

**SUPREME COURT OF NIGERIA**  
4TH FEBRUARY, 2005. SC. 279/2000  
**CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, U. A. KALGO, I.**  
**C. PATS-ACHOLONU, G. A. OGUNTADE, JJSC**

1. RABIATU ADEBAYO  
2. WOSILATU MOMODU ..... APPELLANTS  
3. MULIKATU IBRAHIM  
4. ABDUL-WAHAB  
AND  
RASHEED SHOGO ..... RESPONDENT

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LAND LAW - Title - Pleadings - Root of title of plaintiff's predecessors  
- Should be pleaded adequately - Even in a claim for part ownership (H1)

LAND LAW - Title - Evidence - Sparsely worded pleadings - Led to no  
substantial evidence - In support of the claim (H2)

LAND LAW - Title - Pleadings - Root of title and other facts - That were  
not pleaded - Go to no issue (H3)

APPEALS - Findings of fact - Title to land - Perverse findings - Where  
trial court failed to evaluate the evidence - Court of Appeal will do that  
(H4)

COURTS - Judgments - Trial court should hear all the sides - And com-  
pare weight of evidence - To avoid judicial rashness (H5)

**FACTS**

Before the Kwara State High Court, Offa, the plaintiffs/appellants  
filed an action against the defendant/respondent. They claimed a declara-  
tion that they were part owners of shops situate at Adeleke Road, Owada  
market Offa, per the stripes system of inheritance, and also an order of  
accounts. They claimed that the land was the property of their father Pa

Salami, that they and their mother, who is also respondent's grand mother all contributed money for the erection of the shops on the land. They averred that they delegated the respondent to supervise the building and thereafter collect rents from the shops, but he was collecting the rent for himself only. The respondent denied their claim and averred that the land was bought by his mother, Alhaja Shogo. In order to induce Pa Salami to return home a portion of the land was given to him by Alhaja Shogo. When Pa Salami could not complete the structure on the land due to poverty and abandoned it, the structure was given to Alhaja Shogo's brother then living in Kano. That since the completion of that shop, respondent's mother, the said Alhaja Shogo, had continued to collect rents from that building.

The appellants' pleading was sparse and did not contain their predecessors' root of title. The trial court found in their favour without a proper evaluation of evidence. Respondent's appeal to the Court of Appeal was upheld by that Court. Being aggrieved appellants have now appealed to the Supreme Court.

#### **ISSUES FOR DETERMINATION**

*"i. Whether the non-filing or formulation of any issue on the plaintiffs' interlocutory appeal was fatal to the interlocutory appeal;*

*ii. Whether the learned Justices of the Court of Appeal could validly substitute their own views as to the finding of facts made by the learned trial Judge; and*

*iii. Whether the statement of claim filed by the plaintiffs was adequate for their case."*

**HELD** (Unanimously dismissing the appeal per **PATS-ACHOLONU JSC**)

#### ***Root of title of plaintiff's predecessors***

1. For a case involving a declaration of ownership or title to land whether whole and entire or part ownership, it is essential that a ground work of how the land came into ownership or possession of the predecessors of the claimants be clearly stated. When there is no pleading or averment on that, it is generally difficult to see how the burden of proof can be satisfactorily explained. The pleading of the appellants is the shortest I have

ever seen and the facts to prove the case are very scanty to say the least. It is important to know that facts are the bedrock - nay - the fountain head of law. The court does not apply law in a nebulous clime. In other words it has to scrupulously subject all the facts pleaded and elicited in the evidence to merciless scrutiny to determine which party's case preponderates over the other. The facts are the tools in the hands of a great advocate. (p. 570 E)

### ***Sparsely worded pleadings***

2. It is so difficult for me to take the appellants seriously when they could not satisfactorily explain how their father got the land in the first place. I fail to understand how the terse and sparsely worded pleadings could be a foundation for sufficient facts that would ground or gravitate their case when they are seeking for declaratory reliefs and account of the monies realized from the claim of delegation to collect rentals. On the contrary, the respondent in this case comparatively speaking was fairly profuse in his pleadings and naturally the evidence elicited or adduced ought generally to shore up considerably the material facts pleaded. The weight or substantiality of evidence is what is considered by the court in its adjudication process. (p. 571 D)

### ***Pleadings - Root of title and other facts***

3. The evidence that the land was bought through Baba Saka Balogun being a material fact was not pleaded and so it goes to no issue. This has long been settled. See N. Nwawuba & Ors. v. J. Enemuoh & Ors. (1988) 5 SCNJ 154 at 156. The law frowns at one of the parties trying to overreach the other by springing a surprise. The other party should be informed in time to make a response or state his or her reaction to the facts pleaded. Although I must quickly add that these facts elicited in evidence like the one earlier made were not averred in the appellants pleadings and therefore would go to no issue. (p. 572 D)

