

**SUPREME COURT OF NIGERIA**

10TH JUNE, 2005. SC. 180/2000

**CORAM:- M. L. UWAIS CJN, U. A. KALGO, D. MUSDAPHER,  
G. A. OGUNTADE, S. A. AKINTAN, JJSC**

1. OLUM OGBA

2. CHIVOZO AMADE

..... APPELLANTS

3. CHIMENUMALETE

(For themselves and on behalf of  
Rumuorlu family of Agba Ndele)

AND

1. ISRAEL J. ONWUZO

2. INNOCENT O. WIGBUDU

..... RESPONDENTS

(For themselves and on behalf of  
Okparaeti family of Agba Ndele)

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APPEALS - Courts - Issues - Where an issue was not raised in the court below - Such issue should not be raised in the appeal court - But where it is fundamental in nature - The appeal court will be disposed to give leave - For the issue to be raised (H1)

COURTS - Evidence - Where evidence is strong enough to support the conclusion reached by trial court - It would be out of place for court below - To tamper with such finding of fact (H2)

JUDGMENTS - Constituent parts - Of good judgment - In case of a trial court - Includes questions to be decided - Essential facts of the case of each party - Evidence led - Resolution of the issues - Conclusion - And verdict made by Court (H3)

JUDGMENTS - Standard - Appeals - Where judgment satisfied the required standard - And contains the needed elements - An appellate court - Cannot interfere with such judgment (H4)

### **FACTS**

The plaintiffs/respondents instituted an action against the defendant/appellant before the Ahoda Judicial Division of the High Court of Rivers State. The plaintiffs claim was for a declaration of customary right of occupancy to the parcel of land known as Eli Agba, Ndele in Ikwere District of Kelga in Rivers State; N2,000 damages for trespass and perpetual injunction restraining the defendants from further acts of trespass on the said plaintiffs' land.

The learned trial judge granted the declaration sought by the plaintiffs. The defendants were not satisfied with the judgment, but their appeal against it to the Court of Appeal was dismissed. They have further appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*"1. Whether the judgment of the Court of Appeal should not be set aside as the court in its judgment did not consider at all an issue validly and properly raised before it.*

*2. Was the Court of Appeal right in its decision that the trial Judge did a dispassionate appraisal of the evidence before coming to the conclusion that the respondents proved their claim and were entitled to judgment without stating any reasons for the said conclusion."*

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

***Where an issue was not raised in the court below***

1. It is settled law that generally, where an issue is not raised in the court below by the parties before it, such an issue should not be raised in the appeal court. But if the issue raised by such point is fundamental in nature, the appeal court will be disposed to give leave for it to be raised and will hear it for that reason. Therefore, an issue not canvassed in the court below can only be taken on appeal with leave and in special circumstances:

Where, therefore, there has been no leave sought and obtained by the appellant to argue the new issue and there are no special circumstances disclosed to warrant it being entertained, such new issue would be incompetent and liable to be struck out by the appellate court.

The facts of the instant case clearly show that the appellants failed

to seek and obtain the needed leave of the court below to argue the new issue which they failed to raise at the trial High Court but wanted to take on for the first time at the Court of Appeal. The position of the law, as declared above, is very clear on the point. The necessary leave must first be sought and obtained before such issue is raised. Failure to comply with this laid down procedure will render the issue incompetent. The court below therefore acted within the law when it struck out the said appellants' second issue, and was right in refusing to consider it in the appeal.

(p. 1790 E)

### ***COURTS - Evidence***

2. The allegation that the court below failed to give reasons for supporting the trial High Court's finding of fact or not accepting the reasoning proffered by the appellants is also unfounded. As has been shown above, the passage from the lead judgment relied on in support of this allegation was quoted out of context. The learned Justice had earlier in the said lead judgment considered a number of vital evidence given by two of the plaintiff's witnesses that testified at the trial and which the learned trial Judge accepted in coming to his conclusion in the case. The said evidence was strong enough to support the conclusion reached in the case by the learned trial court. But as it was not shown why the court below should tamper with such an unblemished finding of fact, it would be out of place for that court to tamper with or reverse such finding of fact. (p.1791 E)

