

SUPREME COURT OF NIGERIA
11TH JULY 2008, SC. 199/2002
CORAM:- G. A. OGUNTADE, M. MOHAMMED, F. F. TABAI,
J. O. OGEBE, M. S. MUNTAKA-COOMASSIE, JJSC

OTHNIEL SHEKSE APPELLANT
(For Himself and on behalf of
Kerang Community)
AND
1. VICTOR PLANKSHAK
2. TUMBE DAWAP
3. SHIPROTE DANIEL RESPONDENTS
4. ARDO JIKAN
5. SILAS PWANGKAT

LAND LAW - Trespass - Admission - Where appellant admits in his statement of claim - That respondents are in lawful possession - He cannot rightly bring trespass action against them (H1)

LAND LAW - Issues - Boundary dispute - Where raised by appellant in his statement of claim - He cannot complain that trial court raised it suo motu (H2)

LAND LAW - Concurrent findings - Boundary dispute - Lower courts' findings - That exhibit D did not resolve a boundary dispute - And other concurrent findings that are not shown to be perverse - Will not be disturbed by the Supreme Court (H3)

EVIDENCE - Locus in quo visit - Principles in respect of - Are stated by the Supreme Court in Enigwe case - Appellant was not able to show - That non recording of proceedings at the locus in quo - Adversely affected his case (H4)

COURTS - Issues - Interpretation of evidence - Issue of - That was not raised by parties' counsel before trial court - Is of no consequence - And such new issue cannot be raised on appeal - Without leave of court (H5)

FACTS

Before the High Court of Justice Pankshin, Plateau State, plaintiff/appellant (in a representative capacity) filed an action against the defendants/respondents. Appellant claimed inter alia, a declaration that the quarry site in dispute is in his customary possession and ownership. He also claimed a perpetual injunction restraining defendants from further act of trespass. Pleadings were exchanged between the parties.

At the close of hearing, the trial court thoroughly evaluated the evidence and dismissed the appellant's claim. His appeal to the Court of Appeal was also dismissed. Still aggrieved, appellant has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

(Issue One):

“Whether the Court of Appeal and the lower court were right in dismissing the appellant’s claims and reliefs having regard to the provisions of sections 34,35,36 and 37 and the interpretation of Exhibit ‘D’ the Plateau State Government (white paper) and gazette of 1981 on “Bwanzuhum area/village where the Quarry Site is Located within” is not in Kerang District of Mangu Local Government Council as per the claim and reliefs of the Appellant before the court.

(Issue Two)

Whether or not having regards to the pleadings, the evidence called cum the Exhibits tendered the learned justices of the Court of Appeal were right in dismissing the appellant’s declaratory claim that the Quarry site in Bwanzuhum” is not part of Kerang District.

(Issue Three):

Whether or not the learned justices of the Court of Appeal rightly dismissed the issue of the trial court making a case on boundary dispute between Kerang District and Ampang District and farm-lands for the parties which were not the issues before the trial court for determination on the pleadings claims and the reliefs thereto.

(Issue Four)

*Whether or not the lower court was right and did not occasion a miscarriage of justice in affirming the decision of the trial court which extensively used the unrecorded evidence at the **loquus in quo** which*

materially and adversely affected the decision of the trial court occasioning a miscarriage of justice in the circumstance of this case.

(Issue Five):

Whether or not the oral evidence of PWs 1,2,4 and D.Ws 1,2,3,4 and 5 led in Hausa language without an interpreter to English language (viva voce) as recorded by the trial judge in English language did not vitiate the trial proceedings and or occasioned a miscarriage of justice as held by the Court of Appeal in the circumstances of this case.

(Issue Six):

Whether the learned justices of the Court of Appeal were right in holding that the N22,000.00 paid by the P.W. (Nig) Ltd to the defendants/respondents, whether for trespass to farmland or consideration for lease of Quarry was immaterial in the circumstance of this case.

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

Trespass - Admission

1. This is a clear admission from his own showing that the Respondents were lawfully in possession of the disputed property. He could not rightly therefore bring an action in trespass against them. (p. 3054 E)

LAND LAW - Issues - Boundary dispute

2. Also in a paragraph of the Statement of Claim the appellant raised the issue of boundary dispute as follows:-

“The misconduct of the customary tenants gradually developed into a boundary dispute. The customary tenants were claiming the entire Bwanzuhum area formed part and parcel of Ampang West District.”