### ***Title to land - Perverse findings***

4. The appellants are arguing that the Court of Appeal was substituting its

own views on the issues. It cannot be denied that the High Court did not at anytime consider the case put forward by the respondent. Such bare-faced injustice masqueraded as adjudication in a democratic society where the rule of law reigns, is galling and utterly invidious. Where lies the justice where the cases made up by the contending parties are not put in an imaginary scale. Such a judgment is an affront to reason and intelligence and bespeaks of inordinate desire to see nothing good in the respondent's case. The appellants complained that the Court of Appeal should not talk of belief or non-belief not having been the trial court. The words 'believed' and 'unbelieved' may be inappropriate terminology in the context, but there is no gainsaying that the testimony of the respondent is awash with detailed facts and particulars which the court below found to have completely overwhelmed the evidence of the appellants. I agree with the decision of the Court of Appeal that from the test of the judgment of the High Court, it is perverse as the High Court seemed to have traduced all norms and elementary precepts associated with or innate with good, decent and civilized administration of justice. That is no substitution of the appellate court's own views. This brings me to the general powers of the Court of Appeal in its adjudication processes. Section 16 of the Court of Appeal Act states as follows:-

*"The Court of Appeal may from time to time make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal and make an interim order or grant any injunction which the court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance."* (p. 572 G)

### ***Judgments - Trial court should hear all the sides***

5. The beauty, the elegance and romance of our adjudicatory system is that the court should hear all the sides, carefully compare the weight of

the evidence given, make a proper appraisal before determining preponderance after such painstaking considerations of all the issues addressed upon it. The method adopted by the High Court is redolent with high handedness which in the context I can describe as judicial rashness, and a stint of machiavellianism - the end justifies the means. B

It is my view that what the Court of Appeal did in the case is unassailable. Therefore I dismiss the appeal as being unmeritorious and I affirm the judgment of the Court of Appeal dismissing the action. (p. 574 C) C

## NOTABLE POINTS OF INTEREST

### OGUNTADE JSC

#### *1. Need for Counsel to be serious*

I have in this judgment set out above the totality of the argument of D plaintiffs/appellants' counsel who has in my view demonstrated a remarkable casualness in the manner he put across his argument. I get the impression that plaintiffs/appellants' brief was hurriedly put together or that the plaintiffs/appellants' counsel did not think he needed to put across E to us arguments which would advance his client's chances in this appeal. The arguments were far too brief and conveyed very little of substance. (p. 580 H)

#### *2. Failure to file brief to support interlocutory appeal* F

The reasoning of the court below in the passage above cannot be faulted as the same amply reflects the state of the relevant judicial authorities on the point. I think that the court below was even kind to the appellants in its views. The palpable error in the procedure adopted by appellants' G counsel was clearly understated. Appellants' counsel had failed to file an appellants' brief in support of his interlocutory appeal. Rather he converted the defendant/respondent's appeal into a pedestal upon which to promote his own appeal. Order 3 rules 1, 2 and 3 of the Court of Appeal H Rules enjoin that an appellant shall file an appellant's brief in support of his appeal. The Rules under the said order set out what an appellant's brief must contain. The plaintiffs/appellants having failed or neglected to

file an appellant’s brief in support of their interlocutory appeal were rightly deemed to have abandoned their interlocutory appeal. I therefore decide issue one against the plaintiffs/appellants. (p. 581 H)

B 3. *Title - Failure to discharge onus of proof*

This was a case in which the appellants bore the onus of showing how their predecessor-in-title derived his root of title. In the manner the appellants pleaded their case, the defendant was in possession of the land and collecting rents therefrom. Even if the defendant was a trespasser without any claim to the land, he was entitled to keep his possession until someone with a better title ousted him.

The argument of appellants’ counsel that the court below made its own findings of fact which were in conflict with those made by the court of trial even if correct would not alter the fact that the appellants who were the plaintiffs failed woefully to establish their root of the title. The question whether the averments pleaded in the statement of claim were sufficient to sustain the claim made by the plaintiffs becomes merely academic in view of what I have said earlier that the plaintiffs did not establish their root of title. Obviously, they were not able to do this either because their root of title was not pleaded or because the root of their title did not exist. Whichever it was, the claims they made deserved to fail. (p. 582 G)

