

SUPREME COURT OF NIGERIA
18TH DECEMBER, 2009. SC. 129/2005
CORAM: - A. I. KATSINA-ALU, M. MOHAMMED,
I. F. OGBUAGU, C. M. CHUKWUMA-ENEH,
M. S. MUNTAKA-COOMASSIE, JJSC

LASISI OGBE APPELLANT
AND
SULE ASADE RESPONDENT

APPEALS - Issues - Number - Relation to grounds of appeal - Though one issue can be raised from one or more grounds - Two issues cannot be raised from a single ground (H1)

LAND LAW - Appeals - Identity of land - As basis of challenge by appellant - Propriety - In view of no appeal against finding by trial court - That parties are ad-idem on identity of land - Appellant's challenge on this point is misconceived (H2)

APPEALS - Grounds of appeal - Based on obiter - Sustainability - The remark by Court of Appeal on identity of land as a non-issue - Is an obiter dictum - So it cannot form the basis of a ground of appeal (H3)

EVIDENCE - Admissibility - Admission of Exhibit A - Propriety - It was properly admitted as there is nothing making it inadmissible - Absence of a witness as a party to the suit - Is immaterial to its admissibility (H4)

EVIDENCE - Weight - Exhibit A - Evidential quality - It not only explains how the land was granted to appellant as customary tenant - But also shows why appellant and his people - Are in physical possession thereof (H5)

APPEALS - Documents - Evaluation by appellate court - Propriety - Appellate High Court was right to have evaluated Exhibit A - For appellate court is in as good a position as trial court in evaluating documentary evidence (H6)

FACTS

The plaintiff/respondent sued defendant/appellant before the customary court of Ogun State claiming declaration of title to the land in dispute, damages for trespass, possession and perpetual injunction. It was respondent's story that the land belonged to his family from time immemorial. One Akobunra, appellant's grand father had sometime in the past sought for and was granted the land on payment of tribute. While he was on the land, Akobunra collected tribute from other tenants of respondent's on the land and accounted for same to respondent's family. After Akobunra's death, his son Aina was appointed by respondent's family to carry on the collection of tributes for them. During the time of Aina, one tenant, Kukuto Zampo, came on the land in respect of whose tenancy an agreement, Exhibit A, was prepared, which document was witnessed by Aina. It was after Aina that his son after him refused to remit collected tribute to respondent's family, hence the institution of this suit.

On his part, appellant claimed to be owner-in-possession of the land having inherited same from his fathers before him. During trial respondent tendered Exhibit A in evidence but trial court rejected it on the ground that Kukuto Zampo was not a party to the suit. Ultimately, it dismissed respondent's claim in its entirety. Aggrieved, respondent appealed to the High Court which held that Exhibit A was wrongly rejected. Consequently it admitted the document and allowed the appeal on that basis. Dissatisfied, appellant appealed to Court of Appeal which dismissed his appeal. He has brought this further appeal to Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether court below was right to affirm the admissibility of Exhibit 'A' pursuant to the provision of the Evidence Act.

2. If question is answered in the affirmative, whether the court below placed undue probative weight on Exhibit 'A' when evaluating the evidence.

3. Whether the land in dispute (the description of which both parties agree) was the land originally granted to Akobunla by the plaintiff's ancestor.

4. Whether the court below was right to affirm the decision of the High Court which set aside the decision of the Customary Court

on the ground that it was perverse.

HELD (Unanimously dismissing the appeal per **CHUKWUMA-ENEH JSC**)

Issues - Number - Relation to grounds of appeal

1. It is settled that one issue can be raised from one or more grounds of appeal but two issues cannot be raised from a single ground of appeal. It is unsupportable to say as at paragraphs 1.4 of the appellant's brief of argument that the appellant has thus effectively rolled two issues dealing with admitting Exhibit 'A' and re-evaluation of evidence into one ground of appeal and as he has contended for convenience and to avoid repetition. This is a novel submission and cannot provide however construed a good reason for the obvious error in raising two issues from one ground. It has been clearly settled that two issues cannot be raised from a ground of appeal as a ground of appeal is supposed to encompass a single complaint. (p. 2435 E)

Identity of land - As basis of challenge by appellant - Propriety

2. The Respondent has challenged ground 2 and also issue 3 formulated therefrom. He has contended that the identity of the land in dispute has not arisen from the decision of the lower court.

