

SUPREME COURT OF NIGERIA
FRIDAY 11TH APRIL, 2003. SC. 19/1999
CORAM:- I. L. KUTIGI, M. E. OGUNDARE,
U. MOHAMMED, N. TOBI, D. O. EDOZIE, JJSC

1. SUNDAY UFOMBA
2. JOHNSON UZOGU APPELLANTS
AND
WOSU AHUCHAOGU & 15 ORS RESPONDENTS

CUSTOMARY LAW - Customary arbitration - Appellate court does not interfere with such findings unless it is perverse - Native arbitration award that meets the standard - Will serve as an estoppel - But such standard is not met in this case (H1)

LAND LAW - Possession - Trespass - Is violation of possessory right and does not involve title - Thus a person who has been in exclusive possession but was wrongly dispossessed - Can recover possession even where title belongs to a 3rd party (H2)

TRESPASS - Title - Proof - Where issue of title is raised in action for trespass - Plaintiff must show a better title to be in possession than defendant (H3)

LAND LAW - Title - Proof - As plaintiffs have failed to prove the grant they relied on - And having admitted title of defendants to the disputed land - They cannot be said to have better title than defendants (H4)

LAND LAW - Pledge - Trespass - Plaintiffs' claim for trespass has no basis - As it cannot be said that defendants went on the land - They admitted of having pledged to plaintiffs as described in exhibit 1 (H5)

FACTS

Plaintiffs/appellants instituted this action at the High Court of Abia State, claiming the sum of N10, 000.00 being special and general damages for acts of trespass committed by defendants/respondents on the land in dispute and for an order of perpetual injunction

restraining respondents from further acts of trespass on the land. Appellants' contention is that although the land in dispute originally belonged to respondents' family, yet the same was given to appellants' progenitor in the time past as compensation for the death of his two slaves. Appellants alleged that various heads of their family have continued to be in an undisturbed possession of the piece of land in dispute. Appellants also stated that respondents took advantage of a subsequent rift in appellants' family to encroach into the land. Appellants protested this encroachment.

Later on, the traditional ruler of the town invited appellants to collect a sum of money being pledge money deposited with the ruler by respondents for the land in dispute. Appellants refused to collect the money. The matter was therefore referred to the village customary arbitration, which ruled in favour of appellants and that there was no pledge between the parties. Notwithstanding the ruling of the native arbitration, respondents entered the land and destroyed appellants' economic trees growing therein. On the other hand, respondents however contend that they only pledged a portion of the land to appellants and that they are not in trespass over the land in dispute. In the end, the learned trial Judge found in favour of appellants. Dissatisfied, respondents appealed to the Court of Appeal. The court allowed the appeal and dismissed the claims of appellants. Aggrieved, appellants filed appeal in Supreme Court, contending that the Court of Appeal ought not to have interfered with the concurrent findings of the native arbitration and that of the High Court.

ISSUES FOR DETERMINATION

“(1) Whether the learned Justices of the Court of Appeal adverted their minds to the main issue in the case of the appellants going by their claim, pleadings and the evidence of the parties.

(2) Whether the facts arrived at by the native arbitration and the trial High Court do not constitute concurrent findings of fact which should not be unduly disturbed by an appellate court, the Court of Appeal.”

HELD (Unanimously dismissing the appeal per
OGUNDARE JSC)

CUSTOMARY LAW - Customary arbitration

1. The general rule is that an appellate court will not disturb the concurrent findings of the two courts below unless they are found to be perverse. As the Eze arbitration proceedings are not those of a court of Law, its findings will not come for consideration in the application of this rule. At best, the Eze arbitration award could only be useful as estoppel against the defendants if it satisfied all the requirements of a valid native arbitration award, which does not appear to be the case here. I have no hesitation in resolving question 2 against the plaintiffs. (p. 1115 B)

LAND LAW - Possession - Trespass

2. Trespass is a violation of possessory right and does not involve title to land. Thus, a person who has been in exclusive possession of land but was wrongly dispossessed is entitled to recover possession even if the true title is shown to belong to a third party.

As trespass does not involve title, exclusive possession by a trespasser is good against the whole world except the person who can show a better title. (p. 1116 C)

TRESPASS - Title - Proof

3. Where, however, in an action for trespass the issue of title is raised, to succeed, a plaintiff must be able to show a better title to be in possession of the land in dispute, than the defendant

A claim for damages for trespass coupled with a claim for an injunction against trespass does not automatically put the title to the land in dispute (where the issue of title to the land in dispute had been determined in an earlier case).

In the appeal on hand, the plaintiffs claimed damages for trespass and an injunction against future trespass. By their pleadings, they claimed ownership of the land by grant from the defendants' ancestor Agwu to their own ancestor, Amadi. The defendants in their pleadings denied the grant and claimed that they were the owners of the land. It is abundantly clear from the pleadings of the parties therefore, that title to the

land in dispute was in issue. To succeed therefore, plaintiffs must establish their title to the land, that is, they must prove the grant they relied upon. Subject to what I will say later in this judgment, failure to discharge the burden on them to prove the grant, their case must be dismissed.

B They having admitted that the land originally belonged to the defendants' ancestor, the burden was on them to prove that the defendants' ancestor had been divested of the land and that title is now in them. In effect, to succeed, the plaintiffs must prove the grant. (p. 1116 H)

LAND LAW - Title - Proof

4. I have examined the evidence and the findings of the court below and the reasons for those findings. I have no hesitation D in agreeing with their Lordships of the court below that the findings of the learned trial Judge on the evidence were perverse. I agree with the findings of the court below and on those findings, I, too, agree that plaintiffs failed to prove the grant they relied on in support of their claim to the land in dispute. E As the plaintiffs admitted that the defendants' ancestor, Agwu was the original owner of the land and they having failed to discharge the onus on them to prove that Agwu or his descendants after had divested himself (or themselves) of the title to the land in favour of the plaintiffs, it follows that the defendants F have better title to the land in dispute than the plaintiffs. In conclusion, the plaintiffs having failed to prove the grant they relied on and having admitted the radical title of the defendants to the land in dispute they could not be said to have G better title than the defendants to the land. Indeed the defendants have better title to the land. And as the plaintiffs could not take advantage of any admission of possession by the defendants, their claim for trespass was rightly dismissed by the court below. (p. 1120 D)