**REPRESENTATION**

A. O. Mohammed, (with him R. S. Baiyeshea and E. O. Atafo), for the Respondents.  
G Appellant not represented.

**CASES REFERRED TO**

N. Nwawuba & Ors. v. J. Enemuo & Ors. (1988) 5 SCNJ 154 at 156  
H Oversea Construction Co. Ltd. v. Greek Enterprises Ltd. (1985) 3 NWLR (Pt.13) 407  
A. Emegokwe v. J. Okadigbo (1973) 4 S.C. (Reprint) 78; (1973) 4 S.C. 113 at 117

George v. Dominion Flour Mills (1963) 1 SCNLR 117 at 123 -124

Kodilinye v. Mbanefo Odu 2 WACA 336 at 337

Josiah Akinola and Anor. v. Fatoyinbo Oluwo & 2 Ors. (1962) 1 ALL NLR 224 at 225

Idundun and Ors. v. Daniel Okumagba (1976) 9/10 S.C. 227

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Amakor v. Obiefuna (1974) 3 S.C. (Reprint) 49; (1973) 3 S.C. 67

Oluwi v. Eniola (1963) NMLR 339

Egonu v. Egonu (1978) 11-12 S.C. (Reprint) 82; (1978) 11-12 S.C. 111 at 130

C

### **RULES REFERRED TO**

High Court (Civil Procedure) Rules of Kwara State, 1989 O. 32

Court of Appeal Rules O. 3 rr. 1, 2 & 3, O. 6 r. 6

D

### **LEAD JUDGMENT BY PATS-ACHOLONU JSC**

The dispute over a land or incidences of land ownership in the history of Nigerian jurisprudence and literature in land law, has been largely the cause of anxieties and stress and many have gone to the grave prematurely in battling over land matters, some no more than inanities.

The appellants had instituted an action in the High Court at Offa in Kwara State and claimed a declaration that they are part owners of shops/stores situate at Adeleke Road, Owode Market, Offa per the stirpes system of inheritance, and also an order of accounts. Their case is that the land was the property of their father one Pa Williams and that they the appellants, the respondent's mother and his grand mother all contributed money for the erection of the structure therein. They averred that they delegated the respondent to supervise the building and thereafter collect rents from the shops but the respondent was collecting the rent for himself only.

The respondent replicando said that the land on which the shop/store was built was bought by his mother one Alhaja Salimato Shogo with a financial assistance of her husband Mr. Bello Shogo. In order to induce one Pa Salami, the appellants' father, to return home to Offa, a portion of that land was given to him by Alhaja Shogo, but when Salami

could not complete the house due to impecuniosity and later abandoned it, the structure was given to Madam Shogo's brother then living in Kano. He said that since the completion of that shop, the said Alhaja had continued to collect rents for that building.

B In the High Court, judgment was given to the appellants but on appeal to the Court of Appeal, the judgment of the High Court was reversed and set aside. Not happy with the judgment of the Court of Appeal, the appellants appealed to this court and framed three issues. In the court, they decided to abandon issue no. 1 and relied on the two issues left.

The two issues are:

1. Whether the learned Justices of the Court of Appeal could validly substitute their own views as to the findings of facts made by the learned trial Judge.

2. Whether the statement of claim filed by the plaintiffs was adequate for their case.

The main issue of the respondent in the case is:

E Whether the Court of Appeal was right to have allowed respondent's appeal and dismissed appellants' claims before the trial court.

I believe that in doing justice to this case, I shall discuss the two issues made out by the appellants together. **For a case involving a declaration of ownership or title to land whether whole and entire or part ownership, it is essential that a ground work of how the land came into ownership or possession of the predecessors of the claimants be clearly stated. When there is no pleading or averment on that, it is generally difficult to see how the burden of proof can be satisfactorily explained. The pleading of the appellants is the shortest I have ever seen and the facts to prove the case are very scanty to say the least. It is important to know that facts are the bedrock - nay - the fountain head of law. The court does not apply law in a nebulous clime. In other words it has to scrupulously subject all the facts pleaded and elicited in the evidence to merciless scrutiny to determine which party's case preponderates over the other. The facts are the tools in the hands of a great advocate.**



In its judgment the Court of Appeal, per Onnoghen, JCA., held thus:

*“The learned trial Judge only evaluated the evidence of the respondents and did not even consider the challenge to the root of title of Pa Salami in his judgment. That apart, it is the law that parties and the court are bound by the pleadings and evidence not pleaded goes to no issue. It is strange when the court found at page 107 of the record as follows:*

*The above three witnesses for the plaintiffs that is PW.1, PW.2 and PW.4 and especially PW.1 and PW.4 are very close relations of late Pa Salami who were presumed to have lived with Pa Salami during his life time. One can reasonably believe that by this close relationship, the deceased would have talked or indicated to them what belonged to him and what did not belong to him among his properties before he died.”*

