

SUPREME COURT OF NIGERIA
26th JANUARY, 2007 SC. 84/1999
CORAM:- I. L. KUTIGI, U. A. KALGO, G. A. OGUNTADE,
S. A. AKINTAN, I. F. OGBUAGU, JJSC

JIMOH GARUBA APPELLANT
AND
ISIAKA YAHAYA RESPONDENT

APPEALS - Interference - Findings of fact - Should not be ordinarily disturbed by appellate court - Save there be misdirection - That occasioned miscarriage of justice (H1)

CUSTOMARY LAW - Appeals - Native courts' proceedings - Visit to locus - Attitude of appellate court thereto - Is consideration of the substance - Not the form (H2)

LAND LAW - Title - Appeals - Appraisal of evidence - Where trial Area Court - Failed to properly consider evidence led by the defence - Interference by appellate courts - Was justified (H3)

FACTS

Before the Omu-Aran Upper Area Court Kwara State, plaintiff/appellant filed an action against the defendant/respondent. Plaintiff claimed declaration of title to the parcel of land in dispute. The claim was not admitted by the defendant. As such the parties led evidence in support of their rival claims. At the close of evidence for the defence, the trial court visited the locus quo before delivering its reserved judgment. Plaintiff claimed that the land belonged to his forefather, Oladejo, a son of Afonja. That his said forefather first settled on the land and did not meet anybody thereon save those with whom he shared boundaries. He claimed that his family's title to the land had never been challenged. The action was instituted when the defendant started to build his house on part of the land without plaintiff's permission.

Defendant denied plaintiff's claim and set out a rival claim to the entire land, contending that the land belonged to his great grandfather. The trial Upper Area Court entered judgment for the plaintiff. On appeal to the High Court, the appeal was allowed and Plaintiff's claim was dismissed. Plaintiff's appeal to the Court of Appeal was dismissed. Being dissatisfied, plaintiff has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether it was proper for the Court of Appeal to have simply affirmed the decision of the Omu-Aran High Court and dismissed the appellants’ appeal without any supporting evidence.

2. Whether the Court of Appeal was right when it found that it was proper for the Omu-Aran High Court to have re-evaluated and reconsidered the entire evidence and drew different inferences from that of the trial Upper Area Court.

3. Whether on the preponderance of evidence the plaintiff/appellant is entitled to a declaration of title over the land in dispute.

4. Whether it was proper for the Court of Appeal to have dismissed the appellant’s appeal merely on the procedure adopted by the trial Upper Area Court in first evaluating the evidence of defendant/respondent before that of the plaintiff/appellant.”

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

APPEALS - Interference

1. The law is settled that an appellate court should not ordinarily disturb or tamper with the findings of facts made by a trial court, particularly if such findings and conclusions reached are supported by credible evidence. This principle is premised on the fact that the duty of appraising of evidence given at a trial is pre-eminently that of the trial court that saw and heard the witnesses.

But an exception to the above rule is where there is a misdirection by the trial court. A misdirection occurs when the issues of fact in the case for the parties or the law applicable to the issues raised are not fairly appraised, or considered or misconceived or the law applicable is incorrectly applied by the trial court as a result, there would be a miscarriage

of justice if the decision erroneously reached is allowed to stand.
(p. 37 B)

Native courts' proceedings - Visit to locus

2. Appellate courts are also required not to be unduly strict or rigid with regard to matters of procedure when dealing with appeals from native courts, customary courts or area courts, as in the instant case. This is mainly because since pleadings are not filed in those courts and technicalities have no place with their adjudication of cases, the attitude of appellate courts to the decision from those courts therefore are (i) it is not the form of an action but the substance of the claim that is the dominant factor; (ii) the entire proceedings in such court have to be scrutinized to ascertain the subject matter of the case and the issues raised therein; and (iii) it is permissible to look at both the claim as framed, the findings of fact and even evidence given before such courts to ascertain what the real issues *are*. The relax attitude extended to such courts extend also to procedure regarding visit to the *locus in quo*. Thus, it has been held that native courts (a term which encompasses customary courts and area courts regardless of whether they are presided over by lawyers) need not record in evidence the details of an inspection of a *locus in quo*. What matters, therefore, in proceedings in such courts, is the substance and not the form. Decisions of such courts are to be accorded respect by appellate courts, provided that nothing is done therein which is contrary either to any express requirement of the law or to the principles of natural justice. (p. 37 F)

Title - Appeals - Appraisal of evidence

3. The allegation failure to properly appraise the evidence presented at the trial was based on the failure of the trial court to properly consider the evidence led by the defence in the case. The claim before the trial court was for declaration of title to a parcel of land. The claim was not admitted and as such each side led evidence in line with his case. The appellant, as plaintiff, based his claim to the land on settlement by his ancestor and exercise of acts of ownership by his ancestors up till date. That

claim was denied by the defence who also presented similar rival claim of ownership of the same land also by settlement and various acts of ownership. Seven witnesses testified for the defendant/respondent. Among these witnesses are those who told the court that they paid annual rents/ tributes to the respondent for the portions of the land granted them by the defendant. They also denied that the appellant’s family knew anything about how they came to occupy the portions of the land they occupy for farming purposes out of the disputed land.

It is the evidence of those defence witnesses that the trial court was said to have failed to properly consider and evaluate before it arrived at its decision to enter judgment for the plaintiff/appellant. I believe that the decision of the High Court to re-evaluate the evidence led at the trial was quite justifiable and its decision to set aside the decision of the Upper Area Court is quite in order. This is because none of the plaintiff’s witnesses told the trial court that payment of rent or homage was made for any portion of the land occupied or granted to them by the plaintiff. The evidence they gave was mainly to the effect that they shared boundaries with the plaintiff.

On the other hand, three of the defence witnesses (DW2, DW3 and DW4) told the trial court that the defendant was their overlord on portions of the land on which they lived and farmed. DW2 went further to say that he was the defendant’s caretaker who used to collect rents and tributes from other tenants on behalf of the defendant and that his own father was doing the same assignment for the defendant before he took over the same assignment. DW4 gave similar evidence in respect of Oloko Nla Village, which is an area of the land in dispute. All these witnesses who had their farms on portions of the land in dispute denied that they were on the land with the permission of the plaintiff. These are some of the facts on record which the trial court was said to have failed to properly consider before arriving at its decision in the case. The trial Upper Area Court rejected the evidence led by defence for no good reason. For example, one of the reasons given by the Upper Area Court for rejecting the evidence presented by the defendant was that the man did not know the name of the local government where the disputed land is

situated, a matter which has, nothing to do with the claim before the court.

