

**SUPREME COURT OF NIGERIA**  
13TH FEBRUARY, 2009. SC. 189/2002  
**CORAM:- D. MUSDAPHER, G. A. OGUNTADE,**  
**I. F. OGBUAGU, P. O. ADEREMI,**  
**M. S. MUNTAKA-COOMASSIE, JJSC**

MADAM MEMINOTU IBRAHIM ..... APPELLANT  
AND

1. DR. LASISI OSUNDE

2. DR. DAPO LAWAL ..... RESPONDENTS

3. NUREMI IBRAHIM

---

EVIDENCE - Proof - Uncontroverted evidence - Unchallenged evidence of PW5 is sufficient proof of ownership - In the plaintiff - Therefore the trial court ought to have acted upon it (H1)

CUSTOMARY LAW - Bini customary law - Inheritance of Igiogbe - Applicability - Before the custom can come into play it must be established - That the ownership of the house sought to be inherited thereunder - Was on a firm ground (H2)

ADMINISTRATION OF ESTATES - Administrators - Duties - It is wrong in law for administrator of estate or anybody claiming through him - To assimilate that property to his own - Equity will not even permit that under any guise (H3)

ADMINISTRATION OF ESTATES - Administrators - Undue advantage - One cannot take advantage of his position as administrator - To facilitate the acquisition of the property by his son after his death - It is a wrong doing that will not be allowed (H4)

APPEALS - Concurrent findings - Attitude of courts - Where such findings are patently wrong or perverse - An appellate court will interfere in the interest of justice (H5)

**FACTS**

The plaintiff / appellant sued the defendants / respondents claiming declaration of title and perpetual injunction in respect of a

parcel of land. The respondents filed a joint defence to the action and each filed a separate counter claim against the appellant claiming various parts of the land in dispute. At the end of hearing, the trial court dismissed the claims of the appellant in toto but granted all the reliefs claimed by each of the respondents in their respective counter claims.

Aggrieved, appellant appealed to the Court of Appeal which allowed the appeal against the 1st and 3rd respondents and consequently granted to the appellant the parts of the land in dispute earlier awarded them by the trial court. The Court of Appeal however, dismissed the appeal against the 2nd respondent. Still dissatisfied, the appellant has brought a further appeal against that part of the judgment dismissing her appeal against the 2nd respondent. The 1st and 3rd respondents have also appealed against those parts of the judgment respectively allowing the appeal against them.

### **ISSUES FOR DETERMINATION**

*“(1) Whether failure by owner of land to make verbal protest against an act of trespass committed in his presence in his land is enough ground for declaring the trespasser owner of the land.*

*“(2) Whether the 2nd defendant/ respondent made out a case in his counter claim which was capable of being supported by the evidence of the 4th witness called by the plaintiff/appellant.”*

**HELD** (Unanimously allowing the appeal and dismissing the counter claims per **ADEREMI JSC**)

### ***Uncontroverted evidence***

1. As I have earlier said P.W.5 a vital witness whose evidence was very material to the determination of this case, was never challenged. Thus, these pieces of very crucial evidence stand there like the Rock of GILBRALTAR, uncontroverted. They point to the fact that the ownership thereof is in the plaintiff/appellant. That evidence ought to be acted upon. (p. 358 D)

### ***Bini customary law - Inheritance of Igigobe***

2. The 2nd respondent while further capitalizing on the evidence of P.W.1 to the effect that his (2nd defendant/respondent) father lived and died in the house opposite Idahosa Street, Benin- City, the 2nd respondent, rightly, in line with the Bini Customary Law, inherited his

late father's assumed Igiogbe. The Bini Customary Law upon which this assumption was predicated is a notorious one which must be judicially noticed. That, I have no doubt of, having regard to the plethora of judicial decisions on this point. But, before the said custom can come into play, certain pre-conditions must have taken place. It must be legally established that the ownership in the house which would be inherited by the 2nd respondent as his father's Igiogbe was on a firma terra. That the property was legally that of his (2nd respondent) father. (p. 359 A)

### ***Administrators of estates - Duties***

3. S. E Lawal, the father of the 2nd respondent was one of the two administrators appointed to administer the estate of A. K Ibrahim Guobadia for and on behalf of the plaintiff and her deceased junior half brother. It is the same property he (S. E. Lawal) later went and lived on and eventually died there which the 2nd respondent is now assimilating to be his late father's Igiogbe. It is wrong, in law, for an administrator of an estate or anybody claiming through him, to assimilate that property to his own, Equity will not even permit that under any guise. To say the least, it is gross abuse of office. Administrators or executors are trustees of the property placed in their care, so to say, on trust to the beneficiaries. A heavy duty is placed on those in whom trust and confidence are reposed to show the righteousness of their transactions with the property entrusted to them. No ownership known to law can ever be conferred on an administrator in respect of the property subject- matter of that administration. Such an administrator, the like of S. E. Lawal, cannot have possession of such a property which will ever have any legal blessings. So S. E. Lawal cannot in the least, give out the possession of the property which never belonged to him, in law. (p. 358 D)

### ***Administrators of estates - Undue advantage***

4. If S. E. Lawal had, taken advantage of his position as an administrator of the estate of A. K. Ibrahim Guobadia, created an impression of legal ownership of any of the property subject matter of the administration in his favour such that his most senior son or any son or member of his family could now take advantage of it after his death, to acquire the property, that would be a serious wrong doing.

