

**SUPREME COURT OF NIGERIA**

13<sup>TH</sup> APRIL, 2007. SC. 243/2001

**CORAM:- S. U. ONU, D. MUSDAPHER, S. A. AKINTAN,  
M. MOHAMMED, I. F. OGBUAGU, JJSC**

1. ELEMCHUKWU IBATOR

2. MONDAY IBATOR

..... APPELLANTS

3. ELIJAH ZIAH

(For themselves and representing their  
Ekirikuma family of Ikarama Village in  
Okordia Yenegoa Local Government  
Area of Bayelsa)

AND

1. CHIEF BELI BARAKURO

2. MR. AZIKIWE MOSES

..... RESPONDENTS

3. CHIEF AGREEN OGBONNAH

4. CHIEF FRANCIS KOLOGA

(Representing both Egberiwari and Opoti  
families of Ikarama village in Okordia  
Yenegoa Local Government Area of Bayelsa)

AND

5. NIGERIAN AGIP OIL CO. LTD

..... RESPONDENT

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LAND LAW - Title - Identity of the land - Compensation for damages to  
crops and fish ponds - Being the claim before the court - Issues of title  
and identity - Do not arise (H1)

ACTIONS - Title - Counter claim - Pleadings - Mere averment in state-  
ment of defence - Cannot properly raise the issue of title - Which was  
not raised in the plaintiff's suit - Without a counter claim (H2)

APPEALS - Motions - Fair hearing - Appellants' failure to raise their  
motion - Before arguing their appeal - Means abandonment of it - And  
not denial of fair hearing (H3)

APPEALS - Issue - Evidential weight - Trial court's finding affirmed by Court of Appeal - Is fully supported by evidence (H4)

### **FACTS**

Before the then Rivers State High Court Yenegoa, plaintiffs/appellants filed an action against the defendant, Nigerian Agip Company Limited. Plaintiffs claimed inter alia, a declaration that they and Ekirikuma family are jointly entitled to be paid compensation in respect of the damage done by the defendant to economic and cash crops, fish ponds and lakes being in Abuzubube Land situate in Yenegoa Local Government Area. However, a second set of defendants were joined in the action. 5 witnesses testified in support of the plaintiffs' claims; while the second set of defendants called 4 witnesses.

The trial court in its judgment found for the plaintiffs and granted their relief. The second set of defendants who were aggrieved on the ground that they were sole exclusive owners of the land while plaintiffs were their customary tenants, appealed to Court of Appeal. Their major issue before the lower court was the issue of title to the land in respect of which compensation was paid. Plaintiffs however, contended that their case was not predicated on title to land but entitlement to compensation. The Court of Appeal dismissed the appeal. Still dissatisfied, second set of defendants, have further appealed to the Supreme Court.

### **ISSUE FOR DETERMINATION**

*“B1. Whether the court below was wrong to have held that title to the land (the subject of claim for compensation between rival claimants) is not in issue.*

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

### ***Title - Identity of the land***

1. From the record of the appeal particularly the reliefs claimed by the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents which I have quoted in full earlier in this judgment, it is quite clear that the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents were at the trial High Court principally on the question of payment of compensation for damage done to the land in question to crops, fish ponds and so on, in

respect of which the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents claimed joint entitlement with the family of the appellants. It is for this reason that the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents specifically claimed for the relief of injunction restraining, the only defendant then in the action now 5<sup>th</sup> respondent, from paying the compensation to any person or group of persons or the appellants' family alone. There was no relief for the declaration of title to the *Abuzubube Land* which was the subject of the action for the payment of compensation.

The learned trial judge was not in any doubt whatsoever as to the type of claim before him when he said on the same page as follows:-

*“The claim before me is one for a declaration for entitlement to receive compensation in respect of damages done to properties in ABUZUBUBE Land.”*

In this regard therefore, the court below was right in upholding the trial court's decision that the identity and extent of the land in this case was not indeed in issue. In other words, the identity of the land for the purpose or in support of the appellants' non existent claim for declaration of title to Abuzubube land which was the subject of the payment of compensation, was certainly not an issue before the court below and I so hold. (p. 1764 B/1766 D)

### ***Title - Counter claim - Pleadings***

2. In the absence of a counter claim specifically set up after the last paragraph of the Statement of Defence, the facts averred in paragraph 14 of the Statement of Defence above cannot be used by the appellants to prop up a claim for declaration of title to Abuzubube land. It was in line with this state of pleadings that the learned trial judge in his judgment found for the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents that they were jointly entitled to the payment of compensation with the appellants' Ekirikuma family. Thus, in the absence of any claim for declaration of title in the present case, the learned trial judge was right in resisting any attempt of being dragged into the issue in his judgment which was affirmed by the court below. Therefore on the state of pleadings and evidence adduced by the parties at the trial court, I see no reason whatsoever to interfere with the

concurrent findings of fact by the two lower courts on the question of whether or not issue of claim of title to the land, the subject of payment of compensation, was in issue. Issue of claim of title was certainly not before the trial court and the learned trial judge was quite right in not B considering and determining that issue in his judgment. (p. 1765 A)

***Motions - Fair hearing***

3. By refusing to say anything to the court below on the appellants' C motion before arguing their appeal, their learned counsel afortiori, the appellants, are deemed to have abandoned their motion. The complaint of the appellants of the alleged denial of fair hearing does not arise at all from the proceeding of the court below. The law is trite that where a party has adopted a procedure by consent, he will not be heard on appeal, D that the procedure he adopted is prejudicial to him or had occasioned a miscarriage of justice. Thus, from the record of the court below, there is no basis whatsoever for the appellants' complaint that the court below denied them fair hearing by failing to hear and determine their motion E which was clearly abandoned by their counsel. (p. 1768 E)

***APPEALS - Issue - Evidential weight***

4. This issue, having regard to the judgment of the trial court as affirmed F by the court below, can only be resolved in relation to the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents' claim for declaration that they are jointly entitled with the appellants to share in the amount of money made available by the 5<sup>th</sup> respondent as compensation for the damage done to Abuzubube land. The evidence adduced by the 1<sup>st</sup>-4<sup>th</sup> respondents as plaintiffs at the trial G and accepted by the trial court, fully supports their claim resulting in the judgment in their favour which was affirmed on appeal by the court below. Being an appeal arising from concurrent findings of fact and appellants having not shown that the judgments are perverse, I see no reason H at all to interfere with the judgments of the two courts below in this appeal. (p. 1769 C)

