

SUPREME COURT OF NIGERIA
FRIDAY 11TH APRIL, 2003. SC. 87/1999
CORAM:- I. L. KUTIGI, M. E. OGUNDARE,
U. MOHAMMED, N. TOBI, D. O. EDOZIE, JJSC

1. GABRIEL IWUOHA
2. GEOFFREY OBIOHA APPELLANTS
AND
1. NIGERIAN POSTAL
SERVICES LTD
2. JONATHAN KEZIE RESPONDENTS

APPEALS - Grounds of Appeal - Basis - Grounds of Appeal should be based only on live issues in the appeal - As they are complaint of appellant on judgment of lower court (H1)

APPEALS - Issue - Meaning - An issue must be a proposition of law or fact - That a decision on it in favour of a party to the appeal - Will entitle him to the judgment of court (H2)

APPEALS - Issues - Formulation of - Basis - Issues for determination must be formulated from grounds of appeal - Whether or not they arise from appellant's or respondent's brief (H3)

APPEALS - Document - Evaluation - Both trial and appellate Judges have equal right to evaluate document - And where finding of trial Judge is perverse - Appellate Judge can correct it (H4)

APPEALS - Courts - Evidence - Evaluation - Where evaluation by trial Judge is based on evidence in court - Appellate Judge cannot interfere - Save where such evaluation is perverse (H5)

COURTS - Perverse finding - Meaning - A finding is perverse where it is merely speculative - And not based on any evidence before the court (H6)

FACTS

Plaintiffs/appellants represent Umuelemai community while

2nd defendant/respondent represents Umuduru community. A group known as Mbano League built a Sub-Postal Office on a land donated by appellants' community. 1st defendant/respondent Nigerian Postal Services Limited named the Postal Agency as "Umuduru Postal Agency" and relocated it to the building built by the Mbano League on land donated by appellants' community. The Umuelemai Community did not like the transfer of the postal agency to the new building in Umuduru so they protested to the Nigerian Postal Services Limited. The protest was against the use of the name Umuduru for a facility situate in Umuelemai on land donated by Umuelemai.

The Nigerian Postal Services upheld the protest and by a letter - exhibit B, directed the Umuduru Postal Agent to find an alternative accommodation for the Postal Agency. The directive in exhibit B was not complied with. Thus, appellants filed this action in the High Court of Imo State. In his judgment, the learned trial Judge held in favour of appellants. Dissatisfied with the judgment, 2nd respondent appealed to the Court of Appeal Port Harcourt Division. The court set aside the judgment of the learned trial Judge and dismissed appellants' suit. Dissatisfied, appellants have appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"ISSUE NO. 1

Whether the reversal by the Court of Appeal of the trial court's finding that the sub-post office was situate in Umuelemai was proper considering the preponderance of properly proved and admitted evidence on record.

ISSUE NO. 2

Whether the application by the Court of Appeal of exhibit in its judgment was proper and sustainable (sic).

ISSUE NO. 3

Whether the Court of Appeal did not misdirect itself on the case of the parties before it, and the onus of proof.

ISSUE NO. 4

Whether the 2nd respondent's allegation of grant of land to the British by Umuduru in 1902 was conceded by the appellants, and thus not in issue at the trial.

ISSUE NO. 5

Whether the issue of statutory and indigenous Umuduru and

Umuelemai was raised suo motu in the trial by the trial Judge.

ISSUE NO. 6

Whether the Court of Appeal's judgment in favour of the 2nd respondent was not inconsistent with the same court's finding that the 2nd respondent's case was that the land in dispute was donated by Umuduru to the government outright.

ISSUE NO. 7

Assuming, without conceding, that there was a land dispute between the appellants and 2nd respondent's community, Umuduru, whether there was not enough evidence to have sustained a finding in favour of appellants."

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

APPEALS - Grounds of Appeal - Basis

1. It is not my understanding of the law that every alleged wrong by the trial court or Court of Appeal must be a ground of appeal. Grounds of appeal in my opinion should be based only in respect of the live issues or the issues in controversy in the appeal. A ground of appeal is the complaint of the appellant on the judgment of the lower court. (p. 1144 H)

APPEALS - Issue - Meaning

2. An issue is that which, if decided in favour of the appellant, will in itself give a right to the relief sought in the appeal. In an appeal, it is not every fact in dispute or every ground of appeal which raises an issue for determination. An issue in an appeal must be a proposition of law or fact, so cogent, weighty and compelling that a decision on it in favour of a party to the appeal will entitle him to the judgment of the court.

(p. 1145 B)

APPEALS - Issues - Formulation of - Basis

3. It is elementary law that issues for determination must be formulated from the grounds of appeal, whether the issues arise from the appellant's brief or the respondent's brief.

Document - Evaluation

- 4. I should say that evaluation of a document is not within the exclusive preserve of the trial Judge. Both the trial Judge and the appellate Judge have equal right to evaluate a documentary evidence. This is because, unlike oral evidence which an appellate Judge does not see, he sees like the trial Judge, the document as exhibit. Therefore, where the finding of a trial Judge on documentary evidence is perverse, an appellate Judge will easily see the perversion, and employ his appellate power to correct it.** (p. 1149 H)

Courts - Evidence - Evaluation

- 5. The law is trite that it is within the purview and competence of the trial Judge to first evaluate the evidence of witnesses. He does not share this jurisdiction with the appellate court. He has the exclusive jurisdiction to first evaluate the evidence of the witnesses. Where the evaluation of the trial Judge is borne out from the evidence in court, of course, an appellate Judge cannot interfere. In other words, an appellate Judge cannot interfere in such a circumstance, even if he comes to the conclusion that he should have evaluated the evidence of the witness differently, in the absence of a perverse evaluation.**

- However, where the evaluation of the evidence by the trial Judge is perverse, in the sense that it is not properly borne out from the evidence before him, an appellate Judge is competent to re-evaluate the evidence on the records before him and come to a proper decision.** (p. 1150 D)

COURTS - Perverse finding - Meaning

- 6. A perverse finding, is a finding of facts which is merely speculative and not based on any evidence before the court. A perverse finding is an unreasonable and unacceptable finding because it is wrong and completely outside the evidence before the trial Judge.** (p. 1156 D)

REPRESENTATION

Chief M. I. Ahamba, SAN with Messrs. Chidi Nwuke and Emma Ukaego, for the Appellants

A. N. Anyamene, SAN with C. J. Anyamene-Ezu [Mrs.], for the 2nd Respondent

B

CASES REFERRED TO

Nwabuoku v. Ottih (1961) All NLR 487

Dabup v. Kola (1993) 9 NWLR (pt. 317) 254

Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718

Ezeudu v. Obiagwu (1986) 2 NWLR (Pt.21) 208

Onwuka v. Ediala (1989) 1 NWLR (Pt.96) 182

Ogbechie v. Onochie (1986) 2 NWLR (Pt.23) 484

Balogun v. Labiran (1985) 3 NWLR Pt. 80) 66

Alade v. Alemuloke (1988) 1 NWLR (Pt.69) 207

Onyemaechi v. Nwaohamuo (1992) 9 NWLR (Pt.265) 372

MCC v. Azubuike (1990) 3 NWLR pt. 136) 74

Udeze v. Chidebe (1990) 1 NWLR Pt. 125) 141

Atuyeye v. Ashamu (1987) 1 NWLR Pt. 49) 267.

