

SUPREME COURT OF NIGERIA
FRIDAY 30TH MAY, 2003. SC. 101/1999
CORAM:- M. L. UWAIJS CJN, M. E. OGUNDARE,
U. MOHAMMED, A. I. IGUH, D. O. EDOZIE, JJSC

PATRICK ERHUNMWUNSE APPELLANT
AND
JOHN EHANIRE RESPONDENT

PROPERTY LAW - Title - Whether in issue - It is clear from evidence that appellant had put his title in issue - Having not paid rents to anyone - In respect of his occupation of the premises (H1)

JURISDICTION - Determination - Basis - Though it is plaintiff's claim that determines jurisdiction - But in area court it is the reaction of defendant to testimony of plaintiff - That helps the court to so determine (H2)

LAND LAW - Actions - Hearing - Proper court - Since title is in respect of statutory right of occupancy granted by Governor - High Court has original jurisdiction - In respect of proceedings concerning such land (H3)

FACTS

Plaintiff/respondent sued defendant/appellant before the Oredo Area Customary Court of the then Bendel State claiming inter alia, possession of the property in dispute and mesne profits. The case of respondent was that the property originally belonged to appellant but that appellant had by a deed of transfer Exhibit B made in 1986 and duly registered in the Lands Registry, transferred the property to him, with the relevant Governor's consent. Appellant had, however, continued to occupy the property after the transfer as a tenant at will of respondent, which tenancy had been determined by a notice to quit prior to the institution of this action. On the other hand, though appellant did not deny signing Exhibit B, he maintains that he signed it in the belief that it was merely a deed of mortgage and not a deed of transfer, respondent having earlier promised to help

him secure a loan from the Federal Mortgage Bank on the security of the said property. It is not in dispute that the land on which the property situates is the subject of a statutory right of occupancy.

Thereafter, appellant's counsel raised objection challenging the jurisdiction of the Area Customary Court to adjudicate on the claim in that under the Land Use Act it was only the High Court that had original jurisdiction in proceedings in respect of land, the subject of a statutory right of occupancy. Counsel submitted that though respondent did not expressly claim a declaration of title, the case was such that title must be pronounced on before granting the reliefs claimed. The trial court overruled the objection. Thus appellant appealed to the High Court which affirmed the ruling of trial court as it held that title was not in issue in view of the execution of Exhibit B. Appellant's further appeal to Court of Appeal was also dismissed. This is a further and final appeal by appellant to Supreme Court.

ISSUE FOR DETERMINATION

Whether or not Learned counsel for the plaintiff/respondent, (in this appeal) replied that the Area Customary Court had jurisdiction to try the case as formulated.

HELD (Unanimously allowing the appeal per MOHAMMED JSC)

PROPERTY LAW - Title - Whether in issue

1. The question here is whether the issue of title was relevant for the determination of the dispute between the parties.

Since there were no pleadings in the Area Customary Courts, the evidence adduced is to be analysed in order to find out whether title is in issue in this dispute.

It is crystal clear from the foregoing that the appellant had put the title of his house as an issue in the dispute between him and the respondent. The appellant has not attorned (sic) tenancy to the respondent in respect of the property in dispute and had not paid rents to him or to anyone for his occupation of the premises. I find it difficult to comprehend the conclusion of the Court of Appeal that by signing Exhibit "B" (the Deed of Transfer to the respondent), the appellant had divested himself of the property and as such the question of ownership of the house did not arise. (pp. 1445 E/1448 B)

JURISDICTION - Determination - Basis

2. It is indeed settled law through a chain of decided cases that it is the claim of the plaintiff which determines the jurisdiction of the court. In an Area Customary Court however, a party's claim cannot be ascertained properly until he gives evidence. It will be the reaction of the defendant to the testimony of the plaintiff which helps the court to determine whether it has jurisdiction to adjudicate in the dispute or not.

(p. 1448 G)

LAND LAW - Actions - Hearing - Proper court

3. The title is in respect of a land, the subject of a statutory Right of Occupancy granted by a Governor. The High Court will therefore be the only court with original jurisdiction in respect of proceedings concerning that land.

