

SUPREME COURT OF NIGERIA
3RD APRIL, 2009. SC. 388/2002
CORAM:- A. I. KATSINA-ALU, A. M. MUKHTAR,
W. S. N. ONNOGHEN, P. O. ADEREMI,
C. M. CHUKWUMA-ENEH JJSC

CHIEF APPOLOS N. AMADI APPELLANTS
AND
FELIX CHINDA & OTHERS RESPONDENTS

PLEADINGS - Statement of claim - Amendment - Whether effective
- The original statement of claim is the extant statement of claim - As
the proposed amendment - Which counsel said was deemed prop-
erly filed - Was in fact not filed (H1)

APPEALS - Record of proceedings - Where incomplete - Appellant's
duty - It is the duty of appellant's counsel to obtain supplementary
record - If important documents affecting his appeal were omitted
(H2)

APPEALS - Issues - Raised suo motu - Propriety of - There was proper
pleading of special damages - This obviates the need to consider
propriety or otherwise of suo motu raising of the issue - By Court of
Appeal (H3)

PLEADINGS - Statement of claim - Averments - Sufficiency of - In
spite of non-filing of amendment -The original statement of claim is
unassailable - As far as the pleading of special damages is concerned
(H4)

ACTIONS - Claims - Binding effect - A judge is bound by claims of
the parties - He should not go beyond them - For doing so will be
granting reliefs not claimed (H5)

LAND LAW - Title - Proof - Sufficiency of - Appellant sufficiently
proved his case before trial court - Court of Appeal was therefore
wrong - To hold that he is not the holder of statutory right of occu-
pancy over the land (H6)

FACTS

The plaintiff/appellant sued the defendants/respondents jointly and severally claiming declaration of title to the land in dispute, damages for trespass and injunction. The case of the appellant was that he had bought the land from one Ahorlu Family via a deed of conveyance on which he was subsequently issued a C of O. The case of the respondents was that the land had always belonged to them and not to Ahorlu Family, accordingly the appellant's C of O based on a purchase from the Ahorlu family was a nullity.

In his pleading in support of his claim for special damages, appellant incorporated an estate valuer's report by reference instead of stating particulars thereof. After hearing, the learned trial judge gave judgment to the appellant as prayed. Aggrieved, the respondents appealed to the Court of Appeal which allowed the appeal on the ground, *inter alia*, that special damages was not sufficiently pleaded. The court also went further to give judgment to respondents though they never counterclaimed. Dissatisfied, the appellant has brought this appeal against the judgment of the Court of Appeal.

ISSUES FOR DETERMINATION

"1. Whether the learned Justices of the Court of Appeal were justified when they, suo motu, raised very vital issues on which they based their judgment in favour of the Defendants/Appellants/Respondents....."

2. Whether the learned Justices of the Court of Appeal were wrong in subtly nullifying the Plaintiff/Respondent/Appellant's Certificate of Occupancy in respect of this property when the Defendants/Appellants/Respondents did not make such a claim."

HELD (Unanimously allowing the appeal per **MUKHTAR JSC**)

Statement of claim - Amendment - Whether effective

1. The contention of the learned counsel that the proposed amended statement of claim was deemed as properly filed and served is erroneous, because there is nothing in the record of proceedings to that effect. It is in my view, for all intent and purposes, that the original statement of claim remained the only statement of claim for the purpose of the case, the proposed amendment vide the content of the memorandum of Amendment on page 37 of the printed record of

proceeding, not having been filed. (p. 827 E)

APPEALS - Record of proceedings - Where incomplete

2. Surely the appellant did not expect the court to use the memorandum of amendment as the amended statement of claim. If these documents i.e. the motion for extension of time to file amended statement of claim, and deeming order, and the amended statement of claim were inadvertently omitted in the record of proceedings, then it behoves on learned counsel for the appellant to apply and obtain a supplementary record of proceedings containing these important documents, to be placed before this court. There are definitely some omissions on the part of the appellant's learned counsel, most especially since he was making the decision of the lower court on this amendment an issue. (p. 827 H)

APPEALS - Issues - Raised suo motu - Propriety of

3. I will not delve into argument of the learned counsel on the impropriety of the lower court raising the issue of non-pleading of the special damages suo motu. This is because the averments in the pleadings which I have already reproduced supra contain the pleadings on wrongful act/and the circumstances that led to the claim of special damages, and so I am satisfied that there was proper pleading of the claim and reliefs before the trial court. The need to consider the propriety or impropriety of the learned Justice of the Court of Appeal that wrote the lead judgment suo motu making that aspect of the pleading an issue is therefore obviated. (p. 830 A)

Statement of claim - Averments - Sufficiency of

4. In the circumstance that I have found that the original statement of claim contain averments on special damages, the question of whether the amendment was done or not is of no moment or consequence whatsoever, in view of the content of the original statement of claim and its efficacy to the issue at stake. That is taking into account, my conviction that in spite of the non-filing of the amended statement of claim, the original pleading is unassailable as far as the special damages is concerned. We should not allow technicalities to becloud our sense of judgment. (p. 830 D)

ACTIONS - Claims - Binding effect

5. In the joint statement of defence of the defendants/respondents nowhere did the defendants counterclaim. As a matter of fact the learned trial judge in her judgment rightly confined herself to the reliefs sought and based her orders on them. The cardinal principle of law is that a judge is bound by the claims of parties and must restrict himself within the ambit of the claims, and grant the reliefs claimed and not go beyond or outside them, for doing so will be granting reliefs not claimed. (p. 832 B)