Okpala v. Ibeme (1989) 2 NWLR (Pt. 102) 208

Ehot v. The State (1993) 4 NWLR (Pt. 290) 644

Idika v. Erisi (1988) 2 NWLR (Pt. 78) 563

Madumere v. Okafor (1996) 4 NWLR (Pt. 445) 637.

C

D

E

RULES REFERRED TO

Supreme Court Rules 1990, O. 6

F

LEAD JUDGMENT BY TOBI JSC

Umuduru Postal Agency is the subject matter of this litigation. G
It is the hub on which the litigation rests. The appellants representing the Umuelemai Community, Mbano were the plaintiffs in the High Court and respondents in the Court of Appeal. The 1st defendant, the Nigerian Postal Services Limited, is the 1st respondent in this appeal. It was the 1st defendant in the High Court. Although 1st respondent filed statement of defence and entered appearance through counsel in the High Court, it did not take any active part. As it is, it has not filed any brief in this court; so too in the Court of Appeal. The 2nd defendant, representing Umuduru Community is the 2nd

H

respondent in this court. He was the appellant in the Court of Appeal. And so the litigation is between the appellants and 2nd respondent, which is more of a litigation between Umuelemai and Umuduru.

The Mbanjo League built a Sub-Postal Office on a land donated by the appellants' community. The Nigerian Postal Services Limited, the apparently dormant 1st respondent, transferred the postal agency called Umuduru Postal Agency into a new building, but retained the old name of Umuduru, thereby naming the sub-post office Umuduru Sub-Post office.

As indicated above, the building into which the Sub-Post Office was relocated was built by the Mbanjo League on land donated by the appellants community. Umuduru and Umuelemai are two different clans in Mbanjo but situate adjacent to each other.

The Umuelemai Community did not like the transfer of the postal agency to the new building in Umuduru. They protested to the Nigerian Postal Services Limited. The protest was against the use of the name Umuduru for a facility situate in Umuelemai on land donated by Umuelemai. The Nigerian Postal Services upheld the protest and by a letter, exhibit B, directed the Umuduru Postal Agent to find an alternative accommodation for the Postal Agency. The directive in exhibit B was not complied with. The appellants filed an action in the High Court seeking for two declaratory reliefs and one injunctive relief.

The learned trial Judge entered judgment in favour of the appellants and made the orders sought save relief 16(c) of the statement of claim. In the final order, the Judge involved himself in some advisory role. He said in his judgment as follows:

"(1) The land on which the Sub-Post Office in Umuduru Post Office is situated in Umuelemai land in Umuelemai town or autonomous community.

(2) It is wrongful to open and operate a Sub-Post Office in Umuelemai (which incidentally) is the capital of Isiala Mbanjo Local Government with the name Umuduru since Umuduru is different from Umuelemai.

I shall not make the order prayed for in 16(c) of the statement of claim in the manner it is couched. The court hereby advises NIPOST in the interest of peace and true fact of the case having regards to Umuelemai being the capital or Headquarters of Isiala Mbanjo Local

Government to designate the Sub-Post Office by the correct and appropriate name it should bear which is Umuelemai Sub-Post Office.”

Dissatisfied with the judgment, the 2nd respondent, Jonathan Kezie, appealed to the Court of Appeal. The Court of Appeal set aside the judgment of the learned trial Judge and dismissed, the appellants’ suit. Delivering the judgment of the Court of Appeal, Katsina-Alu, JCA (as he then was) said in the penultimate and last paragraph at page 257 of the record:

“I have sufficiently shown that the plaintiffs did not prove that the parcel of land from where the department Post Office of the 1st defendant operates is or was over Umuelemai land. The trial court misconceived the issues for determination before it and thus disabled itself from evaluating the evidence. Also the trial court drew-conclusions from fact not given in evidence. Moreover the relief of renaming the institution can only be done by administrative fiat and not by a court of law. In the result this appeal succeeds and is allowed. Accordingly I set aside the judgment of the court below.”

Dissatisfied, the Umuelemai Community, represented by the appellants have come to this court. Briefs were filed and duly exchanged. The appellants formulated the following issues for determination:

“ISSUE NO. 1

Whether the reversal by the Court of Appeal of the trial court’s finding that the sub-post office was situate in Umuelemai was proper considering the preponderance of properly proved and admitted evidence on record.

ISSUE NO. 2

Whether the application by the Court of Appeal of exhibit in its judgment was proper and sustainable (sic).

ISSUE NO. 3

Whether the Court of Appeal did not misdirect itself on the case of the parties before it, and the onus of proof.

ISSUE NO. 4

Whether the 2nd respondent’s allegation of grant of land to the British by Umuduru in 1902 was conceded by the appellants, and thus not in issue at the trial.

ISSUE NO. 5

Whether the issue of statutory and indigenous Umuduru and

Umuelemai was raised suo motu in the trial by the trial Judge.

ISSUE NO. 6

Whether the Court of Appeal's judgment in favour of the 2nd respondent was not inconsistent with the same court's finding that the 2nd respondent's case was that the land in dispute was donated
B *by Umuduru to the government outright.*

ISSUE NO. 7

Assuming, without conceding, that there was a land dispute between the appellants and 2nd respondent's community, Umuduru,
C *whether there was not enough evidence to have sustained a finding in favour of appellants."*

The 2nd respondent formulated the following issues for determination:

- "(1) *Was the court below right in re-evaluating the evidence*
D *rendered in the court of trial and coming to a different conclusion?*
(2) *Was there any fault in the re-evaluation which occasioned a miscarriage of justice?"*

Learned Senior Advocate for the appellants, Chief Ahamba, called the attention of the court to what he regarded as typographical error at page 81 of the record. He urged the court to correct the typographical error at page 81 by changing exhibit on that page to exhibit F as contained at page 149. There is no objection from counsel to the 2nd respondent. That apart, it is clear from the record that the document is wrongly named exhibit G in the light of the content
F at page 149. I hold that the agreement between Uchendu and Aladuka is exhibit F not exhibit G as at page 81.

Learned Senior Advocate, Chief Ahamba, adopted an unusual method in arguing the issues in his brief. He did not take the issues
G serially in their numerical order but in some inelegant order. For instance, he argued that issues in the following order: Issues 4, 5 and 1, 2 and 6 together, and 3. He did not argue issue No.7. He must have forgotten the issue apparently in the course of picking the issues randomly. It is also possible that he decided to abandon issue No.7. But
H he should have told the court during oral argument.