LAND LAW - Pledge - Trespass

5. Thus in their pleadings and evidence of 7th defendant in support, the defendants maintained that it was not the whole of the land in dispute that was pledged to plaintiffs' ancestor

but only the portion edged 'blue' on their plan; they did not go on that portion but were farming on the rest of the land belonging to them. In order to better understand the case of the defendants, I examined the plans tendered by the parties. The area in dispute is verged 'red' in both plans. The defendants also showed on their plan (exhibit 1) an area verged 'blue' which they claimed they edged to the plaintiffs and in respect of which they have deposited the redemption money with Eze when plaintiffs refused to allow them to redeem the pledge. A close study of the two plans also shows that the areas allegedly trespassed upon by the defendants outside the area verged 'blue' in defendants' plan which area they claimed is the land pledged. It cannot, therefore, be said that the defendants went on the land they admitted they pledged to the plaintiffs. There is therefore no admission on the part of the defendants upon which the plaintiffs could rely in support of their claim for trespass. (p. 1124 H)

NOTABLE POINT OF INTEREST

TOBI JSC

1. Customary arbitration – Meaning of

A customary arbitration is essentially a native arrangement by selected elders of the community who are vast in the customary law of the people and take decisions, which are mainly designed or aimed at bringing some amicable settlement, stability and social equilibrium to the people and their immediate society or environment. Native or customary arbitration is only a convenient forum for the settlement of native disputes and cannot be raised to the status of a court of law. (p. 1128 C)

REPRESENTATION

E.T.G. Njoku Esq, for Appellant

Chief Chris Uche, SAN with Chuks-Nnadi, Esq., for Respondents

CASES REFERRED TO

Omoniye v. Biriyah (1976) 6 SC 49

Aromire v. Awoyemi (1972) 2 SC 1

- Ngene v. Igbo (2000) 4 NWLR (pt. 651) 131
 Akano v. Okunade (1978) 3 SC 129
 Nwosu v. Otunola (1974) 4 SC 21
 Amakor v. Obiefuna (1974) 3 SC 67
 Ogunde v. Ojomu (1972) 4 SC 105
 B Adani v. Igwe (1957) 2 FSC 87
 Izenkwe v. Nnadozie (1953) 14 WACA 361
 Okoiko v. Esedalue (1974) 9 NSCC 153
 Odesanya v. Ewedemi (1962) 1 All NLR 320
 C Alade v. Bamgbala (1962) WNLR 67
 Onobruhere v. Esegine (1986) 1 NWLR (pt. 19) 799
 Onyekaonwu v. Ekwubiri (1966) 1 All NLR 32
 Kaiyaoja v. Egunla (1974) 12 SC 55

D **LEAD JUDGMENT BY OGUNDARE JSC**

The plaintiffs, who are now appellants in this appeal, claimed from the defendants, jointly and severally as per paragraph 24 of their statement of claim -

- “(a) *N10,000.00 (Ten Thousand Naira) being general and special damages in that on or about the month of February, 1985 and on diverse days before and thereafter the defendants without leave and/or licence of the plaintiffs broke and entered ‘AMAUKWU UZOIY’ land being the same as the land in dispute, situate at Umuode village in Obioma Ngwa Local Government Area and in actual possession of the plaintiffs, cleared by the plaintiffs for farming purposes but set fire on the said land by the defendants which destroyed the plaintiffs’ economic trees and the defendants planted unwanted cash crops without the consent of the plaintiffs to wit:-*
- G 30 labourers at the rate of N5.00 each for 3 days = N450.00
 73 stands of raffia palm trees at N10.00 = 730.00
 130 stands of oil palm trees at N10.00 = 1,300.00
 16 plantain suckers at 5.00 = 80.00
 18 Guava trees at 5.00 = 90.00
 H 12 Kola nut trees at 10.00 = 120.00
 13 Orange trees at 10.00 = 130.00
 27 Pear trees at 5.00 = 135.00
 SPECIAL DAMAGES = 3,035.00
 GENERAL DAMAGES = 6,965.00

TOTAL: = N10,000.00

(b) Perpetual injunction restraining the defendants, their agents and servants or workers from further acts of trespass into aforesaid 'AMAUKWU UZOIYI' land within the jurisdiction of this Honourable Court. "

The plaintiffs instituted the action in a representative capacity B for themselves and on behalf of Ichi family in Umuode village of Obioma Ngwa Local Government Area. The defendants who are members of the Umuagwu family Umuode village of Obioma were sued in their individual capacity.

As pleaded by the plaintiffs, the land in dispute known as C Amaukwu Uzoiyi and situate at Umuode village is delineated on plan No. VEN/D133/85 tendered in evidence at the trial by the plaintiffs and marked exhibit A. The land originally belonged to the family of the defendants. Many years ago, one Amadi the ancestor of the plain- D tiffs migrated from Ichi Mgbedeolu village in Isiala Ngwa to Umuode village in Obioma Ngwa L. G. A. where he settled on land allotted to him by Agwu the ancestor of the defendants as the latter's customary tenant. It was this Amadi who established the Ichi family in Umuode village. Amadi, as customary tenant was paying customary tributes to E Agwu. In addition, Amadi and his slaves who came with him to Umuode village rendered free service on the farm of his landlord, Agwu every "Oriukwu" season which lasted for a period of eight days. During one of these farming seasons, as Amadi and his slaves were F brushing Agwu's farm on the land in dispute, two of Amadi's slaves died in the process of cutting down an oil palm tree. The consequence of such incidence, which was regarded in those days as an abomination, was appeasement of the gods by way of offering expensive sacrifices. Agwu, the landlord, sympathised with Amadi for G the loss of his two slaves and offered the land in dispute to him as compensation. Amadi accepted the offer and took possession of the land. He made necessary sacrifice as required by Ngwa custom, to appease the gods. The two slaves were buried on the land. Amadi H during his lifetime exercised maximum acts of ownership and possession of the land without any interference from anyone. After Amadi's death, successive heads of plaintiffs' family continued occupation of the land, farming and reaping the fruits of economic trees growing thereon, tapping palm wine from raffia palm trees therein, letting out

portions to tenant farmers who paid rents to them and pledging portions of the land to other persons.