The Area Customary Court has no jurisdiction to adjudicate in respect of title to No. 3, Osagie Street, Off St. Saviour Road, Benin City. In the result, this appeal succeeds and it is allowed.

(p. 1449 A)

NOTABLE POINTS OF INTEREST

MOHAMMED JSC

1. Joinder of issues – Instance

An Issue in dispute between the parties is an assertion of a right, claim or demand on one side, met by contrary claims or allegations on the other. If this action had been filed in the High Court, parties would be directed to file pleadings. If the plaintiff makes an averment in the Statement of Claim that the defendant had sold his house and transferred it to him by a Deed of Transfer, the defendant would deny it in the Statement of Defence and put the plaintiff to strict proof of such averment. Parties would have then by their pleadings joined issues on the title of the property. The court below did not look at this hypothesis before it decided that the issue of title of the property in dispute had long been settled when the appellant signed Exhibit "B".

(p. 1448 D)

IGUH JSC

2. Rules of procedure are not stringently applied in customary courts

Customary Courts however, are not superior courts of record. No pleadings are filed in them either. Accordingly, the technical rules and/or procedure which govern the trial of actions in the superior courts of record are not stringently applied in those courts. The only material before Customary Courts is the plaintiff's claim which is the initiating process in all civil suits filed in those courts. Trials are conducted in the Customary Courts in a summary manner and the only opportunity a defendant has to project his case is by oral evidence when he and his witnesses testify before the court in his own defence.
(p. 1452 G)

REPRESENTATION

Ibrahim Idris, for the Appellant

D D.O. Okoh, for the Respondent

CASES REFERRED TO

Dinsey v. Ossei (1939) 5 WACA 177

Nwosu v. Udeaja (1990) 1 NWLR (Pt. 125) 188

E Kwamin Akyin v. Essie Egymah (1936) 3 WACA 65

Olujinle v. Adeagbo (1988) 2 NWLR (Pt. 75) 238

Chukwunta v. Chukwu (1953) 14 WACA 341

Solomon Jonah v. Kojo Owu (1937) 3 WACA 170

F Adeyemi and Others v. Opeyori (1976) NSCC 455

Chief Awara Osu v. Ibor Igim (1988) 1 NWLR (Pt. 69) 231

A-G Anambra State v. A-G Fed. (1993) 6 NWLR (Pt. 302) 692

Ezeanya v. Okeke (1995) 4 NWLR (Pt. 388) 142

STATUTES REFERRED TO

G Customary Courts (Amendment) Edit No. 5 of 1985, s.2

Land Use Act 1978, s.39

Rent Control & Recovery of Premises Edict, 1977

LEAD JUDGMENT BY MOHAMMED JSC

H The question on jurisdiction of Oredo Area Customary Court of the former Bendel State to determine the claim filed by Mr. John Ehanire against Mr. Patrick Erhunmwunse is the single issue raised

by the appellant for the determination of this appeal. Before I go into the merits of the appeal, it is pertinent to give a brief resume of the facts which led to the dispute between the parties. Mr. John Ehanire who is the respondent in this appeal, gave a brief account of what happened between him and the appellant before he filed his suit in the Oredo Area Customary Court. He explained his case in the following narrative:

“The plaintiff is the owner and landlord of a storey building known as and situate at No. 3, Osagie Street, off St. Saviour Road, Benin City, within the jurisdiction of this Honourable court.

By a Deed of Transfer dated 17th February, 1986, and registered as No. 42, at page 42 in volume 687 at the Lands Registry Office Benin City, the Defendant transferred the said story building to the Plaintiff absolutely with the relevant Governor’s consent dated 12th February, 1986, and Registered as No. 16 at page 16 in volume 689 of the Lands Registry Benin City.

At all times material to this action the Defendant was a tenant at will of Plaintiff, occupying the whole storey building and premises known as and situate at No. 3, Osagie Street, Off St. Saviour road, Benin City by the let, leave and grace of the plaintiff.

The plaintiff served notice to quit on the defendant which determined the tenancy on 28th February, 1986.

Despite repeated demands, the defendant has failed and/or neglected to give up possession ever since and still detains same.

WHEREFORE the plaintiff claims as follows:

(a) Possession of the storey building known as and situate at No. 3 Osagie Street, Benin City.