I believe from these disclosures that the interference by the appellate courts was quite justifiable. There is therefore no merit in the appeal. (p. 38 H) B

NOTABLE POINTS OF INTEREST OGUNTADE JSC

1. Use of wrong form may not invalidate proceedings C

And finally, the Court of Appeal in its reaction to the argument that the defendant had employed a wrong court form in its appeal from the Upper Area Court to the High Court observed that to have invalidated the defendant's appeal on the ground that a wrong form was used would amount to sacrificing justice at the altar of a technicality. The court below appropriately relied on Section 46 of the Interpretation Law, Cap. 52 Laws of Kwara State which provides: D

“Whenever forms are prescribed in any law, slight deviations therefrom, not affecting the substance or calculated to mislead shall not invalidate them.” (p. 46 B) E

2. Title - Plaintiff failed to call satisfactory evidence

I have advisedly discussed in *extenso* the reasons why the plaintiff's appeal before the court below failed in order to show that the contention of the plaintiff/appellant before us that the High Court was not entitled to dismiss plaintiff's case just because the Upper Area Court had adopted a wrong approach to the evaluation of evidence was unsound. My desire is to show that there were more substantial grounds why the plaintiff's suit was dismissed by the High Court and why the court below, correctly in my view affirmed the dismissal of plaintiff's suit. It seems to me that a wrong procedure in the evaluation of evidence by the trial court would not on its own have been a sufficient reason to dismiss plaintiff's case. I think it would be more appropriate to conclude that the plaintiff's case was dismissed by the High Court and the dismissal affirmed by the court below, because the plaintiff had failed to call satisfactory evidence in F G H

support of the title he asserted. (p. 46 E)

OGBUAGU JSC

3. Art of writing judgment - Essential factors

B Indeed, it is settled that writing a judgment, is an art in itself and that there are more than one way of going about it. That it is possible to have as many variations as there are Judges. What is essential, is that all evidence adduced, must be considered. It is enough, if the judgment, shows adequately, perception of the facts of the case as disclosed in the evidence, evaluation of the facts, belief or disbelief of the witnesses, and a finding based on the evidence accepted by the court. Afterwards, and this is settled, an Appellate Court, has to decide whether the decision of the trial judge was right and not whether the reasons were right. So, D whether the trial court first started its evaluation of the evidence before it, with that of the Defendant/Respondent, on the authorities, was certainly immaterial. (p. 51 B)

E **REPRESENTATION**

Mr. D. M. Mando for Appellant.

Mr. T. O. Gbadeyan with A. Omotunde and Rotimi Ogunjide for Respondent.

F **CASES REFERRED TO**

Emarieru v. Ovirie (1977) 2 SC. 31

Nor v. Tarkaa (1998) 4 NWLR (Pt. 544) 130 at 139

Ebba v. Ogoto (1984) 4 S.C. 84 @ 98; (1984) 1 SCNLR 372

G Ogundulu v. Philips (1973) 1 NMLR 267 at 272

Highgrade Maritime Services Ltd. v. First Bank of Nig. Ltd. (1991) 1 SCNJ 110

Okolo v. Uzoka (1978) 4 SC. 77 at 86

H Lt. Col. Mrs. R. A. F. Finnih v. J. O. Imade (1992) 1 SCNJ 87

Mogaji v. Odofoin (1978) 4 SC. 91

Idundun v. Okumagba (1976) 10 NSCC 445 at 453

Omoriegie v. Iduzemwanayi (1985) 16 NSCC (Pt. 11) 838 at 848

Abisi v. Ekwealor (1993) 6 NWLR (Pt. 302) 643

Olujinle v. Adeagbo (1988) 2 NWLR (Pt. 75) 238 at 251

Ajao v. Alao (1986) 5 NWLR (Pt. 45) 802 at 822

Oyah v. Ikalile (1995) 7 NWLR (Pt. 406) 150 at 162

Ikeakwu v. Nwamkpa (1967) NWLR 224

B

Okuma v. Tsutsu (1944) 10 WACA 89

Ekpa v. Utong (1991) 6 NWLR (Pt. 197) 258

Iyaji v. Eyiegbe (1987) 3 NWLR (Pt. 61) 532

Anyabine v. Okolo (1998) 13 NWLR (Pt. 582) 444

C

LEAD JUDGMENT BY AKINTAN JSC

The appellant, as plaintiff, commenced this action at Omu-Aran Upper Area Court in Kwara State in a representative capacity against the respondent, also in a representative capacity. His claim was for declaration of title to a parcel of land lying and being at Sapati Oloko Nla Osin in Asa Local Government Area of Kwara State. The claim was not admitted by the defendant and as such the parties led evidence in support of their rival claims. To that end, the plaintiff (now appellant) called four witnesses while the defendant (now respondent) called seven witnesses. At the close of evidence for the defence, the trial court visited the *locus in quo* before delivering its reserved judgment. D

The plaintiff's case was that the land in dispute belonged to the plaintiff's fore-father, Oladejo, a son of Afonja. Oladejo was said to have settled on the land which started from Osin Budo Are where he first settled and extended his farming land up to Modi Village and shared boundary with Jalimodi Alale and Adiloju Suhu. Oladejo, the plaintiffs said ancestor, did not meet anybody on the land when he settled thereon apart from those with whom he shared boundaries. The plaintiff then traced his ancestry from Oladejo to the present members of the family. He claimed that their title on the land had never been challenged. The action was instituted when the defendant, Alfa Tafa, started to build his house on part of the land without seeking for permission from the family. He was challenged but he rebuffed them. F G H

The defendant denied the plaintiffs claim and set out a rival claim

to the entire land. The defendant contended that the land belonged to his great grand father called Musa who came from Oyo Oranmiyan (first Oyo). When Musa arrived on the land, there was no settlement in the whole area. The man was the first person to settle there and the whole area was first called Budo Musa. But that name was later changed to Oloko Nla village. Later one Digunlese came to join Musa Oloko Nla. But Digunlese later moved to a nearby area called Omoroko also called Aba Digunlese. One Sanni, a junior brother of Digunlese also came and settled at Oko Odo Ile close to Digunlese. The contention of the defence was that there was an agreement between Kelani who succeeded Musa on the land that Sanni and his brother, Digunlese, would be paying tributes annually for the use of the portion of land they occupied. They and their successors were paying the agreed homages ever since then. The plaintiff denied that his family ever shared boundary with the plaintiff's family. Rather, they claimed that they were tenants on the land they occupied.