C LAND LAW - Title - Proof - Sufficiency of

6. What the court below did was to set aside the judgment of the trial court which in my view was merely tantamount to dismissing the appellant's claims. I suppose one could say the judgment may have the effect of saying the appellant is not the holder of a statutory right of occupancy over the piece of land described in the certificate of occupancy. Yes, it set aside the judgment of the trial court, but I am hereby setting aside its own judgment as being in error, and substituting it with the judgment of the trial court. I therefore find the appellant's case proved in the trial court, and grant the reliefs sought by the appellant and granted by the trial court. For the foregoing reasoning I resolve this issue in favour of the appellant, and allow the grounds of appeal covering it. (p. 832 E)

**F NOTABLE POINTS OF INTEREST
ONNOGHEN JSC**

1. Issue of special damages was raised by the lower court suo motu
I have gone through the record of appeal including the briefs of argument before the lower court and I agree with the learned counsel for the appellant that the issue of non pleading of special damages was raised by the lower court suo motu and without calling on the parties counsel to address it on same and consequently erroneous as the decision the court eventually reached on the appeal was based on that issue which was against the appellant and resulted in a miscarriage of justice since the appellant specifically pleaded special damages and tendered a valuation report exhibit "G" to prove same. (p. 833 E)

ADEREMI JSC*2. There is no evidence rebutting the C of O of the appellant*

The plaintiff/appellant still relied on Certificate of Occupancy in proof of his claim to the land, which was tendered as Exhibit A - the Certificate of Occupancy, though a prima facie evidence of title of the land covered by it and therefore rebuttable, there is no scintilla of evidence on record rebutting the title. The court below was therefore in error in reversing the judgment of the trial court. (p. 837 H) B

3. There is nothing sacrosanct about proof of special damages

There is nothing extraordinarily sacrosanct about 'SPECIAL DAMAGES' - proof of same. The rule only requires anyone asking for special damages to prove strictly that he did suffer such special damages. All he needs do is to adduce credible evidence of such a character as would suggest that indeed, he is entitled to the award under that head. And having adduced credible evidence in proof therefore, if there is nothing from the side of the adversary to counter that evidence, as in the instant case, the court is entitled to accept and believe the much alleged evidence, a thing the trial court rightly did. (p. 839 A) C
D
E

CHUKWUMA-ENEH JSC*4. Sua motu raising of issues negates fair hearing principle*

This Court has in numerous cases admonished lower Courts on the impropriety of raising points suo motu; in this case, the issue of special damage as not having been pleaded and proceeding to decide on it without affording the parties a hearing on the point i.e. before deciding upon it. It not only negates the principle of fair hearing, it impinges on constitutional rights of the parties as envisaged in section 36 of the 1999 Constitution. There can be no doubt that the instant point is so crucial as it has formed the very basis upon which the decision of the Court below is predicated to set aside the plaintiffs entire judgment as obtained from the trial Court and to find though erroneously that the issue of special damage is not pleaded nor proved. (p. 841 F) F
G
H

REPRESENTATION

Mr. Eberechi Adele - for the appellant.

Respondents and counsel absent.

CASES REFERRED TO

- Ashiru Noibi v, J. F. Ikolati & ors 1987 3 S.C 105
 George v. Dominion Flour Mills 1963 All NLR page 71
 B Emegokwue v. Okadigbo 1973 4 S.C. 113
 Eke v. Okwaranyia 2001 12 NWLR part 726 page 181
 Obasuyi v. Business Ventures Ltd. 2005 5 NWLR part 658 page 668
 Shell Petroleum Development Company v. Tiebo VII 1996 4 NWLR
 C part 445 page 657
 Chindo Worldwide Ltd. v. Total (Nig) PLC 2001 16 NWLR part 739
 page 291
 Attorney-General of the Federation v. A.I.C. Ltd. 2000 10 NWLR
 part 675 page 293
 D U.T.C. French Airlines v. Williams 2000 14 NWLR part 687 page 271
 Ogunleye v. Onu (1990) 2 NWLR part 135 page 745

STATUTES & RULES REFERRED TO

- Land Use Act, 1978, s. 2
 E High Court (Civil Procedure) Rules of Rivers State, 1987, O. 25 r. 4(1)

LEAD JUDGEMENT BY MUKHTAR JSC

- F The plaintiff, who is now the appellant based his claim for the
 land in dispute in this appeal on a deed of conveyance registered as
 No. 140 at page 140 in Vol. 5 of the Deeds Register kept at Port
 Harcourt, on which the plaintiff was issued with a Certificate of Occu-
 G pancy. The appellant bought the land, which he developed, from
 the Ahorlu family of Rumuokokwu, Nkpolu Oroworukwo, and went
 into physical occupation, constructed some buildings thereon and
 farmed on the undeveloped parts. In 1983, one Ebikabena Tantua
 instituted an action against the appellant, in respect of the land but it
 was struck out. In 1989, the Chinda-Nwoke family, of which the
 H defendants in this suit belong sued Anebo Ahorlu, original owners of
 the land in dispute in the Obio Customary Court. On hearing this,
 the appellant instructed his lawyer to inform the Customary Court of
 the plaintiff's interest in the land, but it nevertheless proceeded to
 give the plaintiffs in that case judgment. The respondents thereafter

trespassed on the land and went on a wanton destruction of the property, to wit the appellant reported the matter to the police, who came to his aid. The appellant instituted an action against the respondents jointly and severally claiming the following reliefs:-

“(a) *A DECLARATION that the plaintiff is the holder of a statutory Right of Occupancy over the piece of land variously known as “Ekwuodor or 59 Webo/49 National Street, Mile III, Diobu, Port Harcourt within the Jurisdiction of the Honourable court and more particularly described in certificate of Occupancy No. 69 at Page 69 in Volume 116.*”

(b) *Special Damage :-*

....	N472,500.00
General Damages				<u>N500.000</u>
Total				N972,500.00.

