

SUPREME COURT OF NIGERIA
FRIDAY 10TH JANUARY, 2003. SC. 18/1997
CORAM:-I. L. KUTIGI, U. MOHAMMED, U. A. KALGO,
S. O. UWAIFO, A. O. E. JIWUNMI, JJSC

CORNELIUS ANJORIN LEBILE (by substitution for Abraham Lebile, (deceased) for himself and on behalf of Lebile Family of Igbokoda) APPELLANT
AND	
1. THE REGISTERED TRUSTEES OF CHERUBIM AND SERAPHIM CHURCH OF ZION OF NIGERIA UGBONLA	
2. MR. SAMUEL AYODELE RESPONDENTS
3. MR. SHADRACK KUDEHINBU	
4. MR. GIDEON ILESANMI	

LAND LAW - Pleadings - Traditional history - Proof - Party who relies on such history - Would need to plead names of his ancestors - And narrate a continuous chain of devolution of the land up to him (H1)

LAND LAW - Evidence - Admissibility - Since there was no averment as to founder of Igbokoda land - Plaintiff's evidence is unreliable (H2)

LAND LAW - Community land - Title - Proof - A person who claims title to a portion of such land - Must inter alia prove that the same was allocated to him - By those in authority to do so (H3)

APPEALS - Fresh issue - Raised without leave - Fate - Leave is required to raise such issue - Otherwise the same will be discountenanced (H4)

APPEALS - Judgments - Determination - Basis - Supreme Court determines whether Court of Appeal's judgment was correct - And not whether its reasons were insufficient or wrong (H5)

COURTS - Fair hearing - Parties - Court must give parties opportunity of being heard - And its jurisdiction must be restricted to the parties and issues before it (H6)

APPEALS - Issues - Basis - Issues must be distilled from grounds of appeal - Which must relate to vital aspect of judgment (H7)

FACTS

Plaintiff/appellant (in a representative capacity) sued defendants/respondents in the High Court of Ondo State Okitipupa, claiming declaration of title over the land in dispute, injunction and damages for trespass. At the hearing, appellant contended that one Lebile Okunnuwa was the founder of Igbokoda and the 1st Baale thereof. It was from the said Okunnuwa that the disputed land eventually descended to the present generation of Lebile family. However, two of appellant's witnesses contradicted his claim that Okunnuwa was the founder of Igbokoda.

On the other hand, respondents argued that Igbokoda land was communally owned and that it was on this basis that the community had at various times granted portions of land to some of the respondents. Eventually, the court held that appellant's claims were not proved and accordingly dismissed them. Aggrieved, appellant appealed to the Court of Appeal, Benin City Division. The court dismissed the appeal. Still dissatisfied, appellant has come on a further and final appeal to the Supreme Court.

ISSUES FOR DETERMINATION

1. *Was the Court of Appeal right in affirming the judgment of the trial court based on both Amended Statement of Defence and Further Amended Statement of Defence?*

2. *Whether the court below was right when it struck out as incompetent Issue One (1) raised and argued in the Appellant's Brief.*

3. *Whether it was necessary for the appellant to have sought and obtained prior leave of court to raise and argue Issue Three (3) when it arose from grounds of appeal that attacked the judgment of the trial Judge on his interpretation and application of the provisions of the Land Use Act, 1978, particularly Section 6 of it.*

4. *Was the court below right in not deciding against the respondents' issues 2, 4, 5 and 6 raised and argued in the Appellant's*

Brief when they properly arose from the amended grounds of appeal filed and when the respondents did not canvass contrary arguments to those of the appellant of them?

5. *Whether the court below was right to have raised on its own motion, and decided two issues and to have neglected to decide the six (6) issues raised by the appellant for the determination of the court.*

6. *Whether the appellant ought to have joined the Local Government and/or the community before the court could properly decide the issues raised by him in the suit.*

7. *Was the Court of Appeal right when it held in its judgment that ‘the defendants have shown more acts of ownership on the land in dispute than the plaintiff’?*

8. *Did the court below exercise its discretion judicially and judiciously when it awarded costs against the appellant when it dismissed his appeal but did not award costs against the respondents when it struck out their cross-appeal as incompetent?”*

HELD (Unanimously dismissing the appeal per UWAIFO JSC)