**It is so difficult for me to take the appellants seriously when they could not satisfactorily explain how their father got the land in the first place. I fail to understand how the terse and sparsely worded pleadings could be a foundation for sufficient facts that would ground or gravitate their case when they are seeking for declaratory reliefs and account of the monies realized from the claim of delegation to collect rentals. On the contrary, the respondent in this case comparatively speaking was fairly profuse in his pleadings and naturally the evidence elicited or adduced ought generally to shore up considerably the material facts pleaded. The weight or substantiality of evidence is what is considered by the court in its adjudication process.**

The nature of the appellants’ case as presented in the court of first instance with the dearth of facts might invite a temptation to improvise the appellants’ case at the hearing by giving evidence of material facts not pleaded. Consider for example the evidence of PW.1, the mother of the appellants, and the grand mother of the respondent. She said:

*“My husband bought the land and people knew of it. It is not true that the father of the Defendant bought the land and invited my husband to come and build on it”. From whom or from which family land was*

bought by the husband, she did not say. Who then should fill the gap. Certainly not the respondent. PW.2 Alhaji Aliyu Adebayo in his evidence said “.....*The land at Owode with shops on it is owned by Pa Salami and his children jointly*” ..... Further down in his evidence he said, “The original owner of the land on the block of shops is the Plaintiffs and the mother of the Defendant “I am afraid I do not understand the expression the “*original owners*” in the context it was used in this case. It is woolly and invites varied interpretation. Let me examine the evidence of Madam Rabiatsu Adebayo PW.3 who said, “*I was at Offa when my father bought the land..... My father bought the land through one Baba Saka Balogun*”. Further down in her evidence she said: “*It is the defendant mother who was collecting rent our sheets (whatever that expression means) and we also told her to be in-charge of the proceeds from our father’s farm.*”

If this is so, why was an action for accounts being taken against the respondent and not against the mother. **The evidence that the land was bought through Baba Saka Balogun being a material fact was not pleaded and so it goes to no issue. This has long been settled. See N. Nwawuba & Ors. v. J. Enemuo & Ors. (1988) 5 SCNJ 154 at 156, Oversea Construction Co. Ltd. v. Greek Enterprises Ltd. (1985) 3 NWLR (Pt.13) 407, A. Emegokwe v. J. Okadigbo (1973) 4 S.C. (Reprint) 78; (1973) 4 SC. 113 at 117, George v. Dominion Flour Mills (1963) 1 SCNLR 117 at 123 - 124. The law frowns at one of the parties trying to over reach the other by springing a surprise. The other party should be informed in time to make a response or state his or her reaction to the facts pleaded. Although I must quickly add that these facts elicited in evidence like the one earlier made were not averred in the appellants pleadings and therefore would go to no issue.**

**The appellants are arguing that the Court of Appeal was substituting its own views on the issues. It cannot be denied that the High Court did not at anytime consider the case put forward by the respondent. Such barefaced injustice masqueraded as adjudication in a democratic society where the rule of law reigns, is galling and**

utterly invidious. Where lies the justice where the cases made up by the contending parties are not put in an imaginary scale. Such a judgment is an affront to reason and intelligence and bespeaks of inordinate desire to see nothing good in the respondent's case. The appellants complained that the Court of Appeal should not talk of belief or non-belief not having been the trial court. The words 'believed' and 'unbelieved' may be inappropriate terminology in the context, but there is no gainsaying that the testimony of the respondent is awash with detailed facts and particulars which the court below found to have completely overwhelmed the evidence of the appellants. I agree with the decision of the Court of Appeal that from the test of the judgment of the High Court, it is perverse as the High Court seemed to have traduced all norms and elementary precepts associated with or innate with good, decent and civilized administration of justice. That is no substitution of the appellate court's own views. This brings me to the general powers of the Court of Appeal in its adjudication processes. Section 16 of the Court of Appeal Act states as follows:-

*"The Court of Appeal may from time to time make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal and make an interim order or grant any injunction which the court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance."*

See Akibu v. Opaleye and Ors. (1974) 11 S.C. (Reprint) 141; (1974) 11 S.C. 189. In E. Nneji and Ors. v. Chief N. Chukwu (1996) 12 SCNJ H 395 at 396, this court held as follows:-

*"In the instant case, the findings of fact made by the learned trial Judge are not supported by the credible evidence given. In the circum-*

stance, the court below is in as much a good position to deal with the facts findings as the trial court. The findings of the learned trial Judge are not supported by the weight of evidence. With respect to the learned trial Judge, the use of expressions: “I have no reason to doubt the evidence”, I note and accept as true his evidence”, “I reject as false” and “I do not believe” without really evaluating the evidence of vital witnesses does not preclude an appeal court from itself evaluating the evidence and seeing whether there is any justification for the use of such expressions.”