It seems to me the Defendant/Appellant's challenge of the decisions of the lower courts in this particular is totally misconceived.

The identity of the land in dispute as pronounced above is unequivocal and unambiguous in the sense of asserting that the parties are ad idem as to the identity of the land in dispute. The Defendant/Appellant in this court never challenged this finding by cross-appelling the finding. Therefore, the identity of the land in dispute in this case has been settled by the trial court and both parties have acquiesced in it. (pp. 2436 D/F & 2437 C)

Grounds of appeal - Based on obiter - Sustainability

3. The issue of identity of the land in dispute has not featured before that court as an issue nor in the court below. At the court below it stated in the course of its decision that:

"The land in dispute is known to the parties. There is therefore no dispute of its identity"

The Defendant/Appellant has complained against the statement

but he cannot be heard to say that the land in dispute is unknown to him and his witnesses or that the above observation does not constitute a legitimate inference to be drawn in the context of the above premises in which the observation is relatively situated. In the circumstances, the observation at best is no more other than an obiter dicta
 B meaning that it cannot form the basis to sustain a ground of appeal as it is not part of the ratio decidendi of the decision. (p. 2437 F)

Admission of Exhibit A - Propriety

C 4. I must remark that as there is nothing which has rendered Exhibit 'A' fundamentally as inadmissible evidence; it is my view that the admission of Exhibit A is properly founded. It cannot be faulted not even on the slenderest reason that Kukuto Zampo is not a party to this suit, which reason I must confess, has nothing to do with its admission in evidence. Besides, Exhibit 'A' as a documentary evidence
 D has not been attacked in any manner perjorative as to its integrity and authenticity and therefore it is capable of being believed. Its rejection therefore, has been rightly deprecated as perverse and occasioning a miscarriage of justice. (p. 2443 E)

Exhibit A - Evidential quality

5. The evidential quality of the document per se has not been attacked in any respect of the document by the Defendant/Appellant. Exhibit 'A' has clearly not only explained how the land in dispute has
 F been granted and not sold to the Defendant/Appellant by the Plaintiff/Respondent as customary tenant but also it has provided the reason why the Defendant and his people are physically in possession of the land in dispute as possession in cases of this nature, as a settled
 G principle of law is a cardinal incidence of customary tenancy hence the usual item of claim of recovery of possession in the Writs of Summons as in this case. (p. 2444 B)

APPEALS - Documents - Evaluation by appellate court

H 6. The appellate High Court having admitted Exhibit 'A' it is a settled principle of law that it is in as good a vintage position as the trial court to do its own evaluation of the documentary evidence and ascribe value to it. It is even moreso, in this case where the appellate High Court has found the rejection of Exhibit A as being perverse because

the third signatory to it has not been made a party to the suit. It is also settled that where a trial court as here has made a perverse finding that has run counter to evidence and also has taken into account matters {as to Kukuto Zampo not being a party to the suit} which are irrelevant in reaching a perverse conclusion that an appellate court as the appellate High Court here is in as good a position as the trial court to review the perverse conclusion as if it were a trial court. (p. 2445 B)

NOTABLE POINT OF INTEREST

OGBUAGU

1. It is relevancy that determines admissibility

It is now firmly settled that in determining the admissibility of evidence, it is the relevance of the evidence such as a document, that is important and not how it was obtained.

In other words, admissibility of evidence and particularly documents, depends again, on the purpose for which it is being tendered. There are too many decided authorities in regard to admissibility of documents. (p. 2450 D)

REPRESENTATION

Olayode Delano with Mrs. Kemi Makun for the Appellant
Olatunde Oyajinmi for the Respondent.

CASES REFERRED TO

OSU V. IGIRI (1988) 1 NSCC 11 2 at. 119
 KARIBO V. GRAND (1992) NWLR (Pt. 230) 426
 EGONU V. EGONU (1978) 1-2 54 (Pt. 111) 129
 ROCKONOH V. NITEL (2001) 74 MJSC 21 at 35
 ATOLAGBE V. SHORUN (1985) 1 NWLR (Pt. 2) 360
 ROMAINE V. ROMAINE (1992) 4 NWLR (Pt. 238) 650
 EKE V. OGBONDA (2006). 18 NWLR (Pt.1012) 56 at 524
 OJE V. BABALOLA (1991) 14 NWLR (Pt. 185) 267 at 270
 OGBUYIYA V. OKUDO NO.2 (1990) 4 NWLR (Pt. 146) 551
 AMADI V. ORISAKWE (2005) FWLR (Pt. 247) 1529 at 1588
 ILONA V. IDAKWO (2000) FWLR (Pt.171) 1715 at 1737-1738
 OKPANUM V. S.G.E. (NIG.) LTD. (1998) 7 NWLR (Pt.550) 537
 DANIEL HOLDINGS LTD V. U.B.A. (2005) FWLR (Pt. 277) 895 at