Sometime in 1955 one Ihesiaba Ufomba of the plaintiffs' family was allotted a portion of the land by the family. He built a number of houses on the land and planted citrus trees and other economic trees on it. The plaintiffs' family also allotted another portion to one Omenihu as customary tenant. After Omenihu had reaped his cash crops the plaintiffs' family repossessed the land. In 1984 the National Electric Power Authority (NEPA) occupied a portion of the land and the plaintiffs claimed compensation for the economic crops on the land. In 1977 the plaintiffs also received compensation in respect of landslide affecting the land.

In 1974 there was a rift in the plaintiffs' family resulting in a civil action No. A/107/74. The defendants took advantage of this rift and started encroaching on the land. The plaintiffs protested these encroachments. In 1984 Eze Nwamaghinma, the traditional ruler of the community of both parties summoned the plaintiffs to his residence to collect the sum of N40 (Forty Naira) being pledged money deposited with the Eze by the defendants for the land in dispute. The plaintiffs refused to accept the money for the reason that there was no pledge transaction between them and the defendants. Following plaintiffs' rejection of the money, the Eze set up a panel to arbitrate over the land between the parties. The parties appeared before the panel and each side stated its case. In the end, the panel found in favour of the plaintiffs and decided there was no pledge transaction between the parties over the land. The panel's decision was reduced into writing and signed by members of the panel; copies were given to both parties. In 1985 the plaintiffs cleared the land for farming purposes. Some days thereafter the defendants came on the land armed with machetes and cudgels and destroyed plaintiffs' economic trees growing on the land. In consequence plaintiffs instituted the action leading to this appeal.

The defendants' case runs thus: The defendants are members of the Umuagun family and defend the action on behalf of their family. The land in dispute is called AMAUKWU UMUAGWU and is depicted on plan No. AS.A/IMD 150/85 tendered at the trial and marked exhibit 'C'. The defendants' traditional history is pleaded in paragraphs 5, 6, 8, 9 and 10 of their amended statement of defence

and is as follows:

“5. Paragraph 5 of the statement of claim is only partly true. In that the plaintiffs failed to mention the particular area of land given by the ancestor of the defendants Agwu to the ancestor of the plaintiff Amadi. When Amadi came to the ancestor of the defendants he was given OKPULO AKU land for dwelling purposes, later AGALABA^B land for farming purposes subject to good behaviour and third lace of land called NKERE ENWE for farming purposes. For these gifts Amadi and his descendants had to pay homage by doing farm work every Orie day for the defendants’ ancestor and also give the defendants all palm wine collected by them every Orie day. The plaintiffs at that had nothing to do with the land in dispute which remained exclusively defendants’ property.^C

6. The defendants while admitting paragraphs 7 and 8 of the statement of claim deny that Amadi the ancestor of the plaintiffs was D either powerful, rich or had slaves. However, he was a resourceful man who made prudent use of the lands given to him by defendants’ ancestor. Like any other average person in those days he had a few slaves. The defendants also deny that two of his slaves died while working for an ancestor of the plaintiffs. Only one fell from a palm tree and died. In fact by the custom of the people Amadi was to appease the gods when his slave fell from a palm tree while working for the landlord and on the landlord’s land. E

8. Paragraph 10 of the statement of claim is strongly denied. In F further answer the defendants aver that the following people from their kindred have each in his time held the land in dispute as head of their kindred: Agwu, Elue, Ejigiri, Ahuchaogu, Amachi, Iheonunekwe, Nwamuo, Nwalozie, Nwakamalu, Nwala. The following have also been the heads of the plaintiffs’ family: Amadi, Ufomba, Nwokocha, Dinna, G Harbert and Nwogu.

9. In further answer to paragraph 10 of the statement of claim the defendants aver that it was during the time of Amachi of the defendants’ kindred and Nwokocha of plaintiffs’ kindred that the plaintiffs revived the issue of the death of the slave when their number H increased. In order to keep peace the amount of compensation was settled at 1,000.00 manillas, the equivalent of the present N40.00. As defendants’ ancestors had not the money they gave the plaintiffs’ ancestor the area verged blue on the defendants’ plan on pledge

redeemable when money was available.

10. In further answer to paragraph 10 of the statement of claim the defendants aver that this is only the portion of the whole land in dispute that plaintiffs have exercised any rights of possession upon subject to redemption and it is only in this portion that a member of the plaintiffs' kindred has any habitation. The rest of the land in dispute is in the possession of the defendants many of whom including Nwagwu Njoku, James Onwutuebe, Lazarus Iheonunekwu, Jona Ahuchaogu all of defendants' kindred were born and bred on the land in dispute. In addition the defendants have exercised maximum acts of ownership and possession from time immemorial such as farming, cutting palm fruits, harvesting other economic crops and leasing portions to seasonal tenants. Defendants' 1984 to 1985 farms are dotted in both plaintiffs and defendants' plans."

On the Ngwa custom on the death of a slave, defendants pleaded thus:

"7. Paragraph 9 of the statement of claim is denied and the plaintiffs will be required to prove strictly the allegations contained in that paragraph. It was not the custom of Ngwa people to compensate for the death of a slave while working for the landlord in pursuance of an act of homage to the landlord rather the owner of such slave contributed to the cost of appeasing the gods.

The defendants admitted that Ihesiaha Ufomba built on a portion of the land in dispute pledged to the plaintiffs but claimed it was with their permission. On the NEPA acquisition they pleaded thus:-

"13. Paragraph 13 of the statement of claim is hereby denied. In further answer to that paragraph the defendants aver that when the National Electric Power Authority (NEPA) intended to acquire the piece of land in the area it was a matter for the whole of Umuode village who chose that portion of the land in dispute for the purpose. In the negotiation that ensued the following were privy and participants:

Dr. Sample Ananaba	Umunwankwo
H Chief Christopher Onwuka	Umuoru, the village Councillor
Chief J. E. Ajuzieogu	Umunwarie
Chief S. N. Akpulonu	Okpokoroala
Chief R. E. Esiaba Umuoro,	village leader
Chief S. N. Nworu	Umuobia

Mr. J. C. Egege

Umunkwocha, Secretary village
Council

Mr. Emmanuel Ohiagu

Umunkwocha

Chief J. N. Ananaba

Umunwankwo, village Head.

