

SUPREME COURT OF NIGERIA

17TH JUNE, 2005 SC. 92/2002

**CORAM:- I. L. KUTIGI, A. O. EJIWUNMI, D. MUSDAPHER,
I. C. PATS-ACHOLONU, S. A. AKINTAN, JJSC**

NTOE ANDREW O. ANSA & 3 ORS. APPELLANTS
AND
CHIEF ASUQUO ARCHIBONG ISHIE
& 16 ORS. RESPONDENTS

APPEALS - Briefs - Should contain three essential qualities - Clarity, precision and accuracy - Where a brief lacks these qualities - It will not be comprehensible (H1)

APPEALS - Technicalities - Issues - Where resort to technicalities would cause delay - In resolving the main issues in controversy - Court should move away from it (H2)

EVIDENCE - Documents - Forgery - Proof - Where document is alleged to be forged - Standard of proof required is beyond reasonable doubt (H3)

APPEALS - Evidence - Civil case - Is won on preponderance of evidence - Where Court of Appeal is convinced - That appellants' case is deficient in substance - And not understandable - It cannot assist the appellant (H4)

LAND LAW - Identity of Land - Evidence - Courts - Where appellants failed to describe the areas they were granted in a plan - No court could make an order of declaration or injunction (H5)

ACTIONS - Cause of action - Courts - Where parties are misjoined in an action - Court can order separate trials - For purpose of clarity (H6)

PRACTICE & PROCEDURE - Actions - Institution of - Where a party institutes an action against many defendants - Which ought to give rise to many suits - Such party does so at his own risk (H7)

LAND USE ACT - Possession - Holder of land before the Act, s. 36 (12) - With or without grant of customary right of occupancy - Where the land is used for agricultural purpose - Is entitled to continued possession of such land (H8)

FACTS

Before the High Court, the plaintiffs/appellants instituted an action against the 1st - 9th defendants/respondents. The appellants' claim was that the land in dispute was founded by their ancestor. They stated that their people lived, occupied the place, commenced farming on the land and generally exercised acts of ownership. The respondents were initially granted the permit to settle on a specific area of the land, but they exceeded the area granted them. The head of the appellant therefore took the action to court in 1925. He was non-suited because he was unable to prove his case, and was unable to pay the cost awarded against him.

Appellants' claim was that all the documents of the two earlier suits got lost during the civil war. Another group of people along with the 1st - 9th respondents continued the act of trespass. This group which gave evidence that the land belonged to them, started to allocate the lands they were occupying illegally and denied the appellants' title to the land. Apart from the 1st - 9th respondents some parties were lumped into the action. Diverse claims were made against those other parties in a different vein. The trial court gave judgment against the 1st, 3rd, 7th, 8th, 12th, 15th, and 17th respondents. They lodged an appeal to the Court of Appeal against the judgment which was allowed. Being dissatisfied, the appellants have now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

The issues that I can decipher from the plethora of the repeated issues framed in different words which indeed taxed the mind and lacks clarity of understanding are as follows (extracts from the appellants' issues):

1. Whether the 1st defendant's (meaning the 1st respondent) brief filed in the Court of Appeal on 10/12/99 years out of time was competent without an order of court regularizing same.

2. Whether the learned Justices of the Court of Appeal were right in treating Exhibits "R" and "S" tendered by the 1st defendant as evidence (offer) establishing Res Judicata in their favour.

3. Whether the learned Justices of the Court of Appeal in reversing the judgment that the plaintiffs had proved the acts of trespass rendering the defendants liable to damages for trespass and injunction were justified.

4. Whether the learned Justices of the Court of Appeal found such insufficient documentary testamentary evidence and failure on the part of the trial court to take advantage of having seen and heard the witnesses first to warrant their reversal of the trial court judgment.

5. Whether the learned Justices of the Court of Appeal in their judgment delivered almost in the 5th month after argument had not lost track of the case thereby occasioning miscarriage of justice.