902

NDIC V. OKEM ENTERPRISES LTD. (2004) FWLR (Pt.210) 1176
at 1238

STATUTE REFERRED TO

B Evidence Act, s. 12

LEAD JUDGMENT BY CHUKWUMA-ENEH JSC

This appeal is against the decision of the Court of Appeal
C (Ibadan Division) affirming the decision of the Ogun State Appellate
High Court sitting at Ota which in turn upturned the decision of the
Grade 2 Customary Court Ado Odo - the trial Customary Court
which upon having taken oral evidence of the parties in this case
coupled with an inspection or visit to the locus in quo gave judgment
D for the defendant by dismissing the plaintiffs claim in its entirety.

The plaintiffs claim at the trial court consists of 4 reliefs as follows:

*“(1) The declaration that the plaintiff is entitled under the
Native Law and Custom to Statutory Right of Occupancy to parcel of
E land situate lying and being at Aakasun Ilase Village area of Ado-
Odo/Ota Local Government of Ogun State of Nigeria.*

Bounded

*On the right side by the Okewaye/Idasajon Farm Land
F On the Left side by the Idosaba/Ileko Farm Land
On the Bottom side by the Agric Farm Land
On the Upper side by the Ira*

*(2) (N1, 000. 00) One Thousand Naira damages for trespass
committed by the Defendant, their agents, servant or privies on the
G Plaintiff’s land.*

*(3) Perpetual Injunction restraining the Defendant their agents,
servants, from trespassing upon the land.*

*(4) Possession of the land which was inherited by the Plaintiff’s
Great grand father by the time of immemorial”.*

H The Defendant (i.e. the Appellant in this court) being dissatisfied with the decision of the Court of Appeal has appealed to this court by a Notice of Appeal as per page 124 of the Record containing 6 grounds. The plaintiff is the Respondent in this court.

The parties have filed and exchanged their respective briefs of

argument. The appellant has filed a reply brief. The appellant in his brief of argument has identified 4 issues for determination as follows:

“1. Whether court below was right to affirm the admissibility of Exhibit ‘A’ pursuant to the provision of the Evidence Act.

2. If question is answered in the affirmative, whether the court below placed undue probative weight on Exhibit ‘A’ when evaluating the evidence.

3. Whether the land in dispute (the description of which both parties agree) was the land originally granted to Akobunla by the plaintiff’s ancestor.

4. Whether the court below was right to affirm the decision of the High Court which set aside the decision of the Customary Court on the ground that it was perverse.

The respondent has identified two issues as follows:

“(a) Whether exhibit ‘A’ was properly admitted and made use of.

(b) Whether the court below was right to have re-evaluated the evidence before the trial Customary Court thereby affirming the decision of the High Court which set aside the decision of the Customary Court on the ground that it was perverse.”

It is the plaintiff’s story that his great grandfather Idowu Eyile, hailed from Ijegemo Village in Ado Odo and was the first settler on the land in dispute. Idowu Eyile had three 3 children namely Dopemu, Oteniya and Amodu and as the descendants of Idowu Eyile they exercised acts of possession by cultivating the land in dispute after the death of their father. Dopemu it is said begat Adeniyi, Oteniya begat Asade and Omoboja, Asade begat Sule the respondent in this matter and Kelani Idowu i.e. PW1, while Amodu begat Akapo and Agbawu. The plaintiff inherited the farmland from his own father Asade. It has descended to the present plaintiff in unbroken chain of succession.

The story has it that Akobunra the grandfather of the Appellant approached Idowu Eyile for grant of the land in dispute and the same was granted to him on payment of tribute of native gin, Egbaarin, Eja Aro and a bottle of palm oil. Akobunra in his time collected tributes from the other tenants of Asade family on the land in dispute as customary tenants and accounted for the same to Asade family. It is alleged that Akobunra begat Aina Oya and Togu and that after the death of Akobunra, Aina Oya Akobunra was appointed by

the Asade family to collect tributes from the tenants, (one of such tenants was Kukuto Zampo) on the land in dispute on their behalf.