(c) *Perpetual Injunction restraining the Defendants by themselves, servants or agents from further trespass to the said property.”*

After filing the statement of claim and the defendants/respondents/appellant refused/neglected to file their statement of defence, the plaintiff filed a motion on notice for an order entering judgment in his favour in default of the defendants filing a Statement of Defence within the time limited by law. Thereafter the defendants/respondents filed and moved a motion on notice for an order of extension of time to file the statement of defence. They were granted the order as prayed. In their statement of defence, the defendants/respondents denied most of the plaintiffs/appellant’s claims to the effect that the land purchased by the plaintiff does not belong to the Ahorlu family as they are not members of the Chinda-Nweke family, but have boundary with it. According to the respondents the Certificate of Occupancy issued to the appellant was not in respect of the land in dispute, so the plaintiff has never been in possession of the land. The respondents averred that the plaintiff visited the defendants family in company of some persons with a view to buying the land in dispute, and they offered to sell for the sum of N250,000.00, but the appellant offered only N25,000.00.

Parties adduced evidence which were appraised by the learned trial judge, who in the final analysis found the plaintiff/appellant’s case proved and gave judgment in his favour. The respondents were not satisfied with the judgment, hence they appealed to the Court of

Appeal. The judgment of the trial court was set aside, and judgment was given in favour of the defendants, who are now the respondents in this appeal, which the plaintiff as appellant has filed in this court. In compliance with the rules of this court the appellant filed his brief of argument which was adopted by his learned counsel at the hearing
 B of the appeal, the respondents having refused/neglected to file their brief of argument. The appellant obtained an order to hear the appeal on the appellant's brief of argument only, hence this judgment will be based on the appellant's brief only. The issues raised for determination in the appellant's brief of argument are as follows:-
 C

"1. Whether the learned Justices of the Court of Appeal were justified when they, suo motu, raised very vital issues on which they based their judgment in favour of the Defendants/Appellants/Respondents....."

D *2. Whether the learned Justices of the Court of Appeal were wrong in subtly nullifying the Plaintiff/Respondent/Appellant's Certificate of Occupancy in respect of this property when the Defendants/Appellants/Respondents did not make such a claim."*

The argument of the learned counsel for the appellant under
 E issue (1) supra revolves around pleadings of the parties and the principles of law that govern them, particularly the decision of the lower court that the plaintiff/appellant did not plead special damage, and therefore no evidence ought to be led on that, and so the evidence
 F goes to no issue. I will reproduce the relevant averments in the original statement of claim to determine whether the special damage was pleaded. These averments are:-

*"16. On the 4/2/91 at about 8.30 am the plaintiff went to the land in dispute with one Anebo Ahorlu and Emmanuel Amadi to
 G find all the Defendants including the 3rd Defendant who was not there on the 2/2/91 completing the destruction of the entire fence. They also destroyed 2 pairs of steel hinges, 2 steel bolts, 1500 capacity water tank, 4 wooden windows, 2 wooden doors and 2 standard security iron sale."*

H *19. After the acts of trespass committed against the plaintiffs property as herein before pleaded, the resultant damage was so extensive that the plaintiff could not cost it himself. The plaintiff did on the 11/2/91 commission a firm of valuers Webondah and Associates, to value and cost the damage caused by the Defendants. The said*

firm did value the said damage and produced a report dated the 22/2/91. The said expert report is hereby pleaded and will be founded upon.

21. *Wherefore the plaintiff claims against the Defendants jointly and severally as follows:-*

(a) B

(b) *Special damage.....*”

The appellant claimed that the statement of claim was amended, but the said amended statement of claim became controversial because the court below raised the issue, suo motu that the appellant did not comply with the order to file the proposed amended statement of claim. It is on record that on 13/7/95, the following was recorded by the trial judge, as what transpired on that day in respect of the amendment:- C

“Court: Counsel for the plaintiff who was out of time in filing his amended statement of claim has brought a now (sic) motion for extension of time to file and serve the statement of claim as amended which is (sic) present now not being objected to is taken as moved and granted.”

There was nothing like an order for deeming sought or granted as can be seen above. ***The contention of the learned counsel that the proposed amended statement of claim was deemed as properly filed and served is erroneous, because there is nothing in the record of proceedings to that effect. It is in my view, for all intent and purposes, that the original statement of claim remained the only statement of claim for the purpose of the case, the proposed amendment vide the content of the memorandum of Amendment on page 37 of the printed record of proceeding, not having been filed.*** Indeed, if it was filed, it should have been in the form of a proper document bearing the title of ‘amended statement of claim’, shown to have been properly dated, stamped and addressed for service on the defendants, not just a memorandum. There is definitely no such document in the record of proceedings, and ***surely the appellant did not expect the court to use the memorandum of amendment as the amended statement of claim. If these documents i.e. the motion for extension of time to file amended statement of claim, and deeming order, and the amended statement of claim were inadvertently*** E F G H

omitted in the record of proceedings, then it behoves on learned counsel for the appellant to apply and obtain a supplementary record of proceedings containing these important documents, to be placed before this court. There are definitely some omissions on the part of the appellant's learned counsel, most especially since he was making the decision of the lower court on this amendment an issue. I will come back to this point later in the judgment.

It is the contention of the learned counsel for the appellant that the plaintiff/appellant adequately pleaded his claims and reliefs in paragraphs 15, 16, 17, 18, 19 and 20. He referred to the case of Ashiru Noibi v. J. F. Ikolati & ors 1987 3 S.C 105, and Order 25 rule 4(1) of the High Court Civil procedure Rules of Rivers State, 1987 which states the following:-

"4.(1) Every pleading shall contain, and only, a statement in a summary form of the material facts on which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively."