6. Whether the appellants put up a convincing case to warrant judgment being giving to them.

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

Briefs - Should contain three essential qualities

1. I must confess that the methodology of approach in determining the questions to be resolved by the court tends to make mockery of the manner issues are framed and as I said strange and odd. In adopting this approach, the questions to be determined are somehow rendered cloudy, woolly and unobtrusive. Counsel should always remember that there are essentially three qualities a brief should possess. They are clarity, precision and accuracy. Any brief that fails to possess these distinctive characteristics leads to incomprehension of the contents and makes it difficult to forage into foliage of unnecessary verbiage in attempting to discern what a party is asking the court to resolve. (p. 1547 C)

APPEALS - Technicalities - Issues

2. The appellants in their weird nature of presentation of the case had

faulted the competence of the 1st respondent's brief being as they argued,
 filed out of time, leave not having been sought. I have tried to make out or
 fathom out the argument put forward by the appellants' counsel on this
 point and I could state that because of the inelegance and lack of profundity
 B and analytical precision of the language, the learned counsel for the
 appellants did not bring out clearly what he is asking this court to do. Chief
 Mogboh, SAN., had referred to this court in his brief these rather
 shortcomings. Indeed the nature of the objection on this point lacked
 C clarity and did not conform to the procedures that are attendant to our
 courts. Besides, it seems to me that in a situation where the case has lasted
 for upwards of 27 years it will be fortuitous to rely on ungainly doubtful
 objection that seeks to further prolong the determination of the case
 especially where the appellants used indecipherable or unfathomable
 D language to canvass their case. This court in appropriate cases tends to
 move away from mere technicalities where resort to the form would cause
 a great delay in resolving the main issues in controversy. In this case, the
 causa celebre is the issue of ownership of the land in dispute along with
 E alleged incidents of trespass. The objection argued as much as I can
 understand it does not follow the right procedure and I see no reason to
 depart from what the Court of Appeal has stated. (p. 1548 E)

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EVIDENCE - Documents - Forgery

3. That these documents could not be found either in the State High Court
 or National Archives does not necessarily mean that they do not exist or
 never existed. The expression 'very diligent search' is purely subjective,
 G depending on the competence and diligence of the search. Besides, there
 is no evidence from an archivist that no such document exists. The learned
 counsel for the appellants labeled Exhibit 'S' as forged document. I am
 afraid that to prove that it is a forged document, the standard of proof
 H needed is of proof beyond all reasonable doubt. To describe a document
 in a criminal language is not enough to criminalise it. The appellants had
 in their pleadings referred to two cases which they were not able to tender
 in court because they were lost during the Civil War. They found it

conceivably easy to label the documents produced by the respondents relating to earlier cases won by them as spurious and possibly forged. (p. 1549 F)

Civil case - Is won on preponderance of evidence

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4. A civil case is won on the preponderance of evidence of the plaintiff but where the Court of Appeal is convinced that the case of the appellants is deficient in substance and weight or mired in confusion and not readily understandable, it cannot assist the appellants. The appellants failed to produce the judgments they pleaded. The presumption is that there were no such documents. (p. 1550 G)

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Identity of Land - Evidence

5. The appellants cited Ekpoke v. Usilo (1978) 6-7 S.C. (Reprint) 127; (1978) 6-7 S.C. 187 at 199 to the effect that “so long as a whole parcel of land is described by name in a judgment, every inch of the land named is bound by the judgment”. It cannot be disputed that in this case where the appellants failed to describe the areas they granted in a plan that would assist the court to pin point the area in question, but failed to show the areas supposedly trespassed into, and the court is being asked to make a declaration, it is elementary that no court could make an order of declaration or injunction overland which it does not know its dimension when the area is hotly disputed. Thus, the Court of Appeal cannot be faulted when it held thus in respect of the disputed land:

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“As I had earlier observed, the respondents (now plaintiffs/appellants) did not show the land granted to the 1st appellant (now 1st defendant/respondent) and the area they trespassed upon and in other cases that they showed the land granted to some other communities, they did not show the area trespassed upon and there is therefore no reason for the learned trial Judge to have granted the injunction because the area is still vague” This court has always stressed the importance of showing and depicting succinctly the area of land subject-matter of an action for which reliefs for declaration of customary right of occupancy and trespass are claimed. Failure to show the area as stated proved fatal to the appellants’