By this averment the Appellant himself raised the issue of boundary dispute and cannot complain that the trial court raised it on its own. (p. 3054 E)

LAND LAW - Concurrent findings - Boundary dispute

3. In this respect the finding of the lower court that I have reproduced hereunder is in order: -

"It is not therefore in the province of this court to determine the boundary dispute between Kerang and Ampang-West based on the evidence adduced before me. I cannot therefore grant absolute ownership of Bwanzuhum area to either the Plaintiff or the Defendants because the boundary dispute is yet to be determined.."

B *I fail to see that the learned trial judge erred in making the finding."*

C There is nothing in Exhibit 'D' to show conclusively how the conflicting claims by Kerang and Ampang Districts over Bwanzuhum area were resolved by Mangu Local Government Council in favour of Kerang District. Both lower courts were therefore right in not placing reliance on Exhibit 'D'.

As I mentioned earlier, most of the issues raised by the Appellant are issues of facts upon which the lower courts have made findings of facts, it is not the business of this Court to disturb such findings of facts which are not shown to be perverse. (3055 D)

Locus in quo visit - Principles in respect of

E 4. The Appellant has not been able to show that the non-recording of the proceedings at the locus in-quo adversely affected his case. See Enigwe V. Akigwe (1992) 2 NWLR (Pt. 225, 505), at page 525 - 526 where the Supreme Court stated the principles in respect of visit to locus in quo as follows:

F *"In dealing with the foregoing submissions, I think it is necessary to state the general principles of visit to or inspection of a locus in quo. These are -*

1. *There is no rule of law which determines at what stage in a trial a visit of inspection must be made.*

G 2. *A court should undertake a visit to the locus in-quo where such a visit will clear a doubt as to the accuracy of a piece of evidence when such evidence is in conflict with another evidence .*

3. *Where there are two conflicting evidence adduced by parties to a case, it is necessary to visit the locus in quo if such a visit can resolve the conflict in the evidence.*

H 4. *Where a trial judge makes a visit to locus-in-quo it is not proper for him to treat his perception at the scene as a finding of fact without evidence of such perception being given by a witness either*

at the locus or later in court after the inspection .

5. *On a visit to a locus-in-quo it is necessary for the trial judge to make a record in the course of the proceedings of what transpires at the scene. However, if the trial judge failed to make the record but made statement in his judgment about the visit, such statement would be taken as accurate account of what happened and therefore final, unless of course the contrary can be established by the party that impugns the record -*

6. *Where a visit is made to a locus-in-quo evidence of witnesses can be received at the scene or in Court later. But the parties, in that case, must be given the opportunity of hearing the evidence of the witnesses and where necessary be offered the opportunity of cross-examining the witnesses and commenting on the evidence .* (p. 3056 A)

D

COURTS - Issues - Interpretation of evidence

5. The complaint of the learned counsel for the Appellant regarding the interpretation of the witnesses who gave evidence in Hausa to English is of no consequence because both sides were represented by counsel who did not make an issue of it before the trial court. It was the duty of the counsel to bring to the attention of the trial court any wrong procedure which might affect his client's interest. In fact, since the issue of interpretation was never raised in the trial court it should not have been raised in the Court of Appeal without the leave of the court as a fresh issue. The same applied to this Court also. In the final analysis, I see no substance in all the issues canvassed by the Appellant before this Court. (p. 3057 B)

F

NOTABLE POINTS OF INTEREST ***MOHAMMED JSC***

G

1. *Respondents proved better title and were in possession*

The appeal centered principally on the issue of proof of the customary title and possession of the parcel of land in dispute between the parties. On the evidence adduced by the parties and very carefully evaluated and assessed by the learned trial judge, the Respondents had on the preponderance of evidence, proved better title and were clearly in possession of the disputed parcel of land as rightly found by

H

the learned trial judge and affirmed by the Court below. (p. 3058 D)

MUNTAKA-COOMASSIE JSC

2. When to protest against lack of an interpreter

B It was the duty of the Appellant and his counsel to raise an eyebrow
to the seemingly wrong proceedings being adopted by the trial court.
It is a fact that where a particular court has a language other than
English that court is duty bound to provide an interpreter who can
read and speak both the language and English. But where both coun-
C sel have been in court and present during the proceeding and did
not protest or object to such procedure this court will consider such
lapses, if any, as of no moment. (p. 3059 E)

REPRESENTATION

D Mr. M. Y. Saleh SAN, with him, E. Y. Kurah, Mr. C. Umoru and
M. V. Mshelia for the appellant.
Mr. C. O. Ekeakhogbe for the Respondents.