If the plaintiffs prepared, signed and or forwarded any compensation forms they did so secretly without the knowledge and consent of the defendants or the whole village of Umuode. B

“18. Paragraph 20 of the statement of claim is hereby denied. No compensation has been paid to any party in Umuode village by the National Electric Power Authority in respect of anything done by them over the land in dispute. The burrow pit mentioned by the plaintiffs’ is not within the land in dispute and not on the plaintiffs’ land. If the plaintiffs received any other compensation such receipt was not with the knowledge and consent of the defendants or of Umuode village. Furthermore paragraph 20 portrays the plaintiffs as greedy grabbers.” C D

On the arbitration by the Eze the defendants pleaded:

“16. Paragraphs 18 and 19 are hereby denied and the plaintiffs will be required to prove strictly the allegations contained in those paragraphs. Plaintiffs have been paying homage to the defendants from time immemorial every 8 days on Oriekwu market day and by giving all palm wine tapped by them on that day. Plaintiffs continued to do this until two years ago on the death of Benjamin Amachi. In further answer defendants first summoned the plaintiffs before late Andrew Ironi the Eze of Uratta Autonomous Community the then Autonomous Community for both parties. When Amasato Autonomous Community was created Eze Andrew Ironi transferred the report to Eze Nwamighinna with the instruction that the plaintiffs should return defendants’ land to them. When the case was in the hands of Eze Ironi, Sunday Ufomba the leader of the plaintiffs kept on promising for more than three years to come and receive the money.” E F G

19. In further answer to the said paragraphs the plaintiffs insisted on arbitration after the death of Eze Andrew Ironi because Eze Nwamighinna of Amasato Community was marrying the senior sister of the 1st plaintiff Sunday Ufomba. The defendants will contend that any decision arrived at was null and void because it was contrary to natural justice as Eze Nwamighinna was prejudiced and H

biased being deeply interested in the matter.”

The defendants denied any act of trespass.

The action went to trial at which each side led evidence in support of its case. At the conclusion of trial and after addresses

by learned counsel for the parties, the learned trial Judge found for the plaintiffs and adjudged -

“As I do not see any aspect of this case which prohibits the court from entering judgment in favour of the plaintiffs in this suit, the judgment of this court in the matter is as follows:

(a) *The defendants jointly and severally are hereby adjudged to:*

(i) *Pay to plaintiffs N1, 000.00 (One Thousand Naira)*

(ii) *Pay N3, 035.00 (Three Thousand and Thirty-Five Naira) special damages to plaintiffs.*

(iii) *Pay N1, 000.00 (One Thousand Naira) costs to plaintiffs.*

(b) *The defendants jointly and severally, and through their servants, agents or workmen are restrained permanently from committing further acts of trespass on the piece or parcel of land shown and verged RED in plaintiffs plan No. VEN/D133/85 tendered in evidence in these proceedings as plaintiffs’ exhibit No.1. Judgments for plaintiffs.”*

The defendants were displeased with the judgment and appealed to the Court of Appeal which said court allowed the appeal, set aside the judgment of the trial court and dismissed plaintiffs’ case.

The plaintiffs have, in turn, appealed to this court and in their written brief of argument set out the following two questions as calling for determination, that is to say:

“(1) Whether the learned Justices of the Court of Appeal adverted their minds to the main issue in the case of the appellants going by their claim, pleadings and the evidence of the parties.

(2) Whether the facts arrived at by the native arbitration and the trial High Court do not constitute concurrent findings of fact which should not be unduly disturbed by an appellate court, the Court of Appeal.”

The defendants framed the two questions thus:

“1. Whether the learned Justices of the Court of Appeal erred in law in holding as they did, that the appellants having by their claims of trespass coupled with perpetual injunction, put title to the land in

issue, therefore ought to have proved the exact nature of their title, the purported customary grant.

2. Did the findings of the trial court and the native arbitration on the issue of the alleged customary grant to the appellants amount to concurrent findings, which ought not to have been set aside by the Court of Appeal.” B

As question 2 does not present much difficulty to resolve I shall consider it first.

Question 2:

The general rule is that an appellate court will not disturb the concurrent findings of the two courts below unless they are found to be perverse. As the Eze arbitration proceedings are not those of a court of Law, its findings will not come for consideration in the application of this rule. At best, the Eze arbitration award could only be useful as estoppel against the defendants if it satisfied all the requirements of a valid native arbitration award, which does not appear to be the case here. I have no hesitation in resolving question 2 against the plaintiffs. C D

Question 1: E

Whether the learned Justices of the Court of Appeal adverted their minds to the main issue in the case of the appellants going by their claim, pleadings and the evidence of the parties.

Learned counsel for the plaintiffs observed that their claims were for damages, for trespass and injunction. He submitted that plaintiffs' main claim was in trespass and the issue, therefore, whether the land in dispute was a grant to them or a pledge was ancillary to the main issue of trespass. The court's attention was drawn to the learned trial Judge's finding in plaintiffs' favour that the land was granted to plaintiffs' ancestor by defendants' ancestor. It is further argued that granted that the defendants' version of pledge was the correct one, the plaintiffs would still be in possession of the land as under customary law a pledge of land remained in possession to the exclusion of the pledgor until the redemption of the pledge. It is then argued that either way, the plaintiffs could maintain an action in trespass against the defendants and on the admission of the defendants that they came on the land and disturbed the plaintiffs, the Court of Appeal was in error to disturb the judgment of the trial court in their F G H

(plaintiffs') favour.

For the defendants, it is argued in their brief that by the claims of the plaintiffs for trespass and injunction they have put their title to the land in dispute in issue moreso that the defendants denied liability and claimed to own the land. It is submitted that the onus was on the plaintiffs to prove the grant they relied on for title. Having failed to prove that grant, plaintiffs' case was rightly dismissed, so argued the defendants. It is submitted that plaintiffs having failed to prove their title by grant to the land in dispute, all acts of possession built by them on this traditional evidence must also of necessity fail which acts became acts of trespass.

Trespass is a violation of possessory right and does not involve title to land - Omoniyi v. Biriya (1976) 6 SC 49; Aromire v. Awoyemi (1972) 2 SC 1; Ngene v. Igbo (2000) 4 NWLR (Pt. 651) 131. ***Thus, a person who has been in exclusive possession of land but was wrongly dispossessed is entitled to recover possession even if the true title is shown to belong to a third party*** - Akano v. Okunade (1978) 3 SC 129.