This court will welcome innovations of, or from counsel in areas where the rules of court are silent or not very clear, but such innovations should be good and elegant. While I concede that Order 6 of the Supreme Court Rules, 1990, as amended, does not provide

that issues must be argued in a numerical or alphabetical order, that has always been the practice. This is the first brief that I have come across where that general good practice has not been followed. It is clear to me that counsel intentionally adopted the method. I say so because he had the opportunity to renumber his issues after finishing the brief to reflect the order he argued the issues. The arrangement does not detract from the merits of the case presented in the brief. I will now take the arguments in the brief in the order learned Senior Advocate has taken the issues beginning from issue No.4.

On issue No.4, learned Senior Advocate submitted that the Court of Appeal was in error when it held that the alleged grant or donation of the land to the British Government was not in issue as the appellants were deemed to have admitted that fact. He called the attention of the court to the appellants amended statement of claim at pages 73 to 78, the 2nd respondent's statement of defence at pages 30 to 38, and submitted that a reply to an averment in a statement of defence is only necessary if such averment has not been taken care of by the averment of fact in the statement of claim. He referred to Order 25 rule 6 of Imo State High Court (Civil Procedure) Rules, 1988 and the cases of Ogunleye v. Oni (1990) 2 NWLR (Pt. 135) 745; Alao v. ACB Ltd. (1998) 3 NWLR (Pt. 542) 339 at 370 and Dabup v. Kola (1993) 9 NWLR (Pt. 317) 254 at 270. He submitted that a counter averment of acts of ownership or possession is not so peculiar and different from existing issues as to require a reply. To counsel, the 2nd respondent had a duty to prove the alleged grant as pleaded.

On issue 5, learned Senior Advocate submitted that the conclusion of the Court of Appeal is inconsistent with what was put before the court in the printed record. He claimed that the words "statutory" and "indigenous" were introduced into the pleadings by Mr. Anyamene (SAN), during cross-examination of PW5. In the light of the distinction introduced by Mr. Anyamene, the trial Judge was therefore entitled to apply the same distinction to Umuduru and the Court of Appeal was wrong by faulting his doing so, counsel argued. He urged the court to take judicial notice of the composition of statutory Orlu, vide section 79(1) of the Evidence Act. He also called the attention of the court to the Divisional Administrative Edict of 1971.

It was the submission of learned Senior Advocate that when

the learned trial Judge made reference to statutory or indigenous Umuduru, he was not conjecturing but was dealing with an issue that was before him by pleading and evidence, both oral and documentary, and by statutes. To counsel, the Court of Appeal was in error when it held that statutory and indigenous status for Umuduru was
 B nowhere mentioned throughout the trial. As the erroneous conclusion was one of the reasons for the Court of Appeal allowing the appeal, he urged the court to resolve issue No.5 in the negative and allow ground ten.

C On issues Nos. 1, 2 and 6, learned Senior Advocate submitted that the Court of Appeal was wrong in holding that the conclusion of the trial Judge that the Sub-Post Office was situate in Umuelemai was perverse. Citing *Overseas Construction Ltd. v. Creek Ent. Ltd.* (1985) 2 NWLR (Pt. 13) 407 and *State v. Aibangbee* (1988) 3 NWLR (Pt. D 84) 548 at 587, learned Senior Advocate submitted that both by pleading and evidence, the fact of the location was very conclusively established enough to support the finding of the High Court which was reversed by the Court of Appeal.

E It was the contention of learned Senior Advocate that there was no proper traverse of the averment that several Umuduru indigenes residing on land around the Sub-Post Office were tenants of Umuelemai people and that the land upon which the Sub-Post Office building was erected was donated by Umuelemai people of Mbano League. He referred the court to paragraphs 5(a)-(i) of the amended
 F statement of claim and to the 2nd respondent's traverse in paragraphs 16, 17,20,22 and 27 of the statement of defence.

Counsel argued that based on the authority of *Akintola v. Solano* (1986) 2 NWLR (Pt. 24) 598 at 623, the learned trial Judge
 G would have acted properly if he had rested on the above pleadings alone to find that the location of the Sub-Post Office building was in Umuelemai, but he did not do so in the light of the supportive evidence. He referred to exhibits A, B, C, D, E, F, G, H, J, K and Q and the evidence of PW1, PW4, DW1, DW2 and DW4. He cited
 H *Nwabuoku v. Ottih* (1961) 2 SCNLR 233, (1961) All NLR 487; *Dabup v. Kola* (1993) 9 NWLR (pt. 317) 254; *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt. 67) 718 at 741; *Ezeudu v. Obiagwu* (1986) 2 NWLR (Pt.21) 208 at 209; *Onwuka v. Ediala* (1989) 1 NWLR (Pt.96) 182 at 208; *Overseas Construction Ltd. v. Creek Nigeria Ltd.* (supra);

Ogbechie v. Onochie (1986) 2 NWLR (Pt.23) 484 at 492; Balogun v. Labiran (1985) 3 NWLR Pt. 80) 66 at 84; Alade v. Alemuloke (1988) 1 NWLR (Pt.69) 207 at 216; Onyemaechi v. Nwaohamuo (1992) 9 NWLR (Pt.265) 372 at 383 to 384; MCC v. Azubuike (1990) 3 NWLR pt. 136) 74; Udeze v. Chidebe (1990) 1 NWLR Pt. 125) 141 at 160; A.-G., Oyo State v. Fairlakes Hotel (No.2)(1989) 5 NWLR Pt. 121) B 255 at 237 and Atuyeye v. Ashamu (1987) 1 NWLR Pt. 49) 267.

On issue No.3, learned Senior Advocate submitted that the statement of the Court of Appeal at pages 241 and 255 on the ownership of the land in dispute vis-à-vis proof and the plan respectively, were a complete departure from the case of the appellants as presented before the court by the pleadings and the evidence. He pointed out that the appellants, both in pleading and evidence, presented a case of non-communal ownership of land in that the claim was for a declaration that the Sub-Post Office building to which Umuduru Postal Agency had been transferred with the name retained, was in fact in another town, Umuelemai. He referred to answers to cross-examination of PW5 at page 90 of the record and submitted that nowhere did the witness say that there was such a plan or that such land was ceded. E

Learned Senior Advocate submitted that since the misdirection of the Court of Appeal affected the final conclusion of the court, the misdirection occasioned a miscarriage of justice. He urged the court to allow the appeal. Learned Senior Advocate for the 2nd respondent, Mr. Anyamene appear to have argued the two issues he formulated together. He submitted that the Court of Appeal was right in re-evaluating the evidence given in the trial court. He cited Atolagbe v. Shorun (1985) 1 NWLR (Pt.2) 360; (1985) 4 SC (Pt.1) 150 at 285. He contended that the learned trial Judge was wrong when he held that there was no land dispute, as such, between Umuelemai Community and Umuduru. Referring to the relief claimed, learned Senior Advocate wondered why the trial Judge came to the conclusion that the resolution of the relief would not affect ownership of land. He quoted extracts from the proceedings at page 5 and 6 and dealt with exhibit, the survey plan. F G H