The time-honoured principle is that No one can or shall take advantage of his own wrong doing, the Maxim is” NULLUM COMMODUM CAPERE POTEST DE INJURUA SUA PROPRIA” EX TURPI CAUSA NON ORITUR ACTIO. Lord Widgery put this proposition in a glowing language when in *BUSWELL VS. GODWIN* (1971) 1 ALL E.R. 421 he said and I quote:

*“The proposition that a man will not be allowed to take advantage of his own wrong is no doubt a very salutary one and one which the court would wish to endorse”* (p. 360 A)

**C Concurrent findings - Attitude of courts**

5. It is true that the two courts below have made concurrent findings of facts in favour of the 2nd respondent and indeed the two other deceased respondents. Generally, the law is that concurrent findings of facts cannot ordinarily be disturbed by the appellate court. But, where the findings of the courts below, as in the instant case, have shown that the conclusion reached was patently wrong or perverse, then an appellate court, which this court is, can, in the interest of justice, interfere. It is therefore, with respect, my view that the findings of the two courts below are very much perverse and i hereby set them aside. The two courts below were wrong, both in law and in equity, in their decisions. Consequently, the two issues formulated by the appellant in her brief of argument are hereby resolved in her favour. While the one issue identified by the 2nd respondent in his brief is hereby resolved against him. This appeal is therefore allowed. (p. 360 F)

**NOTABLE POINT OF INTEREST**

**G OGBUAGU JSC**

*1. Title - Failure to protest at the burial is of no moment*

I note that it is the trespass by the 2nd defendant, that was one of the causes of the suit by the Appellant. She debunked the assertion that she did not protest during the burial. At page 64 of the Records, she testified that she was present during the burial of the 2nd defendant's late father and that she objected to the said burial on her land. That she was slapped by one Jeje - a daughter of the deceased person. Even if the Appellant did not protest, she decided not to take the laws into her hands and she went to court to sue. Her suit, is a civilised

way of handling the matter in my respectful view. It is of no moment to me that she did not fight or raise hell at the said burial.  
(p. 363 E/H)

### **REPRESENTATION**

The appellant was absent and not represented by counsel. Chief (Sir) A. O. Eghobamien, SAN (Mr. Oghie Ukuwehah with him) for the 2nd Respondent

### **CASES REFERRED TO**

BON LTD VS. BABATUNDE (2002) 7 NWLR (PT.766) 389  
OYEDIRAN VS ALEBIOSU II (1992) 6 NWLR (PT.249) 550  
IGBINOBA VS IGBINOBA (1995) 1 NWLR (PT. 371) 375  
ARASE VS ARASE (1981) 5 SC 33  
NSIRIM VS NSIRIM (2002) 3 NWLR (PT. 755) 697  
ADEYANJU VS WAEC (2002) 13 NWLR (PT. 785) 479  
IDUNDUN VS. OKUMAGBA (1976) 9-10 S.C. 277  
NWOSU VS BOARD OF CUSTOMS & EXCISE (1988) 5 NWLR (PT. 93) 22  
NNEJI VS. CHUKWU (1996) 10 NWLR (PT. 478) 265  
COKER VS. OGUNJOLA & ORS (1985) 6 S. C. 223

### **LEAD JUDGMENT BY ADEREMI JSC**

This is an appeal against the judgment of the Court of Appeal (Benin Division) in No CA/B/284/97. Madam Meminotu Ibrahim vs. DR. Lasisi Osunde & Ors. delivered on the 11th of February 2002 dismissing the appellant's appeal against the judgment of the High Court of Justice holden at Benin-city, Edo state which had earlier dismissed the claims of the plaintiff (the present appellant) in toto but granted all the reliefs claimed by the defendants in each of their respective counter - claims. The judgment of the trial court in respect of the claim and counter-claims was delivered on the 23rd of May, 1995.

With the leave of the trial court, both parties amended their respective pleadings. In her amended statement of claim, the plaintiff/appellant claimed against the defendant/respondents jointly and severally as follows:

*"1. A declaration that the plaintiff is the owner by inheritance*

*of all that parcel of land verged RED in plan No. JAA/BD/403/88 of 11th August 1988 filed along with this statement of claim and that she is the only person entitled to be granted a Certificate of Occupancy in respect of the said parcel of land*

2. *An order of perpetual injunction restraining the defendant by themselves servants and/ or privies from doing on the land anything inconsistent with rights and interest of the plaintiff.*”

Although the 1st - 3rd defendants/respondents filed a joint defence, each of them however filed a separate counter-claim. The final pleadings upon which the trial was predicated are (1) the amended statement of claim deemed to have been properly filed with the leave of court on the 10th of April 1991 and (2) second further amended joint statement of defence and the separate counter-claims of each of the 1st, 2nd and 3rd defendants/respondents deemed to have been filed and amended on the 24th of April 1991. In his separate counter-claim, the 1st defendant/counter-claimant counter-claimed against the plaintiff, as defendant to the counter-claim, as follows:

“(1) *A declaration that he (1st defendant/counter-claimant) is the person entitled to statutory right of occupancy to all that piece or parcel of land verged blue in Plan No OSA/1933/BD88 filed with the statement of defence which is bounded by survey beacons Nos MG.1290, MG 1291, CP7, PC7828, CP8 AND MG 1293.*

“(2) *Damages of N1000.00 against the plaintiff for her trespass unto the 1st defendant’s land.*

“(3) *Perpetual injunction against the plaintiff, her servants, agents and/or privies from further trespass unto the said land.*”

For his part, the 2nd defendant/counter-claimant counter-claimed against the plaintiff, as defendant to the counter-claim, as follows:

“(1) *A declaration that he (2nd defendant/ counter-claimant) is the person entitled to statutory right of occupancy to all that piece or parcel of land verged yellow in Plan No OSA/1933/BD88 filed with the statement of defence which is bounded by survey beacons Nos MG 1291, CP17, CP4, CP5, CP6 and CP7*

“(2) *An order of perpetual injunction against the plaintiff, her servants, agent and/or privies from entering the said land or doing anything whatsoever on the said land.*”

Finally, in respect of the counter - claim, the 3rd defendant/ counter-claimant, counter-claimed against the plaintiff, as defendant to the counter - claim, as follows:

*“(1) that having succeeded to his childless elder brother, late Jibrila Braimoh (Ibrahim) Guobadia, in accordance with Benin Na-  
tive law and Custom, is the one entitled to inherit all that parcel of  
land situate at Mission Road, Benin City within Benin City Judicial  
Division containing an area of about 1458,646 square metres and  
verged red in Plan No OSA/1933/BDSS filed by the defendants in  
this suit and he is therefore the person that is entitled to statutory  
right of occupancy in respect of the said parcel of land.”*