Exhibit 'A' the agreement dated 28/11/1933 showed that Kukuto Zampo paid tribute to Asade family through their agent called Aina Oya Akobunra. Kukuto Zampo was the grandfather of DW2 in this case and Aina Oya Akobunra the father of the Defendant/Appellant and Asade Oniboto Oteniya the father of the plaintiff; three of them were the 3 signatories to Exhibit 'A'. Exhibit 'A' was however rejected at the trial proceedings by the trial Customary Court on the ground that Kukuto Zampo a signatory to Exhibit 'A' was not a party to the instant case.

Aina Oya Akobunra was collecting tributes from Kukuto Zampo and others on the land in dispute and paying them over to Asade family. On the death of Aina Oya Akobunra, Musari his son took over collecting the tributes from Asade's tenants. He later refused to remit the tributes collected to Asade family as his father used to do.

The plaintiff/respondent noticed the construction of a building on the land in dispute and challenged Musari on want of his leave to put up the structure; even, then the structure was not demolished; at Musari's death his son went into the land committing further acts inconsistent with the grant of customary tenancy.

The Defendant, on the other hand stated that his family had from time immemorial had their ancestral home on the land in dispute and had no other home of their own. Their ancestors Alajogun and his brother Ejiose came from Ile-Ife and settled at Alase compound Ado-Odo with "a crown" but as there was an Oba already at Ado-Okò, Ejiose went to Ilase town near Idiroko and became the 1st Oba there. The land in dispute i.e. as claimed is called "Akasun Ilase". It is stated that Alajogun begat Akobunra; Dopema Akobunra begat Oyin Bolabarin and Dada Oba, Aina Oya and Togun Alajegun. It is the Defendant's story that Oteniya the Plaintiff/ Respondent's father and his people were the labourers to Dopemo on yearly tenancy basis and that they i.e. the plaintiff and his people have now turned round to lay claims to the land in dispute. The Defendant contended that his ancestors, Alajogun and his people introduced shrines (on the land in dispute) namely Ikudogun, Ikuabopa, Duduromo from Ile-Ife to Alase compound Ado Odo and that the plaintiff and his people have their ancestral village where they still live and farm.

The appellant one must emphasize also has filed a reply brief which apart from adverting to matters arising from the preliminary objection has not advanced the appellant's case any further. Coming back to my observation, this matter can be resolved on the facts that are material to the issues for determination raised in this matter and I set out as follows: B

Having perused the Record of Appeal the facts of this case as gathered from the particulars of claim; the evidence of the parties as per the record at the hearing, are vehemently contested by the parties in this appeal. It, therefore, suffices to go straight to the facts as will enable me discuss the issues raised for determination by the parties in this appeal. Unarguably, this appeal has been fought as per the parties' respective briefs on the question of the admissibility of Exhibit 'A' and the probative value attached to it by the two lower courts vis-a-vis the assertion by the defendant and his people of their long possession from time immemorial on the land in dispute and also against their claim that the plaintiff and his people were the customary tenants of the defendant. In short, the resolution of this appeal lies on this court confirming or not of the propriety of admitting Exhibit 'A' and in the result the re-evaluation of cases of the parties. This conclusion is also borne out from the issues raised for determination by both parties in the appeal. C D E

The plaintiff's claim inter alia is for a declaration of a Right of Occupancy over the land in dispute and recovery of possession. The trial court dismissed the claim. On appeal to the High Court, the plaintiff took to task the trial court's decision for rejecting of the admission of a certain document - a tenancy agreement of the land in dispute made between the progenitors of the parties to this suit. The High Court overturned the rejection of the said document and admitted it as Exhibit 'A'. The High Court has sequel to receiving Exhibit 'A' re-evaluated the evidence on having found that the decision of the trial court is perverse. The decision of the appellate High Court that upturned the decision of the trial Customary Court, has been confirmed on a further Appeal to the Court of Appeal by the Defendant. The central issue in that court has been the admissibility of Exhibit 'A' which has been found as rightly admitted and the setting aside of the pronouncement that the plaintiff has been the customary tenant of the Defendant. Before going into discussing this case I F G H I

have to deal with the matter of the preliminary objection and dispose of the same.