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Where parties are misjoined in an action

6. On the issue of joinder, I find the joinder of actions and parties in this
B case freakish, extraordinary and, I dare add, ludicrous. This is a case in
which the appellants should have filed numerous cases as there are many
causes of action, i.e., each suit with its own different defendants. Instead,
the appellants strove to lump all of them together thereby making the whole
C case look like the theatre of the absurd if not a vaudeville. The absurdity
of misjoinder is that it creates a situation where the plaintiffs would be
unable to pursue the case against the misjoined parties decently and
properly as in all probability there are different causes of actions and they
D could set confused as to the essence of what to prove in the case. It tends
to show latent ignorance on how to modulate a case. In a situation where
disparate and different parties are lumped together to avoid multiplicity of
actions but where the parties are unrelated and each set of party or persons
not having anything in common with the others, then the proponent of the
E action has goofed and has himself to blame for a procedure that would not
help him in the least to get the remedy he seeks.

In such a situation, a court can order separate trials, confine the
action to some of the causes of action or order the plaintiffs to elect which
F cause of action shall be proceeded with. (p. 1552 A/ F)

Where a party institutes an action against many defendants

7. A party who decides to institute an action against many defendants from
whom he has different and diverging disputes which ought to give rise to
G many suits in those cases, out of convenience for himself or to save money
pursues such a case in an uncanny manner, does so at his own risk. In such
a case, the court is literally being called upon to decide on several cases
of different or varying nature in one action. It cannot be expected to work
H magic and it is my view that any court that seeks to give judgment based
on such an action of disparate cases cannot be said to have given such a
case the true appraisal, evaluation and analysis it deserves. (p. 1553A)

LAND USE ACT - Possession - Holder of land before the Act

8. It is difficult in the face of the various deficiencies, latent muddle and oddities that characterize this case where the appellants have failed to show the court the areas originally leased to the ancestors of the respondents, and where they have trespassed into, to find for the appellants. On another note, what is the implication of Section 36(12) of the Land Use Act, 1978. Section 36(12) states:

“Any occupier or holder of such land, whether under customary rights or otherwise howsoever, shall, if that land was on the commencement of this Act being used for agricultural purposes, continue to be entitled to possession of the land for use for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate Local Government and the reference in this subsection to land being used for agricultural purposes includes land which is, in accordance with the customary law of the locality concerned, allowed to lie fallow for purposes of recuperation of the soil.”

It seems to me that the import of this section would be that in a situation such as in the case before us particularly when the grant is obscure, or made perhaps so many years back as much as in the 19th century, is that the holder of such land acquires by its continued use the customary right of occupancy as it can be argued that even if the appellants had been able to prove this case, they had not intended that the land would at anytime revert to them. That is, there was not intended ‘animus revertendi. That being so, I see no reason why the respondents could not equally be covered by the tenor and intendment of the Act as well. (p. 1553C)

NOTABLE POINT OF INTEREST

AKINTAN JSC

1. Trespass claim - Is based on lawful possession

The law is settled that a claim in trespass is based entirely on possession of land, not necessarily ownership of the land. Trespass to land, therefore, is actionable by person in possession of the land. But a trespasser who succeeds in seizing possession of land from the true owner cannot resist

an action in trespass by contending that he is the one now in possession and not the one from whom he seized or obtained the land. It follows, therefore, that to succeed in an action for trespass, the plaintiff must prove that he was in possession and that the defendant trespassed on the land in which he was in possession. He must also prove the exact area of the land in his possession trespassed upon. The appellants in the instant case failed to prove that they were ever in possession of the land in dispute and they also failed to prove the exact area trespassed upon and exactly when the acts of trespass were committed. (p. 1555 D)

REPRESENTATION

Orok I. Ironbar, for the Appellants.