*(2) An order for the plaintiff to render an account to the 3rd defendant in respect of the monies, rent and profits collected or re-  
ceived or to be collected by the plaintiff and/or her agents from the  
part of the land verged red in survey plan No OSA/1933/BD88 filed  
herewith.*

*(3) Perpetual injunction restraining the plaintiff and/or agents,  
servants or privies from trespassing or doing anything whatsoever  
into the said land which is the portion verged red in Plan No OSA/  
1933/BD88 filed herewith until after the determination of this suit.”*

Both parties called evidence in proof of the respective aver-  
ments in their pleadings. After taking the oral addresses of their re-  
spective counsel, the learned trial judge, in his judgment delivered on  
the 23rd of May 1995 dismissed the plaintiff/appellant’s case in toto  
and allowed the counter -claim of each of the 1st, 2nd and 3rd de-  
fendants/respondents/counter - claimants. In so doing the learned  
trial judge held inter alia;

*“In this case there are conflicting evidence and submission on  
the issue whether senior brother can inherit the property of a de-  
ceased junior brother who dies without issue and another view is that  
a senior brother cannot inherit the property of a junior brother but a  
junior brother can .....*

*From the foregoing it is obvious that the plaintiff and her wit-  
ness have contradicted themselves in their statements made in this  
court and previous proceedings in every material particular on the  
issue of who buries or inherits the property of a deceased junior  
brother.....*

*It is my considered view therefore, that the evidence of the*

plaintiff on the issue of who buries and/or inherits the property of a junior brother who died childless is contradictory and unreliable. In the circumstance, the authority of *BENIN LAW AND CUSTOM* by Jacob U. Egharevba on this issue under consideration cited by the learned counsel for the plaintiff is not supported by any credible evidence and is therefore inapplicable.....

In Benin, final burial ceremony in accordance with Moslem rites which the plaintiff alleged she did is in my view inconsistent with the mode of inheritance under the Bini Customary Law of inheritance. Accordingly, the plaintiffs case even on this issue alone and from the foregoing, lacks merit and is hereby dismissed.”

**ON THE COUNTER -CLAIM:**

The learned trial judge held:

“All the parties to this suit, it is agreed, claim their root of title from Exhibit C3 which contains what the late Iman Braimoh Ibrahim Guobadia gave to his children. The 1st defendant has established that he inherited the land in dispute from his mother in accordance with Bini Customary Law. Exhibits K and L show acts of possession and ownership and so is the grave reflected on exhibits J which was by his own consent. All these were acts of ownership and possession which were not seriously challenged. I am convinced and satisfied that 1st defendant has proved his counter-claim on balance of probability and I so hold.

The 2nd defendant has also testified that he inherited the land in dispute in his counter - claim through his father who was a grand-child of the late Iman Braimoh Ibrahim Guobadia.. ...The 2nd defendant has shown by evidence, however, that he is in possession of the land in dispute in his counter - claim and has exercised sufficient acts of ownership over the years to entitle him to his claim. The 2nd defendant has therefore proved his case on balance of probability and I so hold.

The 3rd defendant who is the youngest child of the late Iman Braimoh Ibrahim Guobadia claims his root of title by inheritance per Exhibit C3 from his father ..... The evidence given by each of the three defendants seems consistent, cogent, reliable and unchallenged. Their version of the evidence of this issue was supported by P.W.5 supra. I am inclined to believe them that under Bini Customary law it is not right to inherit the property of a junior brother



*who died childless. However, the 3rd defendant has, in my view established acts of possession and ownership over the years on the land in dispute in his counter - claim and has therefore proved his case on balance of probability as required by law."*

Accordingly, the reliefs claimed by the 1st, 2nd and 3rd counter-claimants were granted by the trial court. B

Dissatisfied with the entire judgment, the plaintiff/appellant lodged an appeal to the court below. With the leave of court, the original Notice of appeal was amended. After taking all the arguments based on all the issues formulated before it, the court below, in a reserved judgment delivered on the 11th of February, 2002, allowed the appeal against the 1st and 3rd respondents and consequently granted her (the appellant) the statutory right of occupancy in respect of the house No 18B Idahosa Street, Benin -City and the parcel of land on Mission Street where Mobil Oil Nigeria Limited have their offices which is delineated in the Plan No CA 22/48 and bounded by beacons OA806, OA807 and OA809 Registered as No 31 at page 31 in volume 132 of the Lands Registry in the office at Benin. But the appeal against the judgment of the trial court in respect of the counter - claim of the 2nd defendant/respondents /counter - claimant was dismissed; thus affirming the judgment of the trial court on the 2nd defendant/respondent/counter - claimant. In so doing, the court below reasoned: C D E

*"I agree with the submission made by learned counsel on behalf of the 2nd respondent namely the P.W.4's evidence favoured the 3rd defendant. While house No 18B Idahosa Street belongs to the plaintiff, she cannot claim ownership of the area of land where the 2nd defendant's father's grave is located. There is evidence of contiguity in respect of house No 18B Idahosa street, the house of the 2nd defendant and the vacant parcel of land where, the 2nd defendant's father was buried. Unlike the 2nd defendant, the 1st defendant who was born on the 27th July, 1930 first noticed that his land was being trespassed upon in the late 1950 and all he could do was to complain to the father of 2nd defendant. His counter - claim like that of 3rd defendant ought to fail. F G H*

*It is therefore safe to conclude that the plaintiff adduced enough evidence showing the house No 18B Idahosa Street belonged to her father, so also the area leased to Mobil Oil Nigeria Plc. However, the*

plaintiff did not prove that the 2nd defendant trespassed on her land when he buried his father on the vacant plot without protest. The counter - claim of the 2nd defendant against the plaintiff in respect of the area of land where he buried his father is found proved consequently, judgment shall be entered for the plaintiff in respect of the  
 B area of land on Mission road where the Mobil Oil Nigeria Plc is located as well as house No 18B Idahosa Street, Benin City. The appeal against the 1st and 3rd respondents is therefore allowed. The 1st and 3rd defendants's counter - claim ought to have failed and  
 C are accordingly dismissed. The learned trial judge was right in giving judgment to the 2nd defendant on his counter - claim. The appeal against the judgment in favour of the 2nd defendant on the counter - claim fails and is accordingly dismissed."