### ***Constituent parts - Of good judgment***

3. Judgment writing is an art by itself in which every individual has his own peculiar style and method. All that a good judgment requires is that it must contain some well-known constituent parts. Thus, some of the constituent parts which a good judgment must contain in case of a trial court include: (1) the issues or questions to be decided in the case; (2) the essential facts of the case of each party and the evidence led in support; (3) The resolution of the issues of fact and law raised in the case; (4) the conclusion or general inference drawn from the facts and the law as resolved; and (5) the verdict and orders made by the court. (p. 1791 H)

***Where judgment satisfied the required standard***

4. Similarly, the rule governing judgment writing in the appellate court, like that in a trial court, is not fixed or rigid. It is also governed by individual B style. But whatever style is adopted, certain factors must be retained in a good judgment of an appellate court. Among such factors are that the main objective of an appellate court is to correct errors, if any, of the lower trial or appellate court. To that end, a good appellate court judgment should set C out the claim or claims, brief facts of the case, the decision of the trial or lower appellate court; the appellant's complaints against the decision; the submission of the counsel for the parties in the appeal; and the decision of the appellate court in the appeal. In the instant case, both the judgment of the trial High Court and the lead judgment of the Court of Appeal met the D required standard. Once a judgment satisfies the required standard and contains the needed elements set out above, an appellate court cannot interfere with such judgment merely because the writer could have adopted a different style.

E The allegation made against the lead judgment of the Court of Appeal in the appellants' Issue 2 therefore lacks merit since the judgment satisfies the conditions laid down for a good judgment. (p. 1792 C)

F **REPRESENTATION**

Chief N. Nwanodi, (with him, G. D. Gilus Harry (Miss) ), for the Appellants.

Mr. H. Senibo, for the Respondents.

G **CASES REFERRED TO**

Enang v. Adu (1981) 11-12 S.C. (Reprint) 17; (1981) 11-12 S.C. 25 at 45  
Ezekude v. Odogwu (2002) 7 S.C (Pt.I) 19; (2002) NWLR (Pt. 784) 366  
at 373

H Akpene v. Barclays Bank of Nigeria Ltd. (1977) 1 S.C. (Reprint) 30;  
(1977) 1 S.C. 47

Salati v. Shehu (1986) 1 NWLR (Pt. 15) 198

Raimi v. Akintoye (1986) 3 NWLR (Pt. 26) 97

Plateau Publishing Co. Ltd. v. Adophy (1986) 4 NWLR (Pt. 34) 205.

Oro v. Falade (1995) 5 NWLR (Pt. 396) at 407-408

Mogaji v. Odojin (1978) 4 S.C. (Reprint) 53, 65; (1978) 4 S.C. 91

Ojogbue v. Nnubia (1972) 6 S.C (Reprint) 197; (1972) All NLR (Reprint) 664

Olomosola v. Oloriawo (2002) 2 NWLR (Pt. 750) 113 at 125.

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### **LEAD JUDGMENT BY AKINTAN JSC**

The present respondents were the plaintiffs while the present appellants were the defendants in this action which was instituted at the Ahoada Judicial Division of the High Court of Rivers State. The plaintiffs sued in a representative capacity and it was Suit No. AHC/49/82. The plaintiffs' claim as set out in paragraph 22 of the Amended Statement of Claim was for a declaration of customary right of occupancy to the parcel of land known as Eli Agba Osimini lying and being at Agba, Ndele in Ikwerre District of Kelga in Rivers State; N2,000 damages for trespass; and perpetual injunction restraining the defendants, their servants or agents from further acts of trespass on the said plaintiffs' land. Pleadings were filed and exchanged and the trial thereafter took place before Okor, J. The parties led evidence in line with their respective pleadings. At the end of the proceedings and addresses of counsel, the learned Judge delivered his reserved judgment on 26/6/89. The learned trial Judge granted the declaration sought by the plaintiffs; awarded N1,000 as damages for trespass and granted the injunction sought. N400 was awarded as costs.