LAND LAW - Pleadings - Traditional history - Proof

1. From the above, it is clear beyond any doubt that what was pleaded and put in issue could not have been proper traditional history of ownership. With this type of pleading and the strength of the evidence led, as I shall briefly show, under no circumstances could the plaintiff have been adjudged to have proved his claim. In the first place, the traditional history was not properly pleaded other than what was averred in paragraph 6 of the statement of claim, even in the ridiculously short period it was supposed to cover. It cannot be too often said that a party who relies on traditional history, (which a claim to the founding of a village or town implies), would need to plead the names of his ancestors to narrate a continuous chain of devolution, not allowing there to be any gap or gaps defying explanation or leading to a prima facie collapse of the traditional history. The history must show how the land by a system

of devolution eventually came to be owned by the plaintiffs.
(p. 467 H)

Evidence - Admissibility

2. Even more embarrassing to the plaintiff and completely destructive of his case is the evidence of two of his witnesses, P.W.1 and P.W.5. Rev. Esrom Olubamgbe Omowole who testified as P.W. 1 said inter alia:

“Igbokoda land is under the Amapetu of Mahin. Amapetu Omowole was the founder of Igbokoda... I never heard that Lebile Okunnuwa founded Igbokoda.”

Then Adebajo Omowole, as P.W.5 also said:

“My grandfather, Omowole, as the paramount of the Ilaje/Mahin land founded Igbokoda. Okunnuwa was not the founder of the place known as Igbokoda now. My grandfather founded Igbokoda as a virgin land.”

Admittedly, since there was no averment that Omowole founded Igbokoda the evidence cannot be taken as if he did. However, being evidence led by the plaintiff, it shows that his claim that his grandfather founded Igbokoda is unreliable, apart from the inadequate pleading. (p. 468 F)

Community land - Title - Proof

3. It has long been recognised as a principle that when communal ownership of land is established or known to exist, it must be presumed to remain the customary practice of the community particularly throughout the coast of West Africa until the contrary is proved. In the context or circumstances in which an individual successfully claims and proves ownership of a particular portion of the land an individual or family or quarter in a community laying claim to the ownership of any portion of communal land must discharge the onus of proving title to that portion to the exclusion of the community. The most obvious way this is done is to establish that the land had been allocated to such a claimant so as to confer individual ownership under the custom or practice of the community by those in authority or in a position to do so. Another way is to establish that the system of family ownership of land

has evolved by tradition or otherwise and is recognised and practised in the community, as is the position in some part of Lagos State where there are some well known land-owning families. The present plaintiff's case has not been successfully made under either system. (p. 470 B)

B

APPEALS - Fresh issue - Raised without leave - Fate

4. The plaintiff attempted to question the admissibility of the said certificate of occupancy in issue 1 raised before the court below. But that court held that being an issue not raised in the trial court, leave to raise it on appeal was necessary. Without such leave, the appellant will not be heard on the point. The issue in question was therefore rightly struck out by the court below. (p. 471 E)

D

Judgments - Determination - Basis

5. It does not matter that the court below may not have gone into the available details of circumstances which, put together and considered, must lead to the conclusion that the plaintiff's claim was properly dismissed. It is in law enough that it reached the right decision as I consider it did. In other words, if the conclusion reached by the court below is correct, that cannot be affected by the fact that it was arrived at on insufficient or even some wrong reasons: (p. 472 B)

F

Fair hearing - Parties

6. It is a fundamental principle of natural justice that a person must be given an opportunity of a hearing, (which hearing must be fair), before being deprived of his liberty or property or right. This leads me to the imperative that a court can only exercise its jurisdiction or power over parties before it and strictly in respect of the case between them upon issues raised and reliefs sought. It cannot do so concerning, and to the extent it may affect, persons who are not parties before it and must resist the temptation to make pronouncements to that end. The court must confine its decision to the parties and the claim. (p. 474 B)

H

APPEALS - Issues - Basis

- 7. The plaintiff has complained in issue 6 in this appeal whether the community and/or Local Government should have been joined in the action before the court could have properly decided the action brought by him. It must be realised and made clear that the true and ultimate purpose for which an appellant ought to raise issues for determination in an appeal should be for him to assist the court to decide the appeal in his favour. Such issues ought therefore to be on vital aspects of the judgment where errors perceived to lead to a miscarriage of justice have been carefully identified from complaints made in the relevant grounds of appeal and exposed in the argument reflecting those issues. In order to do this effectively it is inadvisable to make the issues prolix nor is it of any help to raise them on irrelevant or all manner of errors which may not necessarily lead to a reversal of the judgment.** (p. 475 D)