Again, being dissatisfied with the judgment of the court below  
 D the 1st and 3rd respondents/counter - claimants have appealed to this court in respect of the part of the judgment of the court below that dismissed their counter - claims. Their Notice of Appeal is dated and filed on the 3rd of May 2002. Similarly, the plaintiff/appellant has appealed against that part of the judgment of the court below  
 E that upheld the counter - claim of the 2nd respondent. Her Notice of Appeal is the one dated and filed on the 30th of May 2002. It is pertinent here to remark that the 1st and 3rd respondents/counter - claimant/appellants have since died. Suffice it to say that they did not pursue their appeal any longer. The plaintiff/appellant in the appeal  
 F lodged against the judgment of the court below which went in favour of the 2nd respondent has identified two issues from the grounds of appeal contained in his Notice of Appeal. The two issues so identified for determination by this court are as follows:

G "(1) Whether failure by owner of land to make verbal protest against an act of trespass committed in his presence in his land is enough ground for declaring the trespasser owner of the land.

H "(2) Whether the 2nd defendant/ respondent made out a case in his counter claim which was capable of being supported by the evidence of the 4th witness called by the plaintiff/appellant."

The 2nd defendant/respondent for his part has raised only one issue for determination, and as set out in his brief of argument, it is in the following terms:

"Whether, having regard to the state of pleadings and evidence

*adduced by the parties, the Court of Appeal was right in upholding the judgment of the trial court in favour of the respondent on his counter-claim.”*

When this appeal came before us for argument on the 17th of November 2008, the appellant and his counsel, were absent from the court, but from the records, he (the appellant) was served with the hearing notice on the 23rd of April 2008. Counsel for the 2nd defendant/respondent Chief (Sir) Eghobamien, SAN was however present. Since all the briefs of the parties were filed in the court, we, in accordance with the rules of this court regarded the appeal as having been argued. The learned senior counsel for the 2nd defendant/respondent therefore, formally referred to, adopted and relied on his client’s brief dated and filed on the 28th of February, 2005 and urged us to dismiss the appeal.

I have carefully examined the two issues in the appellant’s brief of argument along side the one issue identified by the respondent, it is my view that the only issue identified by the respondent dovetails into the two issues, put together, raised by the appellant. I shall therefore, in this judgment take all of them together.

In arguing the two issues raised in her brief the appellant has argued in her brief, that having attained her majority in 1969, one S.E. Lawal (The father of 2nd defendant/respondent) and Joseph Egharevba, the eldest surviving son of that Benin historian - Jacob U. Egharevba handed over, at a ceremony, the estate of her late father (Abdul Karim Ibrahim Guobadia) who had died intestate on the 15th of March 1950, According to her, both S. E Lawal (now deceased) and A. K .Ibrahim Guobadia (now deceased) were appointed administrators of the estate of late Abdul Karim Ibrahim Guobadia, as the plaintiff and her half brother one Ganiyu were minors at the time of the death of their father. Because Jacob U. Egharevba had gone blind by the time the plaintiff/appellant attained majority. Joseph U. Egharevba had to stand in for his blind father at the handing- over ceremony in 1969. It is perhaps necessary to say here that upon the appointment of Jacob U. Egharevba and S. E. Lawal (both now deceased) the two appointed Joseph Egharevba, who testified as P.W.5 during the proceedings, as their secretary. The plaintiff/appellant claimed she encountered no problem from the time the estate was handed over to her in 1969 until the death in 1984 of S. E. Lawal

Ors of the two original administrators of the estate and the 2nd defendant/respondent, his eldest son dug a grave on part of the plaintiff's land, earlier handed over to her in 1969, and buried his said late father there. Simultaneously, the 1st and 3rd defendants began claiming part of the said land and building on another portion of the land respectively, it was what she considered as acts of trespass by the 1st, 2nd and 3rd defendants/respondents that led to this suit and she was the only survivor of those who handed the estate to her. She referred to the evidence of P.W.5 - Joseph Egharevba which was to the effect that the area of land handed over to her (plaintiff/appellant) was the area verged RED claimed by the plaintiff in Exhibit C her litigation survey Plan. The witness (PW5) having not been cross-examined on this point, his evidence should be believed and acted upon, she submitted adding that the trial court and the court below were wrong in law, to have ignored this all-important evidence. It was also her submission that filing of the present action is a legally recognized way of protesting against the conduct of the 2nd defendant/respondent of burying his father in the part of the land which the plaintiff claimed. Referring to the counter - claim of the 2nd defendant/respondent she submitted that there was no scintilla of evidence on record in support of the reliefs claimed in the counter - claim; even, the documents pleaded in support of the counter - claim were never tendered in evidence by the counter - claimants. That lapse alone she submitted, was fatal to the success of the counter - claim while relying on the decisions in (1) BON LTD VS. BABATUNDE (2002) 7 NWLR (PT.766) 389 (2) OYEDIRAN VS ALEBIOSU II (1992) 6 NWLR (PT.249) 550 and Section 149 (D) of the Evidence Act. She also referred to the evidence of P.W.4 - Stephen Ogbeide- and submitted that there was nothing in that evidence which supported the holding by the courts below that title in the said piece of land was legally established in the 2nd defendant/respondent. She urged that the appeal be allowed.