The defendants were not satisfied with the judgment and their appeal against it to the court below was dismissed. The present appeal is from the judgment of the court below. The parties filed their respective briefs of argument in this court. The appellants formulated the following two issues as arising for determination in their brief:

*"1. Whether the judgment of the Court of Appeal should not be set aside as the court in its judgment did not consider at all an issue validly and properly raised before it.*

*2. Was the Court of Appeal right in its decision that the trial Judge*

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*did a dispassionate appraisal of the evidence before coming to the conclusion that the respondents proved their claim and were entitled to judgment without stating any reasons for the said conclusion.”*

The respondents also formulated two issues in their brief which are similar to those formulated by the appellants.

The plaintiffs, both in their pleadings and evidence led in support, based their claim on traditional history. Their case was that the land in dispute formed part of the family land of Okparaeri of Agba-Ndele in Ikwerre from time immemorial. Okparaeri, the plaintiffs’ ancestor, was the first to settle on the land. He was one of those who migrated from the big Ndele in late 18th Century to settle in Agba. When Okparaeri died, his sons succeeded him on the land and so the land remained in the family since then. Evidence was led regarding a grant of part of the land to the C.M.S. Church and survey plan of the plaintiffs’ entire land which also shows the disputed portion, was tendered and admitted as Exhibit A.

The defendants also based their claim on traditional history. They claimed that the land was discovered by one Ohia of Mgbuelia, a hunter who made the discovery during one of his hunting expeditions. On his return, Ohia informed Ogbolo, who was then the oldest man in Ndele about his discovery. Ogbolo summoned the elders of the four villages that made up Ndele at that time and requested them to nominate persons who would settle on the newly discovered land. Nominations were made from six families from three of the four villages. The defendants’ family, Rumuorlu, was one of the families that made nominations. The land was then shared among the families that made nominations. The defendants’ family occupied the portion of the land given to them after the sharing and they have remained on their portion since then. They claimed that the land in dispute was part of the portion of the land given to their ancestor when the land was shared. They also produced a survey plan of the land showing the disputed land. It was admitted as Exhibit B.

The learned trial Judge rejected the traditional history presented by the defendants. He found as a fact that the land was never shared and accepted the evidence presented by the plaintiffs. Judgment was therefore entered for the plaintiffs as afore-mentioned above and the defendants’

appeal to the Court of Appeal against the judgment was dismissed.

The main complaint of the appellants as canvassed in the appellants' first issue centred on the Court of Appeal's decision that one of the two issues formulated by the appellants before that court was based on a ground of appeal which could only be sustained if the appellants had prior leave of the court before filing it. The ground of appeal as well as the issue based on it were held to be incompetent and therefore struck out. It is submitted that there was abundant evidence before the court that the required leave of the court was in fact obtained on 18th May, 1993. The lower court is therefore said to have acted erroneously when it refused to consider the appellants' appeal as raised in that issue which was wrongly struck out. The failure is said to be a gross miscarriage of justice since mere consideration of only one of the two issues formulated by the appellants in the case could not have fully determined the appeal. The Court of Appeal is said to have, by the omission, been patently in breach of the audi alteram partem rule.

It is further argued that generally, where the lapse has, as in the instant case, occasioned a miscarriage of justice, the proper order this court can legitimately make is one sending the matter back to the lower court for rehearing. The decisions in *FCDA v. Sule* (1994) 33 SCNJ 1 at 11; and *Ifeanyi Chukwu (Osondu) Co. Ltd. v. Soleh Boneh Nig. Ltd.* (2000) 3 S.C. 42 at 60 are cited in support. It is further submitted that as there are sufficient materials in the record of appeal entitling this court to resolve the issue omitted by the lower court, this court should therefore embark on resolving the issue without sending the matter back to the lower court since the said issue is a matter of law alone.