The Upper Area Court entered judgment for the plaintiff/appellant. But on appeal to the High Court, the appeal was allowed and the plaintiff's claim was dismissed. The plaintiff's appeal to the Court of Appeal was dismissed. The present appeal is from the decision of the Court of Appeal dismissing the plaintiff's appeal.

The parties filed their briefs in this court. The appellant filed an appellant's brief and an appellant's reply brief while the respondent filed a respondent's brief. The appellant formulated the following four issues as arising for determination in the appeal:

"1. Whether it was proper for the Court of Appeal to have simply affirmed the decision of the Omu-Aran High Court and dismissed the appellants' appeal without any supporting evidence.

2. Whether the Court of Appeal was right when it found that it was proper for the Omu-Aran High Court to have re-evaluated and reconsidered the entire evidence and drew different inferences from that of the trial Upper Area Court.

3. Whether on the preponderance of evidence the plaintiff/appellant is entitled to a declaration of title over the land in dispute.

4. *Whether it was proper for the Court of Appeal to have dismissed the appellant's appeal merely on the procedure adopted by the trial Upper Area Court in first evaluating the evidence of defendant/respondent before that of the plaintiff/appellant.*"

The respondent, however, narrowed down the issue to one in the respondent's brief. The single issue is as follows:

"Whether it was proper for the Court of Appeal to have affirmed the decision of the Omu-Aran High Court and instead dismissed the plaintiff/appellant's appeal."

The respondent raised a preliminary objection to the competency of the appeal. But this was abandoned at the hearing before this court.

The main attack of the lower court's judgment, as canvassed in the appellant's Issues 1, 2 and 3 is that both the lower court and the Omu-Aran High Court were in error when the two courts held that the Omu-Aran Upper Area Court was wrong in the conclusions and inference drawn from the totality of the evidence led before it. It is submitted that the basis on which the Court of Appeal premised its reason for dismissing the appellant's appeal is not supported by either the evidence led at the trial or from the judgment of the trial Upper Area Court. The re-evaluation of the entire evidence led at the trial by the High Court is said to be totally untenable and wrong.

Reference is made to the modes of proving ownership of land as enunciated in *Idundun v. Okumagba* (1976) 10 NSCC 445 at 453 and *Omorie v. Iduzemwanayi* (1985) 16 NSCC (Pt. 11) 838 at 848, namely, by traditional history, by estoppel *per rem judicatam* which approximate to production of document of title, and by acts of ownership such as allocation to others or allowing others to use part of the disputed land which includes receiving rents or tributes. It is then submitted that the findings made by the Omu-Aran High Court confirmed that there were cogent traditional evidence given by the appellant at the trial to warrant and support the decision of the Upper Area Court in favour of the appellant. It is argued that there was no basis for the High Court to re-evaluate and reconsider the evidence led before the trial court.

The previous judgments tendered at the trial as Exhibit P1 and P2

were said to have been tendered to show that the plaintiff/appellant's father once had a dispute over the land in dispute with one Sumonu where the court gave judgment in his favour and not that they were tendered to raise the issue of *res judicata* as misconstrued by both the High Court and the Court of Appeal. The trial Upper Area Court was therefore right in relying on the said document in giving judgment in favour of the plaintiff/appellant.

The point raised and canvassed in the appellants' Issue 4 is the criticism of the trial court's mode of evaluating the evidence led at the trial. It is alleged that the lower court was critical of the trial Upper Area Court in that it started by first evaluating the evidence led by the defendant before embarking on that of the plaintiff. This is said to be wrong on the part of the lower court in that what is required of an Upper Area Court is generally to do substantial justice devoid of any technicalities. It is submitted that since the upper Area Court did substantial justice in the case, there was totally no justification in tampering with its decision or re-evaluating the entire evidence.

The respondent has argued in the respondent's brief that all the attacks of the Appellant were directed against the judgment of the Omu-Aran High Court and not the Court of Appeal judgment which is on appeal in this court. References are made to the grounds of appeal filed and it is argued that from their particulars, they never arose from the decision of the lower court but that of the High Court on appeal to the lower court.

The contention of the respondent that the grounds of appeal filed were not directed at attacking the judgment of the lower court is not correct. The grounds of appeal and their particulars are well linked with the judgment of the lower court. The issues formulated are quite appropriate and they arose from the grounds of appeal filed. The issues raised will therefore be considered on their merit.

As already stated above, although the appellant formulated four issues in the appellant's brief, the argument preferred was in respect of two issues: (1) whether the re-evaluation by the High Court of the evidence led before Omu-Aran Upper Area Court was proper to justify the

lower court affirming the decision of the said Omu-Aran High Court; and (2) whether the criticism of the method adopted by the trial Upper Area Court in arriving at its decision by the High Court which was affirmed by the lower court should vitiate the decision.

The main grievance of the appellant all along is that Omu-Aran High Court, sitting as an appellate court, reopened the evidence led at the trial before the Upper Area Court and came to the conclusion that the decision of the Upper Area Court was erroneous and must be set aside. **The law is settled that an appellate court should not ordinarily disturb or tamper with the findings of facts made by a trial court, particularly if such findings and conclusions reached are supported by credible evidence. This principle is premised on the fact that the duty of appraising of evidence given at a trial is pre-eminently that of the trial court that saw and heard the witnesses:** (see *Emarieru v. Ovirie* (1977) 2 SC. 31; *Nor v. Tarkaa* (1998) 4 NWLR (Pt. 544) 130 at 139; *Ogundulu v. Philips* (1973) 1 NMLR 267 at 272; *Okolo v. Uzoka* (1978) 4 SC. 77 at 86; and *Mogaji v. Odofin* (1978) 4 SC. 91.