On the other hand, the 2nd respondent, through his brief of argument, had submitted that the evidence of P.W.1- Abdullahi Guobadia - given under cross-examination which is thus:

*"I know that the 2nd defendant's father lived and died in 'the house opposite Idahosa Street, Benin - City.'"*

is supportive of the contention of the 2nd defendant/counter - claim-

ant and he inherited, in accordance with the law, his late father's Igiogbe of which the land where the deceased was buried was part and parcel under the Benin Native Law and Custom, while further relying on Exhibit J tendered during the proceedings, he placed reliance on the decisions in such cases as (1) IGBINOBA VS IGBINOBA (1995) 1 NWLR (PT. 371) 375, (2) ARASE VS ARASE (1981) 5 SC 33 and (3) Oke Vs. Oke (1974) 3 S. C. 1; adding that the 2nd respondent has, through evidence, shown that he was in possession of the land in dispute in his counter - claim and has exercised sufficient acts of ownership on same over the years to entitle him to the reliefs claimed. He also referred to the judgment of the court below which affirmed the findings of the trial court and concluded that the two findings are concurrent and cannot be faulted by this court while placing reliance on the decision on NSIRIM VS NSIRIM (2002) 3 NWLR (PT. 755) 697. It was also his argument that having not protested when the father of the 2nd respondent was being buried on the land in dispute it was too late in the day for the appellant to now complain; placing reliance on the decision ADEYANJU VS WAEC (2002) 13 NWLR (PT. 785)479.

In concluding, he submitted that his counter - claim was based on inheritance under Benin Native law and Custom as reflected in the pleadings and supported by the evidence he led, the appellant, he further added, has not justified, through her evidence, why judgment should be entered in her favour, he finally added that the decision in IDUNDUN VS. OKUMAGBA (1976) 9-10 S.C. 277 is inapplicable to his counter - claim while urging that the appeal be dismissed.

At the risk of sounding to be repetitive but for a proper understanding of this judgment, I wish to restate the facts of this case as reflected by the pleadings of the plaintiff/appellant on one side and the defendant/counter -claimants/respondents on the other side. The amended statement of claim, when gleaned, shows that one Abdul Karim Ibrahim Guobadia died intestate on the 15th of March 1950 and while alive he had two landed property. At his death, he was survived by two children both of who were minors then. They were Madam Meminotu Ibrahim (the plaintiff/appellant) and her junior half- brother -Ganiyu. For the reason of being minors at the death of their said late father (A. K Ibrahim Guobadia) two people namely: Chief Jacob U. Egharevba and Mr. S. E. Lawal were appointed to

administer the deceased's estate. The two administrators of the estate, on their own, appointed J. A. Egharevba, the son of Jacob U. Egharevba as the secretary to the estate. Ganiyu, the half brother of the plaintiff/appellant, later died leaving the appellant as the only surviving child of A. K. Ibrahim Guobadia. One Iman Ibrahim

B Guobadia (now deceased) was the father of A. K. Ibrahim Guobadia and Jibrila Ibrahim Guobadia both by the same mother. Upon the death of Imam Ibrahim Guobadia, his property were shared among his children which included the father of the plaintiff and his junior brother - Jibrila in 1935. The portion of the landed property shared

C to Jibrila was what the 3rd defendant/respondent trespassed upon. Upon the death of Jibrila Ibrahim, the father of the plaintiff, by name, A. K. Ibrahim Guobadia inherited his (Jibrila) share of property according to Bini Native Law and Custom, even though Jibrila was his

D junior brother. It is common ground between the two parties that the 3rd defendant who was one of the children of Iman Ibrahim Guobadia, was one of the beneficiaries of the sharing of the estate in 1935 and the parcel of land shared to him was located behind that of Ruka Ibrahim at off Mission Road. Upon the death of A. K. Ibrahim

E Guobadia (father of the plaintiff) in March 1950 one S. E. Lawal, later deceased, upon the instructions of the family built a house on the portion of plaintiff's land verged green with part of the result collected from SCPA. Suffice it to say that the plaintiff/appellant had

F put tenants in the building on the area verged green before the defendant's trespass. Of course, the tenants put in that house by the plaintiff were forced out as a result of the trespass. By a document made on 15th of May 1969, the administrators handed over the estate of the late Abdul Karim Ibrahim to the plaintiff/appellant. She

G averred that she profusely protested the trespass committed by the 3rd defendant. The 2nd defendant's trespass finds expression in the unauthorized extension of his (2nd defendant) building into her land and digging of a grave on the land where despite protestation by the plaintiff, he (2nd defendant) buried his father in 1984. Since the

H time the estate was handed over to her, the plaintiff averred that she had built two flats by the side of the old house she inherited. The plaintiff further averred that she had no problem with the property handed over to her by the administrators. It was only after the death of S. E. Lawal, the 2nd administrator, that the defendants/respon-

dents began making false claims of ownership to part of her property. For their part, the case put up by the 1st to 3rd defendants/respondents in the 2nd further amended joint statement of defence and counter - claim dated 24th April 1991 is as follows: the late Iman Braimoh (Ibrahim) Guobadia who died intestate on 17/5/34 was a Bini man and a Moslem whose children were (a) Alhaji M. I Ibrahim Guobadia (M) deceased, (b) Madam Sarah Ibrahim Guobadia (F) deceased, (c) Madam Alinotu Ibrahim Guobadia (F) deceased, (d) Madam Modinatu Ibrahim Guobadia (F) deceased, (e) Malam A. K. Ibrahim Guobadia (M) deceased (f) Malam Jibrila Ibrahim Guobadia (M) deceased, (g) Madam Ruka Ibrahim Guobadia (F), (h) Madam Sinoba Ibrahim Guobadia (F) and (i) Malam Nuraimi Ibrahim Guobadia (M). Suffice it that the 1st and 3rd defendants/respondents have since died. The plaintiff was the daughter of late Malam A. K. Ibrahim Guobadia who died on 6/1/50 and who was the second son of late Iman Braimoh (Ibrahim) Guobadia. The 1st defendant was the eldest surviving son of late Alimotu Osunde (Nee Ibrahim), the 2nd defendant is the eldest surviving son of late S. E. Lawal who himself was the eldest and only surviving child of late Mrs. Sarah Akintola (nee Ibrahim Guobadia) while the 3rd defendant is the only surviving son of late Iman Braimoh (Ibrahim) Guobadia. After the death of Iman Braimoh (Ibrahim) Guobadia his property were shared as follows:

(1) The houses at No 52 Lagos Street, (otherwise known as Okemolo and rubber plantation at Okhoro, Benin-City) were shared by the Guobadia family to Alhaji Momoh Jimoh Ibrahim his eldest son

(2) The land adjacent to the house inherited by the 2nd defendant was shared to Mrs. Alimotu Osunde (nee Ibrahim Guobadia)

(3) The house and land verged purple in Plan No OSA/1933/BD88 was inherited by Malam A. K Ibrahim Guobadia which houses he later demolished.