As trespass does not involve title, exclusive possession by a trespasser is good against the whole world except the person who can show a better title - Nwosu v. Otunola (1974) 4 SC 21. As Fatayi-Williams, JSC, as he then was, put it in Amakor v. Obiefuna (1974) 3 SC 67, 75 - 76:

"It is trite law that trespass to land is actionable at the suit of the person in possession of the land. That person can sue for trespass even if he is neither the owner nor a privy of the owner. This is because exclusive possession of the land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrong-doers except a person who could establish a better title. Therefore, anyone other than the true owner, who disturbs his possession of the land, can be sued in trespass and in such an action, it is no answer for the defendant to show, (as the defendant/respondent had sought to show in paragraph 7 of his statement of defence, although he gave no evidence in support of this averment), that the title to the land is in another person."

Where, however, in an action for trespass the issue of title is raised, to succeed, a plaintiff must be able to show a better title to be in possession of the land in dispute, than the

defendant - Ogunde v. Ojomu (1972) 4 SC 105.

A claim for damages for trespass coupled with a claim for an injunction against trespass does not automatically put the title to the land in dispute - Adani v. Igwe (1957) 2 FSC 87; Ajaka Izenkwe & Ors. V. O. Nnadozie (1953) 14 WACA 361 (**where the issue of title to the land in dispute had been determined in an earlier case**). B

In the appeal on hand, the plaintiffs claimed damages for trespass and an injunction against future trespass. By their pleadings, they claimed ownership of the land by grant from the defendants' ancestor Agwu to their own ancestor, Amadi. The defendants in their pleadings denied the grant and claimed that they were the owners of the land. It is abundantly clear from the pleadings of the parties therefore, that title to the land in dispute was in issue. To succeed therefore, plaintiffs must establish their title to the land, that is, they must prove the grant they relied upon. Subject to what I will say later in this judgment, failure to discharge the burden on them to prove the grant, their case must be dismissed. C
D

They having admitted that the land originally belonged to the defendants' ancestor, the burden was on them to prove that the defendants' ancestor had been divested of the land and that title is now in them - Omoniyi v. Biriyah (supra). **In effect, to succeed, the plaintiffs must prove the grant.** E

The plaintiffs' case on the grant was based on paragraphs 5 - 10 of their statement of claim which read: F

"5. Many years ago one Amadi, the ancestor of the plaintiffs migrated from Ichi Mgbedeala village in Isiala Ngwa to Umuode village in Obioma Ngwa Local Government Area, where he settled as a customary tenant of the defendants' family and later on became the founder of Ichi family in the aforesaid Umuode village. G

6. Amadi who had many slaves in the olden days was a powerful man with considerable wealth at his disposal in terms of materials and human resources. The customary tenancy between Agwu and Amadi was subject to usual customary tributes and appeasement sacrifices in cases of unnatural events occurring from animals or other elements belonging to or connecting Amadi. H

7. By virtue of the aforesaid customary grant, Amadi took pos-

session of the land granted to him and in accordance with the custom of those days a customary tenant offers (sic) free service on the farm of the grantor every 'Oriekwu day' which falls within a period of eight days.

B 8. *During one of those farming seasons, Amadi and his slaves were brushing the land in dispute for Agwu, when two of Amadi's slaves died as a result of cutting down an oil palm tree. The incident of falling from oil palm trees, resulting in death was an abomination in those days which involved appeasement of the gods by way of offering expensive sacrifices.*

C 9. *Agwu sympathized with his friend Amadi and readily offered the land in dispute as compensation for the loss of his two slaves. Amadi accepted the land in dispute in place of the loss of his two slaves and proceeded immediately to offer the necessary sacrifices to appease the wrath of the gods in accordance with Ngwa custom and the two important slaves of Amadi were buried in the land in dispute.*

E 10. *Amadi accepted the land in dispute as compensation and in his lifetime he exercised maximum acts of ownership and possession without interference from any quarters including the defendants' family till he died. After Amadi's death the successive heads of the plaintiffs' family also exercised similar acts as owners in possession without let or hindrance from any person including the defendants in this action. Such acts included and include farming, reaping the fruits of economic trees thereon, tapping palm wine from raffia palm trees therein, letting out portions to farmers on receipt of payment of rents and pledging portions therein."*

G The defendants denied the above averments and pleaded as in paragraphs 5 - 10 of their amended statement of defence earlier quoted in this judgment.

Evidence was led on both sides and in a reserved judgment, the learned trial Judge found -

H 1. *"From the evidence before me, I find, as a fact, that the land in dispute was granted to plaintiffs' ancestor absolutely, thereby constituting them as owners in possession of the land free from all encumbrances. The estate granted to plaintiffs' ancestors was one usually described as an estate in fee simple absolute free from all encumbrances."*

2. *"The land descended to plaintiffs on record in these proceedings by inheritance from their ancestors."*

3. *"From the evidence before me, I find also that the plaintiffs possessed or possess the land in dispute from time immemorial till date and at all times material to these proceedings, including the year, 1985. They possessed it exclusively and independently of the defendants."* B

On defendants' appeal to the Court of Appeal that court unhesitatingly set aside the above findings. In the lead judgment of Katsina-Alu, JCA, as he then was, that court observed, and quite C rightly in my humble view, that:

"It is crystal clear from the pleadings that it is not in dispute that the radical title to the land in dispute is in the defendants. In such a situation the plaintiffs have the onus to prove the grant to them by the ancestor of the defendants. So, the question I have to resolve is D whether grant was established."

After an examination of the evidence led for the plaintiffs, Katsina Alu, JCA, found:

1. *"The plaintiffs in the present case assert that the parcel of land in dispute was granted to their ancestor by the ancestor of the defendants under Ngwa native law and custom. Firstly, it is clear from the evidence on record that the plaintiffs did not lead sufficient and cogent evidence before the court of trial in proof of the alleged custom. The mere assertion albeit in cross-examination of the existence F of the custom is clearly not satisfactory. In the second place, for a grant to constitute a valid grant under customary law, the plaintiffs must show that their ancestor was let in possession in the presence of witnesses."*

2. *"Learned counsel for the defendants was therefore right G when he submitted that the plaintiffs failed to give satisfactory evidence of any such custom in Ngwa land, whereby a dead slave is compensated for with outright grant of land."*

3. *"...the evidence called by the plaintiffs as to their root of title was at variance with their pleadings. Whereas the plaintiffs in paragraph 8 of the amended statement of claim, which I have already reproduced in the course of this judgment, asserted that 'two Amadi's slaves died as a result of cutting down an oil palm tree', the 1st plaintiff in his evidence-in-chief said that it was 'two children' of their an- H*

cestor Amadi. Furthermore PW1 contradicted the 1st plaintiff by insisting that it was only 'one son of Ichi' that died. It can be seen clearly that these two witnesses not only contradicted each other, their evidence is also at variance with the plaintiff's pleadings."