The Respondent has raised at length a preliminary objection which has been elaborately incorporated in his brief of argument. He has raised the question of whether there is any competent and albeit
 B valid appeal before this court as (i) issues 1 and 2 of the appellant's brief of argument have been identified as based on ground 4 of the Notice of Appeal where no more than one issue can be raised from a ground of appeal. He has submitted that grounds of appeal must
 C arise from the decision appealed from otherwise they are incompetent See: OGBUYIYA V. OKUDO NO.2 (1990) 4 NWLR (Pt. 146) 551 and that the two issues should be declared incompetent and struck out. (ii) that, grounds 2 and 3 have not arisen from the decision of the court below, and even then issue 3 canvassed upon those
 D grounds have raised fresh issues requiring leave of court, which has not been sought and obtained and so the grounds and the issues are incompetent. See: NDIC V. OKEM ENTERPRISES LTD. (2004) FWLR (Pt.210) 1176 at 1238 and ROCKONOH V. NITEL (2001) 74 MJSC 21 at 35 paragraph 'E', and (iii) that no issue(s) have been
 E raised from grounds 1 and 5 and so should be struck out as having been abandoned and also that the Appeal itself should be dismissed on the combined effect of the respective objections taken above. See: NDIC V. OKEM ENTERPRISES LTD. (Supra). On the question
 F of the agreement of the parties as to the identity of the land in dispute he has submitted it is an orbiter and that no appeal lies against an orbiter. See: NDIC V. OKEM ENTER, LTD (Supra).

He has again, contended that as no issues have been raised from grounds 1 and 5 and that on the authority of ATTORNEY GENERAL BENDEL STATE V. AIDEYAN (2003) FUXR (Pt. 57) 85 to at
 G 961, they should be struck out as abandoned. The court is urged to uphold the objection particularly as the six grounds are incompetent and strike them out as well as the appeal itself there being no competent ground to sustain it.

H The appellant in his reply brief filed on 7/11/2008 has made the point that the totality of the issues numbering about 4 on the whole and canvassed in the appeal has not exceeded the number of the grounds of appeal filed in the matter i.e. 6 on the whole. And that the two issues (i.e. issues one and two) rightly have arisen from

ground 4 that is, a two legged ground of appeal conjunctively linked together by the word “and” dealing to wit, firstly; with admitting Exhibit ‘A’ in evidence and secondly, for placing undue probative value on Exhibit ‘A’ and so are competent issues.

See: BIOCON AGROCHEMICALS (NIG) LTD V. KUDU HOLDINGS LTD, (2000) 5 NWLR (pt.691) 493.

On grounds 2 and 3 the Defendant has contended that the court by issuing a declaration of title over the land not claimed by the plaintiff has by implication put the identity of the land in dispute in contention, and so the grounds have arisen from the court’s decision.

On grounds 1 and 5; it has been submitted that ground 5 has been argued under issue 4 which has dealt with wrong perception of the evidence of the parties.

It is urged that the preliminary objection be struck out as lacking merit.

There are good reasons for raising the preliminary objection in this matter. No doubt the manner of framing ground 4 upon which issues 1 and 2 are premised has presented serious challenge to that ground. ***It is settled that one issue can be raised from one or more grounds of appeal but two issues cannot be raised from a single ground of appeal. It is unsupportable to say as at paragraphs 1.4 of the appellant’s brief of argument that the appellant has thus effectively rolled two grounds of appeal dealing with admitting Exhibit ‘A’ and re-evaluation of evidence into one ground of appeal and as he has contended for convenience and to avoid repetition. This is a novel submission and cannot provide however construed a good reason for the obvious error in raising two issues from one ground. It has been clearly settled that two issues cannot be raised from a ground of appeal as a ground of appeal is supposed to encompass a single complaint.*** See: OJE V. BABALOLA (1991) 14 NWLR (Pt. 185) 267 at 270 and NIGER CONSTRUCTION LTD. V. OKUGBE (1987) 4 NWLR (Pt.67) 787. No doubt raising issues 1 and 2 from ground 4 in this matter is not permissible as it amounts to proliferation of issues. The principle is well settled that an issue not covered by a ground of appeal is incompetent. However, I have been referred to the case of the EKE V. OGBONDA (2006). 18 NWLR (Pt.1012) 56

at 524 and based on that case the facts of which are not the same as here, I am prepared to accede to the alternative plea of the Defendant/Appellant to strike out issue one leaving issue two; even so as issue two is coterminous with issue one of the Plaintiff/Respondent's issues for determination. Issue one is therefore struck out leaving issue two as otherwise competent.