CASES REFERRED TO

E Maji V. Shafi, (1965) NMLR. 33 at 35
Bello V. Kassim, (1969) 1 NMLR 148
Osolu V. Osolu. 2003 11 NWLR Pt. 832, 608 at page 631
Adeniji V. Adeniji (1972) 1 All NLR (Pt. 1) 298
Adegoke V. Adibi (1992 5 NWLR (Pt. 242) 420
F Ike v. Ugboaja (1993) 6 NWLR (Pt. 301. 359)
Enang V. Adu (1981) 11 - 12 SC 25
Ige V Olunloye (1984) 1 SCNLR 158

LEAD JUDGMENT BY OGEBE JSC

G The Appellant sued the Respondents at the High Court of Jus-
tice Pankshin, Plateau State on behalf of himself and Kerang Com-
munity seeking the following reliefs as per paragraph 19 his amended
Statement of Claim:-

H “WHEREFORE, the Plaintiff claim against the Defendants jointly
and severally-

(a) A declaration that the Quarry Site within the Bwansuhum
area is in the customary Possession and ownership of the plaintiff;

(b) An order that the 1st - 5th Defendant account for the sum of N22,000.00 received from P.W. (NIG) LTD.

(c) A perpetual injunction against the Defendants, their servants, agents or privies to restrain them from further acts of trespass.

(d) N25,000.00 (Twenty-Five thousand Naira) damages.”

Pleadings were exchanged between the parties and the trial court after hearing evidence from both the addressees of their counsel thoroughly evaluated the evidence and dismissed the Appellant's claim. Aggrieved by that decision the Appellant appealed to the Court of Appeal, Jos Division. In the lead judgment read by Mukhtar, JCA (as she then was) she thoroughly considered all the issues canvassed before the Court of Appeal and dismissed the appeal.

This is a further appeal to the Supreme Court mainly on issues of facts in which there had been concurrent findings of the two lower courts. The learned counsel for the Appellant in a lengthy brief of eighty pages formulated 6 issues for determination as follows:-

(Issue One):

“Whether the Court of Appeal and the lower court were right in dismissing the appellant's claims and reliefs having regard to the provisions of sections 34, 35, 36 and 37 and the interpretation of Exhibit 'D' the Plateau State Government (white paper) and gazette of 1981 on “Bwanzuhum area/village where the Quarry Site is Located within” is not in Kerang District of Mangu Local Government Council as per the claim and reliefs of the Appellant before the court (Ground One).

(Issue Two)

Whether or not having regards to the pleadings, the evidence called cum the Exhibits tendered the learned justices of the Court of Appeal were right in dismissing the appellant's declaratory claim that the Quarry site in Bwanzuhum ” is not part of Kerang District. (Grounds Two, Five and Nine).

(Issue Three):

Whether or not the learned justices of the Court of Appeal rightly dismissed the issue of the trial court making a case on boundary dispute between Kerang District and Ampang District and farm-lands for the parties which were not the issues before the trial court for determination on the pleadings claims and the reliefs thereto

(Ground three).

(Issue Four)

B Whether or not the lower court was right and did not occasion a miscarriage of justice in affirming the decision of the trial court which extensively used the unrecorded evidence at the loquus in quo which materially and adversely affected the decision of the trial court occasioning a miscarriage of justice in the circumstance of this case (Grounds Four and Six).

(Issue Five):

C Whether or not the oral evidence of PWs 1,2,4 and D.Ws 1,2,3,4 and 5 led in Hausa language without an interpreter to English language (vivavorce) as recorded by the trial judge in English language did not vitiate the trial proceedings and or occasioned a miscarriage of justice as held by the Court of Appeal in the circumstances of this case. (Ground Seven).

(Issue Six):

E Whether the learned justices of the Court of Appeal were right in holding that the N22,000.00 paid by the PW. (Nig) Ltd to the defendants/respondents, whether for trespass to farmland or consideration for lease of Quarry was immaterial in the circumstance of this case. (Ground Eight).

The learned counsel for the Respondents filed a brief on their behalf and adopted the issues formulated in the Appellant's brief.

F On the first issue the learned counsel for the Appellant submitted that the trial court and the Court of Appeal were wrong in not giving effect to Exhibit "D" a Government White paper which gave ownership of the Quarry Site within Bwanzuhum area to Kerang Community.