B 4. "Firstly, the names of their lessees and their particulars should
have been pleaded. The plaintiffs should have called them to give
evidence. This was not done. Again if the plaintiffs received compensation from NEPA and Guffanti, it is elementary that there would be documentary evidence of such payments. No such documentary
C evidence was tendered. What is more no official of NEPA or Guffanti gave evidence in support of these payouts. The only inescapable conclusion is that no such payments were ever made with the result that the plaintiffs failed to establish their claim in regard to acts of ownership and possession."

D The court below found that the finding of the trial court to the effect that the land in dispute was granted to plaintiffs' ancestor absolutely is without foundation.

***I have examined the evidence and the findings of the court below and the reasons for those findings. I have no hesitation
E in agreeing with their Lordships of the court below that the findings of the learned trial Judge on the evidence were perverse. I agree with the findings of the court below and on those findings, I, too, agree that plaintiffs failed to prove the grant they relied on in support of their claim to the land in dispute.
F As the plaintiffs admitted that the defendants' ancestor, Agwu was the original owner of the land and they having failed to discharge the onus on them to prove that Agwu or his descendants after had divested himself (or themselves) of the title to
G the land in favour of the plaintiffs, it follows that the defendants have better title to the land in dispute than the plaintiffs.***

But this is not the end of the matter. Learned counsel for the plaintiffs had argued that the defendants having admitted that the land was pledged by them to the plaintiffs, the latter were in exclusive
H possession and that possession was sufficient to sustain their claim in damages for trespass against the defendants. How correct is this submission?

In *Okoiko & Anor. v. Esedalue & Anor.* (1974) 9 NSCC 153 at pp. 161-162, Elias, CJN delivering the judgment of this court, spelt

out the characteristics of a customary pledge when he said:

“One invariable rule of customary pledge that can be gathered from the reported cases is that the pledgee always goes into possession and has the right to put the land to some productive use. To that extent, such use is a kind of interest due on the amount of the loan. The very nature of a customary pledge, which is perpetually redeem- B able, is that the pledge has only a temporary occupation licence and that he must yield up the pledged land as far as possible in the form he took it on originally. This means that he must put it to only ordi- C nary use so that its return to the pledgor should be unencumbered in any way. The planting of economic crops like cocoa or rubber can only be undertaken by the pledgee in possession at his own risk, unless of course there is express contract permitting him to do so. If the land pledged is already planted by the pledgor with economic trees, there may be a presumption in favour of the pledgee using the D land as such until redemption of the pledge. The whole question was first raised in what is probably the first case on customary pledge heard by our courts which took place in 1889. In Kuahen v. Avose, where there was a pledge of palm trees, Smalman Smith, C.J., held E that the amount of the produce which came to about 12 Pounds per annum while the prevailing customary tribute was 9 Pounds per annum must be taken into account so that the capital borrowed could be reduced each year by the excess of 3 Pounds per year. The learned Chief Justice regarded as unjust and inequitable and opposed to natu- F ral justice a custom according to which, as alleged by the plaintiff, the pledgee was entitled to ‘farm the trees and hold them until the original debt be paid, giving and rendering no account of the value of the produce, which in this case amounted to more each year than the amount paid as tribute. The matter was taken a step further in Jimoh G Amoo v. Rufayi Adigun (1957) WRNR 55 in which the plaintiff’s claim for an account of rents collected by the defendant pledgee while in possession of the plaintiff’s shop in respect of a loan was granted. It seems to follow from these two cases that the court will in H all proper cases take into consideration the nature and character of the use to which the pledgee had put the land while in possession, so that any unjustified benefits thereby derived by the pledgee may be brought into the final account when the pledge is ultimately being redeemed. No longer, it would seem, can the pledgee in possession

take all the benefits from his commercial exploitation of the land and still get back his original capital; much less can he claim against the pledgor any benefit arising from his having planted the land with economic crops like cocoa or rubber, or from his having carried out improvements on the pledged premises.

B *One other important point is that the pledgor's right of redemption cannot be clogged in any way by the pledgee, such for instance as by demanding any amount in excess of the sum for which the land was originally pledged, or by planting the pledged land heavily with economic trees, or by using other subterfuges to delay or postpone the pledgor's or his successors right to redeem; nor is lapse of time a bar to the exercise of the right of redemption, for customary pledges of land are perpetually redeemable."*

D Going back to the case on hand, I must observe that the court below did not consider the issues of pledge as affecting the case. The trial court however did. The learned trial Judge found that the transaction between Agwu and Amadi, the ancestors of the two parties was not a pledge. In effect, he rejected the defendants' case as pleaded by them.

E But what was the admission in the pleadings of the defendants that could be of assistance to the plaintiffs to establish their possession of the land in dispute which is all they require to entitle them to judgment in trespass? For ease of reference I shall quote once again paragraphs 9 and 10 of the defendants' amended statement of defence where pledge was pleaded. It reads:

G *"9. In further answer to paragraph 10 of the statement of claim the defendants aver that it was during the time of Amachi of the defendants' kindred and Nwokocha of plaintiffs' kindred that the plaintiffs revived the issue of the death of the slave when their number increased. In order to keep peace the amount of compensation was settled at 1,000.00 manilas, the equivalent of present N40.00. As defendants' ancestors had not the money they gave the plaintiffs' ancestor the area verged blue on the defendants' plan on pledge*

H *redeemable when money was available.*
10. In further answer to paragraph 10 of the statement of claim the defendants aver that this is only the portion of the whole land in dispute that plaintiffs have exercised any rights of possession upon subject to redemption and it is only in this portion that a member of

the plaintiffs' kindred has any habitation. The rest of the land in dispute is in the possession of the defendants many of whom including Nwagwu Njoku, James Onwutuebe, Lazarus Iheonunekwu, Jona Ahuchaogu all of defendants' kindred were born and bred on the land in dispute. In addition the defendants have exercised maximum acts of ownership and possession from time immemorial such as farming, cutting palm fruits, harvesting other economic crops and leasing portions to seasonal tenants. Defendants' 1984 to 1985 farms are dotted in both plaintiffs and defendants' plans:" (Italics are mine)

In paragraph 11 they averred that they permitted Ihesiaba Ufomba of the plaintiffs' family to build on part of the land in dispute pledged to the plaintiffs as averred in paragraphs 9 and 10 above. In paragraph 16 the defendants pleaded that they wanted to redeem the pledge pleaded in paragraph 9 but the plaintiffs refused to take back their money which the defendants deposited with the Eze of the parties' community.