REPRESENTATION

S. Isumede, Esq. for the plaintiff/Appellant

O. R. Omosowone, Esq. for the Defendants/Respondents

CASES REFERRED TO

- Aigbe v. Edokpolo (1977) 2 S.C. 1
 Akinloye v. Eyilola (1968) NMLR 92
 Elias v. Omo-Bare (1982) 5 S.C. 25
 Ayeni v Sowemimo (1982) 5 S.C. 60
 Ogunleye v. Oni (1990) 2 NWLR (Pt. 135) 745
 Ukejianya v. Uchendu (1950) 13 WACA 45
 Abaye v. Ofili (1986) 17 NSCC (Pt. 1) 94
 Aikhionbare v. Omoregie (1976) 12 S.C. 11
 Ojogbue v. Nnubia (1972) 1 ALL NLR (Pt. 2) 226
 Okeaya-Inneh v. Aguebor (1970) 1 All NLR 1
 Ojah v. Ogboni (1996) 6 NWLR (Pt. 454) 272
 Udeze v. Chidebe (1990) 1 NWLR (Pt. 125) 141
 Kai Tongi v. Sulaiman Kalil (1953) 14 WACA 331
 Agbonifo v. Aiwerioba (1988) 1 NWLR (Pt. 70) 325
 Awoyegbe v. Ogbeide (1988) 1 NWLR (Pt. 73) 695
 Total (Nigeria) Ltd. v. Wilfred Nwako (1978) 5 S.C. 1

LEAD JUDGMENT BY UWAIFO JSC

This action was brought in a representative capacity on behalf of the Lebile family. The full family name was pleaded in paragraph 2 of the amended statement of claim as Lebile Okunnuwa family. The said family is part of a community known as Igbokoda. Igbokoda is in Ilaje/Ese-Odo Local Government Area of Ondo State. The reliefs sought against the defendants were stated as -

(1) A declaration that the plaintiff is entitled to a customary right of occupancy of a parcel of land situate along College Road, Igbokoda, which is bounded on one side by Ilaje High School, on the second side by the building of Mr. Jeje, on the third side by College Road and on the fourth side by Toloki Stream.

(2) An order of perpetual injunction

(3) N10,000. 00 general damages for trespass.

The location and description of the said land was further particularly pleaded in paragraph 9 of the amended statement of claim thus:

“The land in dispute is bounded on the east by the uncompleted building of Mr. Cornelius Jeje, on the west by Ilaje High School, Igbokoda, on the North by Toloki Stream and on the south by College Road, Igbokoda.”

Then in paragraph 10, it was averred:

“The land to the south of College Road, Igbokoda, is also part of Lebile Okunnuwa family land.”

The relevance of these averments shall be shown later in this judgment. In a judgment delivered on 26 November, 1991, by the High Court at Okitipupa presided over by Ajayi, J., the action was dismissed. The Court of Appeal, Benin Division, affirmed the judgment on December 1, 1995. In the appeal to this court, the appellant has raised eight issues for determination. I consider only issues 1, 6 and 7 are worthy of discussion. I shall however touch on all the issues and for that purpose I do hereby reproduce the eight issues as follows:

“1. Was the Court of Appeal right in affirming the judgment of the trial court based on both Amended Statement of Defence and Further Amended Statement of Defence?

2. Whether the court below was right when it struck out as

incompetent Issue One (1) raised and argued in the Appellant's Brief.

3. *Whether it was necessary for the appellant to have sought and obtained prior leave of court to raise and argue Issue Three (3) when it arose from grounds of appeal that attacked the judgment of the trial Judge on his interpretation and application of the provisions of the Land Use Act, 1978, particularly Section 6 of it.*

4. *Was the court below right in not deciding against the respondents' issues 2, 4, 5, and 6 raised and argued in the Appellant's Brief when they properly arose from the amended grounds of appeal filed and when the respondents did not canvass contrary arguments to those of the appellant of them?*

5. *Whether the court below was right to have raised on its own motion, and decided two issues and to have neglected to decide the six (6) issues raised by the appellant for the determination of the court.*

6. *Whether the appellant ought to have joined the Local Government and/or the community before the court could properly decide the issues raised by him in the suit.*

7. *Was the Court of Appeal right when it held in its judgment that 'the defendants have shown more acts of ownership on the land in dispute than the plaintiff'?*

8. *Did the court below exercise its discretion judicially and judiciously when it awarded costs against the appellant when it dismissed his appeal but did not award costs against the respondents when it struck out their cross-appeal as incompetent?*

I must return here to the plaintiff's amended statement of claim. It would appear that as a basis of the title relied on, the plaintiff pleaded in paragraphs 6, 7, 9 and 11 that:

"6. Lebile Okunnuwa was the founder of Igbokoda, and the 1st Baale of the place (1930 - 1957).