(4) The late Malam Jibrila Ibrahim Guobadia inherited the land verged RED in Plan No OSA/1933/BD88.

It is common ground between the parties that Malam Jibrila Ibrahim Guobadia was the full blood junior brother of late A. K. Braimoh Ibrahim Guobadia who pre-deceased his senior full blooded brother. The said Malam Jibrila Ibrahim Guobadia died on 1/2/49

without any issue or a wife. Upon the death of A. K Ibrahim Guobadia on 6/1/50 administrators were appointed by the family to administer his estate and that of his brother Jibrila Ibrahim Guobadia verged purple and red respectively. It is also their case that the land shared to both A. K. Braimoh Ibrahim Guobadia and Jibrila Ibrahim Guobadia is where the Mobil Station is and it is verged brown in Plan No OSA/1933/BD88 which the defendants filed. Again, it is their case that A. K. Ibrahim was survived by two children namely: late Abdul Ganiyu Ibrahim and the plaintiff. A. K. Ibrahim's property verged purple which forms part of the Mobil Petrol Station according to them, was not shared because Ganiyu Ibrahim was a minor and was schooling then. It was their further case that in 1969, the administrators erroneously handed over a document relating to the land belonging to the late Jibrila and A. K. Ibrahim to the plaintiff who had since been collecting rents from Mobil OH Company without accounting to anybody. When S. E. Lawal, the father of the 2nd defendant died on 17/7/84, the 2nd defendant buried him on the land in dispute shown as grave "B" in Plan No OSA/1933/BD88 without let or hindrance nor any protest from the plaintiff who was present at the interment.

As I have earlier said, both parties led evidence in support of the averments in their respective pleadings. It is common ground that upon the death of A. K. Ibrahim Guobadia (father of the plaintiff and one Ganiyu, the half brother of the plaintiff) in 1950 - the two of them being minors at the time, two people namely Chief Jacob U. Egharevba and Mr. S. E. Lawal were appointed by the family to administer the estate of the deceased-A. K. Ibrahim Guobadia.

The two administrators then proceeded to appoint Joseph Egharevba PW.5 - as their secretary. Suffice to say that the said Joseph Egharevba was the son of Chief J, A Egharevba, one of the administrators so appointed. It is common ground that Ganiyu, the junior half brother of the plaintiff/appellant and one of the beneficiaries of the said estate later died childless and unmarried thus leaving the plaintiff/appellant as the only beneficiary of the estate. Again, it is not in dispute that Jibrila, the full blooded junior brother of A. K Ibrahim Guobadia died and his own share of the property of their late father who died in 1935 was inherited by A. K. Ibrahim Guobadia, his senior brother. When the plaintiff/appellant attained the age of



majority, S. E. Lawal (the father of the 2nd defendant/respondent) and Joseph Egharevba who had later gone blind handed over the entire estate to the plaintiff/appellant at a ceremony in 1969. Trouble would seem to start when upon the death of S. E. Lawal in 1984, the 2nd defendant/respondent; his eldest son, dug a grave on part of the plaintiff's land earlier handed over to her in 1969 and buried his father there. It is here important to recall the evidence of Joseph Egharevba the son of Chief Jacob U. Egharevba, he, one of the two administrators of the estate before the handing over and who testified as P.W.5, said in his evidence and I quote him:

*"I was the Secretary to the Administrators of the estate. I was Secretary to the Administrators from 1969 to 1970. I signed Exhibit A. Exhibit A was made after the property of the deceased was handed over to the plaintiff. After handing over the property to the plaintiff I ceased to be Secretary. My father was still alive when the property was handed over to the plaintiff. My father was not 'physically present at the site (sic) the property was handed over to the plaintiff. The 2nd defendant's father late S. E. Lawal was present and I was present....."*

*The property is situated between Mission Road and Idahosa Street. The property is 180 feet wide along Mission Road and about 300 feet long. The Mobil Filling Station is part of the property. The 3rd defendant's house facing Mission Road is part of the land handed over to the plaintiff. The underdeveloped piece of land behind Lawal's house is also part of the land handed over to the plaintiff. The land behind the 1st defendant's house is also part of the land handed over to the plaintiff ..... Where the 2nd defendant's father was buried is part of the land handed by the administrators to the plaintiff....."*

*Under Bini Customary Law it is a full blooded brother who inherits his property ..... The 2nd defendant's father did not also lay claim to the said property."*

Under cross-examination, this witness again said:

*"A senior brother of full blood can inherit the property of a junior (sic) died intestate."*

I have carefully examined the evidence of P.W.5 under cross-examination, the vital pieces of evidence that I have quoted supra were never challenged. I must however observe, regrettably though, that the two courts below never acted on these vital pieces of evi-

dence of P.W.5 Exhibit A is the handing - over document dated 15th May 1969 signed by the two administrators. P.W.5 as their secretary - a member of the family, and another by which the estate was transferred to the plaintiff/appellant who herself signed the document. Exhibit B is the instrument dated 4th November 1971 Registered as B No 31 at page 31 in volume 132 of the Lands registry in the Office at Benin -City signed by the two administrators and the plaintiff/appellant as the sole beneficiary of that estate by which the entire property were conveyed to the plaintiff/appellant as the sole beneficiary . From Exhibit G the survey Plan No JAA/BD/403/88 showing the pieces of land in dispute, the area verged Green is the plaintiff's land trespassed upon by the 1st defendant/respondent - now deceased; the area verged blue thereon is the land trespassed upon by the 2nd defendant/respondent; the area verged Yellow is that trespassed upon D by the 3rd defendant/respondent while the area verged Black is the land leased to Mobil Oil Nigeria Ltd.