(b) An Order that the Defendant do quit the storey building and premises known as and situate at No. 3, Osagie Street, Benin City forthwith.

(c) An Order that the defendant pay up outstanding Electricity bills and Water rate in respect of the said premises.

(d) Mesne profit at the rate of N400.00 per month from 1st March, 1986, till possession is given up.”

The hearing of the case was opened. The Area Customary Court recorded evidence from witnesses and during the address learned counsel for the appellant made a submission challenging the jurisdiction of the Area Customary Court to adjudicate on the

claim filed by the respondent before it. Learned counsel pointed out that Exhibit “A” is a Statutory Right of Occupancy issued by the Governor and under Section 39 of the Land Use Decree (now Act) only High Court has original jurisdiction in proceedings in respect of land, the subject of a Statutory Right of Occupancy. He further argued that having regard to the parties’ stand on the documents said to have transferred the property to the plaintiff there ought to be a court’s pronouncement on the ownership of the house before the Area Customary Court could pronounce on the issue of rent.

Whether or Learned counsel for the plaintiff/respondent, (in this appeal) replied that the Area Customary Court had jurisdiction to try the case as formulated. He submitted that on the face of the documents tendered, ownership of the property is in the plaintiff and it is not an issue in dispute between the parties. He further argued that the claim of the plaintiff is not for a declaration or injunction.

The trial Area Customary Court considered both submissions in its judgment and concluded that it was competent to hear the claim brought before it by the respondent.

On appeal to the High Court, the issue of jurisdiction of the trial Area Customary Court was considered by that court in the following finding:

“The main issue to determine in this appeal is whether the claim of the plaintiff (now respondent) before the lower court was for ownership of landed property and if so whether the lower court had jurisdiction? All the grounds of appeal rest on this.

It is therefore necessary to examine the claim and reliefs and these have been reproduced at pages 1 and 2 of this judgment. The appellant said that the issue of jurisdiction was canvassed at the lower court but the appellant was overruled.

First, let me deal with the issue of substance of the claim. The appellant, by Exhibit B, the Deed of Transfer of the property to the respondent, had divested himself of the property and so question of ownership does not arise. In my view the issue of ownership had long been settled. See Exhibit B, the Deed of Transfer. The claim clearly states that the appellant was a tenant at will of plaintiff occupying the whole storey building and premises known as and situate at No. 3, Osagie Street, Off St. Saviour Road, Benin City. There was therefore landlord and tenant relationship.”

The appellant further appealed to the Court of Appeal, Benin City Division, and formulated the issue of jurisdiction of Oredo Area Customary Court as the main issue. The Court below, in a considered judgment, referred to the decision of this court in the case of Madukolu & Ors. v. Nkemdilim (1962) All NLR 581 and held that the four conditions on the competency of a court to hear a matter as laid down in Madukolu's case were present before the Oredo Area Customary Court exercised its jurisdiction over the respondent's claim. The Court of Appeal held that Oredo Customary Court had jurisdiction to determine the claim filed by the respondent.

Dissatisfied with the above decision, the appellant has finally come to this court armed with one ground of appeal. It is from that ground of appeal that the single issue on jurisdiction of the Oredo Area Customary Court was formulated.

The issue of title is the bone of contention in the dispute which led to this appeal. It is settled law that only the High Court has exclusive jurisdiction to determine the issue of title to land in an urban area in respect of which a Statutory Right of Occupancy has been issued. Section 39(1) (a) of Land Use Decree (now Act) is very clear and needs no further interpretation. The question here is whether the issue of title was relevant for the determination of the dispute between the parties.