But an exception to the above rule is where there is a misdirection by the trial court. A misdirection occurs when the issues of fact in the case for the parties or the law applicable to the issues raised are not fairly appraised, or considered or misconceived or the law applicable is incorrectly applied by the trial court as a result, there would be a miscarriage of justice if the decision erroneously reached is allowed to stand. See *Abisi v. Ekwealor* (1993) 6 NWLR (Pt. 302) 643; and *Nor v. Tarkaa, Supra*.

Appellate courts are also required not to be unduly strict or rigid with regard to matters of procedure when dealing with appeals from native courts, customary courts or area courts, as in the instant case. This is mainly because since pleadings are not filed in those courts and technicalities have no place with their adjudication of cases, the attitude of appellate courts to the decision from those courts therefore are (i) it is not the form of an action but the substance of the claim that is the dominant factor; (ii) the entire proceedings in such court have to be scrutinized to ascertain the

subject matter of the case and the issues raised therein; and (iii) it is permissible to look at both the claim as framed, the findings of fact and even evidence given before such courts to ascertain what the real issues are: see *Olujinle v. Adeagbo* (1988) 2 NWLR (Pt. 75) 238 at 251; *Ajao v. Alao* (1986) 5 NWLR (Pt. 45) 802 at 822; and *Oyah v. Ikalile* (1995) 7 NWLR (Pt. 406) 150 at 162. The relax attitude extended to such courts extend also to procedure regarding visit to the *locus in quo*. Thus, it has been held that native courts (a term which encompasses customary courts and area courts regardless of whether they are presided over by lawyers) need not record in evidence the details of an inspection of a *locus in quo*: See *Badoo v. Ampung* (1949) 12 WACA 439. What matters, therefore, in proceedings in such courts, is the substance and not the form. Decisions of such courts are to be accorded respect by appellate courts, provided that nothing is done therein which is contrary either to any express requirement of the law or to the principles of natural justice: See *Ikeakwu v. Nwamkpa* (1967) NWLR 224; *Okuma v. Tsutsu* (1944) 10 WACA 89; *Ekpa v. Utong* (1991) 6 NWLR (Pt. 197) 258; *Iyaji v. Eyiegebe* (1987) 3 NWLR (Pt. 61) 532; and *Anyabine v. Okolo* (1998) 13 NWLR (Pt. 582) 444.

Applying the law as declared above to the instant case, the first question to be answered is whether the Omu-Aran High Court was right to have tampered with the findings of fact made by the trial Upper Area Court which resulted in the setting aside of the judgment of that court - the decision which was affirmed by the lower court. As already declared above, the action of the High Court could be justified only if the trial Upper Area Court was found to have misdirected itself, by failing to fairly appraise or consider or improperly apply the evidence led before it. The reason given by the appellate High Court for setting aside the judgment of the trial court was that the said trial court failed to properly appraise the evidence led by the parties in the case before it. The lower court agreed with that view and thereby dismissed the appellant's appeal against the decision of the High Court.

The allegation failure to properly appraise the evidence pre-

sented at the trial was based on the failure of the trial court to properly consider the evidence led by the defence in the case. The claim before the trial court was for declaration of title to a parcel of land. The claim was not admitted and as such each side led evidence in line with his case. The appellant, as plaintiff, based his claim to the land on settlement by his ancestor and exercise of acts of ownership by his ancestors up till date. That claim was denied by the defence who also presented similar rival claim of ownership of the same land also by settlement and various acts of ownership. Seven witnesses testified for the defendant/respondent. Among these witnesses are those who told the court that they paid annual rents/tributes to the respondent for the portions of the land granted them by the defendant. They also denied that the appellant's family knew anything about how they came to occupy the portions of the land they occupy for farming purposes out of the disputed land. B C D

It is the evidence of those defence witnesses that the trial court was said to have failed to properly consider and evaluate before it arrived at its decision to enter judgment for the plaintiff/appellant. I believe that the decision of the High Court to re-evaluate the evidence led at the trial was quite justifiable and its decision to set aside the decision of the Upper Area Court is quite in order. This is because none of the plaintiff's witnesses told the trial court that payment of rent or homage was made for any portion of the land occupied or granted to them by the plaintiff. The evidence they gave was mainly to the effect that they shared boundaries with the plaintiff. E F

On the other hand, three of the defence witnesses (DW2, DW3 and DW4) told the trial court that the defendant was their overlord on portions of the land on which they lived and farmed. DW2 went further to say that he was the defendant's caretaker who used to collect rents and tributes from other tenants on behalf of the defendant and that his own father was doing the same assignment for the defendant before he took over the same assignment. DW4 gave similar evidence in respect of Oloko Nla Village, G H

which is an area of the land in dispute. All these witnesses who had their farms on portions of the land in dispute denied that they were on the land with the permission of the plaintiff. These are some of the facts on record which the trial court was said to have failed to properly consider before arriving at its decision in the case. The trial Upper Area Court rejected the evidence led by defence for no good reason. For example, one of the reasons given by the Upper Area Court for rejecting the evidence presented by the defendant was that the man did not know the name of the local government where the disputed land is situated, a matter which has, nothing to do with the claim before the court.

I believe from these disclosures that the interference by the appellate courts was quite justifiable. There is therefore no merit
D in the appeal. I accordingly dismiss it with N10,000.00 costs in favour of the respondent.

E **KUTIGI JSC**

I read in advance the judgment just delivered by my learned brother Akintan, JSC. I agree with his reasoning and conclusions. I also find no merit in the appeal. It is accordingly dismissed with N10,000.00 costs against the Appellant in favour of the Respondent.

