will be determined in any suitable way by the overlord. (p. 182 B)

Customary tenancy - Breach - Instances of

4. From the totality of the evidence, the following acts on the

part of the appellants constitute breach of the customary tenancy which result in forfeiture of the tenancy: (1) Going beyond the area granted them. (2) Alienation of portion or parcel of the land to third parties without the consent of the respondents. (3) Refusal or failure to pay tribute or rent to the respondents. (4) Putting up permanent structures on the land without the consent of the appellants. (5) Putting up competing interest on the land which is adverse to the interest of the respondents. (6) Denial of the respondent's title to the land not originally allocated to them. Although non-payment of tribute or rent may not necessarily constitute misconduct or misbehavior to result in forfeiture, the totality of the above acts of the appellants make such non-payment a clear ground for forfeiture of the customary tenancy, and I so hold. (p. 186 H)

D *PARTIES - Briefs - Binding nature*

5. It is the principle of law that mistakes of counsel should not be visited on the client. If that is the principle learned counsel wants this court to invoke in favour of his clients, he did not make such submission in his brief. And the law is trite that parties are bound by their briefs. (p. 187 G)

JUSTICE - Actions - Pleadings

F **6. It is a fundamental principle in the administration of justice that parties should place all their cards on the table of justice so that the adverse party can clearly see what case is made against him for purposes of arranging adequate defence. It is injustice on the part of a defendant to merely aver in his statement of defence that he will rely on relief against forfeiture without particularizing the content and extent of the defence. That is a cunning way of working towards victory which is not compatible with the tenets of justice. (p. 190 A)**

H *JUDICIAL PRECEDENTS - Binding nature*

7. As a matter of law, a case which has survived the test of judicial precedent is recognised as stable, if decided by the highest court of the land, and will receive the adoration of the lower courts until overruled by the highest court. But until it is

overridden, it represents the state of the law, whether it is of the same age with Methuselah or even older. (p. 190 G)

REPRESENTATION

Chief Broderick Bozimo with, Selekeowei Larry, for the Appellants
C. J. Chukura, Esq., for the Respondents

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CASES REFERRED TO

Mogaji v. Cadbury Nigeria Ltd. (1985) 2 NWLR (Pt. 7) 393

Dike v. Nzeka (1986) 4 NWLR (Pt. 34) 144

Fasoro v. Abdallah (1987) 3 NWLR (Pt. 59) 134

Nwagwu v. Okonkwo (1987) 3 NWLR (Pt. 60) 314

Onisiwo v. Gbamgboye (1941) 7 WACA 69

Onotaire v. Binitie Onokpasa (1984) 12 SC 19

Dokubo v. Bob-Manuel (1967) 1 All NLR 113

Erinle v. Adelaja (1969) NMLR 132

Akagbue v. Ogu (1976) 6 SC 63

Taiwo v. Akinwunmi (1975) 4 SC 143

Board of Customs and Excise v. Abdul (1966) LLR 143

Itsekiri Trustees v. Warri Divisional Planning Council (1973) 11 SC E
235

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STATUTE & RULE REFERRED TO

Bendel State Edict No. 10 of 1988, ss. 1, 2, & 4

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LEAD JUDGMENT BY TOBI JSC

In suit No. SC.106/1996, this court delivered a judgment on 24th October, 1996 in a similar matter. Although the parties are different, the claim was based on virtually the same portion or parcel of land. The plaintiffs in that appeal claimed the following reliefs:-

1. The plaintiffs claim as against the defendants is for a declaration of title to and possession of the piece and parcel of land situate in Nsukwa bush in the Asaba Division and known as Nsukwa land which said land will be more particularly delineated in the plan to be filed by the plaintiffs.

2. Plaintiffs also claim the sum of 300 Pounds from the defendants being the value of annual tributes due from the defendants to plaintiffs for 5 years.

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3. *Plaintiffs seek an order of injunction restraining the defendants, their servants and agents from farming on or in any other way interfering with the said land without the consent of the plaintiffs.*”

The High Court, Asaba dismissed the claims of the plaintiffs in suit No. W/35/58. This court allowed the appeal. Delivering the judgment of the court, Madarikan, JSC, ordered as follows at pages 224 and 225 of the record:

“The appeal is hereby allowed. The judgment of the High Court, Asaba, in suit No. W/35/58 including the order for costs is set aside and it is ordered that:

(a) *The plaintiffs as representatives of the Nsukwa people be and are hereby:*

(i) *Granted a declaration of title to the land edged pink on the plan marked as exhibit B (Plan No. MWC/71A/59;*

(ii) *Granted possession of the said land;*

(iii) *Awarded 300 Pounds being tributes due from the defendants to them; and*

(iv) *Granted an injunction restraining the defendants their servants or agents from farming on or in any other way interfering with the said land without the consent of the plaintiffs.*

(b) *The respondents will pay the appellants the costs of this appeal assessed in this court at 58 guineas and costs in the court below at 183 guineas.”*

With the Supreme Court judgment in favour of the respondents to this appeal, the appellants to this appeal approached the respondents for some negotiation in respect of the property. Overtures and emissaries were made and sent to the respondents to reconsider the situation and take back the appellants as customary tenants.

The respondents showed some magnanimity. The appellants were given two specified areas for use. These areas are verged BLUE in exhibit 2 which contain (i) Etua, Oliogo, (ii) Etua Etiti and (iii) Etua Ozili. The appellants moved beyond the two specified areas. The respondents did not like that. In suit No. 0/15/85, the respondents filed another action seeking the following reliefs:

“(a) *The sum of N1,000,000 (One Million Naira) being damages for various acts of trespass committed on the area not granted to them.*

(b) *An order of the court on the defendants to quit and give up possession of Nsukwa land immediately.*

(c) *Perpetual injunction restraining defendants, their servants and/or agents or collaborators never again to enter plaintiffs Nsukwa land and/or commit any further acts of trespass whatsoever on plaintiffs Nsukwa land.*”

The learned trial Judge, Odita, J., (as he then was) entered judgment in favour of the respondents. He ordered forfeiture of the appellants’ interest in the areas claimed by the respondents, payment of the sum of N2,000.00 as general damages for trespass, possession of the said land and an order of perpetual injunction. Appeal to the Court of Appeal was allowed in part. The court set aside the sum of N2,000.00 awarded to the respondents as general damages for trespass. The court dismissed the appeal against forfeiture, the fulcrum of the case.