Learned Senior Advocate contended that the evidential value of the survey plan was lost on the trial court but the court below placed proper evaluation on the exhibit having regard to the pur-

pose for which it was tendered. Being evidence the plan, ought not to be pleaded under the rules, contrary to the contention of the appellants that the evidence went to no issue it was not pleaded, learned Senior Advocate argued. He pointed out that the Umuelemai people by their own evidence concede that the land where the Sub-Post Office Building is located was from those early times called Umuduru land. Learned Senior Advocate submitted that the complaint of the appellants in question 6 that judgment of the court below was inconsistent with its finding, that the 2nd respondent's case was that the land in dispute was donated by Umuduru to the British Government outright, was based on the misconception of one of the issues raised in the trial court. Citing the case of *Ukwa v. Akwa Local Council* (1965) 1 All NLR 349, learned Senior Advocate submitted that when land dedicated for a particular purpose of public use ceases to be used for that purpose title reverts to the original grantors. He claimed that since the government had abandoned effective use of the land donated by Umuduru in 1902 for the public purpose of administration, the Umuduru grantors are entitled to resume their ownership of the abandoned land and assert original title thereto.

On the contention of the appellants that they donated the plot of land housing the Sub-Post Office to the Mbano League on the term that any postal institution to be erected thereon shall be described by the name Mbano and therefore the court below ought to have found that it was Umuelemai land, learned Senior Advocate called the attention of the court to paragraph 24 of their statement of defence that Ebenezer Ekejiuba a native of Umuduru lived on the said plot which was confirmed by the third witness for the plaintiffs.

On the complaint in issue No.3 that the court below did not apply the proper law on onus of proof, learned Senior Advocate submitted that the law is as old as the hills that the onus is on the party claiming ownership of land in dispute to show the court clearly the area of land to which his claim relates. He referred the court to *Baruwa v. Ogunshola* (1938) 4 WACA 159. Counsel quoted the evidence of what he referred to as the star witness of the appellants at pages 10 and 11 of his brief.

On the issue of statutory and indigenous Umuduru, learned Senior Advocate called the attention of the court to the last sentence of paragraph 5.02B on page 9 of the appellants' brief, which con-

firmed that the point was indeed not raised but that it was a conjecture which the trial court was entitled to make. He pointed out by way of illustration that although Lagos, the former capital of Nigeria and Abuja, the current capital comprise lands owned by communities within their geographical limits, this fact did not prevent the said communities their respective names like Yaba, Surulere, Agege in the case of Lagos and Wuse, Garki, Maitama in the case of Abuja. B

Dealing with the evidence of DW1, Chief B. Kezie, that the traditional ruler gave the land in the name of Umuduru to the British Government, learned Senior Advocate argued that it was wrong to take such evidence as an admission against interest. He contended that the evidence given by the witness was not an admission that Umuelemai owned the land where the Sub-Post office is located. Pointing out that learned Senior Advocate for the appellants did not argue issue No.7, counsel submitted that this court should regard the issue as abandoned. He urged the court to dismiss the appeal. In his reply brief, learned Senior Advocate submitted that issue No.1 in the 2nd respondent's brief does not arise out of the grounds filed by the appellants before this court and that issue No.2 is not exhaustive of all the issues arising out of the fourteen grounds of appeal. Referring to *Idika v. Erisi* (supra), learned Senior Advocate urged the court to strike out issue No. 1. C D E

On exhibit K, learned Senior Advocate contended that since the specific finding of the trial court was not made a ground of appeal by the respondents as appellants before the Court of Appeal, that court could not have relied on the exhibit in the way it did without any appeal against the specific conclusion of the trial court. Since the 2nd respondent did not show that he appealed against the conclusion, the contention in the appellants' brief is therefore not responded to, counsel argued. Learned Senior Advocate submitted in the alternative that the submissions of the 2nd respondent on exhibit K are not tenable. He urged the court to look at exhibit K and to note that it depicts an area west of the confluence as Umuelemai. F G

The submission on behalf of the 2nd respondent in paragraph 13 of the brief at page 7 is a total misrepresentation of fact on record, learned Senior Advocate submitted. He referred the court to the evidence of PW1 and contended that the 2nd respondent's brief very clearly confused between taking of land which is forceful with grant H

which connotes voluntary relinquishment.

On the argument in paragraph 14 at page 8 of the 2nd respondent's brief that the appellants have no locus standi to institute the suit in the first place because land was individually owned in Umuelemai, learned Senior Advocate submitted that the issue is not available to the 2nd respondent as it was not a ground in the Court of Appeal and no leave was sought and obtained to argue the point before this court. Secondly, the argument is not referable to any issue raised in any of the briefs before this court, counsel argued. He urged the court to discountenance the argument. Counsel maintained that the appellants had locus standi to institute the action.

Learned Senior Advocate claimed that the white paper on the Emembolu enquiry had conclusively adjudged the land on which the headquarters was situate to be Umuelemai land. As there was no evidence that Umuduru challenged the decision in the White Paper, the trial court was justified to have taken into consideration when it decided that the Sub-post Office building was situate in Umuelemai, counsel contended. To learned Senior Advocate, the argument on reversion and the case of *Ukwa v. Awka Local Government* (1965) 1 All NLR 349 do not arise at all.

It was the submission of learned Senior Advocate that the evidence quoted in paragraph 21, page 12 of the 2nd respondents' brief is clearly against the 2nd respondent and that it was not quoted out of context. He contended that DW1 contradicted himself.

On issue No.2 of the 2nd respondent's brief, learned Senior Advocate submitted that there was fault in the re-evaluation by the Court of Appeal, fault which occasioned a miscarriage of justice. The fault was that the Court of Appeal failed to put into consideration the totality of the facts upon which the trial court rested its decision. He urged the court once again to allow the appeal.

The appellants formulated fourteen grounds of appeal and seven issues for determination. I did not initially intend to comment on the proliferation of the grounds and issues but since learned Senior Advocate has made it an issue by attacking the two issues formulated by the 2nd respondent, I should deal with the large number of grounds and issues. I ask: what have fourteen grounds and seven issues got to do in this not complicated appeal? ***It is not my understanding of the law that every alleged wrong by the trial court***

or Court of Appeal must be a ground of appeal. Grounds of appeal in my opinion should be based only in respect of the live issues or the issues in controversy in the appeal. A ground of appeal is the complaint of the appellant on the judgment of the lower court.