KALGO JSC

I have read in advance the judgment just delivered by my learned G brother Akintan JSC in this appeal. I am in full agreement with him that although the appellant's appeal is competent it has no merit and ought to be dismissed. The action having been commenced in the Upper Area Court is not strictly bound by the rules of procedure and evidence. What H matters in this case is the substance and not the form of the action. And although the proceedings are generally to be devoid of any technicalities, the rules of natural justice must apply to them. In this case, the failure of the trial Upper Area Court to consider and evaluate the defence which is

substantial and unchallenged, it is in my view, a serious breach of natural justice vitiating such proceedings. I therefore agree and accordingly find that the re-evaluation of the whole evidence by the High Court and confirmed by the Court of Appeal, is in order in the circumstances of this case. Accordingly I find no merit in this appeal and I dismiss it with costs as assessed in the leading judgment. B

OGUNTADE JSC

The present appellant (who is hereinafter called ‘the plaintiff’) commenced this suit against the present respondent’s predecessor, Tafa Alfa, now deceased, claiming a declaration of title to a parcel of land at Sapati Ile (the land is also described as Oloko Nla) in Asa Local Government Area of Kwara State. The suit was ordered to be tried *de novo* by the High Court, Ilorin. The re-hearing was at Upper Area Court of Omu-Aran. On 16-12-94, the aforementioned Upper Area Court, Omu-Aran gave judgment in favour of the plaintiff. D

Dissatisfied, the defendant brought an appeal before the Omu-Aran High Court in its appellate jurisdiction. The appeal was heard on 19-6-95 by Olagunju and Ajayi JJ. and on 30-6-95, the court allowed the appeal. The judgment of the Upper Area Court, Omu-Aran was set aside and plaintiff’s suit dismissed. The plaintiff was dissatisfied. He brought an appeal before the Court of Appeal, Kaduna (hereinafter referred to as ‘the court below’) on six ground of appeal. F

The issues for determination raised before the court below were:

“(1) *Whether it is valid to lodge an appeal with a different form apart from the form prescribed by the law guiding the mode of entering appeal from Area Court to the High Court.* G

(2) *Whether the decision of the Supreme Court on formulation of grounds of appeal is a binding precedent on all courts including Area courts.* H

(3) *Whether the appellate session of High Court of Omu-Aran is right in dismissing the Plaintiff’s claim.*

(4) *Whether it is proper for the High Court to refuse to make a*

decision one way or the other on a ground of appealing (sic) (in) respect of the applicable law to the case before it.”

On 11-9-97, the court below in its unanimous judgment dismissed the plaintiffs appeal. Still dissatisfied, the plaintiff has come before this Court on a final appeal. In his amended brief of argument, the issues for determination in this appeal were stated to be the following:

“2.0 *Whether it was proper for the Court of Appeal to have simply affirmed the decision of the Omu-Aran High Court and dismissed appellant’s appeal without any supporting evidence.*

2.01. *Whether the Court of Appeal was right when it found that it was proper for the Omu-Aran High Court to have re-evaluated and or reconsidered the entire evidence and drew (sic) different inferences from that of the trial Upper Area Court.*

2.02. *Whether on the preponderance of evidence Plaintiff/Appellant is entitled to a declaration of title over the land in dispute.*

2.03. *Whether it was proper for the Court of Appeal to have dismissed appellant’s appeal merely on the procedure adopted by the trial Upper Area Court in first evaluating the evidence of defendant/respondent before that of the Plaintiff/Appellant.”*

The four issues formulated by the plaintiff/appellant dovetail into each other. It is therefore convenient for me to discuss the four issues together. In discussing the history, of this appeal, I observed earlier that the plaintiff had had a judgment in his favour at the Upper Area Court, Omu-Aran. For the plaintiff, things started to fall apart at the Omu-Aran High Court. So what happened at the High Court? It is important to say here that the High Court faulted the judgment of the Upper Area Court on several grounds. At page 107 of the record, the High Court observed:

“In particular, in the instant case, the Upper Area Court not only jumped the gun by first reviewing the case of the defendant/appellant in the course of which the court discredited the defence witnesses and their evidence on tenuous grounds but also stumbled as a result of the fallacious reasoning that informed its findings about the relationship of the defendant and his witnesses to the subject matter of the dispute and by so doing betrayed lack of capacity to evaluate the evidence before it on

which the merits of the matter submitted for a decision depended. They are fatal misconception of the law that goes into the root of the judgment." (underlining mine)

And at pages 108-110 of the record, the High Court said:

"The plaintiff adopted a combination of three of the five modes of proving ownership of land enunciated by the Supreme Court in *Idundun v. Okumagba* (1976) 10 NSCC. 445, 353-455; and *Omorie v. Iduzemwanye*, (1985) 16 NSCC. (Part II) 838, 848, namely, by evidence of traditional history, by estoppel per rem judicatam which approximates to production of documents of title and by act of ownership such as allocation to others or allowing others to use part of the disputed land and includes receiving rents or tributes.

He claimed that one Ladejo was the founder of the disputed land and gave evidence which depicts genealogical order of succession to the administration of the land as passing from Oladejo to Aliyu who was succeeded in turn by Habibu, Abdulkarim and Abdulsalam but the proper relationship to Oladejo of any of the four of whom was not clearly brought out in evidence. The plaintiff's evidence also contains no explanation about the source through which the land devolved on his father, Garba Aremu Osin, who was in immediate control of the land before him a point which is of importance because of the plaintiff's claim that he is a descendant of Habibu, the second in succession to the administration of the land; See *Ohideri V. Akabeze* (1992) 2 SCJ. (Part I) 76, 102.

On the plaintiff's own showing, it is important to know how the authority to administer the land became vested in him when there is no evidence that the line of his great grandfather's predecessor in office or title Aliyu, who succeeded Ladejo immediately and the lineage of the two successors to his great grandfather, Abdulkarim and Abdulsalam, have become extinct in the sense that there are no living offspring from those branches of the genealogical tree testified to by the plaintiff himself.

Whether the progeny of the past administration of the land apart from Habibu's whom the plaintiff is representing are among the members of Afonja family who authorized the plaintiff to bring the action on appeal is a moot point as there is no evidence to that effect. Thus there is

no explanation about what happens to the heirs of his great grandfather's predecessor in office as well as of his successors in office or title. With that vacuum in the plaintiff's evidence the traditional mode of proving his root of title ran into a cul de sac.