In the appellants' second issue, the lower court was accused of not giving sufficient reasons for coming to the conclusion it reached in the case. Reference is made to the portion of the lead judgment written by Ogebe, JCA., where he said:

*"I have examined the record of appeal scrupulously and I am satisfied that the trial Judge did a dispassionate appraisal of the evidence and came to the conclusion that the respondents proved their claim and were entitled to judgment."*

The learned Justice of the Court of Appeal is said to have failed to state the reasons for supporting the trial High Court's finding of fact or for not accepting the reasoning proffered by the appellants in the case. We are therefore urged to set aside the judgment of the lower court for those reasons. It is further submitted that a judgment of a court must amply demonstrate a dispassionate consideration of all the issues properly raised and argued and must reflect the result of such an exercise. In the instant case, the judgment of the court below is said to have failed or neglected to resolve vital or crucial issues raised or give reasons for its decision.

It is submitted in reply in the respondents' brief on Issue 1 that the court below was right in striking out the Issue No. 2 formulated by the appellants in the brief they filed in the court below. This is because the required leave of the court ought to have been sought and obtained before arguing the point in the appellants' brief. Reference is made to page 10, paragraph 5.2 of the brief filed by the appellants in the court below and dated 15/2/91, which is as follows:

"As issue number 2 was not taken up in the court below, the appellants hereby give notice of their intention to apply for the leave of the Honourable Court to raise the issue on appeal. The appellants will also further crave the leave of the Honourable Court to amend the memorandum of their notice of appeal by the addition of 3 further grounds of appeal to the grounds of appeal already filed. The original and further grounds of appeal numbered 6, 7 and 8 are subjoined to this brief as a schedule thereto."

The two issues formulated in the said brief were duly argued in the said brief. But in a motion filed by the appellants on 18/2/91, the appellants prayed the court below for the following reliefs:-

- "1. For an order for leave to amend the memorandum of appellants' notice of appeal by filing additional grounds of appeal.*
- 2. For an order for leave to file brief out of time.*
- 3. For an order deeming the appellants' brief of argument exhibited in the affidavit supporting this application to have been duly filed."*

*The above three prayers of the motion were granted by the court below on 29/4/91.*

*The appellants also filed another motion dated 2nd March, 1993. They prayed the court below for the following two reliefs:*

*“1. Leave of this Honourable Court to argue the issue as to the infraction of Section 33 (2) and (6) of the Constitution of the Federal Republic of Nigeria, 1979, notice whereof was given at page 10 paragraph 5.2 in the appellants’ brief of argument deemed filed on the 24th day of April, 1991;*

*2. An order that this appeal be heard on the basis of the appellants’ brief alone, the respondents not having filed their brief of argument or applied for any extension of time within which to file the same.”*

The first prayer of the above motion was granted on 18/5/93 while prayer 2, having been withdrawn, was struck out. The order of the court below in respect of the motion reads, inter alia, as follows:

“It is hereby ordered as follows:

1. That the application is granted as prayed.

2. That leave is granted to the applicants to argue the issue as to the infraction of Section 33 (2) & (6) of the Constitution of the Federal Republic of Nigeria, 1979, as depicted at page 10 paragraph 5.2 of the appellants/applicants’ brief deemed filed on 24th April, 1991.”

The contention of the respondents is that nowhere in the two motions referred to above did the appellants pray for leave to argue fresh point for the first time in the Court of Appeal. Similarly, the respondents also contend that the said second issue of infraction of the Constitution had in fact been argued in the brief and the motion of 2nd March, 1993, did not contain a prayer seeking leave of the Court of Appeal to deem the argument of fresh point which had been made without the required leave as duly argued fresh point on appeal. It is therefore submitted that since the leave to argue infraction of a section of the Constitution was the one granted to the appellants, that cannot be taken as leave to argue a fresh point on appeal. The court is therefore said to have acted within the law when it struck out the appellants’ second issue which dealt with fresh point not raised at the trial court and was argued without obtaining the required leave of the court.