**The beauty, the elegance and romance of our adjudicatory system is that the court should hear all the sides, carefully compare the weight of the evidence given, make a proper appraisal before determining preponderance after such painstaking considerations of all the issues addressed upon it. The method adopted by the High Court is redolent with high handedness which in the context I can describe as judicial rashness, and a stint of machiavellianism - the end justifies the means.**

**It is my view that what the Court of Appeal did in the case is unassailable. Therefore I dismiss the appeal as being unmeritorious and I affirm the judgment of the Court of Appeal dismissing the action. I award N10,000.00 costs against the appellants.**

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### KUTIGI JSC

I read in advance the judgment just delivered by my learned brother, Pats-Acholonu, JSC. I agree with him that the appeal lacks merit and ought to be dismissed. Clearly, the plaintiffs’ pleadings were insufficient to sustain their claims, and consequently the evidence elicited or adduced on matters not pleaded went to no issue and ought to be disregarded as was done by the Court of Appeal in this case (see for example Oke Bola H v. Molake (1975) 12 S.C. 61, African Continental Seaway Ltd. v. Nigerian Dredging Roads & Gen. Works Ltd. (1977) 5 S.C. (Reprint) 180; (1977) 5 S.C. 235.)

The appeal therefore fails and it is hereby dismissed. I endorse the

order for costs.

### **KATSINA-ALU JSC**

I have read before now the judgment delivered by my learned brother, Pats-Acholonu, JSC. I agree with his reasoning and conclusion. B  
I have nothing to add.

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### **KALGO JSC**

I have read in advance the judgment just delivered by my learned C  
brother, Pats-Acholonu, JSC., and I agree with him that there is no merit  
in the appeal. I adopt as mine all the reasoning and conclusions in the said  
judgment. I accordingly dismiss the appeal and affirm the decision of the  
Court of Appeal. I also abide by the order of costs made in the leading D  
judgment.

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### **OGUNTADE JSC**

The appellants as plaintiffs before the Offa High Court of Kwara E  
State issued their writ of summons on 18/11/88 claiming against the re-  
spondent as the defendant for the following reliefs:

*“1. Declaration that the plaintiffs are part owners of the shops/ F  
stores at Adeleke Road, Owode market, Offa with the mother of the  
defendant through the per stipes system of inheritance.*

*2. An order of court that the defendant should state an account of  
all the collection from the shops/stores.”*

The parties filed and exchanged pleadings after which the case G  
was tried by Eletu-Hebeeb, J. In the judgment delivered on 29-07-96, the  
trial Judge granted the reliefs sought by the plaintiffs against the defen-  
dant.

Dissatisfied, the defendant brought an appeal against the judgment H  
of the trial Judge. The appeal was heard by the Ilorin Division of the  
Court of Appeal (hereafter referred to as the ‘court below’). The court  
below in its unanimous judgment delivered on 28/3/2000 allowed the

defendant's appeal. It made an order dismissing plaintiffs' case.

The plaintiff's have brought this appeal against the judgment of the court below. In their appellants' brief, they formulated three issues for determination in the appeal. The issues are:

- B       *"i. Whether the non-filing or formulation of any issue on the plaintiffs' interlocutory appeal was fatal to the interlocutory appeal;*  
           *ii. Whether the learned Justices of the Court of Appeal could validly substitute their own views as to the finding of facts made by the learned trial Judge; and*  
 C       *iii. Whether the statement of claim filed by the plaintiffs was adequate for their case."*

The respondent formulated two issues for determination. The two issues are amply covered by the plaintiffs/appellants' three issues. I intend to consider together the appellants' three issues. It is a convenient starting point to expose the facts as presented by the parties in their respective pleadings, appellants pleaded thus:

E       *"1. The plaintiffs and the mother of the defendant inherited the land from their father (Pa Salami) (on) per stirpes system of inheritance under native law and custom of Offa.*

F       *2. The plaintiffs, the defendant's mother and the grand mother of the defendant (Madam Omoware) contributed various sums of money to build the stores/ shops on the land the plaintiffs and the defendant's mother inherited.*

G       *3. The plaintiffs and the defendant's mother delegated the defendant to supervise the building of the stores and to collect rentals until 1987 when it became obvious that the defendant was collecting all dues for himself.*

*4. Wherefore the plaintiffs claim for (i) a declaration and (ii) an account stated."*

H       The respondent in paragraphs 5, 6, 7, 13, 14, 15, 20 and 22 of his statement of defence pleaded thus:

*"5. The piece of land on which the building in dispute is built was bought by Defendant's mother Alhaja Salimotu Shogo with the assistance of her husband and father of Defendant Mr. Bello Shogo in 1968.*

6. *The time the piece of land was bought, plaintiffs' father lived at Ajilete in Ogun State.*

7. *In order to induce late Pa Salami to return home to Offa, the Defendant's mother Alhaja Salimotu Shogo gave half of the piece of land to the late Salami to build his house.*

13. *The Defendant avers that he erected the present building on the piece of land after demolishing the temporary stores erected by his mother.*

14. *The Defendant says that his mother had been collecting rents on the temporary stores she erected on the piece of land since 1968 even before she gave half of it to his late father without let or hindrance to the knowledge of the plaintiffs.*

15. *The Defendants has been collecting rents for himself from the building consisting of 10 stores and six rooms since its completion in 1985 to the knowledge of the plaintiffs without let or hindrance.*

20. *The Defendant avers that his mother and transferor, Alhaja Salimotu Shogo has been in peaceful and quiet possession of the piece of land since 1968 to date.*

21. *The Defendant says that late Pa Salami was not the owner of the piece of land on which he built the shops and rooms and plaintiffs could not have inherited the land that does not belong to their father. The Defendant pleads the doctrine of "NEMO DAT QUOD NON HABET".*

A close perusal of the pleadings of parties reproduced above reveals that whilst the plaintiffs traced the title to the land in dispute to one Pa Salami who was said to be the father of the plaintiffs and the defendant's mother, the defendant traced his title to his mother Alhaja Salimotu Shogo who was said to have bought the land in 1968. It is apparent from the pleadings that the defendant did not admit the source of title pleaded by the plaintiffs. Thus both parties relied on different sources of title.

Now at the trial, the plaintiffs on 7-5-91 in the course of the testimony of P.W.6 attempted to tender in evidence the minutes of a meeting between the parties and representatives of Oyun Local Government. This was with the aim of showing that the defendant had previously admitted

plaintiffs' root of title. The defendant objected to the tendering of the minutes. The trial Judge ruled that the minutes were inadmissible.

The plaintiffs were dissatisfied with the ruling. They filed a notice of appeal against it and thereon raised one solitary ground which reads:

B *"The learned trial Judge erred in law in rejecting the minutes of the pleaded minute (sic) brought by a witness from Oyun Local Government because the plaintiffs did not comply with Notice to produce for inspection.*

C Particulars of Error in law

C *"1. The plaintiffs were not expected to produce the minutes which was not in their custody.*

*2. The Oyun Local Government was not under the control of the plaintiff and that was why appropriate staff was to be subpoenaed D to tender the minutes."*

Notwithstanding the Notice of Appeal filed against the interlocutory order by the trial court, the hearing proceeded to conclusion and judgment was finally given in favour of the plaintiffs/appellants. The present E respondent who lost at the court of trial was the appellant before the court below. The present appellants were the respondents before the same court. Both parties filed briefs before the court below. The plaintiffs (now appellants) did not file any brief in support of their interlocutory appeal. Rather at page 136 of the record of proceedings, the plaintiffs F in their respondents' brief wrote under a caption:

*"Issue No. 6 (interlocutory appeal)" thus:*

G *"It is humbly submitted my Lords that Order 32 rule 14(1) of the High Court (Civil Procedure) Rules, 1989 was misconstrued because minutes of the meeting was in the custody or possession of the Oyun Local Government and not in that of the plaintiff. The provision ought to have been interpreted in conjunction with Order 13 of the High Court (Civil Procedure) Rules, 1989. I urge your Lordships to hold that His H Lordship ought to have reached a different conclusion from that reached at page 65 lines 7-31 of the record. Admission of the minutes would have had a confirmatory effect on the unassailable decision of the learned trial Judge.*



*I therefore pray my Lords to answer this issue in favour of the plaintiffs/respondents and dismiss the appeal of the defendant/appellant.”*

And under the heading “Conclusion/Summary, the plaintiffs’ counsel wrote:

“v. *The minute book ought to have been admitted and it would have confirmed that the plaintiffs/respondents and mother of the defendant/appellant (DW.1) owned the building - it was an admission against interest.*”

The above was all that the plaintiffs’ counsel stated in his respondents’ brief in the court below in support of the interlocutory appeal. The defendant filed a reply to the brief filed by the plaintiffs before the court below and therein pointed out that as the plaintiffs had not raised any issue in support of their interlocutory appeal, their appeal was incompetent and ought to be discountenanced. Plaintiffs’ counsel in reaction filed a process captioned “*respondent’s reply brief to interlocutory appeal*” their appeal was incompetent and ought to be discountenanced. Plaintiffs’ counsel in reaction filed a process captioned “*Respondent’s reply brief to interlocutory appeal*” and argued thus at page 144 of the record:

*“It is humbly submitted my noble Lords that it was not necessary for the respondents to formulate a separate issue for determination in respect of the interlocutory appeal in the confirmatory circumstances since the learned trial Judge rightly gave judgment in favour of the respondent which they richly deserved.*”

*I therefore urge your Lordships to dismiss the misconceived and most frivolous preliminary objection.”* The plaintiffs/appellants’ counsel before us in this court has filed a four page brief and the arguments of counsel in support of issue one consists of two paragraphs, which read:

*“It is humbly submitted my Lords that the appellants’ interlocutory appeal from the High Court to the Court of Appeal which is at page 16 of the record is purely confirmatory and/or incidental on ancillary and non-formulation of an issue on it by the appellants herein who were the respondents at the Court of Appeal, could not be fatal or tantamount to an abandonment of the interlocutory appeal.*

*In any case, my Lords, the issue cannot be fatal, as it was purely*

*confirmatory. It could not add or subtract from the High Court judgment in favour of the appellants herein. The minutes would have confirmed that the plaintiff deserved the judgment the High Court awarded in favour of the plaintiffs, since the defendant, his father and mother had agreed in the meeting with Oyun Local Government representative that the 2 plots in question were owned by Pa Salami, the father of the plaintiffs and the defendant's mother and that, it was shared under the per stirpes system of inheritance under Yoruba native law and custom. The minute was not in the custody, power or possession of the plaintiffs and Order 32 rule 14(1) and (2) of the High Court (Civil Procedure) Rules, 1989 did not apply. I respectfully refer my Lords to answer issue No.1 in the negative and to allow ground of this appeal."*

The respondent's counsel in his brief submitted that the failure of the appellants to formulate an issue for determination in respect of their interlocutory appeal before the court below rendered the interlocutory appeal incompetent: *B. A. Shitta-Bey v. A-G Federation & Anor.* (1998) 7 S.C. (Pt. II) 121; (1998) 7 SCNJ 264 at 272; *Stephen Onowhosa & Anor. v. Peter Ikede Odiuzuo & Anor.* (1999) 1 S.C. 40; (1999) 1 SCNJ 13 at 23-24; *U.A.C. Ltd. v. M. O. Fasheyilan & Anor.* (1998) 7 SCNJ 179 at 182. It was submitted that as no issue was distilled from the interlocutory appeal the appeal would be considered as abandoned.

It was further submitted that as the interlocutory appeal filed by the appellants was never consolidated with the respondent's appeal, it was wrong for the appellants to have argued their interlocutory appeal within issues formulated from the respondent's appeal without the leave of the court below: *E. J. Iwuchukwu v. Engr. D. Nwizu & Anor.* (1994) 7-8 SCNJ 328 at 357; (1994) 7-8 SCNJ 328 at 357; *Jonathan Enigwe & Ors. v. Kenneth Akigwe & Ors.* (1992) SCNJ 316 at 343-344. Respondent's counsel observed that the procedure followed by appellants' counsel was in breach of Order 6 rule 6 of the Court of Appeal Rules. Appellants' argument in support of the interlocutory appeal was therefore rightly discountenanced: *G. E. Adah v. J. O. Adah* (2001) 2 S.C. 1; (2001) 2 SCNJ 90 at 97.

I have in this judgment set out above the totality of the argument

of plaintiffs/appellants' counsel who has in my view demonstrated a remarkable casualness in the manner he put across his argument. I get the impression that plaintiffs/appellants' brief was hurriedly put together or that the plaintiffs/appellants' counsel did not think he needed to put across to us arguments which would advance his client's chances in this appeal. B  
The arguments were far too brief and conveyed very little of substance.

The court below at page 158 of the record of proceedings said per Onnoghen, JCA., who wrote the lead judgment:

*"It is the law that argument not based on issue but ground of appeal is incompetent and must be discountenanced - see Onowhosa & Ors. v. Odiuzuo & Anor. (1999) 1 S.C. 40 at 46 where the Supreme Court per E. O. Ogwuegbu, JSC., stated the law as follows:-* C

*"Arguments on appeal should be based on issues formulated and not on grounds of appeal. We have gone a long way since the introduction of brief writing and this court has said in a number of its decisions that argument at the appeal court should be based on issues formulated and not on grounds of appeal. I will in the circumstance ignore the argument in respect of ground two of the grounds of appeal....."* D  
E