Since there were no pleadings in the Area Customary Courts, the evidence adduced is to be analysed in order to find out whether title is in issue in this dispute. The trial Area Customary Court summarised the testimony of the respondent in its judgment and I think the correct statement of his case before it has been adequately reproduced therein. It goes thus:

"Testifying next was Plaintiff himself, and he began by describing defendant as a friend and a former petrol dealer with Unipetrol. He then told court that sometime early in 1985, defendant approached him for a loan of N22,000.00 and said he obliged defendant with the loan as requested. Plaintiff further stated that on 24/5/85 and 17/7/85 defendant gave him two cheques for N5,000.00 and N10,000.00 respectively in part liquidation of the loan but said the cheques were later returned to him unpaid. He proceeded to put the two cheques in evidence and they were accordingly admitted and marked Exhs. E' and "F respectively. According to plaintiff, on 21st October, 1985,

defendant entered into a hand written agreement that he would pay the total loan of N22,000.00 by the 31st of that month and tendered the said agreement, which was duly admitted as Exh. 'G'. Came (sic) the 31st of October, 1985, plaintiff stated, defendant failed to honour his undertaking as contained in Exh. 'G'. On the 16th of November, 1985, plaintiff continued, defendant again wrote an undertaking to the effect that he would pay the money on or before the 2nd day of December, 1985, and tendered the said undertaking which was admitted as Exh. 'H'. Came (sic) the 2nd of December, 1985, he said, defendant once more failed to pay up.

Whilst such pledge remained unfulfilled, he continued, on 9/12/85, defendant asked him to advance him the sum of N6,630.66 to enable him retrieve his document from the New Nigeria Bank Ltd., Mission Road Branch, Benin City, pursuant to a sale of his house for which he had already found a buyer. Plaintiff said he gave that sum to the defendant which the latter paid over to the Bank and later brought a copy of the teller to plaintiff. He tendered the teller dated 9/12/85 and same was admitted as Exh. 'J'. He said this brought defendant's total indebtedness to him to N28,030.66.

Continuing, plaintiff said on 20/12/85, he accompanied defendant to the Bank to collect his document (Exh. 'A') and said he was present when Exh. 'A' was released to defendant by the Mission Road Branch Manager, adding that the exercise was duly witnessed by P.W.3. According to the Plaintiff, later, in mid-January, 1986, defendant came to him to say that the man who had indicated interest in the purchase of his house was not around and wondered if plaintiff was prepared to buy the house. Plaintiff said defendant further told him upon plaintiff's enquiry that the man has offered to pay N40,000.00 for the house. Following this discussion, he stated, both parties went on an inspection of the house after which he agreed to buy it for the sum of N40,000.00 quoted. Subsequently, he said defendant collected from him the sum of N11,969.34 to complete the amount of N40,000.00 for the house. It was after all these, he said the parties together went to the Chambers of P.W.1 for the preparation of the Deed of Transfer and at this stage of his testimony Plaintiff gave the situate of the house as No. 3 Osagie Street, Off St. Saviour Road, Upper Sakpoba, Benin City. He stated that after P.W.1 had prepared the Deed of Transfer parties together took it to P.W.2 for execution.

There, he said, they read through it and signed while P.W.2 attested it.”

The summary of the testimony of the respondent, reproduced above, speaks for itself. I will now go to the evidence adduced by the appellant before the Area Customary Court. Here again the trial Area Customary Court summarized the evidence of the appellant in its judgment. In the summary, the court recorded that the appellant testified and told the court that he was respondent’s friend but denied ever selling his house to him. He denied ever seeing Exhibit ‘B’ (The Deed of Transfer of the house in dispute). He also denied ever instructing P.W.1 to prepare Exhibit ‘B’ as claimed by the witness. The summary of the evidence went further as follows:

“Defendant then told court that sometime in the year 1985, there was an arrangement involving plaintiff, himself, D. W. 1 - D.W.3 to Mortgage his property in issue because of his indebtedness to those others, and put the mortgage value at N100,000.00. On that occasion, he claimed, plaintiff invited him and D.W.1 - D.W.3 to his office and at the said meeting plaintiff promised to help him with a loan of N100,000.00 from the Federal Mortgage Bank, Akure. According to defendant, the loan was to be used to defray the N40,000.00 he was owing those earlier mentioned and the balance N60,000.00 to be handed over to him in pursuit of his business. He said plaintiff later made him to sign a paper for the release of his collateral by the New Nigeria Bank and he then identified Exh. ‘D’ as the said paper. He said the New Nigeria Bank did not release his collateral to him but that when subsequently he called at the Bank he was informed that plaintiff had collected it. He said at the Chambers of P.W.1, plaintiff and three others by names Christopher, Asegbus and Reuben Ehanire asked him to sign one document but he told them he would not, adding, that he asked if that was the Federal Mortgage Bank, Akure they had indicated they were heading for. According to him, the whole situation degenerated into a commotion with the result that P.W.1 drove them away from his Chambers. Having been driven away, he said, plaintiff and others forced him into their car and drove him to an unknown place at the Government Reservation Area before they took him to the house of P.W.2. He said P.W.2 asked what had led them to bring him to his house again and that plaintiff replied they wanted him (defendant) to sign some document but that he refused.