G Issue 2 is essentially the same as issue 1 and the learned counsel for the Appellant submitted under the issue that the Court of Appeal was wrong in affirming the judgment of the trial court dismissing the Appellant's declaratory claim that the quarry - site is not part of Kerang District.

H On the 3rd issue the learned counsel for the Appellant submitted that the Court of Appeal was wrong in dismissing the issue of the trial court making a case on boundary dispute between Kerang District, and Ampang District and farmland which was not the issue be-

fore the trial court on the pleadings and reliefs sought. He relied on the case of Osolu v. Osolu, 2003 11 NWLR Pt. 832, 608 at page 631, Musdapher JSC held as follows:-

"It is trite law that in the determination of disputes between the parties in a court, the decision must be confined to the issues properly raised by the parties. It is not competent for a court suo motu to make a case for either or both of the parties and then proceed to give judgment on the case so formulated contrary to the case of the parties before it. See for example, Adeniji V. Adeniji (1972) 1 All NLR (Pt. 1) 298; Adegoke V. Adibi (1992 5 NWLR (Pt. 242) 420."

On the 4th issue the learned counsel complained that the Court of Appeal should not have affirmed the judgment of the lower court which extensively used unrecorded evidence at locus in-quo which materially and adversely affected the decision of the trial court and occasioned a miscarriage of justice.

On the 5th issue the learned counsel submitted that the failure of the trial court to use an interpreter to translate the oral evidence of PW1, PW2, PW4, DW1, DW2, DW3, DW4 and DW5 given in Hausa into English vitiated the trial proceedings, and the Court of Appeal was wrong in upholding the decision of the trial court. On the 6th issue, the learned counsel for the Appellant submitted that the Court of Appeal was wrong in holding that the sum of N22,000.00 paid by PW. Nig. Ltd. to the Respondents whether for trespass to farmland or consideration for lease of quarry was immaterial. He said that the sum of N22,000.00 was paid for the excavation of the stones of quarry Site and no more.

The learned counsel for the Respondents submitted that virtually all the issues raised by the Appellant are purely evidential problems, evaluation of evidence, ascription of probative value, weight, acceptance and findings of facts made on them. These according to him are purely matters within the power of trial court which had opportunity of seeing the witnesses. He submitted that the trial court and the lower court painstakingly evaluated the evidence and reached the correct decisions which he urged this court to uphold. On the issue of interpretation of the testimonies of witnesses from Hausa to English, he submitted that both parties were represented by counsel before the lower court and did not raise any complaint in that re-

gard. On the issue of boundary dispute the learned counsel for the Respondent submitted that it was raised in the pleadings and the trial court did not raise it suo motu.

The facts of the case are relatively simple. The Appellant in his Statement of Claim and evidence asserted that the quarry site within B Bwanzuhum area is in the customary possession of Kerang District which owned the area from time immemorial. In paragraph 6 of their Statement of Claim the Appellant averred as follows:-

C *“The Plaintiff avers that for several years now, the situation has changed. The customary tenants including the 1st - 5th Defendants have been challenging the plaintiff’s title to the entire Bwanzuhum area by:-*

(a) *refusing to pay poll or community tax to the Kerang District Head;*

D (b) *purporting to lease or alienate the farmlands without the consent and approval of the customary owners;*

(c) *openly denying and challenging the plaintiff’s title to the said area - The plaintiff pleads suit NO. PLD-P8-90 between Victor Plangshat & 5 others Vs Mangu Local Government Council and shall E rely on it.”*

This is a clear admission from his own showing that the Respondents were lawfully in possession of the disputed property. He could not rightly therefore bring an action in trespass against them. Also in a paragraph of the Statement of Claim F the appellant raised the issue of boundary dispute as follows:-

G *“The misconduct of the customary tenants gradually developed into a boundary dispute. The customary tenants were claiming the entire Bwanzuhum area formed part and parcel of Ampang West District.”*

By this averment the Appellant himself raised the issue of boundary dispute and cannot complain that the trial court raised it on its own.

H The learned counsel for the Appellant made heavy weather of the failure of the two lower courts to interpret Exhibit ‘D’, the Plateau State Gazette in the appellant’s favour.