B *In the same way the plaintiff's attempt to establish his title to the land by way of estoppel per rem judicatam through a judgment of a dispute over a piece of land proffered to be the same piece of land as the one which is the subject of this appeal - between his father and one Sunmonu Sapati fought at the trial and appellate courts in which the plaintiff's father was claimed to be victorious came to a dead end.*

C *The judgments of the Upper Area Court and the Appeal Division of the Kwara State High Court tendered at the court below as Exhibits '1' and '2' could not establish that plea as the court ruled that the dispute was not between the same parties, i.e. between the parties to the present action or anyone to whom the defendant is privy. The point is not raised in this appeal. Thus that mode of proving ownership of the disputed land also fizzled out."*

D *A close scrutiny of the reasons why the High Court dismissed the plaintiff's case reveals four or five distinct grounds, namely:*

E *1. That the Upper Area Court had first discredited the evidence of defence witnesses before even considering the case made by the plaintiff: See Owoade v. Omitola [1988] 19 NSCC. (Part 1) 82 808-811.*

F *2. That the evidence of traditional history called by the plaintiff to show the devolution of the land in his family had unexplained gaps and was generally inconsistent and unsatisfactory. See Ohideri v. Akabeze [1992] 2 SCJ (Part 1) 76, 102.*

G *3. That the judgments relied upon by the plaintiff as creating estoppel per rem judicatam in his favour against the defendant could not help the plaintiff as the previous dispute was not between the same parties as in the current dispute.*

H *4. That the attempt of the plaintiff to show that his family exercised acts of ownership over the land in dispute could not be relied upon against the defendant who had not previously acknowledged plaintiff's family's overlordship of the land.*

5. That there was an important contradiction in the evidence of 4th P.W. Ganiyu Ajeigbe from Abayawo village and the plaintiff as to the nature of tribute paid by the alleged plaintiffs tenants.

Before the court below, the plaintiff's counsel made the point that the High Court was not entitled to evaluate afresh the evidence which the trial court i.e. the Upper Area Court had previously evaluated. The court below in my view correctly reacted to this submission at pages 168-169 of the record thus:

"This poser had come for consideration and resolution by the appellate courts in this country to the effect that where a trial court has drawn wrong inference from primary facts, the appellate court (in this case the lower court) can reject the inference and make what it considers to be the right inference supported by evidence. It is also trite that where a trial court has failed, as in the instant case, in its duty to properly consider the evidence before it which led it to draw wrong conclusions from the evidence it accepted, the Appeal court will be perfectly justified in re-evaluating and re-considering the whole evidence in order to arrive at a just decision. See Highgrade Maritime Services Ltd. v. First Bank of Nig. Ltd. (1991) 1 SCNJ 110; Onwuka v. Omoghi (1992) 13 SCNJ 98 p. 116; Ebba v. Ogoto (1984) SCNLR 372; Okoja v. Ishola (1982) 7 SC. 314 p.349; Lt. Col. Mrs. R. A. F. Finnih v. J. O. Imade (1992) 1 SCNJ 87; Ummannadozie Ogguokwelu & Ors. v. James Umuonafunkwa & Anor. (1994) 5 SCNJ. 24; Patrick Ogbu & Ors. v. Fidelis Ani & Ors. (1994) 7-8 SCNJ 163. In the light of the foregoing authorities I hold that the lower court was right in doing what it did in this case by way of re-evaluating and re-considering the whole evidence in order to arrive at a just decision."

The court below, with respect to the argument that the High Court was wrong to have allowed the appeal against the judgment of the Upper Area Court on the ground that it had first considered and demolished the defence case before considering the plaintiff's case said at page 170:

"In my view that ground was based on the case of Owoade v. Omitola (1982) 2 NWLR (Pt. 77) 413 which was that for considering the defendant case first and dismissing the same before looking at the case

for the plaintiff, the trial court misplaced the onus of proof in this case. It is trite that it was a grave error for the trial court to have picked on the main plank in the case of the defence and demolished it before even considering the Plaintiff/Appellant's case. It is therefore apparent that
 B this point, more than any other issue was enough for the Lower Court to give judgment the way it did rather than relying on the way the trial court wrote its judgment and I so hold.” (underlining mine)

And finally, the Court of Appeal in its reaction to the argument that
 C the defendant had employed a wrong court form in its appeal from the Upper Area Court to the High Court observed that to have invalidated the defendant's appeal on the ground that a wrong form was used would amount to sacrificing justice at the altar of a technicality. The court below appropriately relied on Section 46 of the Interpretation Law, Cap. 52
 D Laws of Kwara State which provides:

“Whenever forms are prescribed in any law, slight deviations there-
 from, not affecting the substance or calculated to mislead shall not in-
 validate them.”
 E I have advisedly discussed in *extenso* the reasons why the plaintiff's appeal before the court below failed in order to show that the contention of the plaintiff/appellant before us that the High Court was not entitled to dismiss plaintiff's case just because the Upper Area Court had adopted a
 F wrong approach to the evaluation of evidence was unsound. My desire is to show that there were more substantial grounds why the plaintiff's suit was dismissed by the High Court and why the court below, correctly in my view affirmed the dismissal of plaintiff's suit. It seems to me that a wrong procedure in the evaluation of evidence by the trial court would
 G not on its own have been a sufficient reason to dismiss plaintiff's case. I think it would be more appropriate to conclude that the plaintiff's case was dismissed by the High Court and the dismissal affirmed by the court below, because the plaintiff had failed to call satisfactory evidence in
 H support of the title he asserted.

I have had the advantage of reading in draft a copy of the lead judgment of my learned brother Akintan J.S.C. I agree with him that this appeal has no merit. I would also dismiss it. I abide by the order made by

OGBUAGU JSC

This is an appeal against the decision of the Court of Appeal, Kaduna Division (hereinafter called “the court below”), delivered on 16th September, 1996, affirming the decision of the Kwara State High Court sitting in its appellate Jurisdiction holden at Omu-Aran and delivered on 10th June, 1995.

Dissatisfied with the said decision, the Appellant has appealed to this Court.

In the Appellant’s Amended Brief of Argument, four (4) issues are formulated. They read as follows:

“2.0 Whether it was proper for the Court of Appeal to have simply affirmed the decision of the Omu-Aran High Court and dismissed Appellant’s appeal, without any supporting evidence?”

2.01 Whether the Court of Appeal was right when it found that it was proper for the Omu-Aran High Court to have re-evaluated and or reconsidered the entire evidence, and drew different inferences from that of the trial Upper Area Court?

2.02 Whether on the preponderance of evidence Plaintiff/Appellant is entitled to a declaration of title over the land in dispute.