A. O. Mogboh, SAN., (with him, L. I. Ofoegbu and Dubem Ugwu-Nweze), for the 1st Respondent.

S. A. Mgbe, for the 3rd and 7th Respondents.

U. A. Uno, (with him, Nkoyo Awah Enobong), for the 8th Respondent.

Essien H. Andrew, for the 12th, 15th and 17th Respondents.

CASES REFERRED TO

Ekpoke v. Usilo (1978) 6-7 S.C. (Reprint) 127; (1978) 6-7 S.C. 187 at 199

Okolo v. Uzoka (1978) 4 S.C. (REPRINT) 50; (1978) 4 S.C. 77

Dukubo v. Omoni (1999) 8 NWLR (Pt. 616) 647 at 660

Adepoju v. Oke (1993) 3 NWLR (Pt. 594) 154

Ojomo v. Ibrahim (1999) 12 NWLR (Pt. 631) 415

LEAD JUDGMENT BY PATS-ACHOLONU JSC

It is not meant in the least to be derogatory of the appellants' case if I describe the procedural steps taken in this case right from the High Court to this court as somewhat weird and strange. Perhaps, the account of the synopsis of the matter right from the inception of the action might give a bird's eye view of what I mean. There are parties against whom claims were made who have nothing in common with others. The brief and the issues raised and argued follow the same pattern of sheer chaos.

The appellants as plaintiffs recounted of how their ancestors who

migrated from a place called Mbakeng in Ekoi found the lands in dispute. They stated that their people lived and thereafter occupied the place and commenced farming on the land and generally exercised maximum acts of ownership by what I would describe as manifesting “habemus sibi animus possidendi” under the leadership of Ntoe Odo Edem otherwise also B known as Kasuk. The name Kasuk was adopted as the name of the vast area of land founded by the appellants. The story of the appellants is that towards the end of the 19th century, some portions of the land were granted to the families of 1st - 9th respondents under some stringent C conditions. They made references to two suits in respect of disputes in Kasuk land viz: C/36/1947 and C/62/1956 both of which they convincingly won to show that they owned the land. They stated that about 1925, due to the rapid increase in the population of the 1st - 9th defendants’, D otherwise 1st - 9th respondents’ people and their insatiable appetite for land grabbing, the head of the appellants' people took action in the court. Unable to prove his case, he was non-suited and he was not able to pay the cost of 7 guineas awarded by the court. They claimed that because of the civil war they lost all the documents relating to the two suits mentioned E above and all efforts to obtain the certified true copies proved futile. The people of Ishie (another set of people) and the 1st - 9th respondents not only commenced acts of trespass but also even at Atuaka enquiry gave evidence that the land belonged to them (not the appellants) and indeed F started to allocate the lands they were occupying illegally, indiscriminately and denied the appellants title to the land. They complained too that one of the respondents, Messrs. Reynold Brezina Brown trespassed into a portion of the land and when a letter was addressed to them by the appellants’ G counsel, they ignored it and continued to use the portion they trespassed into for various purposes. They claimed that the 1st - 9th respondents have expanded their hold on the land in the most extensive manner and even put up a chief as rival to their own. They stated that the delay in instituting the action was as a result of the Ntoeship Chieftaincy dispute which was only H resolved in 1975, whereupon this action was brought against the defendants.

Apart from the 1st - 9th respondents there were other parties

against whom claims were made and were lumped together in this action against the 1st - 9th respondents. In respect of those parties some diverse claims were made against them in a different vein. Indeed, from the Records, there are about 6 statements of defence - there was a statement of defence filed by the 12th respondent on the 12th of September, 1980, who counter-claimed; there was another by the 7th respondent filed on 13/6/1979. There was a statement of defence filed by the 8th respondent on the 12th September, 1980; there was a defence of the 11th respondent filed on 29/10/1980. There was a statement of defence filed by the 4th, 15th, 16th and 17th defendants on 23/5/80. The defendants denied the title of the appellants or any liability to trespass.