While I concede the fact that counsel knows his case better than any person, I must say, with the greatest respect, that I do not see the place for seven issues in this appeal. **An issue is that which, if decided in favour of the appellant, will in itself give a right to the relief sought in the appeal. In an appeal, it is not every fact in dispute or every ground of appeal which raises an issue for determination. An issue in an appeal must be a proposition of law or fact, so cogent, weighty and compelling that a decision on it in favour of a party to the appeal will entitle him to the judgment of the court.**

Prolivity of issues formulated is not a merit as it is more likely to obscure the core issues to be determined. Multiplicity of issues tend to reduce most of them to trifles. Issues formulated must have the content and character of issues and should be based on substantial law or fact rather than on numerous trifling slips.

Appeals are not won on large number or quantity of grounds of appeal and issues. On the contrary, appeals are won on the quality of the content of grounds of appeal and issues. In a good number of cases where counsel argue a number of issues together, such issues are prolix and they proliferate to the extent that one or two of the issues should have done the work of all the issues argued together.

In the appellants' brief, learned Senior Advocate argued issues 1, 2 and 6 together. I need not say more except to point out that learned Senior Advocate would appear to see no more reason to argue issue No.7. This could have reduced the issues to six. If the appellants had all the time in the world to formulate fourteen grounds and seven issues, the 2nd respondent who seems not to have equal time should, in my opinion, not be blamed for not formulating equal number of issues. The objection is not meritorious. It is dismissed.

I now take the specific complaint of the appellants in their reply brief. The first complaint is that issue No.1 in the 2nd respondent's brief should be struck out as it does not arise out of the grounds filed by the appellants. **It is elementary law that issues for determina-**

tion must be formulated from the grounds of appeal, whether the issues arise from the appellant's brief or the respondent's brief. See Okpala v. Ibeme (1989) 2 NWLR (Pt. 102) 208; Ehot v. The State (1993) 4 NWLR (Pt. 290) 644; Din v. African Newspapers of Nigeria Ltd. (1990) 3 NWLR (Pt. 139) 392; Idika v. Erisi (1988) 2 NWLR (Pt. 78) 563; Madumere v. Okafor (1996) 4 NWLR (Pt. 445) 637.

I have carefully examined the fourteen grounds of appeal and I am of the view that most of them complained about the re-evaluation of the evidence by the Court of Appeal. Accordingly, I do not see my way clear in striking out issue No.1 of the 2nd respondent's brief since that issue deals with re-evaluation of the evidence given in the trial court by the Court of Appeal.

I entirely agree with learned Senior Advocate for the appellants that issue No.2 does not cover all the issues arising out of the fourteen grounds of appeal. I do not think a respondent is under a legal duty to formulate issues in his brief to cover all the grounds of appeal. Respondent is at liberty to formulate issues in the way he understands the live issues in the appeal, with a bias for his client's case. I do not see anything wrong with the two issues drafted for determination by learned Senior Advocate for the 2nd respondent. If anything, the two issues are crafty, dexterously and elegantly formulated and they cover essentially all the live issues in this appeal.

So much of this appeal dovetails on the re-evaluation of the evidence of witnesses by the Court of Appeal. Quite a number of the seven issues for determination by the appellants and the two issues for determination by the 2nd respondent, deal with the reevaluation of the evidence of witnesses by the Court of Appeal.

Let me take first issue No. 1 in the appellants brief. The learned trial Judge held that the Sub-Post Office was situate in Umuelemai. He got assistance from the following conclusions he reached at page 143 of the record:

"Now in this case, the court has been able to observe that the issue as to whether some people from Umuduru bought land from the vicinity or thereabout of the Sub-Post Office from Umuelemai people was not challenged or debunked. That some houses very close to the Sub Post Office belonging to some people said to be of Umuelemai was not denied, that Umuelemai said to be stronger ele-

ments normally take share of what is due to them in the Osu Clan gathering before the supposedly over Lord Umuduru was not denied, that the witnesses of the defendants were completely discredited and that DW3 Kenneth Ekwelem from Agbaja has in fact no business being there as a witness as he knows next to nothing about the issue having not lived near the Post Office but owns a land that is a kilometer away” B

Dealing with the location of postal agency, the Court of Appeal, per KATSINA-ALU, JCA (as he then was) painstakingly made the point at page 250 of the record and I quote him in extenso: C

“When this witness was then told that contiguous area was the one granted to the colonial government in 1902 he realized the gravity of his admissions and understandably sought to make a “u” turn by introducing for the first time that the British Government took a place near Nwokochi stream in Umuduru but they later transferred to Umuelemai and continued to retain the name Umuduru such as Umuduru Native Court. It would appear that this witness forgot that he had earlier stated that the postal agency which was moved into the building the subject matter of this suit, was in Umuduru land thus conceding that the Native Court building which housed the postal agency was in Umuduru land. It was this native court building which was subsequently converted to a Magistrate’s Court with the postal agency still operating from a room therein.” E

The conclusion of the Court of Appeal is vindicated by the evidence of the 1st plaintiff under cross-examination. In an answer to a question that the building in which the post office is housed is not built in Umuelemai, witness said “No”. This is clearly an admission against interest and the Court of Appeal was entitled to reject the findings of the trial Judge. I entirely agree with the Court of Appeal that the witness tried to make a “U” turn by introducing for the first time that the British Government “took a place near Nwokochi stream in Umuduru but they later transferred to Umuelemai and continued to retain the same Umuduru such as Umuduru Native Court”. F

Skilful advocates have a way of making a witness contradict himself and when the witness is already caught in the web, he cannot get out of it. The 1st plaintiff, the star witness, was such a witness. He admitted under cross-examination that the building in which the post office is housed is not built by Umuelemai. And he is from Umuelemai. H

That is what counsel for the 2nd defendant needed and he got what he needed. Any other story designed to repair that evidence was no longer available to the appellants.

So much quarrel is on exhibit K. Learned Senior Advocate faulted the Court of Appeal for “heavily” relying on an exhibit that
B the trial Judge made a finding that it was not a document of grant. I shall take the exhibit in some sequence in the record.