The Court of Appeal at pages 211 - 212 had this to say on that Gazette:-

“There seems to be ambiguity in the above paragraph for the use of alphabets ‘i.e.’ makes the purport of the comment uncertain. When the term i.e. is used it connotes that whatever follows represents what the clause or sentence before it qualifies. In the present case, none of the sentences that follows the term i.e. has anything to do with the said paragraph 36(ii), which is to do with disputed area of Bwanzuhum i.e. they do not tally. They is therefore no clarity of purpose in the acceptance of 36 (ii), as meant to convey under the said paragraph 37. The White Paper Exhibit ‘D’ is therefore not clear on this or its acceptance of the resolution of the conflicting claims by Kerang Ampang districts over Bwanzuhum. In fact what it seems Government accepts in paragraph 37, (if it is to do with the position of Bwanzuhum) is the recommendation that the Mangu Local Government should be urged to implement its decision on the disputed area of Bwanzuhum), and not that Bwanzuhum is in Kerang District, as is the case of the Plaintiff/Appellant. B C D

In this respect the finding of the lower court that I have reproduced hereunder is in order: -

“It is not therefore in the province of this court to determine the boundary dispute between Kerang and Ampang-West based on the evidence adduced before me. I cannot therefore grant absolute ownership of Bwanzuhum area to either the Plaintiff or the Defendants because the boundary dispute is yet to be determined..” E

I fail to see that the learned trial judge erred in making the finding.” F

There is nothing in Exhibit ‘D’ to show conclusively how the conflicting claims by Kerang and Ampang Districts over Bwanzuhum area were resolved by Mangu Local Government Council in favour of Kerang District. Both lower courts were therefore right in not placing reliance on Exhibit ‘D’. G

As I mentioned earlier, most of the issues raised by the Appellant are issues of facts upon which the lower courts have made findings of facts, it is not the business of this Court to disturb such findings of facts which are not shown to be perverse. See: the cases of *Ike V. Ugboaja* (1993) 6 NWLR (Pt. 301. 359), *Enang v. Adu* (1981) 11 - 12 SC 25 and *Ige V Olunloye* (1984) H

1 SCNLR 158.

The Appellant has not been able to show that the non-recording of the proceedings at the locus in-quo adversely affected his case. See Enigwe V. Akigwe (1992) NWLR (Pt. 225, 505), at page 525 - 526 where the Supreme Court stated
 B **the principles in respect of visit to locus in quo as follows:**

“In dealing with the foregoing submissions, I think it is necessary to state the general principles of visit to or inspection of a locus in quo. These are -

C **1. There is no rule of law which determines at what stage in a trial a visit of inspection must be made See Ejidike & Ors. V. Obiora. (1951) 13 W.A.C.A. 270 at 273 ,**

2. A court should undertake a visit to the locus in-quo where such a visit will clear a doubt as to the accuracy of a
 D **piece of evidence when such evidence is in conflict with another evidence - See: Seismograph Services (Nig.) Ltd. v. Ogbeni, (supra).**

3. Where there are two conflicting evidence adduced by parties to a case, it is necessary to visit the locus in quo if
 E **such a visit can resolve the conflict in the evidence - See Seismograph Service (Nig.) Ltd. V. Akporovo, (1974) 6 S.C. 119 at 128.**

4. Where a trial judge makes a visit to locus-in-quo it is not proper for him to treat his perception at the scene as a
 F **finding of fact without evidence of such perception being given by a witness either at the locus or later in court after the inspection - See Seismograph Service Ltd. V. Onokpasa (supra).**

5. On a visit to a locus-in-quo it is necessary for the trial judge to make a record in the course of the proceedings of
 G **what transpires at the scene. However, if the trial judge failed to make the record but made statement in his judgment about the visit, such statement would be taken as accurate account of what happened and therefore final, unless of course the contrary can be established by the party that impugns the**
 H **record - See Nwizuk’s case (supra) and Maji V. Shafi, (1965) NMLR. 33 at 35 and Bello V. Kassim, (1969) 1 NMLR 148**

6. Where a visit is made to a locus-in-quo evidence of witnesses can be received at the scene or in Court later. But

the parties, in that case, must be given the opportunity of hearing the evidence of the witnesses and where necessary be offered the opportunity of cross-examining the witnesses and commenting on the evidence - See Seismograph Service Ltd. V. Onokpasa, (supra) at pp. 134-135."

The complaint of the learned counsel for the Appellant regarding the interpretation of the witnesses who gave evidence in Hausa to English is of no consequence because both sides were represented by counsel who did not make an issue of it before the trial court. It was the duty of the counsel to bring to the attention of the trial court any wrong procedure which might affect his client's interest. In fact, since the issue of interpretation was never raised in the trial court it should not have been raised in the Court of Appeal without the leave of the court as a fresh issue. The same applied to this Court also.