The learned counsel has argued that the respondents acknowledged the encounter pleaded by the appellant in his statement of claim, in their statement of defence. In this wise, the appellant supplied sufficient facts to acquaint the respondents in advance, that at the trial he would seek redress for those acts which caused the destruction of his properties. I will reproduce the relevant paragraphs of the statement of defence hereunder. They are:-

"(21) The Defendants deny paragraph 18 of the statement of claim and aver that plaintiff was in fact advised by the police to vacate the land after investigation. The plaintiff had on several adjourned dates pleaded with the court for an adjournment to enable him settle with the parties in the High Court application for certiori proceedings. The Defendants shall /and found on the said records of proceedings at the trial.

(23) The Defendants deny paragraph 19 of the statement of claim and puts the plaintiff to the strictest proof thereof.

(24) Paragraph 20 of the statement of claim is not true. The land belongs to the Defendant's family.

(25) The Defendants vehemently deny paragraph 21 (a), (b) and (c) of the statement of claim and shall contend at the trial that

the plaintiff is not entitled to the reliefs sought as he is not the owner of the property in dispute, nor were his items damaged."

Looking carefully at the above averments in the statement of claim, along side those of the defendants reproduced above, one is in no doubt that the plaintiff adequately put the defendants on notice of what they will face at the trial of the case, as is expected and required of him by the principles of law on pleadings. The cardinal principle of pleadings is that a party claiming must not spring surprises on the opponent at the trial, but must endeavour to acquaint him of what to meet at the trial and the challenges against him, for by not doing so, he will take the said opponent unaware, and that will not meet the cause of justice. Parties and the court must be conversant with the case before the court, and this will be possible only if there is proper joinder of issues. See *George v. Dominion Flour Mills* 1963 All NLR page 71, *Emegokwue v. Okadigbo* 1973 4 S.C. 113, and *Eke v. Okwaranyia* 2001 12 NWLR part 726 page 181.

The learned counsel has submitted that by Exhibit 'G', the appellant had adduced evidence to show the particularity necessary to the pleadings. As such with the appellant's evidence supporting his claim on special damages, and exhibit 'G', the appellant discharged the onus placed on him in the matter of this special damages. He placed reliance on the case of *Obasuyi v. Business Ventures Ltd.* 2005 5 NWLR part 658 page 668. The position of the law is that a claim for special damages requires strict proof by credible evidence that is in line with the same particularity that is required for the appellant's pleading. The evidence must prove that damages claimed is related to the injury suffered as a result of the wrongful act. See *Shell Petroleum Development Company v. Tiebo VII* 1996 4 NWLR part 445 page 657, and *Chindo Worldwide Ltd. v. Total (Nig) PLC* 2001 16 NWLR part 739 page 291.

According to learned counsel the respondents did not deny the destruction of the plaintiffs properties at the trial court but mostly insisted that the land in dispute was theirs. But then the appellant proved vide exhibits 'A' and 'B', that the land was fallow at the time the appellant bought it. Indeed the survey plans indicate that the land was fallow as at the time they were made (the date they bear i.e. 1977 and 1985), a long period before the date of the alleged trespass. I agree that the evidence was not challenged, and so it was a

credible and reliable evidence. See Lagos City Counsel Caretaker Committee v. Unachukwu 1978 All NLR 92 relied upon by the learned counsel. ***I will not delve into argument of the learned counsel on the impropriety of the lower court raising the issue of non-pleading of the special damages suo motu. This is because the averments in the pleadings which I have already reproduced supra contain the pleadings on wrongful act/and the circumstances that led to the claim of special damages, and so I am satisfied that there was proper pleading of the claim and reliefs before the trial court. The need to consider the propriety or impropriety of the learned Justice of the Court of Appeal that wrote the lead judgment suo motu making that aspect of the pleading an issue is therefore obviated.***

That brings me back to the issue of the proposed amended statement of claim. ***In the circumstance that I have found that the original statement of claim contain averments on special damages, the question of whether the amendment was done or not is of no moment or consequence whatsoever, in view of the content of the original statement of claim and its efficacy to the issue at stake. That is taking into account, my conviction that in spite of the non-filing of the amended statement of claim, the original pleading is unassailable as far as the special damages is concerned. We should not allow technicalities to becloud our sense of judgment.*** See General Oil v. Oduntan 1990 7 NWLR part 163 page 423 relied on by the learned counsel. See also Ogoiyi v. Umagba 1995 9 NWLR part 419 page 283.

However, I will quickly point out that I don't endorse the argument of learned counsel, that the amended pleading was filed, for it was not. Having observed that the original statement of claim suffices for the purpose of this argument, I would say the learned justice of the Court of Appeal was in error when he held as follows in his judgment:-

"I advert to the learned authors of Bulle Leake And Jacob's Precedent of Pleadings 12th Edition at page 379 subnomen: "DAM-AGES". It was stated:-

"A claim for special damage must be explicitly claimed in the pleading with full particulars of how it is made. Hayword vs. Pullunger & Partners Ltd. (1950) 1 All E.R. 581; Anglo - Cypria

Trade Agencies Ltd. vs. Paphos Wine Industries Ltd. (1951) 1 All E.R. 873”.

(The underlining is supplied)

Guided by and armed with the above I am very clear in my mind that the statement of claim did not plead “*special Damage*.” Put in other Words, paragraph 21 (b) of the statement of claim (supra) cannot constitute a pleading of “*a claim for special damage explicitly claimed in the pleading with full particulars of how it is made*”, The legal effect therefore, is obvious. No evidence ought to be led in that direction.”