7. The land in dispute belongs to Lebile family from time immemorial.

8. *Lebile Okunnuwa and his descendants (including the plaintiff) have from time immemorial been exercising rights of ownership, (farming, hunting and fishing), in the land in dispute without let or hindrance.*

11. The plaintiff's family has been exercising acts of ownership

of the land in dispute from time immemorial and had granted portions of land adjacent to the land in dispute to individuals and Institutions, namely: Mr. Cornelius Jeje, Mrs. Rachel Tikolo, Mr. Oki, Mr. Morighanfen and Ilaje High School, Igbokoda."

The defendants denied these and many other paragraphs of the amended statement of claim and this led the plaintiff to file a reply to the defendants' answer. The defendants' case in the relevant aspects of their pleading was, in a nutshell, that in Igbokoda village/town, land is communal and that the owners of the land, i.e., the Igbokoda community, granted the 1st defendant a parcel of land in 1972. Later, in 1977, the Ilaje/Ese-Odo Local Government which had wanted to acquire that same land for the building of its Secretariat complex, approached the defendants, and with the intervention and collaboration of the Igbokoda community it was agreed by all that another parcel of land be given to the 1st defendant in exchange for the one earlier given it by the community. That was done and it was how the land in dispute was acquired by the 1st defendant. A certificate of a Customary Right of Occupancy dated 19th December, 1979, (Exhibit E) was in respect thereof issued to the 1st defendant by the Local Government.

It seems to me that paragraph 6 of the statement of claim, which pleaded the founding of Igbokoda by Lebile Okunnuwa, must be regarded as being inconsistent with the pleading of ownership of land from time immemorial as averred in paragraphs 7, 8 and 11. This becomes obvious when one considers the averment that the founder was the first Baale from 1930 to 1957; and even more so from the evidence of the plaintiff in cross-examination inter alia as follows:

"Lebile Okunnuwa was the first person to settle at Igbokoda and founded the townMy father was Benjamin Lebile. My grandfather was the Baale from 1930 - 1957. He died on 19/12/57. He was very old - up to 100 years. I knew Pa Odidi. I don't know who was older between him and my grandfather. He died before my grandfather, He was one of the first settlers but my father (sic) granted him land at Larada quarters. My grandfather founded Igbokoda in 1914."

From the above, it is clear beyond any doubt that what was pleaded and put in issue could not have been proper traditional history of ownership. With this type of pleading and

the strength of the evidence led, as I shall briefly show, under no circumstances could the plaintiff have been adjudged to have proved his claim. In the first place, the traditional history was not properly pleaded other than what was averred in paragraph 6 of the statement of claim, even in the ridiculously short period it was supposed to cover. It cannot be too often said that a party who relies on traditional history, (which a claim to the founding of a village or town implies), would need to plead the names of his ancestors to narrate a continuous chain of devolution, not allowing there to be any gap or gaps defying explanation or leading to a prima facie collapse of the traditional history. The history must show how the land by a system of devolution eventually came to be owned by the plaintiffs.

See Akinloye v. Eyilola (1968) NMLR 92 at 95; Total (Nigeria) Ltd. v. Wilfred Nwako (1978) 5 S.C. 1 at 12; Elias v. Omo-Bare (1982) 5 S.C. 25 at 57-58; Owoade v. Omitola (1988) 8 NWLR (Pt. 77) 413 at 424 - 425; Eze v. Atasie (2000) 6 S.C (Pt. 1) 214; (2000) 10 NWLR (Pt. 676) 470 at 482.

In the second place, the alleged history of founding relied on by the plaintiff can hardly be regarded as traditional history. It is too recent, judging from the time the action was filed in 1988, because it was about 70 years (from 1914). That was clearly within living memory, or in any event, as already said, it was inconsistent with the averment of immemoriality in paragraphs 7, 8 and 11 of the statement of claim. Conceptually, it is when an event is beyond human memory or is ancient beyond record, or happened at a time out of mind that it qualifies to be immemorial: see Black's Law Dictionary, 6th edn, page 750. But ***even more embarrassing to the plaintiff and completely destructive of his case is the evidence of two of his witnesses, P.W.1 and P.W.5. Rev. Esrom Olubamgbe Omowole who testified as P.W. 1 said inter alia:***

"Igbokoda land is under the Amapetu of Mahin. Amapetu Omowole was the founder of Igbokoda... I never heard that Lebile Okunnuwa founded Igbokoda."