Dissatisfied, the appellants have come to this court. Briefs were filed and exchanged. Appellants in their amended brief formulated the following issues for determination:

“3.02 *Whether the learned court below was right to have confirmed the judgment of the learned trial Judge who failed to exercise his discretion judiciously and judicially in refusing appellants’ plea for relief against forfeiture having regard to all the special circumstances of the case.*

3.03 *Whether the court below was right in affirming the decision of the trial Judge who held that he was bound by Asani Taiwo & 3 Ors. v. Adamo Akinwumi & 2 Ors. (1975) 4 SC 143 and without reference to the Bendel State Civil Procedure Rules Edict No. 10 of 1998, before deciding the case on the point.*”

The respondents formulated the following issue for determination:

“*Whether the Court of Appeal, Benin Division was right in ordering forfeiture against the appellants and thereby affirming the decision of the trial court having regard to all the circumstances of the case.*”

Learned counsel for the appellants, Chief Broderick Bozimo, submitted on issue No.1 that in exercising his equitable discretion whether or not to grant appellants plea for relief against forfeiture, the learned trial Judge failed to consider the very special circum-

stances of the case as lucidly argued, in appellants' brief of argument before the court below. He adopted the arguments advanced in the court below.

Narrating the story how the appellants came to the land as customary tenants of the respondents, learned counsel submitted that non-payment of tribute or rent is not necessarily inconsistent with the landlord's over lordship rights so as to incur automatic forfeiture of the customary tenancy. He cited *Oniah v. Onyia* (1989) 1 NWLR (Pt. 99) 514 at 532 and *Oduaran v. Chief Asarah* (1972) 1 All NLR 137 at 145. Contending that the appellants paid their tribute from 1966 to 1984, learned counsel argued that the learned trial Judge ought not to have found that they defaulted in the payment of the 1985 tribute when the suit was prematurely instituted in July 1985 before the end of the year and no demand for rent was made. He cited *Ladega v. Akiniyi* (1975) 2 SC 91 at 97. Learned counsel submitted that the learned trial Judge and the Court of Appeal erred in law and did not exercise their discretion judicially and judiciously when they affirmed forfeiture against the appellants having regard to the accepted facts and circumstances of the case. He cited once again *Oniah v. Onyia* (supra).

On issue No.2, learned counsel submitted that the case of *Taiwo v. Akinwumi* (1975) 4 SC 143 is distinguishable from this case in that relief from forfeiture was not claimed in any shape or form in Taiwo's case as was done in this case. He cited again *Ladega v. Akiniyi* (supra) and *Oniah v. Onyia* (supra). Learned counsel described Taiwo's case as archaic having been decided about 30 years ago. To him, the decision was an obiter dictum and therefore not binding and that what is binding in a judgment is the ratio decidendi. He cited *U.T.C. (Nig.) Ltd. v. Pamotei* (1989) 2 NWLR (Pt. 103) 244. He also cited *Black's Law Dictionary* 6th edition, page 1072 for the meaning of obiter dictum. Learned counsel submitted that the learned trial Judge ought to have distinguished this case on appeal from Taiwo's case and ought not to have relied on it wholesale and thereby unjustly refusing appellants plea against forfeiture. It was also the submission of learned counsel that the relevant provisions of the Bendel State Civil Procedure Rules Edict, 1988, applicable to Delta State and therefore to the proceedings at the trial court became operative on 1st December, 1988 by virtue of section 1 of Edict No. 10 of 1988. The appel-

lants further amended statement of defence subjoining their plea against forfeiture was settled and filed on 23rd January, 1989 and the trial commenced on 15th May, 1989, learned counsel pointed out.

He produced *ipsissima verba* the provisions of sections 1, 2 and 4 of the Bendel State Edict No. 10 of 1988 and submitted that the rules are completely silent on the mode for seeking relief against forfeiture. Accordingly, counsel submitted that it was therefore eminently within the discretion of the trial court in the case to have adopted “such procedures as will in its view” do substantial justice between the parties. To learned counsel, the trial Judge, before settling for the procedure recommended in Taiwo’s case, ought to have felt free to examine other such procedure as will in his view do substantial justice between the parties concerned. B
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Learned counsel contended that where there are provisions in local rules of court, resort cannot be had to English Rules in the interpretation of such local rules. He cited once again *U.T.C. (Nig.) Ltd. v. Pamotei* (supra). Recourse to English Civil Procedure and Practice under the Old rules came to an end on 1st December, 1988 after the Civil Procedure Rules became operative, learned counsel claimed. Counsel opined that since the trial Judge commenced trial on 15th May, 1989, five months after the new rules became operative and judgment delivered on 9th October, 1992, over three years after the rules became operative on 1st December, 1988, the Court of Appeal was led into error by affirming the decision of the learned trial Judge’s refusal against forfeiture by relying without more, on English Practice apparently invoking the obsolete Order 35 of Cap. 65. D
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It was the argument of learned counsel that the discretionary latitude accorded by the Bendel State Edict No. 10 of 1988 was not adverted to or employed in the resolution of the question; thus the appellants have suffered miscarriage of justice. An appellate court, especially a final Court of Appeal, may not perpetuate an unfair principle because it is technically bound by a previous decision, if it is satisfied that to do so will do injustice, counsel further argued. He once again cited *U.T.C. (Nig.) Ltd. v. Pamotei* (supra) and the following cases: *Edewor v. Uwegba* (1987) 1 NWLR (Pt. 50) 313 at 337; *Falobi v. Falobi* (1976) 9-10 SC 4; *Ecobank Nigeria Plc. v. Gateways Hotels Limited* (1999) 11 NWLR (Pt. 627) 397 at 420 and Federal G
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Mortgage Bank of Nigeria Limited v. Chief Mrs. Adu (2002) WRN 65 at 73.