At the trial court, judgment was given to the appellants against 1st, 3rd, 7th, 8th, 12th, 15th and 17th respondents who later lodged an appeal to the Court of Appeal against the judgment. In respect of the 12th respondent the Court of Appeal went on to grant title to his Counter-claim. The 1st, 3rd, 7th, 8th, 15th and 17th respondents were successful in the appeal. According to the appellants because of the nature of the judgment of the Court of Appeal by which they claimed it made a blanket order, even those who did not appeal commenced to take advantage of that judgment.

Being dissatisfied with the judgment of the Court of Appeal, the appellants appealed to this court and filed 26 grounds of appeal from which they framed 12 issues. The bizarre nature of the issues formulated and the style of procedure adopted to argue the issues is not only strange but also equally mind boggling. The so-called brief of the appellants is not a brief in a strict sense as it consists of not less than 112 pages and contains 109 cases that are cited. It is a notorious fact that a land case of this nature which has its historical evolution or antecedents in the history of the founding fathers and eventual acquisition of land and exercise of maximum acts of ownership is heavily dependent on the facts of the case rooted in history. That is to say, it is incumbent on the proponents of the action to prefer the testimony that would preponderate over the opposing party's story. The quizzical feature or the nature of the argument on the issues framed is redolent with procedure unknown in our appellate proceedings in that an appellant had to break up his arguments on the issues he

formulated in different headings not just paragraphs as though there are as many cases being appealed against as there are indeed several parties.

In the appellants' brief, the learned counsel for the appellants writes as follows in the introductory part of the brief:.

"For ease of clarity, therefore, argument on each set of defendants/ respondents shall be under different parts of the brief. 1st defendant's arguments shall be covered in Part "A", 3rd and 7th defendants shall be covered in Part "B", 8th defendant/respondent shall be covered in Part "C", 12th defendant shall be covered in Part "D", the 15th and 17th defendants shall be covered in Part "E", while Part "F" shall include argument clearly common to all the respondents".

I must confess that the methodology of approach in determining the questions to be resolved by the court tends to make mockery of the manner issues are framed and as I said strange and odd. In adopting this approach, the questions to be determined are somehow rendered cloudy, woolly and unobtrusive. Counsel should always remember that there are essentially three qualities a brief should possess. They are clarity, precision and accuracy. Any brief that fails to possess these distinctive characteristics leads to incomprehension of the contents and makes it difficult to forage into foliage of unnecessary verbiage in attempting to discern what a party is asking the court to resolve.

The issues that I can decipher from the plethora of the repeated issues framed in different words which indeed taxed the mind and lacks clarity of understanding are as follows (extracts from the appellants' issues):

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the defendants liable to damages for trespass and injunction were justified.

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B to warrant their reversal of the trial court judgment.

5. Whether the learned Justices of the Court of Appeal in their judgment delivered almost in the 5th month after argument had not lost track of the case thereby occasioning miscarriage of justice.

6. Whether the appellants put up a convincing case to warrant
C judgment being giving to them.

There are as many respondents' briefs as there are set of parties each formulating its own issues. This is understandable. I shall in this case depart from the usual mode sometimes used or adopted in the course of
D determining the questions to be resolved in this court. I am doing this because of the amorphous nature of the brief. This is the approach normally used in English, Scottish and U. S courts. The method I have in mind is to approach the resolution of the case holistically as I must confess
E I find it difficult to understand the case of the appellants whose brief is very confusing.

**The appellants in their weird nature of presentation of the case had faulted the competence of the 1st respondent's brief being
F as they argued, filed out of time, leave not having been sought. I have tried to make out or fathom out the argument put forward by the appellants' counsel on this point and I could state that because of the inelegance and lack of profundity and analytical precision of the language, the learned counsel for the appellants did not bring out
G clearly what he is asking this court to do. Chief Mogboh, SAN., had referred to this court in his brief these rather shortcomings. Indeed the nature of the objection on this point lacked clarity and did not conform to the procedures that are attendant to our courts. Besides,
H it seems to me that in a situation where the case has lasted for upwards of 27 years it will be fortuitous to rely on ungainly doubtful objection that seeks to further prolong the determination of the case especially where the appellants used indecipherable or unfathom-**

able language to canvass their case. This court in appropriate cases tends to move away from mere technicalities where resort to the form would cause a great delay in resolving the main issues in controversy. In this case, the *causa celebre* is the issue of ownership of the land in dispute along with alleged incidents of trespass. The objection argued as much as I can understand it does not follow the right procedure and I see no reason to depart from what the Court of Appeal has stated. B