Defendant stated that he did not have his glasses and that he said so but that P.W.2 explained that the document was not for sale rather a mere mortgage of the house. He said it was at this stage he signed the document.”

It is crystal clear from the foregoing that the appellant had
 B put the title of his house as an issue in the dispute between him and
 the respondent. The appellant has not attorned (sic) tenancy to the
 respondent in respect of the property in dispute and had not paid
 rents to him or to anyone for his occupation of the premises. I find
 C it difficult to comprehend the conclusion of the Court of Appeal that
 by signing Exhibit “B” (the Deed of Transfer to the respondent),
 the appellant had divested himself of the property and as such the
 question of ownership of the house did not arise.

An Issue in dispute between the parties is an assertion of a
 right, claim or demand on one side, met by contrary claims or alle-
 D gations on the other. If this action had been filed in the High Court,
 parties would be directed to file pleadings. If the plaintiff makes an
 averment in the Statement of Claim that the defendant had sold his
 house and transferred it to him by a Deed of Transfer, the defendant
 would deny it in the Statement of Defence and put the plaintiff to strict
 E proof of such averment. Parties would have then by their pleadings
 joined issues on the title of the property. The court below did not
 look at this hypothesis before it decided that the issue of title of the
 property in dispute had long been settled when the appellant signed
 F Exhibit “B”.

It is indeed settled law through a chain of decided cases that
 it is the claim of the plaintiff which determines the jurisdiction of the
 court - see A-G Anambra State v. A-G Federation (1993) 6 NWLR
 (Pt.302) 692 at 747. In an Area Customary Court however, a party’s
 claim cannot be ascertained properly until he gives evidence. It will
 G be the reaction of the defendant to the testimony of the plaintiff which
 helps the court to determine whether it has jurisdiction to adjudicate
 in the dispute or not. I have looked into the testimonies of both the
 plaintiff/respondent and defendant/appellant in the case in hand and
 I agree entirely with the learned counsel for the appellant that the title
 H to the property No. 3, Osagie Street, Off St. Saviour Road, Benin
 City is a veritable issue that called for determination in the dispute
 between the appellant and the respondent. The title is in respect

of a land the subject of a statutory Right of Occupancy granted by a Governor. The High Court will therefore be the only court with original jurisdiction in respect of proceedings concerning that land. See Section 39 of Land Use Decree (now Land Use Act). The Area Customary Court has no jurisdiction to adjudicate in respect of title to No. 3, Osagie Street, Off St. Saviour Road, Benin City.

In the result, this appeal succeeds and it is allowed. The judgments of all the three courts below conferring power to the Oredo Area Customary Court to adjudicate in the dispute between the appellant and the respondent are hereby set aside. I order that plaintiff's case be struck out. The appellant is entitled to the costs of this appeal which I assess at N10,000.00. He is also entitled to the costs in the courts below assessed at N200 in the trial Customary Court, N200 in the High Court and N2,000.00 in the Court of Appeal.

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother, Mohammed, JSC. I entirely agree with the judgment.

It is not the practice of customary courts for pleadings to be filed by parties before them. It is not, therefore, always easy to determine at the beginning of a case, the actual issue involved which the court is to adjudicate upon. This is true of the present case.