On grounds 5 - which has raised the question of the Defendant/Respondent's complaint on the re-evaluation of evidence on having admitted Exhibit 'A' and wrongly placing the onus of proof in a land matter on the Defendant/Appellant (who has not counter-claimed) he has submitted that the ground has been covered by issue 4 and therefore could not have been abandoned. There is no answer to the challenge of abandonment against ground one. No doubt ground one has no issue raised from it and, having been deemed abandoned, it is accordingly struck out.

The Respondent has challenged ground 2 and also issue 3 formulated therefrom. He has contended that the identity of the land in dispute has not arisen from the decision of the lower court. Ground 2 without its particulars reads as follows:

"The Court of Appeal erred in law when it held that the land in dispute was known to both parties and that there is therefore no dispute as to its identity."

The ground has put the identity of land in dispute in issue for the first time since the decision of the trial Customary Court. Having perused the judgments of the three lower courts in this matter, which I must in order to deal exhaustively with the question, ***it seems to me the Defendant/Appellant's challenge of the decisions of the lower courts in this particular is totally misconceived.*** Going a little back to the judgment of the trial Customary Court at page 192 of the Record (i.e. 10 lines from the bottom of that page) that court found that

"Defendants states (sic) that the description of the land in dispute is per claim."

Meaning in effect that the description thereof agrees with the boundaries of the land in dispute as set out in the particulars of claim quoted above in the judgment. The onus is on the Defendant/Appellant to show that the ground has arisen from the decision; he has defaulted in this regard. The parties have visited the locus in quo in

the hearing of the matter where the plaintiff/respondent has led the way to showing the land in dispute between the parties. Sequel to the land inspection the trial Customary Court said at p. 194 as per the 2nd paragraph and I quote:

“The court find from the totality of the evidence before this Honourable Court as follows: B

1. *‘That the defendant’s ancestors were the original owners of the land in dispute which is clearly stated by the DW1. This is also confirmed on inspection by the boundary men. The plaintiff is not cultivating or either his agents, servants or privies (sic) around the disputed land’*” (underlining mine). C

The identity of the land in dispute as pronounced above is unequivocal and unambiguous in the sense of asserting that the parties are ad idem as to the identity of the land in dispute. The Defendant/Appellant in this court never challenged this finding by cross-appealing the finding. Therefore, the identity of the land in dispute in this case has been settled by the trial court and both parties have acquiesced in it. More forcefully on this point is the fact that Exhibit ‘A’ in this matter has been rejected by trial Customary Court not because it does not pertain to the land in dispute but essentially because one of the signatories to it is not a party to this suit. At the appellate High Court this document of tenancy agreement has been admitted in evidence as Exhibit ‘A’ because it has documented the transaction between the ancestors of the parties in regard to the land in dispute vis-à-vis its binding nature and in regard to Collecting of tributes from the plaintiff/respondent’s customary tenants. **The issue of identity of the land in dispute has not featured before that court as an issue nor in the court below. At the court below it stated in the course of its decision that:** D E F G

“The land in dispute is known to the parties. There is therefore no dispute of its identity.”

The Defendant/Appellant has complained against the statement but he cannot be heard to say that the land in dispute is unknown to him and his witnesses or that the above observation does not constitute a legitimate inference to be drawn in the context of the above premises in which the observation is relatively situated. In the circumstances, the ob- H

servation at best is no more other than an obiter dicta meaning that it cannot form the basis to sustain a ground of appeal as it is not part of the Ratio decidendi of the decision. Even if I

am wrong for so concluding which I do not concede, the issue faces yet a more formidable hurdle to surmount. Even more so, the ground
 B has raised a new issue being taken for the first time before this court and so requires leave of court and not having sought and obtained leave of court ground 2 of the grounds of appeal and of course issue
 3 raised therefrom are incompetent; in the result they should be struck
 C out.