In the light of the above reasoning I resolve the above issue in favour of the appellant in part. In this wise, I allow ground (1) of appeal, but dismiss ground (2) of appeal.

In arguing issue (2) supra, the learned counsel set out the claim of the appellant in the court of first instance and the documentary evidence of the deed of conveyance and the certificate of occupancy vide which he claimed title to the parcel of land in dispute. He relied on the case of *Dabup v. Kolo* 1993 9 NWLR part 317 page 254, on the purport of the certificate of occupancy. The learned counsel submitted that in view of section 5(2) of the Land Use Act, 1978, the moment the appellant was granted the certificate of occupancy the appellant’s title over the land superseded every other purportedly subsisting one at the time. According to the said Section 5(2):-

“*Upon the grant of a statutory right of occupancy under the provision of subsection (1) of this section, all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished.*”

I agree that the above provision is very clear. The learned counsel however conceded that the grantee of a certificate of occupancy has actually to justify the grant by way of a valid title or interest prior to the right of occupancy. The case of *Ogunleye v. Onu* (1990) 2 NWLR part 135 page 745 cited by learned counsel is relevant to this discussion. Learned counsel further submitted that where a rival claimant is aggrieved by the grant of a certificate of occupancy to a third party in respect of the same land, the onus is on the rival claimant to sue in an appropriate court to set aside the disputed right of occupancy. In a further submission, the learned counsel contended that a court can only set aside a certificate of occupancy implicitly or explic-

itly where a party so aggrieved has asked for that relief in his claim or counter claim as the case may be, as a court has the duty to restrict itself to the case made out by the parties before it and should not grant any relief not claimed by a party. He referred to the case of Ekwealor v. Obasi (1990) 2 NWLR. part 131 page 231.

B A careful perusal of the statement of claim reveals exactly the reliefs sought by the plaintiff/appellant, as can be seen on pages 12 - 13 of the printed record of proceedings, and nothing else. Again, ***in the joint statement of defence of the defendants/respondents nowhere did the defendants counterclaimed. As a matter of fact the learned trial judge in her judgment rightly confined herself to the reliefs sought and based her orders on them. The cardinal principle of law is that a judge is bound by the claims of parties and must restrict himself within the ambit of***
 C ***the claims, and grant the reliefs claimed and not go beyond or***
 D ***outside them, for doing so will be granting reliefs not claimed.*** See the cases of Attorney-General of the Federation v. A.I.C. Ltd. 2000 10 NWLR part 675 page 293 and U.T.C. French Airlines v. Williams 2000 14 NWLR part 687 page 271.

E In the instant case, however ***what the court below did was to set aside the judgment of the trial court which in my view was merely tantamount to dismissing the appellant's claims. I suppose one could say the judgment may have the effect of***
 F ***saying the appellant is not the holder of a statutory right of occupancy over the piece of land described in the certificate of occupancy. Yes, it set aside the judgment of the trial court, but I am hereby setting aside its own judgment as being in error, and substituting it with the judgment of the trial court. I***
 G ***therefore find the appellant's case proved in the trial court, and grant the reliefs sought by the appellant and granted by the trial court. For the foregoing reasoning I resolve this issue in favour of the appellant, and allow the grounds of appeal covering it.*** Even though the appeal succeeds in part, that aspect in
 H which it fails is not of material consequence to affect the merit of the appeal and its outcome in favour of the appellant.

The end result is that the appellant's claim succeeds and the orders made by the trial court are upheld and affirmed. I assess costs at N50,000.00 in favour of the appellant against the respondents in

this court and N10,000.00 in the court below.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother Mukhtar JSC in this appeal. I agree with it and, for the reasons she has given I would also allow the appeal. I abide by the consequential orders made in the said judgment including the order as to costs. B

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother, MUKHTAR, JSC, just delivered. C

I agree with the reasoning and conclusion that the appeal is meritorious and ought to be allowed. D

It is very clear from the pleadings of the parties, particularly that of the appellant who was the plaintiff at the trial court, (particularly paragraphs 12,16 and 19 of the statement of claim) that special damages was specifically pleaded and strictly proved at the trial. The lower court was therefore in error when it held that the issue of special damages was not pleaded. The appellant tendered in evidence an expert report on the damages caused by the respondents on the property in proof of the special damages as exhibit "G". E

That apart, I have gone through the record of appeal including the briefs of argument before the lower court and I agree with the learned counsel for the appellant that the issue of non pleading of special damages was raised by the lower court suo motu and without calling on the parties counsel to address it on same and consequently erroneous as the decision the court eventually reached on the appeal was based on that issue which was against the appellant and resulted in a miscarriage of justice since the appellant specifically pleaded special damages and tendered a valuation report exhibit "G" to prove same. F G

In conclusion, I too allow the appeal for being meritorious and abide by the consequential orders made in the said lead judgment including the order as to costs. H

Appeal allowed.

ADEREMI JSC

This appeal is against the judgment of the Court of Appeal Port Harcourt Division (hereinafter referred to as the court below) delivered on the 29th November, 2001 in Appeal No. CA/PH/381/98: Felix Chinda & Ors V. Chief Appolos N. Amadi. The lower court had entertained an appeal against the judgment of the High Court of Justice, Rivers State sitting at Port Harcourt, delivered in Suit No. PHC/528/92: Chief Appolos N. Amadi Versus Felix Chinda & Ors delivered on 28th May 1998. The appellant, who was plaintiff, had won at the trial court. But, by an unanimous decision, the court below set aside the judgment of the trial court. The appellant, as plaintiff before the trial court, had claimed against the respondents, as defendants before the court, jointly and severally as follows: -

“(a) A declaration that the plaintiff is the holder of a Statutory Right of Occupancy over the piece of land variously known as “Ekwuodor” as 59 Wobo/49 National Street, Mile III, Diobu, Port Harcourt within the jurisdiction of the Honourable Court and more particularly described in Certificate of Occupancy No. 69 at page 69 in Volume 116.