Then Adebajo Omowole, as P.W.5 also said:

"My grandfather, Omowole, as the paramount of the Ilaje/Mahin land founded Igbokoda. Okunnuwa was not the founder of the place known as Igbokoda now. My grandfather

founded Igbokoda as a virgin land.”

Admittedly, since there was no averment that Omowole founded Igbokoda the evidence cannot be taken as if he did. However, being evidence led by the plaintiff, it shows that his claim that his grandfather founded Igbokoda is unreliable, apart from the inadequate pleading. B

In the third place, looking at the averments in paragraphs 9 and 10 of the statement of claim, it would appear that the area of land, (including the land in dispute), to which the plaintiff’s family lays total claim of title or right of occupancy is only a portion of Igbokoda land. In the plaintiff’s reply to the amended statement of defence, he averred in paragraphs 3, 5, 6 and 7 as follows: C

“3. The plaintiff says that there are three quarters in Igbokoda and these are;

(a) Lebile Okunnuwa Family D

(b) Larada Family and;

(c) Araromi Family.

5. The plaintiff avers further that the position of Oba Amapetu over Igbokoda is that of a titular head to whom traditional homage is paid in respect of land and Chieftaincy matters. His position did not divest individual families of their ownership of parcels of the land. He holds the land in trust for his subjects. E

6. In reply to paragraphs 12 and 13 of the amended statement of defence the plaintiff admits that the Amapetu of Mahin fought the 1917 case against Kalasuwe Jubo of Ijaw Apoi. He also fought the 1974 case through his nominees. This is the accepted practice in land disputes between two sets of people each under a separate natural ruler. F

7. In answer to paragraphs 16 and 17 of the amended statement of defence the plaintiff says that his father, Chief J Benjamin Lebile defended suit No.HOD/41/74 as head of Igbokoda community. The suit was brought against him by Chief Ephraim Konye of Okunmo in suit in respect of farmland at the boundary of Igbokoda and Okunmo land.” G H

One can easily see from the admission of the plaintiff in paragraph 6 above that the Amapetu of Mahin fought the cause of community land of Igbokoda in those two suits; and in paragraph 7 above, even the plaintiff’s father fought the suit on behalf of the community.

These averments in paragraphs 6 and 7 support community interest and the position of the defendants that land in Igbokoda was communal. That will require clear proof of the averments in paragraphs 3 and 4 that there are three families owning the respective lands in the alleged three quarters in Igbokoda. I think it was the presumption of communal land ownership in Igbokoda that led the Ilaje/Ese-Odo Local Government to issue the Certificate of the Customary Right of Occupancy (Exhibit E) with the agreement of the community of Igbokoda.

It has long been recognised as a principle that when communal ownership of land is established or known to exist, it must be presumed to remain the customary practice of the community particularly throughout the coast of West Africa until the contrary is proved in the context or circumstances in which an individual successfully claims and proves ownership of a particular portion of the land: see *Amodu Tijani v. Secretary Southern Nigeria* (1921) 2 AC 399 at 410. This case was relied on in *Udeakpu Eze v. Samuel Igiliogbe* (1952) 14 WACA 61. The two were cited by this court in *Udeze v. Chidebe* (1990) 1 NWLR (Pt. 125) 141 at 158 to the effect that ***an individual or family or quarter in a community laying claim to the ownership of any portion of communal land must discharge the onus of proving title to that portion to the exclusion of the community.*** See also *Ojah v. Ogboni* (1996) 6 NWLR (Pt. 454) 272 at 294. ***The most obvious way this is done is to establish that the land had been allocated to such a claimant so as to confer individual ownership under the custom or practice of the community by those in authority or in a position to do so:*** see *Kai Tongi v. Sulaiman Kalil* (1953) 14 WACA 331 at 332. This is the custom and practice, for instance, of the Bini Community of Edo State where all lands in Benin are communal property of the entire Bini people whereof by custom the legal estate is vested in the Oba of Benin in trust for the people until any particular portion is so allocated: see *Okeaya-Inneh v. Aguebor* (1970) 1 All NLR 1 at 8-10; *Aikhionbare v. Omoregie* (1976) 12 S.C. 11 at 28; *Aigbe v. Edokpolo* (1977) 2 S.C. 1 at 3; *Agbonifo v. Aiwerioba* (1988) 1 NWLR (Pt. 70) 325 at 335; *Awoyegbe v. Ogbeide* (1988) 1 NWLR (Pt. 73) 695 at 703. ***Another way is to establish that the system of family ownership of land has evolved***

by tradition or otherwise and is recognised and practised in the community, as is the position in some part of Lagos State where there are some well known land-owning families. The present plaintiff's case has not been successfully made under either system.