***As I have earlier said P.W.5 a vital witness whose evidence was very material to the determination of this case, was never challenged. Thus, these pieces of very crucial evidence stand there like the Rock of GILBRALTAR, uncontroverted. They point to the fact that the ownership thereof is in the plaintiff/appellant. That evidence ought to be acted upon.*** Rather the 2nd respondent has through his brief of argument contended, spiritedly, that the evidence of P.W.1 - one Abdullahi Guobadia, a member of the family supported the case of the 2nd respondent when he testified thus:

*"I know that the 2nd defendant's father lived and died in the house opposite Idahosa Street, Benin -City.*

G While I will not say that the above testimony of P.W.1 has any evidential value that supports, in any measure, the case of the 2nd respondent, suffice it to say that pieces of evidence in his testimony materially favour the plaintiffs case and such are when he said:

*"The estate of late Abdul Karim was handed over to the plaintiff in 1969..... It is not correct in Bini custom that a senior person cannot inherit the property of a junior person, if a junior person dies without a son the senior person can bury the junior....."*

*The whole of the land stretching from Mission Road to Idahosa*

*Street was given to the plaintiff's father by the late Jacob Egharevba and by her late father."*

**The 2nd respondent while further capitalizing on the evidence of P.W.1 to the effect that his (2nd defendant/respondent) father lived and died in the house opposite Idahosa Street, Benin- City, the 2nd respondent, rightly, in line with the Bini Customary Law, inherited his late father's assumed Igiogbe. The Bini Customary Law upon which this assumption was predicated is a notorious one which must be judicially noticed. That, I have no doubt of, having regard to the plethora of judicial decisions on this point. But, before the said custom can come into play, certain pre-conditions must have taken place. It must be legally established that the ownership in the house which would be inherited by the 2nd respondent as his father's Igiogbe was on a firma terra. That the property was legally that of his (2nd respondent) father. *S. E Lawal*, the father of the 2nd respondent was one of the two administrators appointed to administer the estate of A. K Ibrahim Guobadia for and on behalf of the plaintiff and her deceased junior half brother. It is the same property he (*S. E. Lawal*) later went and lived on and eventually died there which the 2nd respondent is now assimilating to be his late father's Igiogbe. It is wrong, in law, for an administrator of an estate or anybody claiming through him, to assimilate that property to his own, Equity will not even permit that under any guise. To say the least, it is gross abuse of office. Administrators or executors are trustees of the property placed in their care, so to say, on trust to the beneficiaries. A heavy duty is placed on those in whom trust and confidence are reposed to show the righteousness of their transactions with the property entrusted to them. No ownership known to law can ever be conferred on an administrator in respect of the property subject- matter of that administration. Such an administrator, the like of *S. E. Lawal*, cannot have possession of such a property which will ever have any legal blessings. So *S. E. Lawal* cannot in the least, give out the possession of the property which never belonged to him, in law. The saying is that "No one gives who possess not." The Maxim is "NEMO DAT OUD NON HABET" Indeed, he gives**

nothing who has nothing, again the Maxim is NIHIL DAT OUD NON HABET. **If S. E. Lawal had, taken advantage of his position as an administrator of the estate of A. K. Ibrahim Guobadia, created an impression of legal ownership of any of the property subject matter of the administration in his favour such that his**  
 B **most senior son or any son or member of his family could now take advantage of it after his death, to acquire the property, that would be a serious wrong doing. The time-honoured principle is that No one can or shall take advantage of his own wrong doing, the Maxim is” NULLUM COMMODUM CAPERE POTEST DE INJURIA SUA PROPRIA” EX TURPI CAUSA NON ORITUR ACTIO.** Lord Widgery put this proposition in a glowing language when in BUSWELL VS. GODWIN (1971) 1 ALL E.R 421 he said and I quote:

D **“The proposition that a man will not be allowed to take advantage of his own wrong is no doubt a very salutary one and one which the court would wish to endorse”**

Let me say that no polluted hand shall be allowed to touch the pure fountain of justice. One shall not have a right of action when  
 E one comes to a court of justice in the unclean manner the 2nd respondent nay, the deceased 1st and 3rd respondents have approached the court with their counter - claims. The facts of this case reveal a clear case of the 2nd respondent taking, unconscientiously, advantage of his relationship with the estate. The above discourse, alone,  
 F without more, is sufficient, in law, to put an end to their counter - claims. **It is true that the two courts below have made concurrent findings of facts in favour of the 2nd respondent and indeed the two other deceased respondents. Generally, the law**  
 G **is that concurrent findings of facts cannot ordinarily be disturbed by the appellate court. But, where the findings of the courts below, as in the instant case, have shown that the conclusion reached was patently wrong or perverse, then an appellate court, which this court is, can, in the interest of justice, interfere.** See (1) NWOSU VS BOARD OF CUSTOMS & EXCISE (1988) 5 NWLR (PT. 93) 22, (2) NNEJI VS. CHUKWU (1996) 10 NWLR (PT. 478) 265 AND (3) COKER VS. OGUNJOLA & ORS (1985) 6 S. C. 223. **It is therefore, with respect, my view that the findings of the two courts below are very much perverse**

**and i hereby set them aside. The two courts below were wrong, both in law and in equity, in their decisions. Consequently, the two issues formulated by the appellant in her brief of argument are hereby resolved in her favour. While the one issue identified by the 2nd respondent in his brief is hereby resolved against him. This appeal is therefore allowed.** The judgment of the two courts below are hereby set aside. In their places I hereby order as follows:

1. Judgment is hereby entered in favour of the Plaintiff/appellant as follows:

(a.) It is hereby declared that the plaintiff/appellant is the owner, by inheritance, of all that parcel of land verged RED in Plan No JAA/BD/403/88 of 11th August 1988 filed along with the statement of claim and that she is the only person entitled to be granted a Certificate of Occupancy in respect of the said land.

(b) An order of perpetual injunction restraining the 2nd defendant/respondent by himself, his servants and/or privies from doing on the land anything inconsistent with the right and interest of the plaintiff/appellant, is hereby made.