In the High Court, there had been tendered by the 1st respondent and admitted documents Exhibits R and S, which were said to be earlier judgments in respect of the land. The appellants had argued that Exhibits “R and S” are doubtful documents and impugned their authenticity. They were documents tendered by the respondents in this case to show that there had been earlier cases on this point, in which judgments given were not favourable to the appellants. What makes them doubtful? The court below found on the existence of these documents which it relied upon to show that these documents could operate as *res judicata*. But what did the appellants say in respect of these documents? In a bid to prove or show E that Exhibit S did not exist, the appellants’ brief states thus:

“The plaintiffs’ ancestors could not be a party to Exhibit S which is a non-existent suit. Records of it are unavailable at the State High Court and the National Archives after very diligent search”. F

That these documents could not be found either in the State High Court or National Archives does not necessarily mean that they do not exist or never existed. The expression ‘very diligent search’ is purely subjective, depending on the competence and diligence of the search. Besides, there is no evidence from an archivist that no such document exists. The learned counsel for the appellants labeled Exhibit ‘S’ as forged document. I am afraid that to prove that it is a forged document, the standard of proof needed is of proof beyond all reasonable doubt. To describe a document in a criminal language H is not enough to criminalise it. The appellants had in their pleadings referred to two cases which they were not able to tender in court because they were lost during the Civil War. They found it conceiv-

ably easy to label the documents produced by the respondents relating to earlier cases won by them as spurious and possibly forged.

This case is reminiscent of a mythological fox not succeeding by its various attempts to pluck grapes and disappointed walked away describing the grapes as sour.

Although the appellants had stated that the trial court did not rely on Exhibits R and S to make its finding but argued that they could not understand why the Court of Appeal latched on them. When these documents were tendered there was no objection or intention manifested to impugn the integrity or authenticity of these documents. These were amply shown at p. 473 of the Record which I shall set down:

“Chief Ntiero Efom was annoyed when we refused to release the timber and the canoes. He sued our head Chief called Chief Ekpeiri Nsemo Ishie. Judgment was delivered by Justice Webber in 1918 in the suit between Efom Ntiero Efom v. Ekpiri Nsemo & Ors. The suit is admitted and marked Exhibit “R” without objection. The judgment ended in our favour. There was no appeal in the above suit. The plaintiff, Efom Ntiero Efom, went back to the land and started planting on the land. Ekpiri Nsemo and Ors sued the plaintiff in an action for declaration of title and trespass. There was a judgment in favour of the Ekpiri Nsemo and Ors. as the owners of the land. The judgment was given in 1925 by Justice Webber. The certified copy of the judgment is tendered in court admitted and marked Exhibit “S” without objection. The defendants failed to pay costs and damages and the land called Asana Abasi was fiefed. Ishie Town Community bought that land outright. Since then we have become the owners in absolute possession. I am living in Asana Abasi presently. Apart from Kasuk Community no other community had ever challenged our land.”

A civil case is won on the preponderance of evidence of the plaintiff but where the Court of Appeal is convinced that the case of the appellants is deficient in substance and weight or mired in confusion and not readily understandable, it cannot assist the appellants. The appellants failed to produce the judgments they pleaded. The presumption is that there were no such documents.

Now, it is important to note that from the pleadings of the appellants' the grant of those parcels of land said to have been made to the respondents was more than 100 years ago. There wasn't any plan tendered in the High Court to show the extent of the land said to have been granted to the respondents. In other words, the areas said to have been granted are not sufficiently identified. The Court of Appeal noted certain deficiencies that appear to be the hallmark of the appellants' case which are; (a) failure to show or depict graphically the area originally granted to the respondents to demonstrate the area trespassed upon and the area outside it, to wit, where the defendants were said to have trespassed into (b) failure even to have a good plan of the area in dispute.