E	<i>(b) Special Damages -</i>	
	<i>(i) Damage to 150 mm hollow blocks security fence wall with reinforced concrete pillars</i>	<i>- N 424,200.00</i>
	<i>(ii) 2 Standard Security iron sale</i>	<i>- N 20,000.00</i>
F	<i>2 sets of steel lockset</i>	<i>-N 500.00</i>
	<i>2 steel hinges</i>	<i>- N110.00</i>
	<i>2 steel belts</i>	<i>- N40.00</i>
	<i>1150 capacity water tank</i>	<i>-N5,150.00</i>
	<i>Carpentry works damaged</i>	<i>- N5,000.00</i>
G	<i>4 wooden doors</i>	<i>-N2,000.00</i>
	<i>2 wooden doors</i>	<i>- N500.00</i>
	<i>Contingencies</i>	<i>- N 5,000.00</i>
	<i>Attendance</i>	<i>- N 10,000.00</i>
		<i>- N 472,500.00</i>
H	<i>GENERAL DAMAGES</i>	<i>-N 500,000.00</i>
	<i>TOTAL</i>	<i>- N 972,500.00</i>

(c) Perpetual Injunction restraining the defendants by themselves, servants or agents from further trespass to the said property.”

Before I begin the consideration of this appeal, I wish to say

that I have had the privilege of a preview of the judgment of my learned brother, Mukhtar JSC. I agree with the reasoning and conclusion reached therein. However, I wish to make my own little contribution. Pleadings, in terms of statement of claim filed on 13th August 1992 and statement of defence filed on 11th March 1993 were filed and exchanged between the parties. Both parties led evidence in proof of the averments in their respective pleadings at the end of which and sequel to the final written addresses of their counsel, the trial court, in a reserved judgment delivered on the 28th May 1998, granted all the reliefs claimed by the plaintiff/appellant. Being dissatisfied with the judgment of the trial court, the defendants, now the respondents, appealed against it to the court below which allowed the appeal. In so doing, the court below held inter alia: -

"The above notwithstanding, the plaintiff or his solicitor did not comply with the order to file an amended statement of claim. No amended statement of claim was filed. And no amended statement of claim is copied in the Record of Appeal. From my close study of the Record of Appeal, the case of the plaintiff was conducted and fought based on the statement of claim originally filed on the 13.8/92

In my view a Certificate of Statutory Right of Occupancy is not in itself or by itself alone proof that the land is within an urban area. No. Whether a piece of land is within an urban area or not is a matter of fact.

This case was fought and contested on the pleadings. The question arising becomes this. Was it an issue or pleadings whether the land in dispute was within an urban area? And was the identity of the land an issue on the pleadings? In my view of the pleadings my certain answer to each of the above posers is a quick and an unhesitating capital NO.

At page 116 of the Record, the learned trial judge found and awarded to the respondent the total of N500,000.00 as special and general damages for the trespass committed on the land in dispute on the 2/2/91 and on 4/2/91. The finding or, the award was not supported by evidence. It is perverse. From all I have been saying above, it is clear to me that the judgment in favour of the respondent cannot be allowed to stand the appeal succeeds accordingly."

Being dissatisfied with the said judgment, the plaintiff at the lower court (now appellant) has appealed from the judgment of the court below to this court. He has raised two issues from the three grounds of appeal therein contained in his Notice of Appeal. And set out in his brief of argument filed on 27th September, 2006, they are as follows: -

B *“(1) Whether the learned Justices of the Court of Appeal were justified when they, suo motu, raised very vital issues on which they based their judgment in favour of the defendants/appellants/respondents.”*

C *“(2) Whether the learned Justices of the Court of Appeal were wrong in subtly nullifying the plaintiff/respondent/appellant’s Certificate of Occupancy in respect of this property when the defendants/appellants/respondents did not make such a claim.”*

D When this appeal came before us for argument on the 20th of January 2009 neither the respondents nor their counsel were present in court, but the records of the court showed that they were served. Mr. Adele, learned counsel for the appellant, who was present, adopted his client’s brief filed on the 27th of September 2006 and urged that
E the appeal be allowed after successfully moving the application before us on that day to hear and determine this appeal on the appellant’s brief alone.

I shall start with Issue No. 2 which strikes at the foundation of the plaintiff/appellant’s case. A quick look at the pleadings leaves me
F in no doubt that the plaintiff/appellant relied on title deeds i.e. Certificate of Occupancy No. 69 at page 69 in volume 116 and a Deed of Conveyance No. 140 at page 140 in volume 5 of the Deeds of Register on the piece of land which he called “EKWUODOR” a name
G agreeable to the defendants/respondents as expressed in the statement of defence and which according to the plaintiff/appellant was called 59 Wobo Street or 49 National Street, Mile III, Diobu Port Harcourt - the two names were denied by the defendants in their pleadings. Substantially, from the pleadings of the two parties, the
H identity of the land is not in dispute. They are both familiar with it. Evidence was called by both parties to substantiate the averments in their respective pleadings. At the conclusion of the evidence and sequel to the taking of the addresses of their respective counsel, the learned trial judge in a reserved judgment delivered on the 28th of

May, 1998 found, for the plaintiff. In so doing, the trial judge held inter alia:-

“He (plaintiff) tendered Deed of Conveyance, showed his root of title through credible evidence and tendered a Certificate of Occupancy all consistent. There was no doubt as to the identity of the land as changes in name of street are common place in Port Harcourt, a fact which has attained notoriety and the court taken judicial notice of.....