The 7th defendant testified at the trial and deposed, inter alia, as follows:

"Amadi requested Agwu to show him land where to live. He showed him. He showed him three pieces of land called Okpu Aku. He was to farm on the second portion called Agalaba. The third portion was called Nkerenwe for use as a farm. The condition for which the three portions of land were given to Amadi was that Amadi would work for Agwu on Orie market days. If he killed any animal, he would give Agwu the heart, the liver and the leg of the animal. Amadi paid these tributes to Agwu voluntarily. Amadi used to work for Agwu with his (Amadi slaves) on the Orie days. When the works were going on, one of the slaves of Amadi climbed a palm, fell down from it and died. Only one slave not two slaves died. He was buried on the land called Okpulo Aku, one of the lands given to Amadi. No compensation was agreed upon for the death of the slave between Agwu and Amadi. The relationship of Agwu and Amadi was not strained because of the death of the slave. It is not the custom of Ngwa people to pay compensation for a slave who died while working for his overlord or master. Slaves had no regard or value in those days. I know one Amachi. He was from Umuagwu, not from Ichi. I know Nwokeocha from Ichi. During the time of Nwokeocha and Amachi, Nwokeocha demanded that Amadi (sic) should pay compensation

for the death of the slave. Amadi (sic) asked him how much he wanted as compensation. This was from his heart of heart. He agreed to pay him 1000 manillas which amount to 20 pounds. In Naira it is now N40. He did not pay the 1000 manillas. Instead he gave him a portion of the land in dispute to hold on pledge and said he would
 B redeem it when he had money. I showed the portion of the land in pledge to Nwakeocha in my plan, defendants' exhibit No.1. Apart from the portion of the land on pledge to Nwakeocha, the defendants own the remaining portion of the land. Outside the portion on
 C pledge, we farm the rest of the land. We harvest palm fruits on it. We harvest oranges on the land. We harvest pineapples, pears, kola all on the land in dispute. We live on the land. Those who live on it are Nwagwu Njoku (9th defendant), Oluikpe Ahuchaogu (5th defendant), Iheanacho Ahuchogu (3rd defendant), Nwosu Ahuchogu (1st
 D defendant). They have lived on the land from time beyond my memory."

Further in his evidence he deposed:

"It was not Ichi people who gave PW4 where he lives. He came to live on the land when he had a quarrel with first plaintiff. He came
 E to Iheonunekwu Ahuchogu for Anyanwu who was one of our elders and told him about the quarrel. Iheonunekwu Ahuchogu showed a piece of land behind his yard to PW4 to build his house. The place shown to him was within the area on pledge between Amadi (sic) of
 F Umuagwu and Nwakeocha of Ichi. Apart from PW4 no other person from Ichi living on the land in dispute including the land on pledge." (Italics are mine)

Cross-examined, he testified thus:

"When a slave died in the circumstances of this case, the gods
 G were not appeased. It was only when a free born died in the circumstances of this case that the gods were appeased."

On further questions, he added:

"My ancestor Agwu did not give the plaintiffs' ancestor Amadi the land in dispute as atonement for the death of the slave who died
 H there. It was not given to Amadi as compensation for appeasement of the gods. The land was on pledge to the family of the plaintiffs. The pledge was not between Agwu and Amadi. It was between Amadi (sic) and Nwakeocha that the pledge took place."

Thus in their pleadings and evidence of 7th defendant in

support, the defendants maintained that it was not the whole of the land in dispute that was pledged to plaintiffs' ancestor but only the portion edged 'blue' on their plan; they did not go on that portion but were farming on the rest of the land belonging to them. In order to better understand the case of the defendants, I examined the plans tendered by the parties. The area in dispute is verged 'red' in both plans. The defendants also showed on their plan (exhibit 1) an area verged 'blue' which they claimed they edged to the plaintiffs and in respect of which they have deposited the redemption money with Eze when plaintiffs refused to allow them to redeem the pledge. A close study of the two plans also shows that the areas allegedly trespassed upon by the defendants outside the area verged 'blue' in defendants' plan which area they claimed is the land pledged. It cannot, therefore, be said that the defendants went on the land they admitted they pledged to the plaintiffs. There is therefore no admission on the part of the defendants upon which the plaintiffs could rely in support of their claim for trespass.

One of the acts of ownership claimed by the plaintiffs is the grant to NEPA but the two plans show that the area occupied by NEPA is outside the land in dispute.

In conclusion, the plaintiffs having failed to prove the grant they relied on and having admitted the radical title of the defendants to the land in dispute they could not be said to have better title than the defendants to the land. Indeed the defendants have better title to the land. And as the plaintiffs could not take advantage of any admission of possession by the defendants, their claim for trespass was rightly dismissed by the court below.

Consequently, I find no merit in this appeal which I hereby dismiss with N10, 000.00 (Ten Thousand Naira) costs to the defendants.

H

KUTIGI JSC

I have had a preview of the judgment just rendered by my learned brother Ogundare, JSC. He has meticulously examined all

relevant issues in this appeal and has come to proper conclusions. I agree with him that the appeal lacks merit and ought to be dismissed. I accordingly dismiss it with N10,000.00 costs in favour of the defendants/respondents.

B

MOHAMMED JSC

I agree that this appeal be dismissed. It is crystal clear from the facts that the defendants, who are respondents, in this appeal, have better title to the land in dispute than the appellants. I agree with the Court of Appeal that the appellants had failed to prove the grant they relied upon in support of their claim to the land in dispute. My learned brother, Ogundare, JSC, has considered all the issues canvassed in this appeal and for the reasons he gave in his judgment affirming the decision of the court below I too will dismiss this appeal. The appeal is accordingly dismissed. I award N10,000.00 costs in favour of the respondents.