Although the learned trial Judge made strenuous efforts to avoid making any pronouncement as to the communality of Igbokoda land, he seemed to have recognised this phenomenon when he said:

"Since this court is satisfied that the Local Government put the defendants on the land and once there is evidence in court that the Local Government got their land from the community, it would be too much to expect the defendants to go into the root of title of the community."

This observation as to the ability of the community of Igbokoda to give land out derives from and is based on the presumption of the existence of a system of communal ownership of land in that village. It is, in my view, justified in the absence of proof by the plaintiff of a contrary system of land ownership or that the particular land in dispute had been allocated to his family. The validity of the Certificate of Customary Right of Occupancy issued to the 1st defendant by the Local Government upon which the defendants relied rests on this premise. **The plaintiff attempted to question the admissibility of the said certificate of occupancy in issue 1 raised before the court below. But that court held that being an issue not raised in the trial court, leave to raise it on appeal was necessary. Without such leave, the appellant will not be heard on the point.** See Agu v. Ikewibe (1991) 3 NWLR (Pt. 780) 385. **The issue in question was therefore rightly struck out by the court below.**

The issue of title to support ownership of the land as claimed by the plaintiff not having been proved, the court below considered whether the plaintiff could rely on acts of ownership. The court then observed and reached a conclusion per Akpabio JCA, as follows:

"On the question of acts of possession, I myself have looked at the records and can find no act of possession performed on the land in dispute by the plaintiff. He had neither a house on it, nor any farm. Even on his own pleadings, the palm trees he planted on the land between 1967 and 1969, were 'bulldozed, cleared and destroyed' by Ilaje/Ese-Odo Local Government. On the other hand the

defendants averred that they had eight residential houses, which were then being occupied by members and officials of the Church, in addition to their church's main building. Under the circumstance I am of the firm view that the defendants showed more acts of ownership on the land in dispute than the plaintiff. The suit of the plaintiff was
 B *therefore rightly dismissed by the learned trial Judge."*

It does not matter that the court below may not have gone into the available details of circumstances which, put together and considered, must lead to the conclusion that the
 C ***plaintiff's claim was properly dismissed. It is in law enough that it reached the right decision as I consider it did. In other words, if the conclusion reached by the court below is correct, that cannot be affected by the fact that it was arrived at on insufficient or even some wrong reasons:*** see *Ukejianya v.*
 D *Uchendu* (1950) 13 WACA 45 at 46; *Ayeni v Sowemimo* (1982) 5 S.C. 60 at 74-75; *Abaye v. Ofili* (1986) 17 NSCC (Pt. 1) 94 at 133. I have endeavoured in this judgment to show all the weaknesses in the plaintiff's case and there is no doubt in my mind that the plaintiff woefully failed to prove his case and that the proper order of dismissal has been entered against him. I therefore answer issues 1 and
 E 7 in the affirmative.

From what I have said earlier on, issue 2 must be answered in the affirmative since the issue therein was raised for the first time on appeal without leave of court. As to issue 3, I think leave was not
 F necessary because the matter arose from the interpretation of Section 6 of the Land Use Act, 1978, by the learned trial court in the final judgment delivered by him. The plaintiff was entitled to appeal as of right from the effect of that interpretation. The court below was
 G therefore in error to have thought that leave was required and consequently the issue raised as issue 3 was wrongly struck out. But I must say it was an irrelevant issue, which could in no way affect the merit of the case. This also applies to issue 4. As to issue 5, what the court below did was to summarize what it found to have survived out
 H of the six issues raised by the plaintiff, and then considered them under two issues which it framed from those other issues the way it understood them to connote. There is nothing improper about that so long as the summary was reasonably reflective of the issues in question as they relate to the grounds of appeal. The problem with

the method the learned counsel for the plaintiff employed in stating his issues for determination in this case and the argument in support, with due respect, is that it hardly made for easy comprehension of the issues and argument. I have myself had to contend with what appeared to me to be extensive argument, (covering 50 typed foolscap pages), largely on irrelevancies in the present appeal. I do not intend this as a criticism but I do express it perhaps as an observation of the difficulty I found myself to have encountered in the way a relatively simple matter was presented. B