Furthermore, I find it most disconcerting that the Defendant/Appellant on this ground has at paragraph 2.2: of the reply brief stated thus:

*“The Respondent seeks to argue that ground 3 relates to a
 D challenge based on the parties before the court, whereas on the face of the ground of appeal this is not the case. Ground 3 states that the Court of Appeal wrongly affirmed a decision of the High Court granting a declaration of title over land not claimed by the Respondent. The particulars to ground 3 simply emphasize the position of the Appel-
 E lant - that the customary tenant of the Respondent in respect of whose land the Respondent may have had a claim was not before the court. In essence the declaration of title was wrongly made against the Appellant.”*

With respect, the above expatiation on ground 3 cannot be
 F right as it has made the absence of proper parties in this case the centre piece of its complaint without any cause. Even more fundamental error is that the Defendant/Appellant has failed to show that the ground has arisen from the decision. The complaint as to the
 G improper constitution of parties has never been muted nor canvassed in the court below also in the appellate High Court and the trial Customary Court. Neither party before the court below has frontally raised this issue nor has the court raised it and decided that question. It is settled principle of law that grounds of appeal must arise or flow
 H from or related to judgments of the court appealed from. See: NDIC V. OKEM ENTER. LTD. (Supra) and UGO V. OBIKWE (1989) 2 SC (Pt 11) 4.

Furthermore, I must observe that this is not an attack or challenge which otherwise impinges on the jurisdiction or competence of

the court vis-à-vis the question of improper parties before the court and so capable of being raised at any stage of the proceedings. This is a matter of procedural irregularity and it does not affect the jurisdiction or competence of the court to entertain the matter. See: **AYORINDE V. ONI** (2000) 2 SC. 33. Besides, this is an action being prosecuted and defended in representative capacities, that is to say, between the overlord and his customary tenants. B

Finally the ground, at best has again raised a new issue which can only be sustained in the circumstance on leave of court having been first sought and obtained. In the absence of any such leave of court, it is incompetent, and it is hereby struck out. See: **ROCKONOH V. NITEL** (2001). I have taken considerable time to examine the question arising from the preliminary objection and the Defendant/Respondent's reaction thereto. Grounds 1,2,3, and 6 and issues 1 and 3 declared incompetent herein have been totally misconceived and have tended to misguide the court to dealing with matters collateral in nature, indeed, not properly before the court and ultimately would have led to a miscarriage of justice. I now come to consider the case of the parties as per the briefs of argument. But before then as no issue has appeared to have been raised from ground six, it is also hereby struck out. C
D
E

I now come to the appellant's case as per his brief of argument, i.e. on the remaining live issues. Subject to my findings above, if I may emphasize, I uphold the preliminary objection with regard to issues 1 and 3 of the Defendant/Appellants issue for determination and grounds 1,2,3, and 6 of the Grounds of Appeal and I hereby strike them out as incompetent. F

On issue two, issue one having been struck out the appellant has dealt with the question of admissibility and relevancy of Exhibit 'A'. I agree with the Appellant that this document is central to the dispute in this appeal. No doubt the admission of Exhibit 'A' has literally turned the scales against the appellant before the Appellate High Court as well as the court below. He has denounced the appellate High Court for relying on the provisions of Section 12 of the Evidence Act to admit the document - Exhibit 'A', thus has wreaked havoc to the appellant's case in the appeal. The appellant has submitted in this regard that it is wrong based on section (2) (c) of the Evidence Act to refer to and rely on the Evidence Act - Section 12 to G
H

admit the document - Exhibit 'A' when the Evidence Act does not apply to Customary Courts. See: OSU V. IGIRI (1988) 1 NSCC 11 2 at 119.

The appellant has not only strongly deprecated the admission in evidence of Exhibit A by the Appellate High Court but also has challenged the high probative premium i.e. unwarranted evidential weight given to Exhibit A which has led according to the appellant to a wrong conclusion on the facts and the propriety of construing a witness to Exhibit A, that is to say, Aina Oya Akobunra as a party bound by the terms of Exhibit A. He has challenged Exhibit A on three other grounds, that is to say, firstly, that Exhibit A is not an agreement between the ancestors of the parties showing their true relationship in regard to the land sold by the plaintiff's ancestor to the Defendant's ancestor situate in Akasun Ilase location of the land in dispute but has been made between Kukuto Zampo (as Tenant) and Asade Onitodo Oteniya (as landlord) in respect of a farmland as per Exhibit A; and secondly, that Aina Oya, the witness to Exhibit A has not been named and assigned the function of collecting rents as agent of Asade family in Exhibit A; and thirdly, that Exhibit A deals with the land granted by the plaintiff's ancestor in consideration of rent and has been occupied by Kukuto Zampo and that there is no link between the land in dispute and the farmland covered by Exhibit A. And so, that upon the blighted uncertainty of the land in dispute, the court below has acted in error to have confirmed the decision of the High Court.