Learned counsel submitted that in the face of the absence of any prescribed mode of seeking relief against forfeiture under the Bendel State High Court (Civil Procedure) Rules Edict No. 10 of 1988, the erstwhile operative law, Cap. 65 of 1976, Laws of Bendel State having been repealed, the learned trial Judge ought to have considered and adopted in the special circumstance of this appeal the more liberal provisions enjoined by Order 2 rule 1, “as will in its view”, do substantial justice.

Even if conceded, without admitting, that the mode adopted by the appellants in seeking relief against forfeiture is defective, counsel submitted that by virtue of Order 2 rule 1(1) such defect or failure ought to have been treated as mere irregularity as provided under the said rule. Counsel submitted that an opportunity now presents itself to this court to do substantial justice to the parties in this appeal. He cited *Odi v. Osafile* (1985) 1 NSCC 14; (1985) 1 NWLR (Pt. 1) 17, *Maclean v. Inlaks Ltd.* (1980) 8-11 SC 1; *Okulate v. Awosanya* (2000) FWLR (Pt. 25) 1666, 1680 at 1689; (2000) 2 NWLR (Pt. 646), 530 *Bronik Motors Ltd. v. Wema Bank Ltd.* (1983) 6 SC 158 and *Uyobaria v. Kporoaro* (1966) 1 All NLR at 4. Learned counsel also submitted the following supplementary list of authorities: *Aghenghen v. Wagboreghor* SC/107/197; (2002) FWLR (Pt. 84) 200 at 203-205; (1974) 1 SC 81; *Ndika v. Chiejina* (2000) FWLR (Pt. 117) 1178 at 1187-1188 and *Ezeobi v. Ezeobi* (2002) FWLR (Pt. 118) at 1370 and 1381.

I have always believed and said that it is more profitable to both counsel and the courts for counsel who is relying on cases after filing his brief, to call the attention of the court to the relevant principles the cases are meant to adumbrate or illustrate during oral argument so that the court can duly write down the cases in the appropriate paragraph or paragraphs relating to the principles involved. It is not the best procedure for counsel to throw at the court list of authorities and expect the court to read each and everyone of them to find its bearing on the relevant principles. I am not saying that the supplementary list of authorities will not be looked into because of the lapse. I will read the three cases cited and come to a decision one way or the other. Learned counsel kindly made available to us both

the old Bendel State High Court (Civil Procedure) Rules, Cap. 65 and the current Order 1 of the Bendel State High Court (Civil Procedure) Rules Edict, 1988.

Learned counsel for the respondent, Mr. C. J. Chukura on the only issue he formulated, submitted that the Court of Appeal did not order forfeiture against the appellants but merely dismissed the appellants appeal against forfeiture. He cited the relevant decisions of Akpabio, Akintan and Ige, JJCA. on the issue. Learned counsel enumerated the following acts as misbehaviours of grave nature warranting forfeiture of the appellants' interests on the land in dispute at page 7 of his brief:

- (i) Denial of the overlords title.
- (ii) The repetitive nature of the breaches of customary tenure.
- (iii) The seriousness of the breaches.
- (iv) Taking action against their overlords in respect of the land (suits 0/9/86 and 0/14/85).
- (v) Interference with the possession of other tenants (one of which is Oil Palm Company Limited).
- (vi) Alienation of overlord's title

Relying on *Erinle v. Adelaja* (1969) NMLR 132 at 136; *Itsekiri Trustees v. Warri Divisional Planning Council* (1973) 11 SC 235 at 259-260; *Akagbue v. Ogu* (1976) 6 SC 63 at 74; *Taiwo v. Akinwunmi* (1975) 4 SC 143 and *Board of Customs and Excise v. Abdul* (1966) LLR 143, learned counsel submitted that the Court of Appeal was correct in dismissing the appeal against forfeiture. He urged the court to dismiss the appeal.

While customary tenancy vests in the tenant the right of perpetuity of tenure or tenancy and therefore peaceable enjoyment, the chain of perpetuity of tenure and peaceable enjoyment will be broken once there is a breach of the incidents of the tenancy. In law a breach of any of the obligations which are incidental to the tenancy, on the part of the tenant, is capable of visiting the tenant with the punishment of forfeiture of the tenancy.

This appeal is based essentially on the granting of an order of forfeiture by the learned trial Judge and the refusal by the Judge in granting relief against forfeiture. ***Forfeiture derives from the word 'forfeit'. The word means forfeiting or being forfeited. The word***

‘forfeit’ in one sense and in the sense of this appeal means taken from one because an agreement or rule has been broken, or taken from one by law as a punishment for wrong doing. In the context of this appeal, forfeiture precisely is the usual way or mode by which a customary tenancy may be determined in law. The major incident of customary tenancy is the recognition of the rights of the overlord to the title of the property, an incident which carries all other appurtenances in respect of the allodial right of the overlord to the property. The customary tenant remains undisturbed qua the payment of tribute or rent, but the moment he threatens or denies the allodial right of the overlord, the tenancy will be determined in any suitable way by the overlord.

In this appeal, the respondents chose the option of the right of forfeiture. The case law is in great proliferation. I can take a few cases. In Dokubo v. Bob-Manuel (1967) 1 All NLR 113, the Supreme Court held that a denial of title of the true overlord is a ground for forfeiture in every system of jurisprudence known to Nigeria. In Onotaire v. Binitie Onokpasa (1984) 12 SC 19, the Supreme Court held that it is fairly safer to imply that it is a condition of a grant in customary law that a grantee who challenges the title of his grantor incurs the penalty of forfeiture.

In Onisiwo v. Gbamgboye (1941) 7 WACA 69, the West African Court of Appeal dealt with the essence of forfeiture. The court said at page 70:

The real foundation of the misbehaviour which involves forfeiture is the challenge to the overlords rights... Every case must be considered on its own facts.”