In regard to issue 6, I do not think that the plaintiff was necessarily required to join the Local Government of Ilaje/Ese-Odo and/or the community of Igbokoda in the present case having regard to the reliefs sought against the defendants to a parcel of land in the said community. The learned trial Judge in the course of his judgment made certain pronouncements in reaction to the submissions of the plaintiff's counsel which would now appear to have been misunderstood by the plaintiff himself or his counsel. It will be recalled that the defendants said the land in dispute was given to them by the Local Government leading to the issuance of a certificate of customary right of occupancy at the instance of the community. The second defendant in his testimony said that although there are three quarters in Igbokoda, each of those quarters are limited to their homestead and that Igbokoda land belongs to the entire community. The implication of that evidence is the communal ownership of land in Igbokoda raised as an issue. C D E F

The plaintiff's counsel specifically addressed the court on that issue in respect of which the court made an observation. I shall recite the relevant passage of the judgment thus:

"Prince Mafo has urged the court to pronounce on the ownership of Igbokoda land as between the community and the Local Government or between the community and the Lebile family. I regret to disagree because neither the Local Government nor the community is a party to this case. If the plaintiff did not think that it was necessary to join either of these two bodies as co-defendants in this case, then the court can only decide the issue of ownership as between the plaintiff and the defendants." G H

It is impossible to fault the observation of the learned trial Judge going by the nature of the submission made by learned counsel. This

is because, first, there was no relief before the court seeking a declaration that would in effect put at risk the right of the community of Igbokoda to their land or the right of the Local Government to issue a certificate of customary right of occupancy. Second, even if there had been such a relief, the court would have no jurisdiction to make a decision in the present circumstances to adversely affect such a right without the community and the Local Government being made parties. ***It is a fundamental principle of natural justice that a person must be given an opportunity of a hearing, (which hearing must be fair), before being deprived of his liberty or property or right. This leads me to the imperative that a court can only exercise its jurisdiction or power over parties before it and strictly in respect of the case between them upon issues raised and reliefs sought. It cannot do so concerning, and to the extent it may affect, persons who are not parties before it and must resist the temptation to make pronouncements to that end. The court must confine its decision to the parties and the claim.*** See *Ochonma v. Unosi* (1965) NMLR 321; *Ojogbue v. Nnubia* (1972) 1 ALL NLR (Pt. 2) 226; *Intercontrators Nigeria Ltd. v. U.A.C. of Nigeria Ltd.* (1988) 2 NWLR (Pt. 76) 303.

Still considering a further though almost similar aspect of the plaintiff's counsel's submission, the learned trial Judge said:

"Prince Mafo had asked me to decide the issue of the ownership of Igbokoda town once and for all as to whether the town is owned by individuals, or by the community at large. I would have gladly done so if either the community or the Local Government had been a party before me. The fact that the Baale of Igbokoda gave evidence before me does not make him a party to the suit and therefore, the court cannot decide the right of the community without the community being made a party." (Emphasis mine)

A close comparison of the submission contained in the above observation with that in the earlier one reveals a salient difference. In the earlier one the real question is whether Igbokoda land is owned by the community or by the Local Government, or by the Lebile family. Strictly, a clear answer may warrant the Igbokoda community and the Local Government being made parties. But looking at the emphasized phrase in this later observation, the submission in question does not seem to me to make the presence of those parties

necessary, since going by the strength of the plaintiff's case the question turns on whether the presumption of communal land ownership had been rebutted by the plaintiff so as to declare him, (i.e., the Lebile family), the owner of the land in dispute. It is the resolution of that question in the negative that can reasonably justify the observation later made by the learned trial Judge that: B

"It is not in doubt nor does the plaintiff deny it that the land in dispute was the one exchanged by the Local Government for the one granted to them by the community." (Emphasis mine)

Obviously, the community can only grant communal land, and if that is how the learned trial Judge implicitly regarded the land in dispute, then it could not be the property of the Lebile family. Nothing prevented the learned trial Judge from reaching a conclusion as to the communal nature of Igbokoda land even without the community or the Local Government being made parties. ***The plaintiff has complained in issue 6 in this appeal whether the community and/or Local Government should have been joined in the action before the court could have properly decided the action brought by him. It must be realised and made clear that the true and ultimate purpose for which an appellant ought to raise issues for determination in an appeal should be for him to assist the court to decide the appeal in his favour. Such issues ought therefore to be on vital aspects of the judgment where errors perceived to lead to a miscarriage of justice have been carefully identified from complaints made in the relevant grounds of appeal and exposed in the argument reflecting those issues. In order to do this effectively it is inadvisable to make the issues prolix nor is it of any help to raise them on irrelevant or all manner of errors which may not necessarily lead to a reversal of the judgment.*** C D E F G