I am satisfied the plaintiff has proved his case in the preponderance of evidence on the balance of probability The visit to the locus was interesting as the court after hearing from the parties found for itself that DW1 had deceived it when I asked at the scene from what DW1 said. He answered that Wobo Street was just a few seconds walk by all, a situation which lent credence to the claims of the plaintiff.”

The above is the summation by the trial judge of the evidence led before him. He had the singular opportunity of seeing the witnesses. I have had a very careful reading of the totality of the evidence led, the findings of the trial judge as set out above cannot be faulted. And it is now firmly established that an appellate court does not make a practice of departing or setting aside the findings of a trial judge unless it is clear that same are perverse. There is nothing perverse in what I have reproduced above. It is now well settled law that a party may prove title to a piece of land in any of the following five ways: -

- (1) by traditional evidence;
- (2) by documents of title;
- (3) by various acts of ownership, numerous and positive, and extending over a length of time as to warrant the inference of ownership;
- (4) by acts of law enjoyment and possession of the land and
- (5) by proof of possession of adjacent land in circumstances which render it probable that the owner of such land would in addition, be the owner of the disputed land.

See (1) *IDUNDUN & ORS V. OKUMAGBA & ORS* (1976) 9-10 S.C. 227 and (2) *ATANDA V. AJANI* (1989) 3 NWLR (pt.III) 511.

What's more, the plaintiff/appellant still relied on Certificate of Occupancy in proof of his claim to the land, which was tendered as

Exhibit A - the Certificate of Occupancy, though a prima facie evidence of title of the land covered by it and therefore rebuttable, there is no scintilla of evidence on record rebutting the title. The court below was therefore in error in reversing the judgment of the trial court. Both Exhibits "A" - the Certificate of Occupancy and "B" - the Deed of Conveyance establish beyond doubt, the title of the plaintiff. Issue No. 2 is therefore resolved in favour of the appellant.

I now go back to Issue No. 1 which poses the question as to whether the Amended Statement of Claim, subject matter of an application before the trial court was filed sequel to the grant of that application. At page 39 of the record of proceedings lines 32-40, it was recorded thus: -

"Counsel for the plaintiff who was out of time in filing his Amended Statement of claim has brought a new motion for extension of time to file and serve the statement of claim as amended which is present not being objected to is taken as moved and granted."

From the above, there is nothing to show that the plaintiff/applicant applied for a "deeming order". It was therefore right that one was not granted. Having granted the new application it was the duty of the applicant to file the new process - the Amended Statement of Claim after the order was granted. So the only process which the plaintiff/appellant filed and upon which he founded his case was the statement of claim filed on the 13th of August, 1992 which was copied into the record of proceedings. Had the plaintiff filed the said amended process and had he been minded that his case should be founded on it, it was and it still remains his duty to ensure that, that amended process if filed, was made part of the records before the appellate courts. I have however also carefully read the afore-mentioned statement of claim and I am clear in my mind that special damages were specifically pleaded. The proceedings are replete with evidence substantiating the claim for special damages. This evidence was not challenged. The trial judge who saw and heard the witness said on the issue of special damages thus: -

"In the instant case the plaintiff produced PW2 the Estate Valuer who tendered the Valuation Report. The defendant did nothing in rebuttal and so the court has accepted his expert evidence as there is nothing to the contrary or anything to persuade the court not to use it....."

I am satisfied the plaintiff has proved his case on the preponderance of evidence on the balance of probability.”

There is nothing extraordinarily sacrosanct about ‘SPECIAL DAMAGES’ - proof of same. The rule only requires anyone asking for special damages to prove strictly that he did suffer such special damages. All he needs do is to adduce credible evidence of such a character as would suggest that indeed, he is entitled to the award under that head. See *IMANA V. ROBINSON* (1979) 3 & 4 S.C. 1. And having adduced credible evidence in proof therefore, if there is nothing from the side of the adversary to counter that evidence, as in the instant case, the court is entitled to accept and believe the much alleged evidence, a thing the trial court rightly did. I cannot fault the findings of the trial court; they are in my view, not perverse.

It is for the above little contribution but most especially for the exhaustive reasoning and conclusion in the judgment of my learned brother, Mukhtar JSC, with which I am in full agreement, that I also say that this appeal is meritorious. It must be allowed and I hereby allow it. I set aside the judgment of the court below. In its place, I restore the judgment of the trial court. I abide by all other consequential orders including order as to costs contained in the said lead judgment.

CHUKWUMA-ENEH JSC

This appeal is against the decision of the Court of Appeal, PortHarcourt Division allowing the defendants’ appeal and setting aside of the trial Court’s decision hence the appeal to this Court by the plaintiff/appellant.