**NOTABLE POINTS OF INTEREST**

**MOHAMMED JSC**

*1. Implications of not filing cross appeal or respondent's notice*

Looking at these three further issues, they clearly do not arise from any of the grounds of appeal filed by the appellants resulting in their being incompetent. Definitely, the 1<sup>st</sup>-4<sup>th</sup> respondents who have not filed any cross-appeal from which grounds of appeal these further issues could have arisen, nor filed a respondents' Notice to affirm the judgment of the court below on grounds other than grounds argued by the appellants, have not got an unbridled right or freedom of raising issues or further issues for determination which have no relevance to the grounds of appeal filed by the appellants. The role of this court in the circumstances therefore is strictly limited to seeing whether or not the decision of the court below which affirmed the judgment of the trial court is correct.

Therefore, the 1<sup>st</sup>-4<sup>th</sup> respondent's further issues which do not arise nor relate to any of the grounds of appeal filed by the appellants, are incompetent and shall have no role to play in the determination of this appeal. (p. 1761 H/1762 D)

**AKINTAN JSC**

*2. When damages can be claimed without proving title*

The position in law is that it is possible for a tenant on or and occupier of a parcel of land to successfully claim damages for his properties, including farm corps, damaged on the land. He needs not prove title to such land before he could succeed. All he needs to establish is that his property on the land was damaged. It follows therefore that the contention of the appellants that the respondents were not entitled to succeed because they failed to prove title to the land is totally erroneous. (p. 1774 B)

**REPRESENTATION**

I. P. C. Igwe Esq. for the appellants.

J. C. Ejioogu Esq. for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> respondents.

5<sup>th</sup> respondent absent and not represented.

**CASES REFERRED TO**

- Eliochin (Nigeria) Ltd v. Mbadiwe (1986) 1 NWLR (pt.14) 47  
Oguma Associated Companies (Nigeria) Ltd. v. LB.W.A. Ltd (1988) 1 NWLR (pt.73) 658 at 681  
B Nzekwu v. Nzekwu (1989) 2 NWLR (pt. 104) 373 at 430  
Akhiwu v. Principal Lotteries Officer, Mid-West State (1972) 1 All N.L.R. (pt.1) 229  
Ilodibia v. Nigerian Cement Company Ltd (1997) 7 NWLR (pt.512) 174 at 190  
C Odiba v. Muemue (1999) 10 NWLR (pt.622) 174  
Olorunfemi v. Asho (1999) 1 NWLR (pt.585) 1  
Alli v. Alesinloye (2000) 6 NWLR (pt.660) 177  
Taiwo Ilari Ogun v. Moliki Akinyelu & Ors (2004) 18 NWLR (pt.905) 362 at 388 and 392  
D Otapo v. Summonu (1987) 2 NWLR (pt.58) 587  
Nnamani v. Nnamani (1996) 3 NWLR (pt.438) 591  
Nelson v. Amah 6 WACA 134  
E Okosun v. Johnnnny (1972) 10 SC. 53

**LEAD JUDGMENT BY MOHAMMED JSC**

F By a writ of summons dated 22-11-1984 and filed on 27-11-1984, the plaintiffs instituted their action against the defendant, Nigerian Agip Company Limited at the High Court of Justice of Rivers State then sitting at Yenagoa and claimed the following reliefs:-

G *“1. A declaration that the plaintiffs and the Ekirikuma family are the persons jointly entitled to be paid compensation in respect of the damage done by the defendant to economic and cash crops, fish ponds and lakes being in ‘ABUZUBUBE LAND’ situate at Ikarama Okordia in the Yenagoa Local Government Area.*

H *2. An order of court that the said compensation be paid jointly to the plaintiffs and the Ekirikima (sic) family of Ikarama, Okordia.*

*3. An injunction restraining the Defendant from paying the said compensation to any individual or group of persons or Ekirikima (sic) family only”*

However, by a motion on notice dated 14-10-1985 which was later heard and granted by the trial court, a second set of defendants were joined in the action filed by the plaintiffs. The action was thus heard on pleadings. In the course of the hearing of which live witnesses testified in support of the plaintiffs' claim while the second set of defendants B called four witnesses. At the end of the hearing, the trial court in its judgment delivered on 15-9-1988, found for the plaintiffs and granted their reliefs one of which was that they are jointly entitled with the second set of defendants to be paid compensation for the damage done to the land occupied by the parties on which economic crops, fish ponds and lakes were destroyed by the activities of the 1<sup>st</sup> defendant's company. Part of this judgment at page 98 of the record reads:- C

*"In conclusion therefore I hold that the claim succeeds. Consequently I grant the declaration that the plaintiffs (Opoti and Egberiwari families) are persons jointly entitled to be paid compensation in respect of the damage done by the Nigerian Agip Oil Company Limited."* D

Learned trial judge then proceeded to make an order that the amount of money set aside for the payment of the compensation by the 1<sup>st</sup> defendant - E

*"now deposited with the Government Treasury in the Rivers State Ministry of Finance, be paid to the plaintiffs (Opoti and Egberiwari families) and the 2<sup>nd</sup> defendants (Ekirikuma family) jointly."* F

The 2<sup>nd</sup> set of defendants who were aggrieved with this decision of the trial High Court principally on the ground that they were sole exclusive owners in possession of the land involved in the payment of compensation because the plaintiffs were their customary tenants, appealed to the Court of Appeal against the decision. G

At the Court of Appeal Port-Harcourt Division where the defendants appeal was heard, the defendants raised several issues' including an issue of title to land which reads -

*"B1 whether the plaintiffs/respondents failed to prove any title at all or any customary joint title with the appellants to the land in question."* H

However, the plaintiffs who were the respondents in the court

below contended that their case at the trial court was not one predicated on title to land but rather one for entitlement to compensation. This is clearly reflected in the plaintiffs issue one in their respondents' brief in that court. The issue reads -

B *"B1. Whether the action before the trial court filed by plaintiffs/respondents was one for declaration of title to land as against the claim for joint entitlement with appellants to compensation damage to crops and things on Abuzubube land."*

C The Court of Appeal which heard the appeal on 29-9-2000, in its judgment delivered on 6-11-2000, in a unanimous decision dismissed the appeal and affirmed the decision of the trial High Court.