For the avoidance of doubt, all the counter - claims of the 2nd defendant/respondent are hereby dismissed, I also set aside the cost awarded in favour of the 2nd respondent by the court below. In its place I hereby award N1,000.00 (One thousand naira) as costs against the 2nd defendant but in favour of the plaintiff at the trial court; N2,000.00 (two thousand naira) only as costs against the 2nd respondent, but in favour of the appellant at the court below. I also award N50,000.00 (fifty thousand naira) only as costs in favour of the appellant but against the 2nd respondent in this court.

### **OGUNTADE JSC**

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Aderemi JSC. I agree with his reasoning and conclusion. I would also dismiss the counter-claim raised by the defendant/respondent. I subscribe to the orders made on costs in the lead judgment.

**OGBUAGU JSC**

This is an appeal against the Judgment of the Court of Appeal, Benin Division (hereinafter called “the court below”) delivered on 18th February, 2002, dismissing the Appellant’s appeal against the Judgment of the Edo State High Court of Justice at Benin Judicial Division presided over by Akhigbe, J. delivered on 23rd May, 1995, dismissing the Appellant’s claims and granting the separate Counter-Claims of the three former Defendants/Respondents.

Dissatisfied with the said Judgment, the Appellant appealed to this Court on two grounds of appeal. The Appellant has formulated two issues for determination, namely,

- “(1) *Whether failure by owner of land to make verbal protest against an act of trespass committed in his presence in his land is enough ground for declaring the trespasser owner of the land.*
- “(2) *Whether the 2nd defendant/respondent made out a case in his counter claim which was capable of being supported by the evidence of the 4th witness called by the plaintiff/appellant*”

On the part of the 2nd Respondent/Appellant, one issue has been formulated for determination, namely,

- “*Whether having regard to the state of the pleadings and evidence adduced by the parties, the Court of Appeal was right in upholding the Judgment of the trial court in favour of the Respondent on his Counter Claim*”.

I note that in the said issues of the parties, it is not stated on what grounds of appeal the said issues, were/are distilled from. However, since there are only two grounds of appeal, I take it that the said issues, arise from the said grounds.

I had the privilege of reading before now, the lead Judgment of my learned brother, Aderemi, JSC, just delivered wherein the facts of the case leading to the instant appeal, have been exhaustively stated. I will therefore, briefly, make my own contribution.

I will first, deal with the evidence of the PW.5 - Joseph Egharavba - a Journalist attached to the “Observer”, Benin City. He is the surviving son of late historian Egharavba who was one of the Administrators of the estate of late A.K. Ibrahim. He knew one late S.E. Lawal who was the second Administrator of the said estate. PW.5, was the Secretary to the said Administrators. He identified Exhibit A which was made after the property of the deceased, was handed over to

the Plaintiff/Appellant. It was after the said hand over, that he ceased to be the Secretary. That his said father, was still alive when the said property, was handed over to the Plaintiff/Appellant. That the 2nd defendant's father - late S.E. Lawal, was present as himself, when the said handover was effected. He described in some detail, the situation of the said property. His evidence in-chief and under cross-examination and Re-examination, appear from pages 58 to 61 of the Records. His evidence was not challenged nor controverted. Yet, the two lower courts, never considered or evaluated the crucial and material evidence of this witness. B

From the Records at pages 50 to 52, it cannot be true, that the evidence of P.W.1 Abdullahi Guobadia, supported the case or evidence of the 2nd defendant. He swore at page 51 of the Records, inter alia, that the estate of late Abdul Karim, was handed over to the Appellant in 1969. That the Appellant's grand father, owned from Mission Road by Mobil Petrol Station up to Idahosa Street. That the whole of this area/property, was given to the Appellant's father by the late Jacob Egharavba and the witness's late father. I note that the material evidence of P.W.1, supported the evidence of P.W.5 as to the ownership of the said property being in the Appellant. C

I note that it is the trespass by the 2nd defendant, that was one of the causes of the suit by the Appellant. She debunked the assertion that she did not protest during the burial. At page 64 of the Records, she testified that she was present during the burial of the 2nd defendant's late father and that she objected to the said burial on her land. That she was slapped by one Jeje - a daughter of the deceased person. That in spite of her protest, the 2nd defendant, went ahead with the burial. The fact that the P.W.4 stated in his evidence that there was no fighting or any protest about the place of burial in my respectful view, is of no moment. The Appellant understandably testified that she did not see P.W.4 on that day because, there were many people there. The P.W.4 did not say which area he was at the said burial where as expected, there were many people present. Even if the Appellant did not protest, she decided not to take the laws into her hands and she went to court to sue. Her suit, is a civilised way of handling the matter in my respectful view. It is of no moment to me that she did not fight or raise hell at the said burial. However, the P.W.4 who was a tenant in the house of the Appellant D

from 1975 to 1985, swore that during this period of his tenancy, nobody claimed ownership of the said house which he described where it is situated or located. The Appellant swore that the land behind the 2nd defendant's house, is part of her land which she inherited.

B In conclusion, I agree with the reasoning and conclusion in the said lead Judgment of my learned brother, Aderemi, JSC. I too, allow the appeal of the Appellant and Dismiss the appeal of the 2nd defendant in respect of his Counter- Claim. I abide by all the consequential orders contained in the said lead Judgment.

---

**MUNTAKA-COOMASSIE JSC**

This is an appeal against the decision of the Court of Appeal, D Benin Division delivered on 11th February, 2002 dismissing the Appellant's appeal against the judgment of the trial court dismissing the Appellant's claim and granting the 2nd respondent's counter-claim.

E I have read the lead judgment of my learned brother Aderemi JSC. His reasoning and conclusions tally with my understanding of the law on this matter. I therefore, with respect, adopt the same as mine. All the issues filed by the parties were dealt with decisively by my learned brother. I have no cause to disagree. Appeal is adjudged meritorious and the same is allowed. I allowed the appeal and abide F by the consequential orders made in the lead judgment. I endorse orders as to costs.

G

H