This is an appeal that has been heard *ex parte* in this Court, that is to say, on the appellant’s brief alone in compliance with the Rules of this Court. As can be seen from the record, the respondents (defendants in the trial Court and appellants in the Court of Appeal and the respondents in this Court) have always dragged their feet in the pursuit of prosecuting this matter right from its inception at the trial Court. It will not therefore sound strange that the respondents have been coerced into action more or less by the plaintiff/appellant’s application for judgment to be entered in his favour by the trial Court to get the defendants/respondents to file their Statement of Defence in this matter. In this Court, the application to hear the appeal on the

brief of the appellant's brief alone duly served on the respondents has not elicited any positive response from the respondents that is, by filing their respondents' brief of argument, hence the order to hear this appeal on the appellant's brief alone. Even then the respondents have not tried to arrest the judgment or to seek for extension of time to enable them regularize their position by filing their respondents' brief of argument out of time. They have to be taken as having abandoned their case in this matter. Therefore, the only reasonable inference to draw from their masterly inactivity in the circumstances, is lack of interest in defending the judgment they have obtained in the Court below. The defendants' apathy, I must say in not defending their judgment will not of course be taken as conceding the appeal and nor will this Court be deterred from deciding the appeal with a view to allow it or dismiss it as the case arises. The defendants/respondents will take the consequences; after all this is a 2002 appeal.

In this matter, the plaintiff (appellant) has sought for a declaration that he is the holder of a customary Right of Occupancy over a piece of land variously known as "Ekwuodor or 59 Webo/49 National Street, Mile III, Diobu, Port-Harcourt - more particularly described in Certificate of Occupancy No. 69 at page 69 in Volume 116. He also has claimed General and Special damages and perpetual injunction against the defendants and their privies.

At the trial of the matter the parties have testified in support of their respective pleadings filed and exchanged between the parties before hand. The trial Court, however, has found in favour of the plaintiff/appellant and granted his prayers as claimed including an award for special damages. On appeal to the Court of Appeal, the trial Court's judgment has been set aside hence the plaintiff/appellant's appeal to this Court. And in the appellant's brief of argument filed and served on the respondents, he has raised of twin issues for determination as follows:

"(1) Whether the learned Justices of the Court of Appeal were justified when they suo motu raised very vital issues on which they based their judgment in favour of the Defendants/Appellants/Respondents

(2) Whether the learned Justices of the Court of Appeal were wrong in subtly nullifying the plaintiff/respondent/appellant's Certifi-

cate of Occupancy in respect of this property when the defendants/appellants/respondents did not make such a claim."

I have set out the foregoing as preambles, as it were, to enable me situate my brief comment within the factual ambience of this matter.

I think I should proffer an opinion on the impropriety of the Court below raising the issue of non-pleading of special damage *suo* *motu*. As found in the lead judgment and I agree, there are sufficient averments in the statement of claim to wit paragraphs 12, 13, 14, 15, 16, 17, 18, and 19 as to the wrongful entry by the defendants and their servants into the land in dispute and have caused extensive devastation of the plaintiffs properties in that wake, thus serving as the precursor to the claim for special damages suffered by the appellant as per the Statement of Claim filed in this matter.

In paragraphs 15, 16, 17, 18, 19, and 20 of the Statement of Defence, the defendant have denied the alleged invasion and destruction of the plaintiffs property. The plaintiff has prepared a valuer's report and has tendered it in evidence as Exhibit G in support of his claim for special damage. That notwithstanding, the Court below *suo motu* has raised the issue of special damage and has posited in the judgment that it is neither pleaded nor strictly proved by evidence if any adduced in that regard. In this matter, the issue of special damage *per se* raised *suo motu* by the Court below has not been contested in the briefs of the parties. Thus, the Court below has failed to limit itself to the issues properly raised from the grounds of appeal and as canvassed by the parties in their respective briefs of argument in the matter. This Court has in numerous cases admonished lower Courts on the impropriety of raising points *suo motu*: in this case, the issue of special damage as not having been pleaded and proceeding to decide on it without affording the parties a hearing on the point *i.e.* before deciding upon it. It not only negates the principle of fair hearing, it impinges on constitutional rights of the parties as envisaged in section 36 of the 1999 Constitution. There can be no doubt that the instant point is so crucial as it has formed the very basis upon which the decision of the Court below is predicated to set aside the plaintiffs entire judgment as obtained from the trial Court and to find though erroneously that the issue of special damage is not pleaded nor proved. See: UGO V OBIKWE (1989) 2 S.C. (Pt. 11) 41. It has emerged as settled from numerous decisions of this Court that the

function of an appellate Court in hearing matters before it is circumscribed by the very complaints by the appellant against the judgment of the lower Court. Aptly, let me re-echo this Court's clear pronouncement against Courts taking in cases before them, issues not raised by parties as I draw a parallel as between such pronouncement with what has happened in this case. This Court in *EJOWHOMUVEDOK-ETER LTD.* (1986) 5 NWLR (Pt. 39) 1 at 39 has made certain the position when it held that

"It is not the business of the Court to raise an issue for the party. The function of the Court (be it a Court of original jurisdiction or appellate) is to adjudicate on disputes properly submitted in accordance with the rules of practice of the Court. It is not its function to create dispute for the parties. The system of our Justice is not inquisitorial".

What the Court below has done in this matter is not only preserve but also has occasioned injustice, which has entitled this Court to interfere with the decision of the Court below to avert a miscarriage of justice in this matter.

That special damage which is central to this matter has to be specially pleaded, and strictly proved has been part of our settled law and so the plaintiff in the instant case rightly has proved this aspect of his claim by expert report Exhibit G - a compendium particularizing the special damage he has suffered in the hands of the defendants and their cohorts in the wake of destroying his property in this matter. Again, the Court below as can be seen has therefore committed a grave error in holding that special damage has not been particularly averred in the statement of claim nor strictly proved as required by law which otherwise means rejecting the same. It has erroneously resulted in setting aside of the plaintiffs claim in this matter by the lower Court; hence the appeal to this Court.

From all the above and much more reasons contained in the lead judgment of my learned brother. Mukhtar. JSC, which I have had the advantage of reading before now. I also agree that this appeal should be allowed. I allow it and endorse the orders contained in the lead judgment.