Still not satisfied with the decision of the Court of Appeal, the second set of defendants have further appealed to this court. Henceforth D in this judgment, the defendants and the plaintiffs shall be referred to as the 'appellants' and the 'respondents' respectively.

Briefs of argument were duly filed and exchanged between the parties before this appeal came up for hearing in this court on 16-1-2007. E In the appellants' brief of argument, the following four issues were identified from the grounds of appeal filed by the appellants -

F *"B1. Whether the court below was wrong to have held that title to the land (the subject of claim for compensation between rival claimants) is not in issue.*

*B2. Whether the court below was wrong to have upheld the trial court decision that the identity and extent of the land in this case were not in issue.*

G *B3. Whether the court below was wrong to have failed to hear and decide the appellants' pending motion to adduce further evidence on appeal before proceeding to judgment.*

*B4. Whether the judgment of the trial court which was upheld by the court below is not against the weight of evidence."*

H Strangely enough, the learned counsel to the 1<sup>st</sup>- 4<sup>th</sup> respondents who stated in no uncertain terms that he was adopting the four issues as identified by the appellants in their brief of argument, proceeded to formulate further issues for determination. I shall say something on this



practice later on in this judgment. Meanwhile the ‘further’ issues framed by the 1<sup>st</sup> - 4<sup>th</sup> respondents are –

“B2. *Whether a party who did not appeal against the judgment of the court below or file a respondent’s Notice, can be heard urging against the judgment of the lower court.* B

B3. *Given the concurrent judgments of the lower courts whether this honourable court has any reason to disturb this judgment.*

B4. *Whether the Court of Appeal was right in affirming the findings of fact that the land in question belongs jointly to the plaintiffs/respondents and the appellants as a basis for which the judge granted the reliefs claimed.” C*

The case of the plaintiffs now 1<sup>st</sup>-4<sup>th</sup> respondents in this court at the trial court was that the compensation due and payable by the Nigerian in Agip Oil Company Limited, now the 5<sup>th</sup> respondent in this court in respect of damage done by the company in the course of its operations in the area to crops, fishponds and other waters on the land in Abuzubube, be paid to them as representing Egberiwari and Opoti families of Ikarama, Okordia jointly with the family of the appellants as joint owners of the land affected by the damage. The stand of the defendants now appellants however was that their family is exclusively entitled to the entire amount of compensation to be paid because they are exclusive owners of the land in question, the plaintiffs’ 1<sup>st</sup>-4<sup>th</sup> respondents’ families being their customary tenants on the land. The learned trial judge in a well considered judgment, upheld the claim of the ‘ plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents that they are entitled to the compensation jointly with the family of the appellants. The appellant’s appeal against that judgment of the trial court was dismissed by the Court of Appeal hence the present appeal, D E F G

Before proceeding to consider the issues arising for determination in this appeal, it is necessary to comment on the action of the 1<sup>st</sup>-4<sup>th</sup> respondents in their brief of argument where after agreeing and adopting the four issues identified in the appellants’ brief of argument as the issues arising for the determination in this appeal, at the same time proceeded to frame further issues for determination. Looking at these three further issues, they clearly do not arise from any of the grounds of appeal filed H

by the appellants resulting in their being incompetent. Definitely, the 1<sup>st</sup>-4<sup>th</sup> respondents who have not filed any cross-appeal from which grounds of appeal these further issues could have arisen, nor filed a respondents' Notice to affirm the judgment of the court below on grounds other than  
 B grounds argued by the appellants, have not got an unbridled right or freedom of raising issues or further issues for determination which have no relevance to the grounds of appeal filed by tile appellants. The role of this court in the circumstances therefore is strictly limited to seeing whether or not the decision of the court below which affirmed the judgment of  
 C the trial court is correct. See *Eliochin (Nigeria) Ltd v. Mbadiwe* (1986) 1 NWLR (pt.14) 47, *Oguma Associated Companies (Nigeria) Ltd. v. LB.W.A. Ltd* (1988)1 NWLR (pt.73) 658 at 681 and *Nzekwu v. Nzekwu* (1989) 2 NWLR (pt. 104) 373 at 430. What is rather surprising in the  
 D conduct of the learned counsel to the 1<sup>st</sup>-4<sup>th</sup> respondents in this respect is that in the first further issue raised by him from the non existent grounds of appeal, he was accusing the appellants of the same behaviour at the court below which he rightly observed as being not allowed under the  
 E law. Therefore, the 1<sup>st</sup>-4<sup>th</sup> respondent's further issues which do not arise nor relate to any of the grounds of appeal filed by the appellants, are incompetent and shall have no role to play in the determination of this appeal.

F Going back to the issues for determination in the appellants brief of argument, the main and real issue for determination having regard to the judgment of the trial court affirmed by the court below in its judgment now on appeal, is issue number one. The question is whether the court below was wrong to have held that title to the land the subject of  
 G claim for compensation by the parties claimants, was not in issue.

Learned appellants' counsel has argued strongly, that the court below was wrong in holding that where the claim to compensation is between rival claimants to the land, the proper issue for determination is  
 H entitlement to compensation and not title. Counsel pointed out that entitlement to compensation cannot be judicially and judiciously determine without a proper consideration of who has a better title; that a claimant to compensation cannot succeed without first establishing his title to the