It is quite clear from the testimonies of the parties before the Oredo Area Customary Court that the dispute between the parties involves land which is the subject of a statutory right of occupancy. Although the claim by the Respondent herein, as plaintiff, was inter alia to recover possession of the house which he claimed to have purchased from the Appellant, the latter's defence is a denial of the sale of the property to the Respondent. This puts title to the house in issue. Section 39 subsection (1)(a) of the Land Use Act, Cap. 202, which vests exclusive jurisdiction in the High Court with regard to first instance proceedings in respect of land which is the subject of a statutory right of occupancy, provides as follows:-

“39(1) The High Court shall have exclusive original jurisdiction in respect of the following proceedings -

(a) proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to have been granted by him under this Act; and for the purposes of this paragraph, proceedings includes proceedings for a declaration of title to a statutory right of occupancy.”

B It follows that the Oredo Area Customary Court lacked the jurisdiction to hear the case and the Court of Appeal erred in holding otherwise.

C I too would allow the appeal and I adopt the order as to costs made by my learned brother, Mohammed, JSC.

OGUNDARE JSC

D I agree entirely with the judgment of my learned brother, Mohammed, JSC., just delivered, a preview of which I had before now. For the reasons given by him, which reasons I hereby adopt as mine, I too allow this appeal, set aside the judgments of the three courts below and strike out Plaintiff’s claim in the Oredo Area Customary Court, Benin City, for want of jurisdiction of that court to adjudicate
E on the claim.

I abide by the orders for costs made by my learned brother, Mohammed, JSC.

F _____

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Mohammed, JSC., and I entirely agree that there is merit in this appeal and that the same ought to be
G allowed.

The plaintiff’s claims against the defendant before the trial Oredo Customary Court in the now defunct Bendel State of Nigeria, holden at Benin City, are as follows:-

H “(a) Possession of the storey building known as and situate at No. 3, Osagie Street, Benin City.

(b) An Order that the Defendant do quit the storey building and premises known as and situate at No. 3, Osagie Street, Benin

City forthwith.

(c) An Order that the Defendant pays up outstanding Electricity Bills and Water Rates in respect of the said premises.

(d) Mesne profits at the rate of N400.00 per month from 1st March, 1986, till possession is given up.”

The background facts that culminated in this appeal have been fully set out in the leading judgment and no useful purpose will be served by my recounting them all over again. It suffices to state that although the plaintiff's claims against the defendant are for possession of the residential landed property situate at No. 3, Osagie Street, Benin City, payment of outstanding electricity bills and water rates in respect of the premises and mesne profits at the rate of N400.00 per month, the defendant's case is a total denial of the plaintiffs assertion of title to the property in issue. Although the plaintiff claimed that the property was transferred to him by the defendant under a duly registered deed of assignment, Exhibit B, the defendant in his defence denied selling or transferring the property at any time to the said plaintiff. The defendant further denied giving instruction to anyone to prepare Exhibit B on his behalf. The length and breadth of his defence is that the building which is the subject matter of this action is his bona fide property and that he never at any time transferred his title thereto to the plaintiff or to any other person else. He also denied that he ever agreed to pay the plaintiff N400.00 per month as rent in respect of his property.

At the trial, the defendant raised the issue of want of jurisdiction on the part of the trial Customary Court to entertain and/or determine the suit. Both the trial court and the Customary Court of Appeal, Bendel State, together with the Court of Appeal, Benin Division, had considered the issue severally and overruled the defendant on the point. Said the Court of Appeal:

“I agree with the learned counsel for the respondent that it is trite law that in determining whether a court has jurisdiction or not to entertain an action it is the plaintiff's claim that is relevant.”

The court below went on to hold thus:-

“In the case in hand, by Section 2 of the Customary Courts (Amendment) Edict No. 5 of 1985, the jurisdiction and powers formerly conferred on Rent Tribunals in Bendel State, applicable to Edo State, were transferred to the Area' Customary Courts to be

exercisable by those courts.”

It emphasised that ex facie, the action before the trial Oredo Area Customary Court is not for ownership or title to the property in issue but simply concerned a landlord and tenant dispute. It concluded:-

B “I would like to say it loud again that the respondent sought reliefs enacted in the Rent Control and Recovery of Premises Edict of 1977 as amended by Edict No. 6 of 1985...

C It should be mentioned again that pursuant to Rent Control and Recovery of Residential Premises (Amendment) Edict 1985 of Bendel State, applicable to Edo State, rent tribunal matters were transferred to the jurisdiction of the Area Customary Court. Thus, the trial court in the instant case rightly adjudicated upon the claim for possession, arrears of rent and mesne profit brought before it by the respondent.”