In the unreported case of Sanni v. Iyalode SC.238/1959 delivered on 10/5/60, this court said:

“There are various ways whereby a customary tenant may incur liability to forfeiture under native law and custom, and a denial of the landlord’s title is one of the serious misconducts for which liability to forfeiture may be incurred.”

In Oniah v. Onyia (1989) 1 NWLR (Pt. 99) 514, the court said at page 532:

“It is well settled that forfeiture is the usual mode of determining a customary tenancy. The real basis of misconduct or misbehaviour

which renders the tenancy liable to forfeiture is the challenge to the title of the overlord. This may be by alienation of part of the land, under claim of ownership, refusal to pay the tribute due or indeed, direct denial of overlord's title by setting up a rival title in the customary tenant himself, as in the instant case ... "

A clear condition of customary tenancy is the payment of tribute or rent by the tenant to the overlord. In the case of *Braid v. Kalio* (1927) 7 NLR 34, the plaintiff, on behalf of the people of Bakana, claimed from the defendant, as representing the people of Okrika, an arrears of rent in pursuance of an agreement of 1915 under which the Okrikas undertook to pay 10% per annum for every temporary house erected by them on a certain piece of land. It was held that the agreement implied an intention on the part of the parties that the undertaking of the Okrikas to pay rent was assumed by them in consideration of the Bakanas permitting them to occupy the land.

In the more recent case of *Makinde v. Akinwale* (2000) 2 NWLR (Pt. 645) 435, this court dealt in great detail with the issue of forfeiture of a customary tenancy. The court held inter alia as follows:

(1) A customary tenancy is liable to forfeiture when the tenant commits any offence that can lead to forfeiture or that is incompatible with the customary tenancy such as the denial of the overlordship of the landowners.

(2) It is a serious act of misbehaviour by a customary tenant to deny the title of the true overlord to the land which he is a tenant of. It is a misbehaviour which is a firm ground for forfeiture of the tenancy and is said to be so as a widely accepted system.

(3) Forfeiture is the usual mode of determining a customary tenancy. The real basis of the misconduct or misbehaviour which renders the tenancy liable for forfeiture is the challenge to the title of the overlord. This may be by (a) alienation of part of the land; or (b) a claim of ownership; or (c) refusal to pay the tribute due; or (d) direct denial of overlord's title by setting up a rival title in the customary tenant himself.

(4) Although the non-payment of rent or tribute is not necessarily inconsistent with the ownership of the overlord, the circumstances and the reasons for the refusal to pay tribute may determine whether there is a denial of the title of the overlord.

With the above case law, I now make the factual position. PW3,

the 3rd plaintiff, said in examination-in-chief at pages 101 to 103 of the record:

"In 1958, the defendants were our tenants and we gave them portions of land to farm. They later left the portion of land we gave them and entered other lands which we did not give them. We took the defendants to court as a result. The case reached to the Supreme Court, Lagos and we won... After the Supreme Court judgment, the defendants came and pleaded. The people that came to plead are as follows... As a result of the pleading of the above people, our Obi summoned our people. My people agreed to the appeal... The defendants left the land we gave to them after the judgment and entered into land where we made our farms and thereby drove us away from the land completely. The defendants cut down our trees and sold them. The defendants do not pay homage to our Obi. The defendants hunt in our bush. The defendants allocated portions of land to strangers who pay rent to them. The defendants built a school... The defendants did not pay homage of bush pig killed there on to our Obi according to custom. The Supreme Court ordered the defendants to pay N600.00 to us, but the defendants complied after the judgment but now the defendants failed to pay."

Under cross-examination, witness said at pages 105 and 106 of the record:

"The defendants paid rent up to 1984... The defendants abused the grant given to them and put strangers on the land we gave to the defendants... The defendants do not recognise us as their overlord."

PW4, Sunday Onuwa, gave evidence in respect of how he was disturbed by people from Atua while he was clearing his portion of the land. He said at page 108 of the record:

"As I was clearing my own portion of the bush, one Oji Onwugbolu came and met me there. He came with one Alex Onyenike. Peter Okpor also came. I told them that nobody gave me the land but that the land belongs to me. We started to quarrel. Thereafter, I cleared the bush and set fire on it. Something was destroyed in the farm. My cassava and maize were destroyed. These people I mentioned came from Atua."

There is plethora of evidence that the people of Atua are the appellants. This is vindicated by paragraph 2A of the further amended statement of defence. The appellants admitted in their further

amended statement of defence that they are customary tenants of the respondent but denied a number of averments in the further amended statement of claim. In paragraph 6(xii) of the further amended statement of defence, the defendants agreed that they are the customary tenants of the plaintiffs.

In paragraph 15 of the further amended statement of defence, the appellants as defendants averred: B

“With reference to paragraph 13 of the amended statement of claim the defendants will at the trial contend as follows:

(a) That the defendants have observed all rules and conditions relating to their tenancy with the plaintiffs their overlords; C

(b) That the defendants have not committed any of the acts as alleged in paragraphs 9-12 of the amended statement of claim or at all...;

(c) That the defendants have tendered their rent for 1985 but the plaintiffs would not accept same but are determined to turn the defendants out of the land.”

The appellants gave evidence in line with the above averments. It is therefore clear that the parties did not join issue as to whether the appellants are the customary tenants of the respondents. And so this court will not go into that. I should like to take the issue of payment or non-payment of rent further. DW5, Christopher Ogoli, said under cross-examination at page 145 of the record: E

“The defendants went to pay rent in 1985 which was not accepted by the plaintiffs. The defendants therefore paid the rent into the court. We have not paid rent in 1986 to 1990 to date.” F

And so the averments in paragraph 15(c) of the further amended statement of defence did not tell the whole story about the nonpayment of rent. It stopped half way that is in respect of payment of rent in 1985. In the light of the evidence before the learned trial Judge, Odita, J. (as he then was) found as follows at page 201 of the record: G

“From the conclusion I have reached, I find as a fact that the plaintiffs have established that the defendants breached the terms of their customary tenancy for the defendants acted completely in breach of their customary tenancy. They went beyond the blue verged areas in plan No. MWC/408/86 of 1st July, 1986 - exhibit 2. The defendants built permanent houses, schools, market, and postal agency H

without the consent of the plaintiffs. All these are breaches of the terms of the customary tenancy. To me they all amount to acts of misconduct to which the defendants are liable to forfeit their grant. I therefore find as a fact that the defendants have forfeited their customary tenancy and I so hold."