The learned trial Judge, while evaluating the evidential or probative values of the evidence, said at page 138 of the record:

C *“I have carefully looked at exhibit K which appears to be a sketch drawing of the military camp. It does not demarcate the area that is specifically Umuduru in it even though Umuduru Station is the name. No one can rely on such document to show the extent of land that is Umuduru and that belonging to other neighbouring villages.
D The exhibit does not show the extent of the land taken by the Military people then. Besides there is no key to any feature. It is not a document intended to show the area of land ceded, donated or taking (sic) by the government but rather an attempt to show various military dispositions within the encampment in Umuduru station so
E called.”*

The exhibit featured in the judgment of the Court of Appeal first in page 242 when the court in summarizing the evidence of the 2nd defendant, said:

F *“It was said that the 2nd defendant testifying on behalf of Umuduru showed the extent of the land comprised in the grant by tendering a sketch of the area made by the British Administrative Officers at the time which was admitted in evidence without objection and marked exhibit K... Also DW2 Nze Justin Ozurumba Aguguo
G the 2nd defendant’s surveyors testified that the area shown in exhibit K coincided with the area verged yellow in exhibit N.”*

The Court of Appeal stated the case of the appellants on the exhibit at pages 245 to 246:

H *“For the plaintiffs, it was again pointed out that the issue at stake was not title to land but in which of the two towns the Sub-Post Office is situate. It was the contention of the plaintiffs that exhibit K the document tendered as proof of the alleged grant in 1902 though admitted was not pleaded and it was urged on this court to expunge it. Besides, even if it was legal evidence, exhibit K did not prove what*

it set out to prove. The learned trial Judge held that it is not a document intended to show the area ceded or granted to government.”

The Court of Appeal in re-evaluating the exhibit arrived at the following findings at pages 248 and 249 of the record:

“DW2 Nze Justin Ozurumba Aguguo, testified that the area shown in exhibit K coincided with the area verged Yellow in exhibit N^B giving reasons for coming to this conclusion. The plaintiffs’ counsel conceded this fact in his cross-examination of DW2. At page 105 the following is recorded in the course of cross-examination of DW2:

Q. These 3 plans exhibits C, K and N described the same location?^C

A. Yes”

In the light of the above, I do not, with the greatest respect, agree with learned Senior Advocate for the appellants, that the Court of Appeal was wrong in relying “heavily” on exhibit K, assuming that the court really relied “heavily” on the exhibit. Apart from the above, I have quoted what the court said on the exhibit, I do not see any other reference or specific conclusion that the court drew as a basis for allowing the appeal. In other words, there was no specific mention of exhibit K as a document for the decision of the court. ^E

I can quote the penultimate paragraph of the judgment in the following terms:

“I have sufficiently shown that the plaintiffs did not prove that the parcel of land from where the departmental Post Office of the 1st defendant operates is or was ever Umuelemai land. The trial court misconceived the issues for determination before it and thus disabled itself from evaluating the evidence. Also the trial court drew conclusions from facts not given in evidence. Moreover the relief of renaming the institutions can only be done by administrative fiat and not by G a court of law.”

And so, there was no heavy reliance on exhibit K. Even if there was such reliance, I would think the court was on a sound footing to so rely. Learned Senior Advocate, as counsel for the plaintiffs in the High Court, conceded that exhibits C, K, and N described the same location and the location was the area occupied by the British Government in 1902. **I should say that evaluation of a document is not within the exclusive preserve of the trial Judge. Both the trial Judge and the appellate Judge have equal right to evalu^H**

ate a documentary evidence. This is because, unlike oral evidence which an appellate Judge does not see, he sees like the trial Judge, the document as exhibit. Therefore, where the finding of a trial Judge on documentary evidence is perverse, an appellate Judge will easily see the perversion, and employ his appellate power to correct it.

Let me take the submission in the reply brief that the issue of exhibit K was not made a ground of appeal and therefore not available to the Court of Appeal. Ground 2 of the grounds of appeal complained that the learned trial Judge committed grave errors of law and fact in his evaluation of evidence, which resulted in his perverse judgment.

In the particulars of error, paragraph (e) states:

"In cross-examination of DW2 (i.e. the defendant's surveyor) the plaintiff concede that the 2nd defendant's plan (exhibit N) described the same "location" as exhibit obtained from the national archives depicting the area occupied by the British Government in 1902."

The major function of a ground of appeal is to let the respondent know the complaint the appellant has against the judgment of the court. The essence of particulars is, as the name implies, to particularize in specific language the grounds of appeal. In other words, where grounds of appeal are not explicit, particulars will fill the space by stating the specific details. That was what paragraph 2(e) of the notice of appeal to the Court of Appeal did and I cannot see the furore or storm.

Issue No.3 looks to me more of a ground of appeal than an issue. An issue based on misdirection, in my humble view, is a ground of appeal and not necessarily an issue. But this should not disturb this court from taking the merits of the issue as argued on pages 20 to 22 of the brief.

The first dictum of the Court of Appeal which learned Senior Advocate attacked reads:

"Clearly the question is one of ownership of the parcel of land wherein the Sub-Post Office is operated. When a party pleads and sets out to prove numerous and positive acts of ownership extending over a sufficient length of time, he is providing title to the land in

question.”

Learned Senior Advocate for the appellants submitted that the above is a complete departure from the case of the appellants as presented before the court by pleading and evidence. He maintained that the appellants presented a case of non-communal ownership of land as the claim was for a declaration that a Sub-Post Office building to which Umuduru Postal Agency had been transferred with the name retained, was in fact, in another town, Umuelemai. B

With respect, I do not agree with learned Senior Advocate. I am rather surprised that he maintains that the appellants presented a case of non-communal ownership of land. It is likely he has forgotten the averment in paragraph 2 of the amended statement of claim. I reproduce the paragraph: C

“The plaintiffs sue in a representative capacity for themselves and on behalf of Umuelemai Community Mbano Local Government Area.” D

This is also indicated against the names of the plaintiffs who are now appellants. Similarly, it is averred in paragraph 1 of the amended statement of claim that the 2nd defendant, who is now the 2nd respondent, *“is a community leader in Umuduru and he is sued in a representative capacity for himself and on behalf of the members of Umuduru Community in Mbano”*. In the same way, the above is also indicated against the name of the 2nd defendant, who is the 2nd respondent. I must say that paragraph 1 is not necessary. I have just indicated it for completeness. PW1 said under cross-examination at page 60: E

“By our land terms, lands are owned individually and grant made by owners.” F

The above statement is a clear contradiction of paragraph 2 of the amended statement of claim. This is because while paragraph 2 averred that the plaintiffs were sued as representatives of the Umuelemai community, PW1 gave evidence on individual ownership of land. If that is the land tenure system in Mbano Local Government Area, why did the appellants sue the defendants in a representative capacity? If this argument is stretched further, the conclusion can be reached that since the statement of PW1 was not pleaded, it will go to no issue. This is because evidence which is not pleaded or which is at variance with the pleadings, go to no issue. I do not want G H

to pursue that aspect.

Let me return to the dictum of the Court of Appeal that learned Senior Advocate attacked. Certainly, the Sub-Post Office is built on a land. This is rather too obvious and need not be said. But there are times one makes an obvious statement to make an obvious point.