2.03 Whether it was proper for the Court of Appeal to have dismissed Appellant’s appeal merely on the procedure adopted by the trial Upper Area Court in first evaluating the evidence of Defendant/Respondent before that of the Plaintiff/Appellant?”

The Respondent, formulated one issue for determination, namely-

“4.02 Whether it was proper for the Court of Appeal to have affirmed the decision of the Omu-Aran High Court, and instead dismissed the Plaintiff/Appellant’s appeal”.

The Respondent, in his Brief of Argument, raised a Preliminary Objection on the competence of the Appellant’s appeal. He attacked grounds 1, 2, 3, 4, 5 and 6 of the original grounds of appeal and stated that they are all grounds of fact. However, during the hearing of this

appeal on 30th October, 2006, at a stage, the learned counsel for the Respondent, abandoned the objection which I accordingly struck out.

Now to the merit of the appeal. A careful examination of the Issues of the parties, in my respectful view, relate substantially, to the inferences and conclusions of the court below from the totality of the evidence led at the Upper Area Court. The brief summary of the facts of the case leading to this appeal, are contained in the lead judgment of my learned brother, Akintan, JSC, and I adopt the same as mine.

In the court below, on the issue whether the High Court had the right to re-evaluate and re-consider the whole evidence at the trial court, or whether an Appellate can reject the inference and make what it considers to be the right inference, I agree with its statement of the law as regards the powers or attitude of an Appellate Court, which is now trite law. In other words, and this is also settled, that where a trial court has drawn wrong inference from primary facts, an Appellate Court such as the High Court in the instant case, can reject the interference and make what it considers to be the right inference provided, it is supported by the evidence before the trial court. See Ebba v. Ogodo (1984) 4 S.C. 84 @ 98; (1984) 1 SCNLR 372; Highgrade Maritime Services Ltd v. First Bank of Nig. Ltd. (1991) 1 SCNJ. 110; and Patrick Ogbu & ors. v. Ani & ors. (1994) 7-8 SCNJ. 363 and many others.

In respect of Issue 2.01 of the Appellant, the court below further stated at pages 168 and 169 of the Records, inter alia, as follows:

“ It is also trite that where a trial court has failed, as in the instant case, in its duty to properly consider the evidence before it which led it to draw wrong conclusions from the evidence it accepted, the Appeal Court will be perfectly justified in re-evaluating and re-reconsidering the whole evidence in order to arrive at a just decision. See Highgrade Maritime Services Ltd. v. First Bank of Nigeria Ltd. (1991) 1 SCNJ. 110, Onwuka v. Onoghi (1992) 3 SCNJ. 96 p. 116, Ebba v. Ogolo (1984) SCNLR 372, Okoja v. Ishola (1982) 7 S.C. 314 p. 349, Lt. Col. Mrs. R.A.F. Finnih v. J. O. Imade (1992) 1 SCNJ. 87; Umumadozie Ogbuokwelu & ors. v. James Umunnafunkwa & anor. (1994) 5 SCNJ. 24; Patrick Ogbu & ors. v. Fidelis Ani & ors. (1994) 7-8 SCNJ. 363. In

*the light of the foregoing authorities, I hold that the lower court was right in doing what it did in this case by way of **re-evaluating and re-considering the whole evidence in order to arrive at a just decision***".

So, my answer to the said Issue 2, is in the **Affirmative**. From the above, it cannot be said as has been raised in Issue 2.0 of the Appellant, that the court below, simply affirmed the decision of the High Court and dismissed the Appellant's appeal without **any supporting evidence**. As rightly submitted by the Respondent in his Brief, the court below, in my respectful view, resolved the issue of the power of the High Court in its appellate jurisdiction to re-evaluate the evidence before the trial court and not whether the re-evaluation led to a miscarriage of justice as contended by the Appellant in this Court. The consequence, is that all the grounds of appeal and the issues on re-evaluation of evidence, did not arise from or relate to the ratio decidendi in the judgment of the court below. Issues in Nos. one, two and three of the Appellant's Brief with respect, lack substance and they fail together with the arguments in respect thereof.

I observe that the issue of the identity of the land in dispute which the High Court raised *suo motu*, is not a subject-matter of appeal in this Court. In other words the issue, is not supported by any of the grounds of appeal in this Court. However, the court below at pages 170-171 of the Records, stated that the bone of contention, centre on the High Court raising the issue *suo motu* or commenting on the point and whether it was competent to do so. After referring to page 112 of the Records, it stated inter alia, as follows:

"..... From this statement, it is clear that the observation of the court has not affected the mind of the lower court in arriving at its decision The comment is an irrelevant issue and which consequently not led to a miscarriage of justice and I so hold".

I agree...

In respect of the complaint at Part 3.17 and 3.18 of the Appellant's Brief, of the "wrongful" rejection of Exhibits P1 and P2, the court below, rightly in my respectful view, stated that it did not flow from the grounds of appeal of the Respondent before it and that it is not related to any of

the issues formulated by the Respondent. It stated inter alia, at page 169 of the Records.

“..... I agree with learned counsel to the Respondent that these complaints do not flow from the grounds of appeal of the appellant nor are they related to any of the issues formulated by the appellant. In the circumstance such complaints or issues which are not supported by a ground of appeal are incompetent or not valid for consideration by an Appellate Court. See Chief J. A. Imonikhu & anor. v. The Attorney-General of Bendel State & ors. (1992) 7 SCNJ. 197; Sylvanus Odife & anor. v. Geoffrey Xniomoko & ors. (1992) 7 SCNJ. 337. On the alternative argument by learned counsel to the Respondent that the refusal of the trial court to attach any evidential value to the two exhibits P1 and P2 being not a ground of appeal restrained the lower court from commenting on Exhibit P1 and P2 appears sound in law and I so hold.....”.

It is noted by me that at page 55 of the Records, the trial court stated inter alia, as follows:

“..... Though, the plaintiff made an effort to show this Court that the parties in Exhibits P1 and P2 are the same with the instant case. **But the evidence before us does not prove that they are the same.** Therefore, Exhibit P1 and P2 cannot serve as RES JUDICATA in this case.....”