B The Court of Appeal had no reason to disagree with the findings of the trial Judge. Delivering the lead judgment of the court Akpabio, JCA said at pages 325 and 326 of the record:

C *"Also even if one did not agree, with the learned trial Judge's findings on trespass, what of the question of non-payment of tribute which was one of the other grounds on which the claim for forfeiture of customary tenancy was based? In respect of this ground, the appellants themselves had admitted not paying the tribute for 1985, but averred that they had tendered the money to the respondents, but D they refused to accept same but insisted on evicting them. They the appellants therefore went and paid the money into the court. When asked which court they paid the money into, they could not say. They could also not produce any receipt for payment. Appellants explanation for non-payment of the 1985 tribute was therefore re-*
E jected by the learned trial Judge, and I agree with him. Under our law, failure by the tenant to pay tribute to his landlord as and when due is a recognised ground for forfeiting the customary tenancy."

F Citing the case of Abidoye v. Alawode (1994) 6 NWLR (Pt. 349) 242, the learned Justice said in conclusion on the issue of forfeiture:

G *"In view of the above, I find that on the basis of all the evidence before the learned trial Judge, he was justified in ordering forfeiture against the appellants. The omnibus issue is therefore re-*
solved in favour of the respondents."

H The above are concurrent findings of the two lower courts and I do not see any reason to interfere with them. See Mogaji v. Cadbury Nigeria Ltd. (1985) 2 NWLR (Pt. 7) 393; Dike v. Nzeka (1986) 4 NWLR (Pt. 34) 144; Fasoro v. Abdallah (1987) 3 NWLR (Pt. 59) 134; Nwagwu v. Okonkwo (1987) 3 NWLR (Pt. 60) 314.

From the totality of the evidence, the following acts on the part of the appellants constitute breach of the customary tenancy which result in forfeiture of the tenancy: (1) Going beyond the area granted them. (2) Alienation of portion or

parcel of the land to third parties without the consent of the respondents. (3) Refusal or failure to pay tribute or rent to the respondents. (4) Putting up permanent structures on the land without the consent of the appellants. (5) Putting up competing interest on the land which is adverse to the interest of the respondents. (6) Denial of the respondent's title to the land not originally allocated to them. B

Although non-payment of tribute or rent may not necessarily constitute misconduct or misbehaviour to result in forfeiture, the totality of the above acts of the appellants make such non-payment a clear ground for forfeiture of the customary tenancy, and I so hold. That takes me to the issue of relief against forfeiture. Let me briefly deal with the three cases cited by learned counsel for the appellants in his supplementary list of authorities. In Aghenghen v. Chief Waghoreghor (supra), the Supreme Court held that in customary court, any proved misbehaviour by customary tenants is usually now punished by a fine. Customary tenants now enjoy something akin to emphyteusis (sic), a perpetual right in the land of another. In that case, the facts were not anything near those in this appeal. The case dealt with two previous decisions of the Warri High Court and the Supreme Court. Both parties did not call oral evidence but relied on documentary evidence. There was no evidence of denial of the title of the owners of the land as in this appeal. Accordingly, the case is inapposite. D E

Both Ndika v. Chiejina (supra) and Ezeobi v. Ezeobi (supra) had nothing to do with customary tenancy and forfeiture on the part of the tenant. While Ndika involved dispute of a house under customary law, Ezeobi involved assault and humiliation. But the two cases have something in common and **it is the principle of law that mistakes of counsel should not be visited on the client. If that is the principle learned counsel wants this court to invoke in favour of his clients, he did not make such submission in his brief. And the law is trite that parties are bound by their briefs.** Above all, this court was not told even in oral argument that counsel made mistake in the case in the lower court or courts. It is a pity that I have to speculate. This is the point I was trying to make earlier. If counsel had related the authorities to paragraphs in his brief by expatiation of the principles, this court should have had less prob- F G H

lems.

Learned counsel for the appellants poured so much venom on the case of *Taiwo v. Akinwunmi* (1975) NSCC 224. He is certainly not happy with the decision of this court. He feels bad, too. In the circumstances, I shall examine the case in some detail, beginning with the facts. The Ijeshatedo people as plaintiffs claimed against the Itire people as defendants damages for trespass and an injunction. In another suit, the Itire people as plaintiffs, claimed against the Ijeshatedo people, as defendants, a declaration that as their customary tenants under native law and custom, the Ijeshatedo people have forfeited for misconduct all their rights, title and/or interest in all the parcel of land which they held as the Itire people's customary tenants at Itire. They also claimed damages for unlawfully cutting down the Itire people's palm trees and other economic trees and crops on the land. Finally, they asked for recovery of possession of the said land. The two suits were consolidated and heard as such. The learned trial Judge dismissed the claim of the Ijeshatedo people for trespass and injunction. The learned trial Judge then considered the evidence in support of the claims of the Itire people for forfeiture of the customary tenancy and for possession. He also awarded the Itire people damages for the unlawful cutting down of their economic trees.

On appeal, the Supreme Court held *inter alia* that:

(1) A claim by a tenant for relief from forfeiture should be commenced either by an originating summons or by way of a counterclaim in an action brought by the landlord, or simply by an application for a writ of summons in that action; and such a request for relief should not be made in the averments in the statement of defence as has been done in the case in hand.

(2) Whether the act committed by a customary tenant constitutes a misbehaviour or not, or whether such misbehaviour can incur forfeiture depending on the particular circumstances of each case.

(3) The list of such acts which constitutes misbehaviour is not closed and that it is still open to the court in every case brought before it to consider the complaint of the overlord against his customary tenant and to determine whether the complaint is well founded and whether having regard to the circumstances, the acts complained of are so serious as to warrant the forfeiture of the customary tenancy.