D The defendant being dissatisfied with this decision of the Court of Appeal has further appealed to this Court.

E The sole issue formulated by both parties for the resolution of this appeal is whether the court below was justified in holding that only the plaintiff’s claim is relevant in the determination of whether or not the trial Area Customary Court had jurisdiction to entertain the suit.

F It is a fundamental principle of law that it is the claim of the plaintiff which determines the jurisdiction of the court to entertain a suit. Put differently the question of jurisdiction is determined by the nature of the plaintiff’s case. See Attorney-General of Anambra State and Others v. Attorney-General of the Federation and Others (1993) 6 NWLR (Pt. 302) 692 at 742 and Adeyemi and Others v. Opeyori (1976) NSCC 455 at 463. This is the position in strict procedural law, particularly in respect of matters instituted before our superior

G courts of record. Customary Courts/however, are not superior courts of record. No pleadings are filed in them either. Accordingly, the technical rules and/or procedure which govern the trial of actions in the superior courts of record are not stringently applied in those courts. The only material before Customary Courts is the plaintiff’s claim which is the initiating process in all civil suits filed in those courts.

H Trials are conducted in the Customary Courts in a summary manner and the only opportunity a defendant has to project his case is by

oral evidence when he and his witnesses testify before the court in his own defence.

In this connection, it cannot be over-emphasised that the form of an action in customary courts must not be stressed where the issue involved is clear. The law is long settled that it is the substance of such actions that is the determinant factor. See Kwamin Akyin v. B Essie Egymah (1936) 3 WACA 65, Solomon Jonah v. Kojo Owu (1937) 3 WACA 170 at 171 and Chukwunta v. Chukwu and Others (1953) 14 WACA 341. Proceedings in Customary Courts must be carefully scrutinised to ascertain what the real subject matter of a case C and the real issues raised therein are. Consequently, it is permissible, not only to look at the plaintiff's claim before the Customary Court, but also to study the findings and even the evidence given or tendered before such Customary Courts with a view to identifying the real issues between the parties in the suit. See: Olujinle v. Adeagbo D (1988) 2 NWLR (Pt. 75) 238 at 251, Chief Awara Osu v. Ibor Igim (1988) 1 NWLR (Pt. 69) 231, Nwosu v. Udeaja (1990) 1 NWLR (Pt. 125) 188, Richard Ezeanya and Others v. Gabriel Okeke and Others (1995) 4 NWLR (Pt.388) 142. It ought to be stressed also that in dealing with proceedings from Customary Courts, an appellate court E must not be unduly strict or rigid with regard to matters of form or procedure as the whole object of trials before such courts is that the real dispute between the parties should be adjudicated upon. See Dinsey v. Ossei (1939) 5 WACA 177. With the above well established F principles of law in view, I will now proceed to consider the sole issue for determination in this appeal.

As already pointed out, although the plaintiff's claims against the defendant sound in recovery of premises, payment of outstanding electricity bills and water rates and mesne profits, it is beyond dispute, G after a careful study of the proceedings before the trial Oredo Area Customary Court, Benin City, that the insurmountable issue between the parties concerns ownership or title to the property, the subject matter of the suit. Whilst the plaintiff claims that the defendant lawfully transferred the property to him under Exhibit B, the defendant H denies any such transfer or alienation of the property to the plaintiff.

The trial Oredo Area Customary Court, as I have already pointed out, is not a superior court of record where pleadings are ordered and filed and the technicalities of the law strictly observed.

That court is only a court of summary jurisdiction. It is, therefore, clear to me that the trial Customary Court was duty bound to consider not only the claim before it but also the defence of the defendant in order to determine what the real issue between the parties is and whether or not it had jurisdiction to entertain the suit. In other words, the trial court ought to consider the totality of the case of both the plaintiff and the defendant in order to form a balanced and objective opinion as to whether or not it had the requisite jurisdiction to entertain the suit. I am, therefore, unable to endorse the finding of the court below to the effect that only the plaintiff's claim without more needs be considered in the determination of the question of the trial court's jurisdiction to entertain the suit raised by the defendant in the case.