land where title to the land is in issue between the parties as in the present case. A number of cases cited and relied upon by the appellants include *Nelson v. Amah* 6 WACA 134, *Dobadina & Another v. Ambrose & Ors* (1969) 1 NMLR 24 and *Ogunleye v. Babatayo* (1990) 2 NWLR (pt.135) 745. In the present case, learned appellants' counsel observed that the B plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents having admitted in their case that the land belongs to the appellants but that the appellants are such owners jointly with them, their case at the trial court should not have succeeded, if the case of *Oko Mogaji & Ors v. Cadbury. Ltd* (1985) 2 NWLR (pt.7) 393 at C 395, which required the 1<sup>st</sup>-4<sup>th</sup> respondents to have traced their root of title, is taken into consideration. Concluding his arguments in support of this issue, learned appellants' counsel argued that the plaintiffs 1<sup>st</sup> -4<sup>th</sup> respondents, having failed to prove that the land in question, Abuzubube, D is a communal land, their claim ought to have been dismissed by the trial court and that the failure to dismiss the action had occasioned a miscarriage of justice to the appellants thereby necessitating the interference by this court in allowing their appeal. In dealing with this issue, learned counsel to the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents insists that title to the land E which is the subject to the claim for compensation, was not in issue before the trial court as rightly held by the court below. Relying on tile law that courts do not make the habit of granting relief not claimed by a party as stated by this court in *Oba Lawal Ifabiyi v. Chief Solomon F Adeniyi & Ors* (2000) 5 SCNJ 1, learned counsel observed that as there was no claim for title to the land before the trial court, the court was right in refusing to grant such relief which was not claimed even by the appellants at the trial court, the court below or in this court and as such even G the decision in the case of *Dobadina Family v. Ambrose Family* (supra) cited by the appellants where it was held that claimants to compensation must satisfy the court among others that they have a prima facie right to entitlement to the compensation being paid, does not support the case of H the appellants that title to the land must be proved; that considering the background of this case which was originally between the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents and the *Nigerian Agip Oil Company Limited*, now the 5<sup>th</sup> respondent in this court, the appellants who were joined in the action as

defendants who did not put up any claim for title to the land in question, should have expected any such relief from the trial court taking into consideration the decision in *Garuba v. Kwara State Investment Company Ltd. & Ors* (2005) 5 SCNJ 29. Finally, learned counsel urged this court to hold that the title to the land which is the subject of the payment of compensation, was not in issue in the present case as found by the trial court and affirmed by the court below.

**From the record of the appeal particularly the reliefs claimed by the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents which I have quoted in full earlier in this judgment, it is quite clear that the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents were at the trial High Court principally on the question of payment of compensation for damage done to the land in question to crops, fish ponds and so on, in respect of which the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents claimed joint entitlement with the family of the appellants. It is for this reason that the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents specifically claimed for the relief of injunction restraining, the only defendant then in the action now 5<sup>th</sup> respondent, from paying the compensation to any person or group of persons or the appellants' family alone. There was no relief for the declaration of title to the *Abuzubube Land* which was the subject of the action for the payment of compensation.**

The defendants/appellants who on their application were joined in the action as 2<sup>nd</sup> set of defendants by the trial court, in their further amended statement of defence dated 26-2-1988 and filed at the trial court on 1-3-1988, filed no counter claim claiming the relief for decoration of title to the Abuzubube land situate at Ikarama Okordia in the Yenagoa Local Government Area, the land in respect of which compensation was payable by the 5<sup>th</sup> respondent for the damage caused by its operation in the area. Paragraph 14 of the further statement of defence at page 47 of the records reads:-

**“14. The 2<sup>nd</sup> set of defendants deny that the plaintiffs are entitled to the relief sought in their paragraph 14 of their Amended Statement of claim. An agreement signed by the plaintiffs and their solicitor that it was only economic trees and neither land nor lakes that were disputed**

*will be founded upon at the trial. By that admission the plaintiffs are estopped from denying that the ownership of the Abuzubube land is residing, in the 2<sup>nd</sup> set defendants.”*

**In the absence of a counter claim specifically set up after the last paragraph of the Statement of Defence, the facts averred in paragraph 14 of the Statement of Defence above cannot be used by the appellants to prop up a claim for declaration of title to Abuzubube land. It was in line with this state of pleadings that the learned trial judge in his judgment found for the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents that they were jointly entitled to the payment of compensation with the appellants’ Ekirikuma family. Thus, in the absence of any claim for declaration of title in the present case, the learned trial judge was right in resisting any attempt of being dragged into the issue in his judgment which was affirmed by the court below. Therefore on the state of pleadings and evidence adduced by the parties at the trial court, I see no reason whatsoever to interfere with the concurrent findings of fact by the two lower courts on the question of whether or not issue of claim of title to the land, the subject of payment of compensation, was in issue. Issue of claim of title was certainly not before the trial court and the learned trial judge was quite right in not considering and determining that issue in his judgment.** This puts to rest first issue for determination in this appeal.

Next issue for determination is whether the court below was wrong to have upheld the trial court’s decision that the identity and extent of the land in this case were not in dispute. Learned counsel to the appellants referred to the findings of the trial court at page 95 of the record and argued that the trial court having found that title was in issue in this case, ought to have also found that the plaintiffs were required to have proved the definite identity of the land, to succeed; that the plaintiffs/1<sup>st</sup> -4<sup>th</sup> respondents having failed to establish the essential ingredients of the identity of the land, their claim ought to have failed. The cases of *Nelson v. Amah* 6 WACA 134 and *Okosun v. Johnny* (1972) 10 SC. 53 were relied upon.

The 1<sup>st</sup>-4<sup>th</sup> respondents however maintained that there was no doubt

or uncertainty as to the name and the entire identity of the Abuzubube land which the trial court found is well known to the parties because it is the same land that the three families of the respondents and the appellants have claimed compensation for damage done to the same land at other instances of similar claims, before the present claim. Learned counsel observed that as the representatives of the three families entitled to compensation were present on the day the assessment took place, the question of any doubt as to the identity of the land for the purpose of payment of compensation, can hardly arise.

It must be stated here that although the learned trial judge made some findings on title and identity of Abuzubube land at page 95 of the record, the findings were strictly restricted to ascertaining the families who were to participate in the sharing of the amount set aside by the 5<sup>th</sup> respondent for the payment of compensation for the damage done to the Abuzubube land by its operation. **The learned trial judge was not in any doubt whatsoever as to the type of claim before him when he said on the same page as follows:-**

*“The claim before me is one for a declaration for entitlement to receive compensation in respect of damages done to properties in ABUZUBUBE Land.”*

**In this regard therefore, the court below was right in upholding the trial court’s decision that the identity and extent of the land in this case was not indeed in issue. In other words, the identity of the land for the purpose or in support of the appellants’ non existent claim for declaration of title to Abuzubube land which was the subject of the payment of compensation, was certainly not an issue before the court below and I so hold.**

The third issue in the appellants’ brief of argument is Whether the court below was wrong to have failed to hear and determine the appellant’s pending motion to adduce further evidence on appeal before proceeding to judgment. The complaint of the appellants in this issue is that the failure of the court below to hear and determine their pending motion to adduce further evidence before proceeding to judgment, was a breach of their right of fair hearing citing and relying on the decisions in *Otapo v.*