Dealing with the procedure, Fatayi-Williams, JSC (as he then was) said at page 237:

“The reason for this somewhat elaborate procedure is not far to seek. By proceeding either by way of an originating summons or a counter-claim where pleadings could be ordered, the tenant will be able to set out in detail, the facts upon which he relies such as the circumstances leading to the breach. The landlord or overlord, on the other hand, will be able, in his own defence to the originating summons or counter-claim, to reply to all facts on which the tenant is relying. Issues as to whether to grant relief or not will then be joined and neither party will be taken by surprise. The court will then hear evidence from both sides based on their pleadings and will thus be in a better position to consider all the circumstances and probabilities and come to a conclusion one way or another.”

It is not only learned counsel for the appellants who did not like the procedure set by the Supreme Court. The trial Judge did not like it too. He said at page 204 of the record:

“Although Taiwo’s case appears to me to be strict adherence to procedure which to me is holding fast on technicality, which the courts now abhor, whatever is the case, until this strict adherence to procedure is considered by the Supreme Court in another case, I am bound by the Taiwo’s case. I therefore have no alternative than to follow it.”

The case of (sic) endorses three alternative procedures. They are (a) originating summons, (b) counterclaim, (c) application for writ of summons. Taiwo is clearly on the point that the relief should not be made in the averments in the statement of defence. Therefore the alternative relief in the penultimate paragraph of the appellants further amended statement of defence is to no avail. In effect the relief was not properly before the trial Judge and there was no need for the two lower courts to consider it. The learned trial Judge ought to have asked both counsel to address him on Taiwo as it affected the alternative relief.

What is wrong with the procedure set up by the Supreme Court in Taiwo to receive the condemnation of both the counsel for the appellants and the learned trial Judge? I do not see anything wrong with the procedure; if anything, the procedure is fair and just. Relief against forfeiture is a substantial adjectival matter which, in my humble view, deserved a substantial and independent defence outside the

statement of defence. The plaintiff is entitled to know in advance the content and substance of the relief the defendant is seeking. It is not justice to keep the plaintiff in darkness and continue to speculate or conjecture what the defendant is really up to in his defence of relief against forfeiture. ***It is a fundamental principle in the administration of justice that parties should place all their cards on the table of justice so that the adverse party can clearly see what case is made against him for purposes of arranging adequate defence. It is injustice on the part of a defendant to merely aver in his statement of defence that he will rely on relief against forfeiture without particularizing the content and extent of the defence. That is a cunning way of working towards victory which is not compatible with the tenets of justice.***

The learned trial Judge held the view that Taiwo is merely technical but as a judgment of a superior court, he had no choice but to follow up. Putting it the other way, but for the rules of stare decisis, he should have not followed it because the procedure is merely technical. With respect, I do not agree with him. Courts of law should draw a dichotomy or cleavage between our adjectival laws which are based on fundamental rules of natural justice and those which are based on mere technicalities and therefore pursue the shadow of the litigation rather than the substance of it. It beats me hollow for any thought that a procedure which ably gives room for the doing of justice to the parties is referred to as technical. What then is justice? Justice is never built on technicalities but on what is just and fair in any given situation. A procedure which is built on justice cannot be regarded as technical.

Learned counsel for the appellants described or called the decision in Taiwo as archaic on the ground that it was decided about thirty years ago, and therefore should not be followed. A case does not lose its value as a judicial precedent in the common Law system (if I may so naively restrict my experience) on the ground of age. ***As a matter of law, a case which has survived the test of judicial precedent is recognised as stable, if decided by the highest court of the land, and will receive the adoration of the lower courts until overruled by the highest court. But until it is overriden, it represents the state of the law, whether it is of the***

same age with Methuselah or even older. In my humble view, the older a case, the maturer it is and this court and all the courts below are bound to follow it, and not throw it in the dust bin. I should allow myself to draw an analogy that in English Courts, cases that were decided one or two centuries ago are followed by the House of Lords and the courts below. What then is in thirty years? Taiwo was decided in 1975 and that is not even thirty years now. B

Learned counsel urged us to consider the fact that the appellants have stayed on the land for so long and have in the process built permanent block houses, including schools, markets, maternity, post office and all that. Much as this court appreciates the sentiments of the counsel in the brief and genuine efforts he has made for his clients, the truth is that the appellants are not entitled to the sympathy of this court. I say this because they have thoroughly overstepped their boundaries, so much so that a court of equity cannot help them. D C

The appellants have not done equity and they should therefore not expect equity done to them. They lost in the first case in this court. They went to the respondents. They begged. They pleaded for forgiveness. The respondents sympathised with them. They were given some portion or parcel of the land. There was a clear condition attached to the goodwill and magnanimity on the part of the respondents. It was that they should not go beyond what was given to them. They went beyond the boundaries and did their thing in their own way. They flouted the total rights of the respondents to the land with impunity. The police intervened to no avail. They showed power. They forced themselves there. And they now blow up sentiments. This court cannot hear them. It is too late in the day. One principle of equity beget another principle of equity. Equity does not act in vain or in isolation. Equity must act for a purpose. F G

Learned counsel called the attention of the court to the Bendel State Edict No. 10 of 1988, applicable to Delta State which contained the Bendel State High Court (Civil Procedure) Rules, 1988. He relied heavily on section 4 of the Edict which provided that where a matter arises in respect of which no provisions or no adequate provisions are made in the Rules, the court shall adopt such procedure as will in its view do substantial justice between the parties concerned. H

In my view, the procedure stated in Taiwo achieves the ends of

substantial justice. A procedure which requires a party raising a defence to place enough facts on what the defence is based to enable the adverse party prepare a defence meets the requirements of justice in all its ramifications. In this appeal, the appellants would regard the procedure in Taiwo as working injustice but both the court and the respondents regard it as clearly achieving justice. The important consideration of substantial justice is from the point of view of the court, and not necessarily from the point of view of the parties. After all, the losing party will always say that injustice has been done to him.

In sum, this appeal fails and it is hereby dismissed. The judgment of the Court of Appeal is hereby affirmed. I award N10,000.00 costs in favour of the respondents.