In reply to the point raised in the appellants’ issue 2 that the Court of Appeal did not give reasons for supporting the trial court’s finding of

fact or for not accepting the reasoning proffered by the appellants in their brief before the court, it is submitted in the respondent's brief that the Court of Appeal indeed gave reasons in support of its conclusion in the case. Reference is made to portions of the lead judgment, on page 280 of the record where Ogebe, JCA., accepted the finding of fact made by the learned trial Judge on acts of ownership as given in evidence by P.W.2, Godwin Iroanwusi. Similarly, the learned Justice also referred to the evidence of Stephen Ikpoku Alete (P.W.5) who was the overall head of the community on how he intervened in the dispute and advised the appellants to remove their juju from the land as they were not the owners. It is therefore submitted that the passage quoted from the lead judgment was quoted out of context.

It is clear from the facts of this case, as set out above, that the question raised in the appellants' Issue 2 in the appellants' brief filed in the lower court is a fresh issue not raised at the trial High Court. The appellants also conceded that they required leave before they could successfully raise the issue. Their case was that they had in fact sought and been granted the required leave. But it is clear from the prayers in the two motions relied on by the appellants in support of their contention that they sought and obtained the required leave, and already reproduced above, that no such prayer was included in any of the two motions.

**It is settled law that generally, where an issue is not raised in the court below by the parties before it, such an issue should not be raised in the appeal court. But if the issue raised by such point is fundamental in nature, the appeal court will be disposed to give leave for it to be raised and will hear it for that reason. Therefore, an issue not canvassed in the court below can only be taken on appeal with leave and in special circumstances:** See Enang v. Adu (1981) 11-12 S.C. (Reprint) 17; (1981) 11-12 S.C. 25 at 45; Ezekude v. Odogwu (2002) 7 S.C. (Pt.I) 19; (2002) NWLR (Pt. 784) 366 at 373; Akpene v. Barclays Bank of Nigeria Ltd. (1977) 1 S.C. (Reprint) 30; (1977) 1 S.C. 47; Salati v. Shehu (1986) 1 NWLR (Pt. 15) 198; Raimi v. Akintoye (1986) 3 NWLR (Pt. 26) 97; and Plateau Publishing Co. Ltd. v. Adophy (1986) 4 NWLR (Pt. 34) 205.

Where, therefore, there has been no leave sought and obtained by the appellant to argue the new issue and there are no special circumstances disclosed to warrant it being entertained, such new issue would be incompetent and liable to be struck out by the appellate court. See *Eliochin Nig. Ltd. v. Mbadiwe* (1986) 1 NWLR (Pt. 14) 14 at 72; *Attorney-General of Oyo State v. Fairlakes Hotel Ltd.* (1988) 12 S.C (Pt.I) 1; (1988) 5 NWLR (Pt. 92) 1 at 24; *Lipede v. Sonekan* (1995) 1 NWLR (Pt 374) 668 at 685; and *Ejowhomu v. Edok-Eter Ltd.* (1986) 5 NWLR (Pt. 39) 1 at 16. B

The facts of the instant case clearly show that the appellants failed to seek and obtain the needed leave of the court below to argue the new issue which they failed to raise at the trial High Court but wanted to take on for the first time at the Court of Appeal. The position of the law, as declared above, is very clear on the point. The necessary leave must first be sought and obtained before such issue is raised. Failure to comply with this laid down procedure will render the issue incompetent. The court below therefore acted within the law when it struck out the said appellants' second issue, and was right in refusing to consider it in the appeal. C  
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The allegation that the court below failed to give reasons for supporting the trial High Court's finding of fact or not accepting the reasoning proffered by the appellants is also unfounded. As has been shown above, the passage from the lead judgment relied on in support of this allegation was quoted out of context. The learned Justice had earlier in the said lead judgment considered a number of vital evidence given by two of the plaintiff's witnesses that testified at the trial and which the learned trial Judge accepted in coming to his conclusion in the case. The said evidence was strong enough to support the conclusion reached in the case by the learned trial court. But as it was not shown why the court below should tamper with such an unblemished finding of fact, it would be out of place for that court to tamper with or reverse such finding of fact. F  
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Judgment writing is an art by itself in which every individual has his own peculiar style and method. All that a good judgment