In the final analysis, I see no substance in all the issues canvassed by the Appellant before this Court. The appeal lacks merit and I hereby dismiss it with the costs of N50,000.00 in favour of the Respondents.

MOHAMMED JSC

This appeal is against the judgment of the Court of Appeal Jos Division, delivered on 28th February, 2002. In that judgment the Court dismissed the Appellant's appeal against the judgment of the High Court of Justice of Plateau State sitting at Pankshin also dismissing the Appellant's suit instituted against the Respondents jointly and severally as Defendants for the following reliefs.

"(a.) A declaration that the Quarry site within the Bwansuhum area is in the customary possession and ownership of the Plaintiff.

(b.) An order that the 1st - 5th Defendants account for the sum of N20,000.00 received from P.W. (NIG.) LTD.

(c.) An order that the 1st - 5th Defendants, their servants, agents or privies to restrain them from further acts of trespass.

(d.) N25,000.00 (Twenty-five Thousand Naira) damages."

The Appellant's claim of title and possession to the parcel of land in dispute was rooted in customary law. The case was heard on

pleadings duly filed and exchanged between the parties in which pleadings, the Respondents as the Defendants also counter-claimed for the same parcel of land. Witnesses called by the parties to prove their respective claims were heard. At the conclusion of the hearing, the learned trial judge, after evaluating the evidence adduced before him, in a well considered judgment, dismissed the Appellant's claims and granted the Respondents/Defendants' counter-claim in part. The Appellant's appeal against this judgment of the trial court was also dismissed by the Court of Appeal, hence the present further appeal to this Court.

Although in the rather very voluminous brief of argument filed by the learned senior Counsel for the Appellant as many of 6 issues for the determination of the appeal were formulated therein and duly adopted by the learned Counsel to the Respondents in the Respondent's brief of argument, the appeal centered principally on the issue of proof of the customary title and possession of the parcel of land in dispute between the parties. On the evidence adduced by the parties and very carefully evaluated and assessed by the learned trial judge, the Respondents had on the preponderance of evidence, proved better title and were clearly in possession of the disputed parcel of land as rightly found by the learned trial judge and affirmed by the Court below.

The complaint of the Appellant that he was denied a fair hearing by the trial court where the Appellant was not given the opportunity to have the use of an interpreter to interpret to the Court the evidence of the witnesses called by the parties who testified in Hausa, was clearly without any substance whatsoever, as the complaint was not raised by his learned Counsel at the trial court. In any case, the alleged complaint of denial of fair hearing was adequately considered and resolved against the Appellant by the Court below. Furthermore, the appeal being one against the concurrent findings of fact by the two Courts below, in the absence of any allegation that the decisions were perverse or do not flow from the evidence led at the trial court, I see no reason to disturb the findings.

For the foregoing reasons, I am in complete agreement with my learned brother Ogebe JSC, that the appeal ought to be dismissed. Accordingly, I also dismiss the appeal with N50,000.00 costs

to the Respondents.

TABAI JSC

I read, before now, the lead judgment of my learned brother Ogebe, JSC and I agree that the appeal lacks merit. The main issue in the appeal is the evaluation of the evidence. In my assessment, the learned trial judge very ably evaluated the evidence. Every material finding is supported by the evidence on record. I do not therefore see any reason for interfering with the concurrent findings of the two courts below. B
C

In the event I also dismiss the appeal for lack of merit. I abide by the order on costs contained in the lead judgment.

MUNTAKA-COOMASSIE JSC

I have read in draft the lead judgment of my learned brother Ogebe JSC which has just been delivered. I agree with the reason and conclusion reached by his lordship. I have nothing more useful to add other than to say that it was the duty of the Appellant and his counsel to raise an eyebrow to the seemingly wrong proceedings being adopted by the trial court. It is a fact that where a particular court has a language other than English that court is duty bound to provide an interpreter who can read and speak both the language and English. But where both counsel have been in court and present during the proceeding and did not protest or object to such procedure this court will consider such lapses, if any, as of no moment. For example in what language the witnesses were cross-examined? How did they communicate with each other vis-a-vis their respective counsel. I think I have no cause to disagree with my learned brother in this judgment. As no leave has been obtained from both the trial court and court below I see no reason why it should be raised in this court. For the reasons given by my learned brother in the lead judgment, I too hold that the appeal lacks substance same is hereby dismissed. I endorse the order as to costs of N50,000.00 in favour of the respondents. D
E
F
G
H