D

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother Tobi, JSC. I entirely agree with the judgment and I have nothing to add.

E

OGUNDARE JSC

I was privileged to read in advance the judgment of my learned brother Tobi, JSC just delivered. I agree entirely with him that this appeal is lacking in merit; it fails and I too dismiss it. I need only comment on the issue of forfeiture raised in the proceedings. Defendants/appellants were customary tenants of the plaintiffs/respondents. They were so declared by the judgment of this court in SC.106/1966 - Chief Amuebie and Anor. v. Osekwe Odiabara and Ors. delivered on 24th October, 1969. Following the judgment of this court in that case in which possession of the land then in dispute and now in dispute was granted to the plaintiffs in that case and an injunction restraining the defendants from farming etc. on the land without the consent of the plaintiffs the defendants approached the plaintiffs for a settlement as a result of which new terms of customary tenancy were agreed upon. Soon however, the defendants went back to their bad ways in consequence of which the plaintiffs sued them claiming as per their further amended statement of claim as hereunder:

“(i) Forfeiture of the defendants’ interest in the areas verged BLUE in the plan attached hereto, which the plaintiffs granted to them as customary tenants.

(ii) The sum of N10,000.00 (Ten Thousand Naira) being special and general damages for the various acts of trespass complained of herein. B

(iii) Possession of the land.

(iv) Perpetual injunction restraining the defendants, their servants and/or agents from entering the plaintiffs’ (Nsukwa) land and from otherwise committing any further acts of trespass thereon.” C

The defendants filed a defence in which they pleaded as hereunder:

“15. With reference to paragraph 13 of the amended statement of claim the defendants will at the trial contend as follows:-

(a) That the defendants have observed all rules and conditions relating to their tenancy with the plaintiffs their overlords; D

(b) That the defendants have not committed any of the acts as alleged in paragraphs 9 - 12 of the amended statement of claim or at all;

(c) That the defendants did not enter into a fresh tenancy agreement after the Supreme Court decision in suit No. W/35/58; E

(d) That the plaintiffs are not happy over the rapid development of the defendants through hard work and are determined either to frustrate same or take over the land;

(e) That the defendants have tendered their rent for 1985 but the plaintiffs would not accept same but are determined to turn the defendants out of the land. F

(f) That in the three villages which constitute Etua there are deaths and births and the population has been increasing and will not diminish. G

(g) That the plaintiffs will not in the circumstance be entitled as claimed in paragraph 13 of the amended statement of claim or at all.

(h) That the plaintiffs’ claim is frivolous, vexatious, speculative, misconceived and ought to be dismissed with substantial costs. H

(i) Alternatively: if, which is not admitted, the defendants have committed any act of misconduct to warrant the forfeiture of their tenancy, they (defendants) will at the trial ask for relief against forfeiture as they have amply developed the entire area of grant by setting

up permanent building and other developments on the land."

The case went on trial at the end of which the learned trial Judge found for the plaintiffs and adjudged as hereunder:

"In the final analysis, I hereby enter judgment for the plaintiffs against the defendants as follows:

B (i) *Forfeiture of the defendant's interest in the areas verged BLUE in the plan No. MWC/408/86 of 1/7/86 - exhibit 2 in this proceedings, which the plaintiffs granted the defendants as customary tenants;*

C (ii) *The sum of N2, 000.00 (Two Thousand Naira) being general damages for trespass;*

(iii) *Possession of the said lands verged BLUE in plan MWC/408/86 - exhibit 2 such possession should be given up by the defendants to the plaintiffs not later than ONE year from today;*

D (iv) *Perpetual injunction restraining the defendants, their servants and/or agents from entering the plaintiff's land verged YELLOW in plan No. MWC/408/86 of 1/7/86 - exhibit 2, and from otherwise committing any further acts of trespass thereon.*

(v) *The claim for special damages is hereby dismissed.*

E *I shall hear counsel as to costs."*

The learned trial Judge considered the defendants' plea of relief against forfeiture and much as he would have granted this relief he held that the defendants did not come by way of proper procedure as laid down in *Taiwo & Ors. v. Akinwunmi & Ors.* (1975) 9 NSCC 224; (1975) 4 SC 143. The defendants appealed to the Court of Appeal and raised the following issues before that court:

(1) Based on grounds 5, 7, 8 and 9:

G Whether the grant and conditions of the grant of customary tenancy to the appellants by the respondents after the Supreme Court judgment in suit No. SC/106/1966 were adequately or at all considered and ascertained by the learned trial Judge before finding that the appellants breached their conditions and therefore forfeited their customary tenancy.

H (2) Based on ground 6:

Whether the claims for trespass and for recovery of possession are not contradictory and if contradictory, whether they were reliefs properly claimed and sustained in this action.

(3) Based on grounds 1, 3, 4 and 11:

Whether the learned trial Judge considered material and relevant issues in support of the appellants' case vis-a-vis that of the respondents?

(4) Based on grounds 10 and 12:

Whether the area of the purported subsequent grant was established in view of the issues joined on the point by the parties, B

(5) Based on ground 2:

Whether or not the issues raised by the parties in paragraph 8 of the amended statement of claim and paragraphs 8 and 9 of the amended statement of defence were properly appreciated and resolved at the trial. C

That court, after due consideration of all the issues canvassed before it, dismissed the appeal but gave a veiled indication that it might have granted the plea of the defendants for relief against forfeiture if it had been properly laid. For Akpabio, JCA who read the lead judgment of the Court of Appeal and with which the other Justices who sat with him agreed said:

"Before concluding, I must say that in view of the numerous development projects carried out by the appellants on the land, I have considered granting the appellants a 'relief from forfeiture' as contained in the last paragraph of their statement of defence. But, as pointed out by the learned trial Judge, a relief from forfeiture is not granted in vacuo. It has to be applied for either by way of counter-claim or by summons as stipulated in the case of Asani Taiwo & 3 Ors. v. Akinwunmi & 2 Ors. (1975) 4 SC 143. But in the instant case the appellants never claimed in any of the above ways. All we have on record was a mere declaration of intention by the appellants at the last paragraph of their statement of defence as follows:

'...the (defendants) will at the trial ask for relief against forfeiture as they have amply developed the area of grant by setting up permanent buildings and other developments on the land.' From start to finish of the trial there was no indication whatsoever that the appellants ever applied or asked for relief from forfeiture. Under our law a court has no power to grant to a party that which he did not claim (Ekpenyong v. Nyong (1975) 2 SC 71). This court cannot therefore also grant the appellants a relief from forfeiture. The appeal against forfeiture therefore, fails and is hereby dismissed."