*Summonu* (1987) 2 NWLR (pt.58) 587 and *Nnamani v. Nnamani* (1996) 3 NWLR (pt.438) 591 in support of this argument. It was further argued by the appellants that had the motion to adduce further evidence which was an admission of the appellants' assertion that they exclusively owned the land in question, their appeal at the court below would have been allowed on the further evidence alone and failure to hear the motion therefore, occasioned a miscarriage of justice justifying allowing the appeal. B

For the 1<sup>st</sup>-4<sup>th</sup> respondents however, their learned counsel pointed out that on the day the appellants' appeal was heard at the court below, learned appellants' counsel agreed to argue his appeal without any complaint that there was any motion pending before that court. This was inspite of the fact that the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents' counsel informed that court of a pending motion filed by the 1<sup>st</sup>-4<sup>th</sup> respondents which he agreed to withdraw to pave the way for the hearing of the appeal. By this conduct, argued the learned counsel to the respondents, the appellants are deemed to have abandoned their motion and therefore have no reason to complain before this court. Several decisions such as *Ilodibia v. Nigercem* (1997) 7 SCNJ 77, *Agidigbi v. Agidigbi* (1996) 6 SCNJ 105 and *Ekpetu v. Wanogho* (2004) 12 SCNJ 220, were relied upon in support of this position of the 1<sup>st</sup>-4<sup>th</sup> respondents. D

The answer of whether or not the court below refused or failed to hear the appellants' pending motion to adduce additional evidence before proceeding to hear and determine their appeal, can be easily found from the record of this appeal on the day it was heard at page 210 which reads:- F

*"I.P.C. Igwe: for the appellants.*

*B.U. Ekwugha: for the respondents* G

*Mr. B.U. Ekwugha of counsel says that there is a notice of motion dated 27/3/2000 and filed on 28/3/2000. Counsel seeks to abandon and withdraw the application. Mr. Igwe does not oppose the application to withdraw.* H

*Court: The application dated 27/3/2000 and filed on 28/3/2000 is struck out accordingly.*

*Mr. Igwe for the appellants argues the appeal and says as fol-*

*lows:-*

(1) There is an appellants' Amended Brief deemed properly filed on 22/2/95. Counsel applies to abandon issue No.4 and to renumber issues Nos. B4 and B5. Counsel adopts the Amended Appellants brief and relies thereon. Urges the court to allow the appeal.

*Mr. Igwe has no reply on any point of law.*

Court: The appeal is adjourned to 6<sup>th</sup> November, 2000 for judgment.”

From this record, it is quite clear that when the attention of the court below was drawn to the pending motion filed by the 1<sup>st</sup>-4<sup>th</sup> respondents and the application by their counsel to withdraw the motion, as the learned counsel to the appellants had no objection to the withdrawal of the motion, it was accordingly struck out by the court below. At that point, if the appellants' counsel had wanted to proceed with the appellants' pending motion to call additional evidence before hearing their appeal, their learned counsel could have informed the court of his desire to move the motion first for determination before the hearing of the appeal. Therefore **by refusing to say anything to the court below on the appellants' motion before arguing their appeal, their learned counsel afortiori, the appellants, are deemed to have abandoned their motion.** The complaint of the appellants of the alleged denial of fair hearing does not arise at all from the proceeding of the court below. The law is trite that where a party has adopted a procedure by consent, he will not be heard on appeal, that the procedure he adopted is prejudicial to him or had occasioned a miscarriage of justice. See *Akiwu v. Principal Lotteries Officer, Mid-West State* (1972) 1 All N.L.R. (pt.1) 229 and *Ilodibia v. Nigerian Cement Company Ltd* (1997) 7 NWLR (pt.512) 174 at 190. **Thus, from the record of the court below, there is no basis whatsoever for the appellants' complaint that the court below denied them fair hearing by failing to hear and determine their motion which was clearly abandoned by their counsel.**

The last issue in the appellants' brief of argument is whether the judgment of the trial court which was upheld by the court; below is not



against the weight of evidence. After adopting their arguments in issues 1 and 2 in support of the present issue, the appellants submitted that having regard to the pleadings and evidence of the parties, the learned trial judge ought to have held, that on the preponderance of evidence, the appellants' case was more probable than the case of the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents. All further arguments of the appellants in support of this issue are mainly in support of the appellants' case on the claim for declaration of title to the land in question which was not before the trial court for determination. Although the 1<sup>st</sup>-4<sup>th</sup> respondents' counsel was also dragged into the same line of arguments in their brief of argument, **this issue, having regard to the judgment of the trial court as affirmed by the court below, can only be resolved in relation to the plaintiffs/1<sup>st</sup>-4<sup>th</sup> respondents' claim for declaration that they are jointly entitled with the appellants to share in the amount of money made available by the 5<sup>th</sup> respondent as compensation for the damage done to Abuzubube land. The evidence adduced by the 1<sup>st</sup>-4<sup>th</sup> respondents as plaintiffs at the trial and accepted by the trial court, fully supports their claim resulting in the judgment in their favour which was affirmed on appeal by the court below. Being an appeal arising from concurrent findings of fact and appellants having not shown that the judgments are perverse, I see no reason at all to interfere with the judgments of the two courts below in this appeal.** See *Odiba v. Muemue* (1999) 10 NWLR (pt.622) 174; *Olorunfemi v. Asho* (1999) 1 NWLR (pt.585) 1; *Alli v. Alesinloye* (2000) 6 NWLR (pt.660) 177 and *Taiwo Ilari Ogun v. Moliki Akinyelu & Ors* (2004) 18 NWLR (pt.905) 362 at 388 and 392.

The appeal having trailed, the same is hereby dismissed.

There shall be N10,000.00 costs against the appellants in favour of the respondents.