*"See also the Supreme Court decision in the case of U.A.C. Ltd. v. Fasheyitan (1998) 7 SCNJ 179 at 182; Macaulay v. NAL Merchant Bank 4 NWLR (Pt.144) 283 at 42.*

*It is therefore my considered opinion that since the respondent has distilled no issue from the interlocutory appeal for determination, the interlocutory appeal is deemed abandoned by the respondents. See Anie v. Uzorka (1993) 8 NWLR (Pt.309) 1 at 17; British American Insurance Company v. Omolayo (1991) 2 NWLR (Pt.176) 721 at 730 - 731.* F

*The position of the law being what it is, I hereby hold that the argument on the interlocutory appeal not having been based on issue(s) formulated from the grounds of appeal is incompetent in law and is accordingly discountenanced by this court. The preliminary objection of learned counsel for the appellant is upheld."* G  
H

The reasoning of the court below in the passage above cannot be faulted as the same amply reflects the state of the relevant judicial authorities on the point. I think that the court below was even kind to the

appellants in its views. The palpable error in the procedure adopted by appellants' counsel was clearly understated. Appellants' counsel had failed to file an appellants' brief in support of his interlocutory appeal. Rather he converted the defendant/respondent's appeal into a pedestal upon which  
B to promote his own appeal. Order 3 rules 1, 2 and 3 of the Court of Appeal Rules enjoin that an appellant shall file an appellant's brief in support of his appeal. The Rules under the said order set out what an appellant's brief must contain. The plaintiffs/appellants having failed or neglected to  
C file an appellant's brief in support of their interlocutory appeal were rightly deemed to have abandoned their interlocutory appeal. I therefore decide issue one against the plaintiffs/appellants.

The appellants' 2nd and 3rd issues will be taken together. I have earlier in the judgment set out in extenso the four-paragraph statement of  
D claim filed by the appellants and the reliefs which the appellant sought. Although the appellants claimed a declaratory relief to the effect that the property in dispute was jointly owned by the appellants and the respondent's mother, the appellants failed to plead the root of the title, which they  
E asserted. They pleaded that the land was owned by Pa Salami who was said to be the father of the appellants and the respondent's mother, but they did not plead the particulars of the person from whom Pa Salami  
F derived his title to the land, the year he purchased the land and the documents of purchase. This was notwithstanding the fact that the respondent pleaded that his mother acquired the land by purchase. At the trial the appellants did not call evidence of the person or family who sold the land to Pa Salami or of anybody who witnessed the sale transaction between the vendor and Pa Salami.

G      This was a case in which the appellants bore the onus of showing how their predecessor-in-title derived his root of title. In the manner the appellants pleaded their case, the defendant was in possession of the land and collecting rents therefrom. Even if the defendant was a trespasser  
H without any claim to the land, he was entitled to keep his possession until someone with a better title ousted him. See *Amakor v. Obiefuna* (1974) 3 S.C. (Reprint) 49; (1973) 3 S.C. 67; *Nwosu v. Otunola* (1974) 4 S.C. (Reprint) 14; (1974) 4 S.C. 21; *Oluwi v. Eniola* (1963) NMLR 339.

In Egonu v. Egonu (1978) 11-12 S.C. (Reprint) 82; (1978) 11-12 S.C. 111 at 130, this court said per Obaseki, JSC.:

*“Over the years, it is one of the oft repeated catch phrases but a well settled principle of law that in a claim for declaration of title, the plaintiff must succeed on the strength of his own case (evidence) although any evidence adduced by the defence which is favourable to the plaintiff’s case will go to strengthen the case for the plaintiff. See Kodilinye v. Mbanefo Odu 2 WACA 336 at 337; See Josiah Akinola and Anor. v. Fatoyinbo Oluwo & 2 Ors. (1962) 1 ALL NLR 224 at 225; See Idundun and Ors. v. Daniel Okumagba (1976) 9/10 S.C. 227.”*

The argument of appellants’ counsel that the court below made its own findings of fact which were in conflict with those made by the court of trial even if correct would not alter the fact that the appellants who were the plaintiffs failed woefully to establish their root of the title. The question whether the averments pleaded in the statement of claim were sufficient to sustain the claim made by the plaintiffs becomes merely academic in view of what I have said earlier that the plaintiffs did not establish their root of title. Obviously, they were not able to do this either because their root of title was not pleaded or because the root of their title did not exist. Whichever it was, the claims they made deserved to fail.

It is for the above and the more elaborate reasons in the lead judgment of my learned brother, Pats-Acholonu, JSC, that I would also dismiss this appeal. I agree with the order in the lead judgment as to costs.

G

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