The above observation of the learned Justice of the Court of

Appeal was only an obiter as the question of relief against forfeiture or the procedure for it was never raised by the parties before their Lordships of that court. The defendants have now appealed to this court, upon two original and one additional grounds of appeal. The additional ground of appeal reads:

B *"The learned Justices of the Court of Appeal erred in law by affirming the learned trial Judge's refusal to grant appellants plea for relief against forfeiture having regard to all the special circumstances of the case.*

C *Particulars of error*

The case of Taiwo v. Akinwunmi (1975) 4 SC relied on by both the trial court and court below was not binding because:

(i) *It was decided obiter dicta - pronouncements on a preliminary question which did not address the issues that arose for determination in the substantive appeal.*

(ii) *It was decided 30 years ago and has been overtaken by current procedural law binding on the trial court namely the State Civil Procedure Rules Edict No. 10 of 1988.*

E (iii) *The learned trial Judge failed to exercise his discretion judicially and judiciously in refusing the application for relief against forfeiture having regard to the circumstances of the case."* and was allowed to be argued with leave of this court. In the appellants' amended brief of argument learned counsel for the defendants/appellants raised the following two issues as arising for determination in the appeal:

F *1. "Whether the learned court below was right to have confirmed the judgment of the learned trial Judge who failed to exercise his discretion judiciously and judicially in refusing appellants' plea for relief against circumstances of the case.*

G *2. Whether the court below was right in affirming the decision of the trial Judge who held that he was bound by Asani Taiwo & 3 Ors. v. Adamo Akinwunmi & 2 Ors. (1975) 4 SC 143 and without reference to the Bendel State (Civil Procedure) Rules Edict No. 10 of 1998, before deciding the case on the point."*

H They all boil down to the question of the defendants' plea for relief against forfeiture. Learned counsel was of the view that the trial Judge was wrong to have relied on Taiwo v. Akinwunmi (supra) in refusing to grant the plea when the learned Judge could have relied on the Bendel State (Civil Procedures) Rules available to the court. I

have gone through the relevant rules referred to by learned counsel and with regret, I cannot see how the rules help the defendants in this case. On the contrary, Order 1 rule 1 of the rules which provided:

"Subject to the provisions of any Act, civil proceedings may be begun by writ, originating summons, originating motion or petition, as hereinafter provided." was against the defendants. Going by the rules, the only way to seek a relief in court is either by way of writ, originating summons, originating motion or petition. In the case of a defendant in an action, he could also claim his relief by way of counter-claim. That is all that the rules enjoined and indeed that was the purport of the decision of this court in *Taiwo v. Akinwunmi*. As *Fatayi-Williams, JSC* (as he then was) put it on pages 171-173.

"... where a tenant, whether he is a customary tenant or not, commits an act which could incur a forfeiture of the tenancy and a claim for such forfeiture is brought against him in the High Court, the proper procedure is not by just asking for relief in the pleadings as it has been done in the application for amendment. The procedure to be followed and which we recommend for future use, is described in Atkins Court Forms, 2nd Edition, volume 24 at page 30 as follows:-"

'A claim for relief from forfeiture for non-payment of rent may be made in a number of ways. If the landlord has not begun any proceedings the tenant or sub-tenant may initiate a claim for relief by writ or originating summons. Alternatively, the tenant may counter-claim for relief in the lessor's action or simply apply by summons in that action.... If the application is made after judgment it is usually by summon.' (See also *Standard Pattern Co. Ltd. v. Ivey* (1962) 1 All ER 452 and *Gill v. Lewis* (1956) 1 All ER 844). The reason for this somewhat elaborate procedure is not far to seek. By proceeding either by way of an originating summons or a counter-claim where pleadings could be ordered, the tenant will be able to set out in detail the facts upon which he relies such as the circumstances leading to the breach. The landlord or overlord, on the other hand, will be able, in his own defence to the originating summons or counter-claim, to reply to all the facts on which the tenant is relying. Issues as to whether to grant relief or not will then be joined and neither party will be taken by surprises. The court will then hear evidence from both sides based on their pleadings and will thus be in a better posi-

tion to consider all the circumstances and probabilities and come to a conclusion one way or another.

The defendants in the case on hand neither issued a writ nor did they come by way of originating summons nor did they file a counter-claim. They only pleaded, in the alternative, that they would
 B at the trial ask for the relief against forfeiture. I think the learned trial Judge was right in holding that the defendants had not come by way of proper procedure and, rightly in my view, refused to grant them that relief. There is thus no room for a consideration of the merits of
 C their case against forfeiture.

Having considered as a whole, the submission of learned counsel both in their respective written briefs and oral submissions, I have no reason whatsoever to disturb the judgment of the court below. It is not correct to say that the decision as to the proper procedure laid
 D down in *Taiwo v. Akinwunmi* (supra) was obiter. It is indeed one of the issues raised in that case and was exhaustively considered by this court in the judgment read by Fatayi-Williams, JSC (as he then was). Consequently, I too dismiss this appeal and abide by the order for costs made by my learned brother, Tobi, JSC.
 E

ONU JSC

Having been privileged to read before now the judgment of
 F my learned brother Niki Tobi, JSC just delivered, I am in complete agreement with his reasoning and conclusions. I adopt the same as mine and have nothing more to add thereto.

KATSINA-ALU JSC

I have had the privilege of reading in draft the judgment of my
 G learned brother Niki Tobi, JSC in the appeal. I entirely agree that the appeal is without merit. I also dismiss it with costs as awarded in favour of the respondents. Appeal dismissed.
 H