The appellants cited Ekpoke v. Usilo (1978) 6-7 S.C. (Reprint) 127; (1978) 6-7 S.C. 187 at 199 to the effect that "so long as a whole parcel of land is described by name in a judgment, every inch of the land named is bound by the judgment". It cannot be disputed that in this case where the appellants failed to describe the areas they granted in a plan that would assist the court to pin point the area in question, but failed to show the areas supposedly trespassed into, and the court is being asked to make a declaration, it is elementary that no court could make an order of declaration or injunction overland which it does not know its dimension when the area is hotly disputed. Thus, the Court of Appeal cannot be faulted when it held thus in respect of the disputed land:

"As I had earlier observed, the respondents (now plaintiffs/appellants) did not show the land granted to the 1st appellant (now 1st defendant/respondent) and the area they trespassed upon and in other cases that they showed the land granted to some other communities, they did not show the area trespassed upon and there is therefore no reason for the learned trial Judge to have granted the injunction because the area is still vague".

This court has always stressed the importance of showing and depicting succinctly the area of land subject-matter of an action for which reliefs for declaration of customary right of occupancy and trespass are claimed. See *Oladimeji v. Oshodi* (1968) 1 All NLR 417 at

418 and Epi v. Aigbedion (1972) 10 S.C (REPRINT) 45; (1972) 1 All NLR (Pt. 2) 370. **Failure to show the area as stated proved fatal to the appellants' case.**

On the issue of joinder, I find the joinder of actions and parties in this case freakish, extraordinary and, I dare add, ludicrous. This is a case in which the appellants should have filed numerous cases as there are many causes of action, i.e., each suit with its own different defendants. Instead, the appellants strove to lump all of them together thereby making the whole case look like the theatre of the absurd if not a vaudeville. The absurdity of misjoinder is that it creates a situation where the plaintiffs would be unable to pursue the case against the misjoined parties decently and properly as in all probability there are different causes of actions and they could set confused as to the essence of what to prove in the case. It tends to show latent ignorance on how to modulate a case. In a situation where disparate and different parties are lumped together to avoid multiplicity of actions but where the parties are unrelated and each set of party or persons not having anything in common with the others, then the proponent of the action has goofed and has himself to blame for a procedure that would not help him in the least to get the remedy he seeks. In volume 1 of the English Supreme Court of 1976, the learned authors wrote as follows:

“The court has very wide powers to protect a defendant being prejudiced by the joinder of parties or of the causes of action which cannot correctly be tried together”.

In such a situation, a court can order separate trials, confine the action to some of the causes of action or order the plaintiffs to elect which cause of action shall be proceeded with. See *University of Oxford & Cambridge v. Gill* (1899) 1 Ch. 55. The 1st - 9th respondents were sued together as defendants for statutory right of occupancy and damages for trespass. In the same suit, 10th - 14th defendants were sued for trespass. The 12th defendant who was sued in turn counter-claimed. In this quagmire of strange proceedings, 15th - 17th defendants suddenly appeared from nowhere and sought to be joined. The appellants did not

think it wise to apply to the court to strike out the names of the 15th -17th who should have pursued their own case differently. **A party who decides to institute an action against many defendants from whom he has different and diverging disputes which ought to give rise to many suits in those cases, out of convenience for himself or to save money pursues such a case in an uncanny manner, does so at his own risk. In such a case, the court is literally being called upon to decide on several cases of different or varying nature in one action. It cannot be expected to work magic and it is my view that any court that seeks to give judgment based on such an action of disparate cases cannot be said to have given such a case the true appraisal, evaluation and analysis it deserves. It is difficult in the face of the various deficiencies, latent muddle and oddities that characterize this case where the appellants have failed to show the court the areas originally leased to the ancestors of the respondents, and where they have trespassed into, to find for the appellants. On another note, what is the implication of Section 36(12) of the Land Use Act, 1978. Section 36(12) states:**

“Any occupier or holder of such land, whether under customary rights or otherwise howsoever, shall, if that land was on the commencement of this Act being used for agricultural purposes, continue to be entitled to possession of the land for use for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate Local Government and the reference in this subsection to land being used for agricultural purposes includes land which is, in accordance with the customary law of the locality concerned, allowed to lie fallow for purposes of recuperation of the soil.”