B And the point is this. Since the Sub-Post Office was built on a land the transfer of the Sub-Post Office from Umuelemai to Umuduru involves a dispute as to the land on which the Sub-Post Office is built. This is vindicated by the relief in paragraph 16(a) of the amended statement of claim in the following terms:

C *“A declaration that the land on which the Sub-Post Office called Umuduru Sub-Post Office is situate is Umuelemai land in Umuelemai Town.”*

Two distinct points come out from the above. First, the words D “Umuelemai land” clearly suggest and indicate communal land because Umuelemai is a community. Paragraph 2 of the amended statement of claim averred that Umuelemai is a community. The second point is that the word “land” appears twice in the relief. Is paragraph 16(a) a case of non-communal ownership of land? Are the words E “Umuelemai land” consistent with non-communal land? I think not. It is my view that the words “Umuelemai land” are consistent with communal ownership of land. Accordingly, the issue raised by learned Senior Advocate is to no avail. I reject it. And that takes me to the second dictum and it reads:

F *“Plaintiffs, through PW5 Bonaventure Chima Eze admitted in cross-examination that there was a plan showing land granted to the British in 1902. But when asked whether he had it he replied that it should be in Owerri where Government records are kept. That plan G was never tendered by the plaintiffs whose case it was that it was Umuelemai land that was acquired by the British Government. At that stage the proper order the learned trial Judge should have made was one of dismissing the plaintiffs’ case.”*

H Learned Senior Advocate for the appellants argued that it was not the case of the appellants that the British acquired land in 1902, and that the case was put forward by the 2nd respondent. Counsel pointed out that what the appellant said at page 48 of the record under cross-examination was that the colonial government took a price of land near Nwokochi stream in Umuduru and later trans-

ferred to Umuelemai but retained the name Umuduru, an anomaly that had been corrected. Counsel also pointed out that PW5 never said what the Court of Appeal ascribed to him. Counsel claimed that in a question by counsel as to whether he had a plan of the land ceded to the British in 1902, he merely said: *"I suspected that it should be at Owerri."* B

By my understanding of the answers, PW5 suspected that the plan of the land ceded to the British in 1902 should be at Owerri. And so, the submission of learned Senior Advocate that *"nowhere did the witness say that there was such a plan or that such land was ceded"* is a matter of semantics, which, with respect is neither here nor there. The pronoun *"it"* in the answer of PW5 stands in the place of *"plan of the land ceded to the British in 1902"*. It has no other meaning and so the furore is neither here nor there. C

I think, Learned Senior Advocate has one point and it is that it was not the case of the appellants that it was Umuelemai land that was acquired by the British Government in 1902, rather it was the case put forward by the 2nd respondent as 2nd defendant in paragraph 15 of his statement of defence. That was a wrong evaluation of the evidence but not enough to destroy the work of the court. That takes me to issue No.4. Learned Senior Advocate attacked the following conclusion of the Court of Appeal: D E

"The plaintiffs did not in their reply specifically or by necessary implication deny the issue of grant or donation of the said land to the British Government and under the rules of pleading they are deemed to have admitted that fact. The parties did not join issue on the grant." F

It was the argument of learned Senior Advocate that since the amended statement of claim is replete with averments of acts of ownership, and administrative actions of various governments in correction of the name Umuduru to Umuelemai, there is no need to deny the averment in the reply. I agree with his statement of law that a reply to an averment in a statement of defence is only necessary, if such averment has not been taken care of by the averments of facts in the statement of claim. In other words, if the statement of claim has averred to contrary facts in the statement of defence, to the extent that the parties have joined issues, a reply need not deal with such averments in the statement of defence. That is unnecessary duplication of court process and parties are not encouraged to dupli- G H

cate a court process. Having said that, the point the Court of Appeal dealt with was specific and it is in respect of grant or donation of the land to the British Government in paragraph 8 and of the 2nd defendant's statement of defence. They averred:

B *"8. The British Government reached Umuduru in 1902 and requested for land to establish a Divisional Headquarters. The Chief of Umuduru at the time on behalf of his people granted the government the land verged yellow on the 2nd defendant's plan aforesaid.*

C *9. The government built a native court thereon, a Rest House for the Administrative Officer and houses for a Divisional Headquarters thereon. The 2nd defendant hereby pleads and will rely on the report issued by the East Central State census Committee in July, 1973 and entitled "Historical Events List of local, Regional and Native Significance" in support of the facts pleaded to show that the*
D *Okigwe Division had originally its headquarters at Umuduru and a Native Court at Umuduru within the said land verged yellow."*

By the above paragraphs, the 2nd respondent was not claiming ownership of the land in dispute in the air but pleaded specific acts in alienating the land dispute to the British government. They
E pleaded specific developmental projects and I expected the appellants to react one way or the other. Pleading acts of ownership is good; but not denying the averments in paragraphs 8 and 9 is bad. See *Eke v. Okwaranyia* (2001) 12 NWLR (Pt. 726) 181; *Udo v. CRSNC* (2001) 14 NWLR (Pt. 732) 116; *Okonyia v. Ikengah* (2001)
F 2 NWLR (Pt. 697) 336. In the circumstances, I cannot see my way clear in faulting the conclusion of the Court of Appeal. I also come to the same conclusion and it is that under the rules of pleading the appellants are deemed to have admitted that fact. See *Adeleke v. Aserifa* (1986) 3 NWLR (Pt. 30) 575.
G

I move to issue No.5. Again, learned Senior Advocate attacked the following finding of the Court of Appeal:

H *"Clearly the learned trial Judge was carried away by "paragraph 7 of the amended statement of claim. He entered into realm of conjecture. There was no mention throughout the trial of statutory and indigenous Umuduru. The learned trial Judge supplied the evidence about what happened in Orlu and based his judgment upon it."*

Learned Senior Advocate relied on the said paragraph 7. Coun-

sel reproduced part of paragraph 7. I will reproduce the whole of the paragraph:

“The attempt by Umuduru to usurp what belongs to Umuelemai did not start today. When the colonial masters came they sited the capital at Umuelemai. But because Umuduru first produced some educated and influential sons the capital suddenly was designated Umuduru. In fact the entire area known as Mbano at the commencement of this suit was called Umuduru Division. Hence institutions meant for the entire Division were designated Umuduru. When the Divisional name was changed all institutions except the Post Office changed to either Umuelemai or Mbano. When the Division was called Umuduru the Headquarters was also called Umuelemai. A certified true copy of the provincial Administration System Official Document No. 22 of 1966 is hereby pleaded and shall be founded upon. The said Headquarters included the area in which the postal Agency is situate. The Umuelemai master plan of 1984 is produced by Department of Land, Survey and Urban Department is hereby pleaded.”

There is nothing in paragraph 7 indicating the dichotomy between statutory and indigenous Umuduru. It was not pleaded and so the learned trial Judge was not entitled to embark upon such dichotomy or cleavage. Case is made by the parties and the only function of the court is to adjudicate on the case duly presented by the parties. Courts do not have jurisdiction to raise matter not presented or placed before them. Courts have no jurisdiction to instigate one of the parties against the other. I entirely agree with the Court of appeal that there was no mention throughout the trial of statutory and indigenous Umuduru.