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#### ONU JSC

The case that has given rise to the appeal herein commenced when by a writ of summons dated 22/11/1984, and filed on 27/11/1984, the plaintiffs instituted their action against the defendant, (Nigerian Agip Com-

pany Limited) at the High Court of Justice, Rivers State then sitting at Yenagoa and claimed the following reliefs: -

- B *“1. A declaration that the plaintiffs and the Ekirikuma family are the persons jointly entitled to be paid compensation in respect of the damage done by the defendant to economic and cash crops, fish ponds and lakes being in ‘ABUZUBUBE LAND’ situate at Ikarama Okordia in the Yenagoa Local Government Area.*
- C *2. An order that the said compensation be paid jointly to the plaintiffs and the Ekirikuma family of Ikarama Okordia.*
- 3. An injunction restraining the defendant from paying the said compensation to any individual or group of persons or Ekirikuma family only.”*

D However, by a motion on notice dated 14/10/85 which was later heard and granted by the trial court, a second set of defendants were joined in the action filed by the plaintiffs. The action was thus heard on pleadings, culminating in the calling of five witnesses supporting the claim while the second set of defendants called four witnesses. At the end of E the hearing, the trial court in its judgment delivered on 15/9/1988, found for the plaintiffs and granted their reliefs one of which was that they are jointly entitled with the second set of defendants to be paid compensation for the damage done to the land occupied by the parties on which economic crops, fish ponds and lakes were destroyed by the activities of the F 1<sup>st</sup> defendant’s company. Part of the judgment at page 98 of the record reads: -

G *“In conclusion therefore I hold that the claim succeeds. Consequently I grant the declaration that the plaintiffs (Opoti and Egberiwari families) are persons jointly entitled to be paid compensation in respect of the damage done by the Nigerian Agip Oil Company Limited.”*

H The learned trial Judge then proceeded to make an order that the amount of money set aside for the payment of the compensation by the 1<sup>st</sup> defendant-

*“now deposited with the Government Treasury in the Rivers State Ministry of Finance, be paid to the plaintiffs (Opoti and Egberiwari families) and the 2<sup>nd</sup> defendants (Ekirikuma family) jointly.”*

The 2<sup>nd</sup> set of defendants who were aggrieved with this decision of the trial High Court principally on the ground that they were sole exclusive owners in possession of the land involved in the payment of compensation because the plaintiffs were their customary tenants, appealed to the Court of Appeal against the decision. B

At the Court of Appeal, Port Harcourt division where the defendants' appeal was heard, the defendants raised several issues including an issue of title to land which reads -

*“B1. Whether the plaintiffs/respondents failed to prove any title at all or any customary joint title at all or any customary joint title with the appellants to the land in question.”* C

However, the plaintiffs who were the respondents in the court below contended that their case at the trial court was riot one predicated on title to land hut rather one for entitlement to compensation. This is clearly reflected in the plaintiffs issue one in the respondents brief in that court. The issue reads: - D

*“B1. Whether the action before the trial court filed by plaintiffs/respondents was one for declaration of title to land as against the claim E for joint entitlement with appellants to compensation damage to crops and things on Abuzubube land.”*

The Court of Appeal heard the appeal on 29/9/2000 and in its unanimous decision of 6/11/2000 dismissed it while affirming the decision of the trial High Court. F

Still not satisfied with the decision of the Court of Appeal, the defendants have further appealed to this court and who I shall refer to in the rest of this judgment as 'appellants' and 'respondents' respectively. Briefs of argument were duly filed and exchanged. G

The appellants submitted the following four issues as arising for determination, to wit:

*“B1. Whether the court below was wrong to have held that title to the land (subject of claim for compensation between rival claimants) is H not in issue.*

*B2. Whether the court was wrong to have upheld the trial court decision that the identity and extent of the land in this case were not in*

issue.

*B3. Whether the court below was wrong to have failed to hear and decide the appellants' pending motion to adduce further evidence on appeal before proceeding to judgment.*

**B** *B4. Whether the judgment of the trial court which was upheld by the court below is not against the weight of evidence."*

Strangely enough, the learned counsel for the respondents who categorically stated that he was adopting the four issues identified by the appellants proceeded to formulate three more issues to re-inforce the plaintiffs' (now 1<sup>st</sup> set of respondents') case in respect of the compensation due arid payable to the Nigerian Agip Oil Company Ltd, now 5<sup>th</sup> respondent in this court in respect of damage done by the company in the course of its operations in the area to crops, fish ponds and other waters on the land in Abuzubube, be paid to them as representing Egberiwari and Opoti families of Ikarama, Okordia jointly with the family of the appellants as joint owners of the land affected by the damage.

Thus, while the learned trial Judge proceeded to order the payment of the sum of N8,200 which represented the said compensation in respect of the said damage and which had been deposited with the Government Treasury in the Rivers State Ministry of Finance, to the Plaintiffs (Opoti arid Egberiwari families) and the 2<sup>nd</sup> defendants (Ekirikuma family) jointly, the court below at page 222 of the Records reproduced some of the findings of fact which appear at pages 97 — 98 of the Records as follows:

*"These findings of facts are amply supported by the evidence led before the learned trial Judge and as such he was quite justified in the conclusion reached by him. This issue is also resolved in favour of the respondents and against the appellants. In conclusion, the appeal fails on all the issues on which was argued and it is accordingly dismissed....."*

**H** On the state of the pleadings and evidence adduced by the parties at the trial. I see no reason whatsoever to interfere with the concurrent findings of fact by the lower courts on the question of whether or not the issue of claim of title to the land the subject of payment of compensation

was in issue. Issue of claim of title was certainly not before the trial court and the learned trial Judge was justified in not considering and determining that issue in his judgment, belated as it was.

The Court of Appeal on its part affirmed the decision of the court below.

In sum, I agree with my learned brother Mohammed, JSC that this appeal, arising as it does from the concurrent findings of fact and the appellants not having shown that the judgments to it are perverse, I see no reason whatsoever to interfere therewith.

See *Odiba v. Muemue* (1999) 10 NWLR (Pt.622) 174; *Olorunfemi v. Aшо* (1999) 1 NWLR (Pt.585) 1; *Alli v. Alesinloye* 6 NWLR (Pt.660) 177 and *Taiwo Ilari Ogun v. Moliki Akinyelu & others* (2004) 18 NWLR (Pt.905) 362; to mention but a few.

Accordingly, I too dismiss the appeal with N10,000 costs to the respondents.

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#### MUSDAPHER JSC

I have had a glance at the judgment of my Lord Mohammed, JSC just delivered. In the aforesaid judgment, his Lordship has meticulously and lucidly dealt with all the issues submitted to this court for the determination of the appeal. I respectfully adopt all the reasoning as mine and I accordingly also find the appeal as lacking in merit. I dismiss it and I award costs of N10,000.00 to the Respondent.