requires is that it must contain some well-known constituent parts. Thus, some of the constituent parts which a good judgment must contain in case of a trial court include: (1) the issues or questions to be decided in the case; (2) the essential facts of the case of each party and the evidence led in support; (3) The resolution of the issues of fact and law raised in the case; (4) the conclusion or general inference drawn from the facts and the law as resolved; and (5) the verdict and orders made by the court. See *Oro v. Falade* (1995) 5 NWLR (Pt. 396) at 407-408; *Mogaji v. Odojin* (1978) 4 S.C. (Reprint) 53, 65; (1978) 4 S.C. 91; *Ojogbue v. Nnubia* (1972) 6 S.C (Reprint) 197; (1972) All NLR (Reprint) 664; and *Olomosola v. Oloriawo* (2002) 2 NWLR (Pt. 750) 113 at 125.

Similarly, the rule governing judgment writing in the appellate court, like that in a trial court, is not fixed or rigid. It is also governed by individual style. But whatever style is adopted, certain factors must be retained in a good judgment of an appellate court. Among such factors are that the main objective of an appellate court is to correct errors, if any, of the lower trial or appellate court. To that end, a good appellate court judgment should set out the claim or claims, brief facts of the case, the decision of the trial or lower appellate court; the appellant's complaints against the decision; the submission of the counsel for the parties in the appeal; and the decision of the appellate court in the appeal. See *Umeania v. Emodi* (1996) 2 NWLR (Pt. 430) 348 at 364; *Pro v. Falade* supra; and *Ojogbue v. Nnubia*, supra. In the instant case, both the judgment of the trial High Court and the lead judgment of the Court of Appeal met the required standard. Once a judgment satisfies the required standard and contains the needed elements set out above, an appellate court cannot interfere with such judgment merely because the writer could have adopted a different style. See *Olomosola v. Oloriawo*, supra.

The allegation made against the lead judgment of the Court of Appeal in the appellants' Issue 2 therefore lacks merit since the judgment satisfies the conditions laid down for a good judgment.

In the final result, there is totally no merit in the entire appeal. I

accordingly dismiss it with N10,000 costs in favour of the respondents.

**UWAIS CJN**

I have had the opportunity of reading in draft the judgment read by my learned brother, Akintan, JSC. I agree entirely with his reasoning and conclusion. B

I too find no merit in the appeal and hereby dismiss it with N10,000.00 costs to the respondents.

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**KALGO JSC**

I have read before now the judgment of my learned brother, Akintan, JSC., in this appeal. I am in full agreement with him that there is no substance in the appellants' appeal and ought to be dismissed. The preponderance of the evidence at the trial indicated that the respondents have sufficiently proved that they are entitled to the customary right of occupancy of the land in dispute. Both the trial court and the Court of Appeal were correct, in my view, in finding that the land in dispute belongs to the respondents. This constituted the concurrent findings of fact which this court will not interfere with except where special reasons were shown by the appellant and this was not the case here. See *Akeredolu v. Akinremi* (1989) 5 S.C. 102; (1989) 3 NWLR (Pt. 108) 164; *Ibodo v. Enarofia* (1980) 5-7 S.C (Reprint) 29; (1980) 5-7 S.C 42; *Ogunbiyi v. Adewunmi* (1988) 12 S.C. (Pt.III) 144; (1988) 5 NWLR (Pt. 93) 217. In the circumstances and for the more detail reasons given in the leading judgment, I also find no merit in this appeal. I accordingly dismiss it and affirm the decision of the Court of Appeal. I abide by the order of costs in the leading judgment. D  
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**MUSDAPHER JSC**

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I have had the honour to read in advance the judgment of my Lord, Akintan, JSC., just delivered with which I entirely agree for the same reasons lucidly set out in the aforesaid judgment, which I adopt as mine,

I too dismiss the appeal as it is without any merit. I abide by the order for costs contained in the aforesaid judgment.

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**OGUNTADEJSC**

I have had the advantage of reading in draft a copy of the lead judgment just delivered by my learned brother, Akintan JSC. He has painstakingly and thoroughly considered all aspects of the issues agitated in this appeal. His views accord with mine on the issues. I would also dismiss the appeal with costs as in the lead judgment.

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