E

TOBI JSC

I agree entirely with the judgment delivered by my learned brother, Ogundare, JSC. The appellants who were the plaintiffs at the High Court, claimed ownership of the land in dispute through grant by the respondents' ancestors. The learned trial Judge accepted the claim but the Court of Appeal did not. The court held that the appellants did not prove the grant.

The burden of proof of title to land is on the party who asserts or claims that title. In other words, where a plaintiff claims title to land, the burden is on him to prove the title. In *Odesanya v. Ewedemi* (1962) 1 All NLR 320, this court held that in a claim for a declaration of title to land, the onus is on the plaintiff to prove title to a defined area to which a declaration can be attached. See also *Alade v. Bamgbala* (1962) WNLR 67; *Onobruchere v. Esegine* (1986) 1 NWLR (Pt. 19) 799; *Onyekaonwu v. Ekwubiri* (1966) 1 All NLR 32; *Kaiyaoja v. Egunla* (1974) 12 SC 55. Accordingly, a plaintiff who fails to prove title to the land in dispute which is relevant to his relief must fail. This is because he has failed to lead credible evidence in vindication of his relief.

In paragraphs 6, 7, 8 and 9, the appellants as plaintiffs averred:

“6. Amadi who had many slaves in the olden days was a powerful man with considerable wealth at his disposal in terms of materials and human resources. The customary tenancy between Agwu and Amadi was subject to usual customary tributes and appeasement sacrifices in cases of unnatural events occurring (sic) from animals or other elements belonging to or connecting Amadi.

7. By virtue of the aforesaid customary grant, Amadi took possession of the land granted to him and in accordance with the custom of those days a customary tenant offers free service on the farm to the grantor every “Orieukwu day” which falls within a period of eight days.

8. During one of those farming seasons, Amadi and his slaves were brushing the land in dispute for Agwu, when two of Amadi’s slaves died as a result of cutting down an oil palm tree. The incident of falling from oil palm trees, resulting in death was an abomination (sic) in those days which involved appeasement of the gods by way of offering expensive sacrifices.

9. Agwu sympathized with his friend Amadi and readily offered the land in dispute as compensation for the loss of his two slaves. Amadi accepted the land in dispute in place of the loss of his two slaves and proceeded immediately to offer the necessary sacrifices (sic) to appease the wrath of the gods in accordance with Ngwa custom and the two important slaves of Amadi were buried in the land in dispute.”

I do not see anywhere in the record where the above averments were proved. And the burden was clearly on the appellants/ plaintiffs to prove the averments. An outright grant of land to live on is not uncommon and outright grant of land for cultivation is unusual but not unheard of, but an outright grant of land which is not required either for living on or for cultivation is so exceptional but it could only be proved by the clearest possible evidence and should never be presumed. See *Obasi v. Oti* (1966) 1 All NLR 282. From the evidence adduced by the appellants/ plaintiffs, I come to the inescapable conclusion that they did not prove the alleged grant of the land in dispute to them by the respondents.

The second issue is in respect of the concurrent findings of the native arbitrators and the trial High Court. A customary arbitration

does not qualify as a court of law within the Constitution. It is not even an inferior court outside the Constitution, as for example, the magistrate court. Apart from the fact that the members of the body are not learned in the law, it is a notorious fact that the procedure adopted in adjudication is simple, and clearly outside the technical
 B procedure of courts of law. This apart, the decisions they give do not qualify as judgments in the real technical sense of the expression in our jurisprudence and, therefore, cannot pass the test of judicial precedent. Decisions of magistrate courts in Nigeria do not come within
 C the purview of stare decisis, not to talk of decisions of native or customary arbitration.

A customary arbitration is essentially a native arrangement by selected elders of the community who are vast in the customary law of the people and take decisions, which are mainly designed or aimed
 D at bringing some amicable settlement, stability and social equilibrium to the people and their immediate society or environment. Native or customary arbitration is only a convenient forum for the settlement of native disputes and cannot be raised to the status of a court of law.

The expression “concurrent findings” of two courts of law, mean
 E exactly what it says. The two concurrent findings must be those of two courts of law. In view of the fact that a native or customary arbitration is not a court of law, the learned trial Judge, with the greatest respect, was in error when he equated decisions of native arbitration
 F with those of courts of law. While I concede to the learned trial Judge that a customary arbitration could be binding on the parties when certain ingredients are fulfilled, decisions of such body do not qualify as “concurrent findings” with those of the High Court. It is for the above reasons and the fuller reasons given by my learned brother,
 G Ogundare, JSC that I dismiss the appeal with N10,000.00 costs in favour of the respondents.

EDOZIE JSC

H I had a preview of the judgment just read by my learned brother, Ogundare, JSC and I agree with him that the appeal lacks substance.

The plaintiffs’ claim is for damages for trespass and an injunction against future trespass in respect of the land in dispute. The de-

fendants denied the claim asserting that the land in dispute belongs to them. It is settled law that where a plaintiff claims damages to trespass and injunction and the defendant alleges that the land belongs to him, the plaintiff in order to succeed has to prove not only that he was in possession of the land when the trespass was committed on it but also that his own title to the land in dispute is better than that of the defendant. This is because, in the circumstance title to the land in dispute is put in issue. Therefore, in order to succeed, the plaintiff has the burden of proving not only that he was in possession when the alleged trespass was committed by the defendant, but also that his own title to the land in dispute was better than that of the defendant: *Amakor v. Obiefuna* (1974) 3 SC 67; *Ogbechie v. Onochie* (1988) 1 NWLR (Pt. 70) 370; *Anthony Idesoh & Anor. v. Chief Paul Ordia* (1997) 3 NWLR (Pt. 491) 17 at 25. In the instant case, the plaintiffs as the root of their title, pleaded and relied on a customary grant of the land in dispute from the defendants' ancestors to the plaintiffs' ancestors coupled with numerous acts of ownership exercised by the plaintiffs' people over the land in dispute. The evidence led in support of the grant was unsatisfactory hence the court below set aside the finding of the trial court to the effect that the grant had been established. I am of the view that the court below was justified in disturbing the finding of the trial court leading to the dismissal of the plaintiffs' case since they had failed to show that they had a better title to the land in dispute than the defendants.

I will also dismiss the appeal and abide by the consequential orders made in the lead judgment. Appeal dismissed.

G

H