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#### AKINTAN JSC

I had the privilege of reading the lead judgment prepared by my learned brother, Mahmud Mohammed, JSC. He has adequately set out the facts of the case and all the issues raised in the appeal are extensively discussed in the said lead judgment. I entirely agree with his reasoning and conclusions reached therein.

It is clear from the claim filed by the plaintiffs at the Yenagoa High Court that the dispute before the court was that of claims for damages caused by the 5<sup>th</sup> respondent, an oil prospecting company, to the plaintiffs' crops, damage done to fish ponds and their economic trees. It was

not one for a declaration of title to the land on which the damaged crops fishing ponds etc were situated. Title to or ownership of the land in question is quite distinct and different from ownership of crops etc said to have been damaged on the land by the oil prospecting activities of the B 5<sup>th</sup> respondent.

The position in law is that it is possible for a tenant on or and occupier of a parcel of land to successfully claim damages for his I properties, including farm corps, damaged on the land. He needs not prove title to such land before he could succeed. All he needs to establish C is that his property on the land was damaged. It follows therefore that the contention of the appellants that the respondents were not entitled to succeed because they failed to prove title to the land is totally erroneous.

For the above reasons, and the fuller reasons given in the lead D judgment, which I adopt, I also hold that there is totally no merit in the appeal. I accordingly dismiss it with costs as assessed in the lead judgment.

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E **OGBUAGU JSC**

This is an appeal by the 2<sup>nd</sup> set of defendants/Appellants against the decision of the Court of Appeal, Port-Harcourt Division, (hereinafter called “the court below”) delivered on 6<sup>th</sup> November, 2000 affirming the F Judgment of the trial court - per Tabai, J. (as he then was) delivered on 15<sup>th</sup> September, 1988 in favour of the 1<sup>st</sup> to 4<sup>th</sup> Plaintiffs/Respondents. Dissatisfied with the said decision, the Appellants, have appealed to this Court on six (6) grounds of appeal which because of the issues that are relevant in the determination of this appeal, it is not necessary or important for me to reproduce the same in this Judgment. G

The 1<sup>st</sup> set of Respondents, were the Plaintiffs in the trial court while the 2<sup>nd</sup> set of Respondent, was the 1<sup>st</sup> set of defendant at the trial court. The Appellants were the 2<sup>nd</sup> set of defendants at the trial court H because, on their application or motion of 14<sup>th</sup> October, 1985, they were joined as a party to the Suit. The Plaintiffs/Respondents in the said suit, only sued the Nigerian Agip Oil Co. Ltd. as the defendant. For the avoidance of doubt, the reliefs sought in their paragraph 14 of their Statement

of Claim, read as follows:

“(i) A declaration that the plaintiffs and the Ekirikima (sic) (it is Ekirikuma) family are the persons jointly entitled to be paid compensation in respect of the damage done by the defendant to economic and cash crops, fish ponds and lakes being in “ABUZUBUBE” land situate at Ikarama Okordia in the Yenegoa Local Government Area.

[the underlining mine].

(ii) An order of court that the said compensation be paid jointly to the plaintiffs and the Ekirikima (sic) family of Ikarama, Okordia.

(iii) An injunction restraining the defendant from paying the said compensation to any individual or group of persons or Ekirikume (sic) family only”.

The above reliefs, are clear and unambiguous. The Plaintiffs/Respondents, never claimed for any declaration of title to the land called “ABUZUBUBE” situate at Ikarama, Okordia. I note that the Appellants, in their Amended Statement of Defence at pages 34 to 39 of the Records filed on 14<sup>th</sup> August, 1986, never counter-claimed for declaration of title or for any other relief or reliefs. Instead, in their said pleadings, they contended that they are the sole exclusive owners in possession of the land involved and that the Plaintiffs/Respondents, are only their customary tenants. Certainly, that was not the issue or reliefs sought in the Plaintiffs/Respondents’ said claim.

The learned trial Judge, in a well considered Judgment, slated inter alia at page 98 of the Records, as follows:

“On a balance of probability therefore, I do not believe the claim of the 2<sup>nd</sup> set of defendants of their absolute ownership of the Abuzubube. I believe that whatever rights that were exercised by the Plaintiffs in Exhibit (sic) “A “, “B “ and “C” were so exercised by reason of their being joint owners of the Abuzubube. ....

..... The totality of the evidence in my view tilts the balance, in favour of the Plaintiffs that is to say that, the properties damaged and for which the compensation was deposited belonged to the Plaintiffs and 2<sup>nd</sup> set of defendants jointly.

In conclusion therefore I hold that the claim succeeds. Consequently

*I grant the declaration that the plaintiffs (Opoti and Egberiwari families) are the persons jointly entitled to be paid compensation in respect of the damages done by the Nigerian Agip Oil Company Limited (1<sup>st</sup> defendant) to economic trees in the Abuzubube land situate at Ikarama in the*

B Yenegoa Local Government Area.

*[the underlining mine]*

His Lordship, then proceeded to order the payment of a certain sum of money (the said page 98 is not very legible) which represented the said compensation in respect of the said damage and which had been deposited with the Government Treasury in the Rivers State Ministry of Finance, “to the Plaintiffs (Opoti and Egberiwari families) and the 2<sup>nd</sup> defendants (Ekirikuma family) jointly.