On issue 8, it is pertinent to state briefly how the cross-appeal was disposed off by the court below. The cross-appeal filed by the defendants was regarded by the court as incompetent on the ground that from the nature of the complaint made by them against an aspect of the judgment of the trial court, a respondents' notice rather than a cross-appeal was appropriate. It was a view reached by the court below upon which the appellant gave no assistance to the court in his response to the said cross-appeal in his reply brief. In other H

words, he did not know that the cross-appeal was incompetent and had not complained in this court against the manner the lower court dealt with it. I do not think he can be seen to be aggrieved by complaining that the court below did not compensate him by costs for striking out the cross-appeal. It was clearly within the discretion of the court below in the circumstances not to award costs and I think that discretion was properly exercised.

I have come to the conclusion that this appeal is absolutely without merit. I therefore dismiss it and award costs of N10,000.00 in favour of the respondents who were the defendants at the trial against the appellant who was the plaintiff.

KUTIGI JSC

I read in draft the judgment just rendered by my learned brother, Uwaifo, JSC. I agree with his reasoning and conclusions. I will also dismiss the appeal there being concurrent finding of facts amply supported by evidence on the critical issues.

The appeal is accordingly dismissed with N10,000.00 costs to the respondents.

MOHAMMED JSC

I agree that the appeal is without merit. I have had a preview of the opinion of my learned brother, Uwaifo, JSC., in the judgment just read and it is very clear that the claim of the appellant cannot be granted. I therefore dismiss the appeal. I award N10,000.00 in favour of the respondents.

KALGO JSC

I have read in advance the judgment just delivered by my learned brother, Uwaifo, JSC, in this appeal and I entirely agree with him that the appeal lacks merit and should be dismissed.

It is common ground that the respondents who were the defendants in the trial court succeeded both in that court and in the Court of Appeal. There is therefore concurrent findings of the two lower courts dismissing the appellant's claims in the trial court and his

appeal in the Court of Appeal and conferring the land in dispute on the respondents.

The facts giving rise to this appeal have been fully narrated in the leading judgment and I do not intend to repeat them here. The issues which were formulated by the appellant for determination in this appeal were carefully set out and fully discussed in the judgment. B

Issue 1 appears to me to be the dominant and most vital issue in this appeal. It touched on the backbone of the whole evidence given by the appellant and his witnesses at the trial. The appellant pleaded in paragraphs 7, 8 and 11 of his Amended Statement of Claim that the Lebile family owned the land in dispute through their ancestors from time immemorial exercising acts of ownership. He purported to call and elicit some traditional evidence to support his claim but the evidence clearly contradicted his pleadings because it did not show how the land in dispute devolved to him through any of his ancestors. In such a case, the appellant must prove the origin of the land holding and the devolution, including when his ancestors came to the land. See *Ogunleye v. Oni* (1990) 2 NWLR (Pt. 135) 745; *Bangbose v. Oshoko* (1988) 2 NWLR (Pt. 78) 509; *Owoade v. Onitola* (1988) 2 NWLR (Pt. 77) 43. Also, the evidence of P.W.1 and P.W.5, would no doubt appear to have destroyed the credibility of the appellant's claim. It is very essential that the evidence in support of traditional history on land must be very reliable and credible to support any claim of title. In the absence of such evidence, as in the instant case, the rule in the case of *Kojo II v. Bonsie* (1957) 1 WLR 1223 cannot apply. It follows therefore that the claim of the appellant rooted on traditional history must fail. On the whole the appellant has completely failed to prove that the land in dispute belonged to him. I answer issue 1 in the affirmative. C D E F G

As I said earlier the rest of the issues raised by the appellant in this appeal were fully dealt with in the leading judgment and I adopt the reasoning and conclusion reached therein as mine. I have nothing useful to add.

For the above and the more detailed reasons given by my learned brother, Uwaifo, JSC., in the leading judgment, I also find no merit in this appeal. I dismiss it with N10,000.00 costs in favour of the respondents. H

EJIWUNMI JSC

I was privileged to have read the draft of the judgment just delivered by my learned brother, Uwaifo, JSC. I have therefore had the opportunity of considering the judgment in terms of the facts and the issues raised in this appeal. Being satisfied that my learned brother
B has fully considered all the issues raised in the appeal, I am in full agreement with him that the appeal lacks merit. The appeal is therefore also dismissed by me for all the reasons given in the said judgment. I hereby award costs in the sum of N10,000.00 in favour of
C the respondents.

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