It is plain to me that the issue of ownership and/or title to the building, the subject matter of the suit, was copiously raised in the proceedings that it was incumbent on the trial court to determine that issue before it could properly deal with the plaintiff's claims against the defendant. This is because, unless the trial court satisfied itself that the plaintiff had established his title to the premises in dispute, it would almost certainly find itself unable to grant the reliefs claimed against the defendant.

Now, Section 39 of the Land Use Act, 1978, confers the High Court with exclusive original jurisdiction to determine the issue of title to land situate in an urban area and therefore the subject of a statutory right of occupancy. That section of the law provides thus:-

"39 (1) The High Court shall have exclusive original jurisdiction in respect of the following proceedings:-

(a) proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under this Act; and for the purposes of this paragraph, proceedings includes proceedings for a declaration of title to a statutory right of occupancy;

(b) proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under this Act."

It is common ground in the present case that the building situate at No. 3, Osagie Street, Benin City, which is the subject of the present action, is within the Benin City urban area under the Urban Area Designation Edict of Bendel State, 1990. There is also uncon-

troverted evidence that the defendant had a Certificate of Statutory Right of Occupancy issued by the State Governor in respect thereof in assertion of his root of title to the premises in dispute. It is evident that the primary issue that calls for determination in this case is who as between the plaintiff and the defendant has valid and subsisting title to the land and premises in dispute. B

Under the Land Use Act, 1978, the only competent court to resolve this question is the High Court of Justice, Edo State. In my view, the Oredo Area Customary Court is clearly without jurisdiction to entertain the present action and the decision of the Court of Appeal to the contrary is, with profound respect, erroneous and unsustainable. C The sole issue for determination in this appeal is accordingly resolved in favour of the defendant/appellant.

It is for the above and the more detailed reasons contained in the judgment of my learned brother, Mohammed, JSC., that I, too, allow this appeal. The judgments of the Oredo Area Customary Court delivered on the 26th March, 1990, the Bendel State Customary Court of Appeal delivered on the 23rd June, 1993 and the Court of Appeal, Benin City Division, delivered on the 16th July, 1998 upholding the jurisdiction of the Oredo Area Customary Court to determine the plaintiff's claims in the present action are hereby set aside. I abide by the order as to costs made in the leading judgment. E

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EDOZIE JSC

I had a preview of the lead judgment just delivered by my learned brother, Mohammed, JSC., and I agree with him that the appeal is meritorious and should be allowed. G

The Plaintiff/Respondent's claim before the Oredo Area Customary Court was for possession, mesne profits and costs of electricity and water rate in respect of a storey building at No. 3, Osagie Street, Benin City, hereinafter referred to as the property in dispute. It is not disputed that ex facie the aforesaid Area Customary Court had the requisite jurisdiction to entertain such a simple claim particularly if there is no controversy over title to the property in dispute. H

However, from evidence adduced by the parties at the trial court, it was manifest that the ownership of the land in dispute was being

- vigorously contested. The Plaintiff/Respondent's case appears to be that the Defendant/ Appellant were originally the owner of the property in dispute, which he was occupying. Subsequently, he, the Defendant/Appellant, sold the property to the Plaintiff/Respondent to whom he attorned (sic) a tenant. The sale was by a Deed of
- B Transfer dated 17th February, 1986. The Defendant/Appellant had vigorously denied that assertion that he at anytime divested himself of the property in dispute. Thus, a serious and fundamental issue of title to the property in dispute had arisen. The determination of
- C the Plaintiff/ Respondent's claim is dependent on the resolution of this issue of title. Unarguably, the Area Customary Court lacked the jurisdiction to adjudicate over title to land situate in an urban area the subject of a Statutory Right of Occupancy in respect of which the High Court enjoys exclusive jurisdiction by virtue of Section 39 (1) (a) of the Land Use Act.
- D I, therefore, agree with my learned brother, Mohammed, JSC., that the courts below were in grave error in failing to appreciate that the trial court lacked the jurisdiction to entertain the claim before it. Consequently, I allow the appeal and endorse all the consequential
- E orders made in the lead judgment.

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