At page 110 of the Records, the High Court stated that the point as regards the effect of the Exhibits P1 and P2, was not raised in the appeal before it. “*Thus that mode of proving ownership of the disputed land also fizzled out*”. That being the case, the Appellant raising the issue in this Court, becomes completely misconceived. I so hold.

As regards Issue 2.03 or Issue No.4, with respect, I do not agree with the submission in the Respondent’s Brief that there is no ground of appeal about the way the High Court dealt with the complaint about the way the trial court wrote its judgment. Ground 3 of the original grounds of appeal and Ground 2 of the Additional Grounds of appeal, seem to me, adequate grounds of appeal in respect of the complaint. Issue 4 also covers this complaint.

I wish to state straight away, with respect, that the taking or dealing by the trial court, with the evidence of the defendant and his wit-

nesses first, is immaterial. Too much weather was made about it by the Appellate High Court. See pages 105 to 107, 116-119 of the Records. As far back as 1985, this Court, has stated and restated that there is no specific style in writing of judgments. See the cases of Amokomowo v. Audu (1985) 16 NSCC (Pt.1) 633, 640, and Chief Olufosoye & 2 ors. v. Olorunfemi (1989) 1 NWLR (Pt.95) 27 @ 37 - per Oputa, JSC.

Indeed, it is settled that writing a judgment, is an art in itself and that there are more than one way of going about it. That it is possible to have as many variations as there are Judges. See the case of Onuoha v. The State (1988) 3 NWLR (Pt.83) 460 @ 464; (1988) 7 SCNJ. (Pt.1) 20 @ 24. What is essential, is that all evidence adduced, must be considered. See the case of Awopejo & 6 ors. V. The State (2001) 12 SCNJ. 293 @ 302. It is enough, if the judgment, shows adequately, perception of the facts of the case as disclosed in the evidence, evaluation of the facts, belief or disbelief of the witnesses, and a finding based on the evidence accepted by the court. See also the cases of Stephen v. The State (1986) 5 NWLR (Pt.46) 978 @ 1005 and Nkado & 2 ors. v. Obiano & anor. (1997) 5 SCNJ. 33 @ 55 to 57. Afterwards, and this is settled, an Appellate Court, has to decide whether the decision of the trial judge was right and not whether the reasons were right. See Ukejianya v. Uchendu 13 WACA 45 @ 46 and Abeye v. Ofili (1986) 1 S.C. 231. I am aware that in the High Court, the proper approach, or proper format, has been stated in the cases of Alhaji Sanusi v. Ameyogun (1992) 4 SCNJ. 177 @ 187; Onwuka & ors. v. Ediala & anor. (1989) 1 NWLR (Pt.96) 182 @ 209; and recently, Ogolo & 15 ors. v. Chief Ogolo & 5 ors. (2003) 12 SCNJ. 181 @ 203; and Usiobaifo & anor. v. Usiobaifo (2005) 1 S.C. (Pt.11) 60. So, whether the trial court first started its evaluation of the evidence before it, with that of the Defendant/Respondent, on the authorities, was certainly immaterial. Afterwards, it eventually came to a final conclusion of finding for the Plaintiff/Appellant. However, the court below dealt with the point or issue as will be shown hereunder.

It must be stressed and this is also settled that in Native or Customary Court Judgments, or proceedings, an Appellate Court should look at the substance, rather than the form in order to do substantial justice.

See Chukwunta v. Chukwu 14 WACA 341; Ajayi & Aina (1942) 16 NLR 67 @ 71; Adogan v. Aina (1964) 1 ANLR 127; Studham v. Strainbridge (1895) 1 QB. 87; Ekennia v. Nkpakara & 7 ors. (1997) 5 SCNJ. 70 @ 83; Kamalu & 2 ors. v. Umunna & 6 ors. (1997) 5 SCNJ. 191 @ 204
 B citing some Other cases therein; Ajagbonna v. Chief Iledare (1997) 6 SCNJ. 33 and Chief Dokubo & anor. v. Chief Omoni & 9 ors. (1998) 6 SCNJ. 168 @ 180 - 181 and many others. This is why it is settled that an Appellate Court, will be slow and indeed not justified, in interfering with the judgments of Native, Customary or Area Courts, when the evidence
 C is based on credibility.

I note that at the said page 107 of the Records, the High Court relied on the case of Owoade & anor. v. Omitola & 2 ors. (1988) 1 NSCC Vol. 19 (Pt.1) 802, 808-811 (it is also reported in (1988) 5 SCNJ.
 D 1) in holding that the trial court “**jumped the gun by first reviewing the case of the defendant/appellant**”. The court below, at page 170 of the Records, also referred to the case which is also reported in (1988) and not (1982) 2 NWLR (Pt.77) 413 and stated that Ground 10 of the Appellant’s
 E ground of appeal, was based on this case. It then stated inter alia, as follows:

“..... It is trite that it was a grave error for the trial court to have picked on the main plank in the case of the defence and demolished
 F it before even considering the Plaintiff/Appellant’s case. It is therefore apparent that this point, more than any other issue was enough for the Lower Court to give judgment the way it did **rather than relying on the way the trial court wrote its judgment** and I so hold”.

I also note that the said approach by the trial court, was not the
 G reason for its allowing the appeal of the Respondent. It stated at the said page 107 of the Records, inter alia, as follows:

“..... In particular, in the instant case, the Upper Area Court **not only jumped the gun by first reviewing the case of the defendant/appe-**
 H **lant in the course of which the court discredited the defence witnesses and their evidence on tenuous grounds but also stumbled as a result of the fallacious reasoning that informed its findings about the relationship of the defendant and his witnesses to the subject matter of the**

dispute and by so doing betrayed lack of capacity to evaluate the evidence before it on which the merits of the matter, submitted for a decision depended. They are fatal misconception of the law that goes into the root of the judgment”.

So, from the above, it is not true or justified, with respect, when the Appellant stated that the court below, dismissed the Appellant’s appeal, **merely on the procedure adopted** by the trial court in first evaluating the evidence of the defendant/Respondent before that of the Plaintiff/Appellant. I so hold.

In the final result, it is from the foregoing and the reasons and conclusion in the lead judgment of my learned brother, Akintan. JSC, that I too, dismiss the appeal and I affirm the decision of the court below. I abide by the consequential order in respect of costs.

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