D The court below at page 222 of the Records, reproduced some of the findings of fact and holdings of the trial court that appear at pages 97 to 98 of the Records, and stated as follows:

*“These findings of facts are amply supported by the evidence led before the learned trial Judge and as such he was quite justified in the conclusion reached by him. This issue is also resolved in favour of the respondents against the appellants.*

*In conclusion, the appeal fails on all the issues on which it was argued and it is accordingly dismissed.....”.*

F I agree. I have a feeling and in fact I am of the respectful view that the Appellants, fighting and bringing this appeal up to this Court, are actuated by sheer greed and selfishness. I may be wrong, but that is my respectful but firm view. If they felt very strongly that the Appellants are not entitled to any share in the said compensation, they should have counter-claimed, but they didn’t. The trial court even found as a fact and stated inter alia, as follows:

H *“..... There is in my view no evidence to support the assertion, that the plaintiffs **had at any time** being the customary tenants of the defendants. I do not therefore believe the evidence of the defendants about the plaintiffs being their customary tenants on the Abuzubube.....”.*

Even if the Plaintiffs/Respondents were the Appellants’ customary



tenants, are they not entitled to compensation for the damages done to their economic trees and cash crops, etc? I or one may ask. I will stop here. I believe the saying in the Nigerian Society is, "Live and let others live". A simple claim for compensation for things damaged or destroyed on a land, in my respectful view, cannot be seen as to amount to seeking a declaration of title. B

Before concluding this Judgment, I will, by way of emphasis, comment even briefly, on Issue B.3 of the Appellants' Brief. I note at page 207 of the Records, that the Appellants, applied for an order granting leave to the Appellants to adduce further evidence at the hearing of the appeal. This was before the hearing of the appeal. On 25<sup>th</sup> September, 2000 when the appeal came up for hearing, the learned counsel for the Appellants - Mr. Igwe, never said a word about their said motion, but proceeded to argue their appeal. At page 210 of the Records, the following appear, inter alia: D

*"Mr. Igwe for the appellants argue the appeal and says as follows:-*

*(1) There is an Appellant's Amended Brief deemed properly filed on 22/2/95. Counsel applies to abandon Issue No. B4. And to renumber Issues Nos. B5 and B6 respectively to read respectively as Issues No. B4 and B5. Counsel adopts the Amended Appellants' brief and relies thereon. Urges the court to allow the appeal".* F

Thereafter, the learned counsel for the Respondents, also argued the appeal, adopted their Respondents' Brief and urged the court to dismiss the appeal. Thereafter, Mr. Igwe is recorded as "Mr. Igwe has no reply on any point of law." Thereafter, the appeal was reserved for Judgment to 6<sup>th</sup> November, 2000. G

The Appellants, who never stated or indicated the ground or grounds of appeal they formulated the said issues they were relying on for determination, in this Issue B3 which reads inter alia as follows:

*"to have failed to hear and decide the Appellants pending motion to adduce further evidence on Appeal, before proceeding to judgment."* H  
[the underlining mine]

now complain that the court below, failed to hear and determine

their said motion.

Wonders, it is said, will never end. The Records, on the hearing date or even before the judgment or even on the date of the Judgment, have not shown, where the Appellants' said motion/application, was ever mentioned to the court below/Justices, how much more to talk of their failing to hear the said application. If the learned counsel for the Appellants, in his wisdom, had decided as the "master" of their appeal before the court below, to abandon their said motion and not even to mention it, how does the court below or the Justices come in? I or one may ask. It should have been a different matter, if the learned counsel for the Appellants, had mentioned their said motion and the court below, refused to hear the same and insisted on going on or ahead with the hearing of the appeal. Then, there and then, the complaint of the learned counsel for the Appellants and not even the Appellants personally, should have been understandable and considered. To now blame the blameless or "shift the buck" - so to say, of the failure or refusal of the learned counsel or his neglect to mention their motion or move it, to the learned Justices of the court below and blatantly, accuse them of refusal to hear and determine the said application, to me, is unfair and not justified to say the least and it is unacceptable to me, with the greatest respect to the learned counsel to the Appellants. Instead of graciously accepting or conceding his fault or negligence and blame this on perhaps, inadvertence, he now shifts the non-hearing of the motion, on the learned Justice of that court.

There is no doubt and this is settled, that the prevailing view in respect of a motion filed before an already prepared judgment is delivered, is for that court to hear the motion. In fact, it is a known practice of this Court. The reason for this, is to avoid taking a course that may pre-empt or frustrate the possibility of doing real justice between the parties.

See the case of *Mobil Producing Nigeria Unlimited & anor. v. Chief Monokpo & anor.* (2003) 18 NWLR (Pt.852) 346; (2003) 12 SCNJ. H 2006 @ 238 -per Uwaifo, JSC. Honestly, I regard this issue, with respect, as a worthless one and I ignore it. I say no more about it. A court cannot be wrong for not hearing or determining a matter, the notice or existence of which, was not drawn to its notice.

As to the failure of both the Appellants and the Respondents, to show under what grounds of appeal their respective issues were formulated from, I wish to state that it is now firmly settled that every issue for determination, must be formulated from, based upon and related to or distilled from a competent ground of appeal. In other words, an issue not distilled from any of the grounds of appeal, is incompetent and must be discountenanced together with the argument or arguments advanced thereunder in the consideration of the appeal. Thus, issue or issues formulated by an Appellant or a Respondent, must be based on and correlate with the grounds of appeal. So, for an issue of determination to be competent, it must be based on a ground of appeal. There are too many decided authorities in respect of the foregoing. See the cases of *Captain Amadi v. NNPC* (2000) 10 NWLR (Pt.674) 76; (2000) 6 SCNJ. 1; (2000) 6 S.C. (Pt.1) 66; (2001) FWLR (Pt.9) 1527; (2000) WRN 4-7; *Alhaji Arowolo v. Akayo & 2 ors.* (2003) 8 NWLR (PL 823) 451 @ 500 C.A. and *Adelusola & 4 ors. v. Akinde & 3 ors.* (2004) 12 NWLR (Pt.887) 295 @ 311; (2004) 5 SCNJ. 235 @ 246 just to mention a few. This should have been the end of this appeal. But in the interest of justice to the parties, I have gone ahead to deal with its merit.

Finally, there are concurrent findings of facts by the two lower courts which are not perverse and on the decided authorities, this Court, cannot interfere. See the cases of *Bamgboye v. University of Ilorin & anor.* (1999) 10 NWLR (Pt. 622) 290; (1999) 6 SCNJ. 295; *Leadway Assurance Co. Ltd. v. Zeco Nig. Ltd.* (2004) 4 S.C. (Pt.1) 45; (2004) 4 SCNJ. 1 @ 10; *Ogbu v. Wokoma* (2005) 14 NWLR (Pt.944) 118; (2005) 7 SCNJ. (2005) 7 S.C. (PII) 123 @ 136 and many others.

I had the advantage of reading before now, the lead Judgment of my learned brother, Mohammed, JSC. It is from the foregoing and the more detailed reasoning and conclusions contained therein and which I entirely agree with, that I too dismiss the appeal which lacks merit. I abide by the consequential order in respect of costs.