I now take issue No.6. The issue deals with what learned Senior Advocate for the appellants regarded as inconsistency in the judgment of the Court of Appeal. While I cannot place my hands on the brief where this issue was specifically argued, I find it difficult to appreciate the point involved in the issue. Let me quote once again part of the penultimate paragraph of the judgment at page 257 of the record:

“I have sufficiently shown that the plaintiffs did not prove that the parcel of land from where the departmental post office of the 1st defendant operates is or was over Umuelemai land.”

How can such a conclusion be inconsistent with an alleged

finding of the court that the 2nd respondent's case was that the land in dispute was donated by Umuduru to the government?

Stating in summary the case presented by the 2nd respondent, the court said at pages 246 and 247:

B *"The case of the 2nd defendant is that the parcel of the land in dispute is government land. He pleaded and led evidence in support thereof that the land whereon the sub-post office is situate is government land by virtue of the donation or grant made by the traditional ruler of Umuduru in 1902 to the British Government."*

C I cannot see anywhere in the judgment of the Court of Appeal where that court found that the "2nd respondent's case was that the land in dispute was donated by Umuduru to the government outright." Assuming that there is any such finding, it is not inconsistent with the decision of the court against the appellants; portion of which D I have quoted above from the penultimate paragraph.

The law is trite that it is within the purview and competence of the trial Judge to first evaluate the evidence of witnesses. He does not share this jurisdiction with the appellate court. He has the exclusive jurisdiction to first evaluate the evidence of the witnesses. Where the evaluation of the trial Judge is borne out from the evidence in court, of course, an appellate Judge cannot interfere. In other words, an appellate Judge cannot interfere in such a circumstance, even if he comes to the conclusion that he should have evaluated the evidence of the witness differently, in the absence of a perverse evaluation.

However, where the evaluation of the evidence by the trial Judge is perverse, in the sense that it is not properly borne out from the evidence before him, an appellate Judge is competent to re-evaluate the evidence on the records before him and come to a proper decision. A perverse finding, this court held in Overseas Construction Company Nig. Ltd. v. Creek Enterprises (Nig.) Ltd. (1985) 3 NWLR (Pt. 13) 407 is a finding of facts which is merely speculative and not based on any evidence before the court. A perverse finding is an unreasonable and unacceptable finding because it is wrong and completely outside the evidence before the trial Judge.

The trial Judge hears the witness give evidence. He sees the

witness and therefore all his habits and mannerisms. So too his demeanour and idiosyncrasies. And our adjectival law expects him to make full use of all his faculties propelled by law and commonsense to evaluate the evidence by removing the chaff from the grain and arrive at proper conclusions which a reasonable tribunal will arrive at. Where he fails to do that, an appellate Judge will interfere. See Adeye v. Adesanya (2001) 6 NWLR (Pt. 708) 1; Olatunde v. Abidogun (2001) 18 NWLR (Pt. 746) 712; Adeleke v. Iyanda (2001) 12 NWLR (Pt. 729) 1; Udo v. CRSNC (2001) 14 NWLR (Pt. 732) 116; Enilolobo v. Adegbesan (2001) 2 NWLR (Pt. 698) 611. The point should be made that an appellate Judge must confine himself to the record and not extraneous matters.

I see in this appeal a situation where the learned trial Judge, with the greatest respect, did not properly apply the accepted principles of law in the evaluation of the evidence of some of the witnesses. The Court of Appeal, in my view, rightly held that he entered into the realm of conjecture in certain aspects. Of course, he is forbidden by the law to conjecture.

In sum, this appeal fails and it is hereby dismissed. The judgment of the Court of Appeal setting aside the judgment of the High Court is hereby affirmed. The 2nd respondent is awarded N10,000.00 costs.

KUTIGI JSC

I read before now the judgment just delivered by my learned brother Niki Tobi, JSC. I agree with him that this appeal lacks merit and ought to be dismissed. It is accordingly dismissed with N10,000.00 cost to the 2nd respondent only.

OGUNDARE JSC

I read in advance the judgment of my learned brother Tobi, JSC just delivered. I agree with him that this appeal is lacking in merit. I too dismiss it. Although, the claims of the plaintiffs as representatives of Umuelemai Community against the defendants as representatives of Umoduru Community are:

“(a) A DECLARATION that the land on which the Sub-Post

Office called Umuduru sub-post office is situate in Umuelemai land in Umuelemai town.

(b) A DECLARATION that it is wrongful to open and operate a sub-post office built in Umuelemai with the name Umuduru since Umuduru is a different town from Umuelemai.

B *(c) AN INJUNCTION restraining the defendants and/or their agents from operating any sub-post office or postal agency in Umuelemai with the name Umuduru sub-post office."*

The essence of the action is, in fact, a dispute between the two
C Communities as to the ownership of the land on which the post office the subject matter of the action is situate. To succeed, the plaintiffs must prove that the land was originally theirs and is situate in their village. The Court of Appeal after a painstaking evaluation of the evidence led at the trial came to the conclusion that the findings
D of the learned trial Judge were perverse and also found that:

"the plaintiffs did not prove that the parcel of land from where the developmental post office of the 1st defendant operates is or was over Umuelemai land."

The plaintiffs did not prove that the parcel of land from where
E the departmental post office of the 1st defendant, is or was, over Umuelemai land. For the reasons given by the court below in the lead judgment of Kastina-Alu, JCA (as he then was), I have no reason whatsoever to disagree with the above conclusions. It would appear that the learned trial Judge totally misconceived the essence of
F the action before him, his judgment was rightly set aside by the court below. I dismiss this appeal and abide by the order for costs made in the lead judgment of my brother Tobi, JSC.

G

MOHAMMED JSC

I have had a preview of the judgment of my learned brother Niki Tobi, JSC, in draft, and I agree entirely with his opinion that this appeal has no merit at all. I too agree to dismiss it. I also award
H N10,000.00 costs in favour of the respondents.

EDOZIE JSC

I had a preview of the draft of the lead judgment just read by

my learned brother Niki Tobi, JSC. I am in agreement with him that the appeal is unmeritorious and should be dismissed.

The substance of the appellants' claim at the trial High Court is a claim by the Umuelemai community against the Umuduru community of the ownership of the land on which the Sub-Post Office called Umuduru Post Office was built. The trial High Court substantially granted the appellants' relief and inferentially a declaration that the appellants own the land in question. The Court of Appeal re-evaluated the evidence both oral and documentary and arrived at a different conclusion, that is to say, that the appellants did not prove that the parcel of land in dispute is the land of Umuelemai people.

The present appeal in this court turns on the correctness of the re-evaluation of the evidence by the Court of Appeal. I am in agreement that the re-evaluation of the evidence by the Court of Appeal is without reproach and its conclusion is unassailable. I, also dismiss the appeal with an endorsement of the consequential orders made in the lead judgment. Appeal dismissed.

E

F

G

H