It seems to me that the import of this section would be that in a situation such as in the case before us particularly when the grant is obscure, or made perhaps so many years back as much as in the 19th century, is that the holder of such land acquires by its continued use the customary right of occupancy as it can be argued that even if the appellants had been able to prove this case, they had not intended that the land would at anytime revert to them. That is,

there was not intended ‘animus revertendi. That being so, I see no reason why the respondents could not equally be covered by the tenor and intentment of the Act as well.

In my view, the case is a lost cause and I therefore would dismiss
B the appeal and affirm the judgment of the court below. I award N10,000.00 costs to each set of the respondents.

KUTIGIJSC

C I have had the opportunity of reading before now the judgment just delivered by my learned brother, Pats-Acholonu, JSC. I agree with his reasoning and conclusions. The appeal has no merit and it is hereby dismissed with costs as assessed.

D

EJIWUNMIJSC

I have had the opportunity of reading in draft the judgment just
E delivered by my learned brother, Pats-Acholonu, JSC. In that judgment, my learned brother had examined the disjointed facts and the issues raised thereon and properly came to the conclusion that this appeal lacks merit. Having also read the judgment of the court below in the light of the issues
F raised in this appeal, I find myself in full agreement with the conclusion reached in the lead judgment that the appeal be dismissed. Accordingly, I also dismiss the appeal for the reasons given in the lead judgment and abide with the consequential orders made thereon.

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MUSDAPHERJSC

I have read in advance the judgment of my Lord, Pats-Acholonu, JSC., just delivered, with which I entirely agree, for the same reasons, I
H too find the appeal unmeritorious and I accordingly dismiss it and affirm the judgment of the court below. I abide by the order for costs contained in the lead judgment.

AKINTANJSC

The appellants instituted this action against a number of defendants (now respondents). Their claim against the first set of respondents was for trespass in that the said people who were initially permitted to settle on a specific area of land many years ago, exceeded the area granted them. The said respondents denied the claim. The court below held that the area trespassed on was not proved and the claim was dismissed.

The claim against the other sets of respondents was also for trespass in that they entered and settled on the land in dispute without permission. The area involved in all the claims are vast and the defendants had long settled on the various areas involved. The parties also denied the plaintiffs' claim.

One of the main points raised in the appeal in this court is that the appellants failed to prove the exact area of land trespassed upon by the various sets of respondents. The law is settled that a claim in trespass is based entirely on possession of land, not necessarily ownership of the land. Trespass to land, therefore, is actionable by person in possession of the land. See Okolo v. Uzoka (1978) 4 S.C. (REPRINT) 50; (1978) 4 S.C. 77; and Dukubo v. Omoni (1999) 8 NWLR (Pt. 616) 647 at 660. But a trespasser who succeeds in seizing possession of land from the true owner cannot resist an action in trespass by contending that he is the one now in possession and not the one from whom he seized or obtained the land. It follows, therefore, that to succeed in an action for trespass, the plaintiff must prove that he was in possession and that the defendant trespassed on the land in which he was in possession. He must also prove the exact area of the land in his possession trespassed upon. See Adepoju v. Oke (1993) 3 NWLR (Pt. 594) 154; and Ojomo v. Ibrahim (1999) 12 NWLR (Pt. 631) 415. The appellants in the instant case failed to prove that they were ever in possession of the land in dispute and they also failed to prove the exact area trespassed upon and exactly when the acts of trespass were committed.

For the above reasons and the fuller reasons given in the leading judgment written by my learned brother, Pats-Acholonu, JSC., which I

have read before now, I agree that the entire appeal lacks merit and I dismiss it with N10,000 costs in favour of each set of respondents.

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