On the totality of the evidence adduced by the parties on their traditional histories, he has under this umbrella submitted that it must be considered based on the principle expounded in the decision in IDUNDUN V. OKUMAGBA (1975) NSCC (Vol. 10) 445 and in particular has submitted further that the onus on the plaintiff is to establish his case in one of the five ways laid down in that case. He has relied on the evidence of the Defendant and the boundary men to contend that the Defendant/Appellant has been in uninterrupted possession of the land in dispute at Akasun Ilase and that it has been established that the land in dispute has been the land sold to the Defendant ancestor and not subject to payment of rent. Further, on the totality of the evidence, he posits that the plaintiff's ancestors sold a parcel of land to the Defendant ancestor and it is situated in Akasun Ilase location of the land in dispute.

Finally, he contends that the rejection of Exhibit A has not resulted in a perverse decision as the judgment of the trial customary court is otherwise supported by the evidence of the appellant and his witnesses in the trial court and that it is wrong for the High Court without justifiable grounds to have intervened and substituted its conclusion, for that of the trial Customary Court. The court is urged to allow the appeal and set aside the decisions of the two lower courts and restore the decision of the trial Customary Court. B

The respondent's case according to his brief is copiously set out. On the rejection of Exhibit 'A' i.e. the tenancy agreement having on its rejection by the trial court occasioned a miscarriage of justice, he has submitted that its admission by the High Court has been based on its relevancy. See: EGONU V. EGONU (1978) 1-2 54 (Pt. 111) 129, and TORTI V. UKPABI (2000) FWLR (Pt. 29) 2481 at 2535. He has maintained that the High Court and Court below have rightly ascribed probative value and weight to the document - Exhibit A as justified by the testimonial evidence given by the plaintiff/respondent and his witnesses, which has rightly led on having been held, that the rejection of Exhibit A is perverse and has occasioned a miscarriage of justice to setting aside of the decision of the trial customary court. The evidence has further showed that his ancestors have been the first settlers on the land in dispute over which they have exercised acts of ownership before granting the land in dispute to the defendant/appellant and his people as customary tenants; hence the defendant/appellant and his people are now in actual possession of the disputed land. He makes the point that possession by customary tenants of the land granted to them as here is a vital incidence of customary tenancy. See: SAGEY V. NEW INDEPENDENT RUBBER LTD. (1977) 5 SC.143 and OGUN V. AKINYELU (2005) FWLR (Pt. 243) 601 at 620. He has submitted that there is no evidence of an out-right sale of the land in dispute to the Defendant/Appellant's family; and also has contended that the question of identity of the land in dispute does not arise from the description of it as per the particulars of claim which has clearly delineated the land in dispute on which the parties have joined issues; See: ILONA V. IDAKWO (2000) FWLR (Pt.171) 1715 at 1737-1738 and even then it has been made abundantly certain by the evidence led in support thereof by the plaintiff and his witnesses. He submits that his case as based on the traditional evi- C D E F G H

dence before the court has been cogent, consistent and is more probable and in accord with the principles laid down in *IDUNDUN V. OKUMAGBA* (Supra) and supports the claim for a declaration of title in this case in their favour.

On the concurrent findings of the two lower courts, he has
 B opined firstly, that the High Court has rightly interfered with the trial
 Customary Court's decision having regard to the documentary evidence as per Exhibit A its rejection has been held as perverse. See: *AMADI V. ORISAKWE* (2005) FWLR (Pt. 247) 1529 at 1588 and
 C *DANIEL HOLDINGS LTD V. U.B.A.* (2005) FWLR (Pt. 277) 895 at
 902 and secondly, that the Defendant/Appellant in this court has not
 made out a case of exceptional circumstances to justify any interference with the concurrent decisions by these Courts. The court is therefore urged to dismiss the appeal and affirm the decisions of the two
 D lower courts.

I have at last come out of the woods, as it were, to consider the merits of the cases put forward by the parties in this appeal. I must confess that the respondent's two issues for determination are in themselves self sufficient to resolve the matter taking in that regard the
 E remaining two issues of the Appellant's case which are substantially identical to the respondent's live issues here.

On the first issue of whether exhibit 'A' was properly admitted and made use of. This issue has covered issue 2 of the appellant's
 F brief. The first observation is that the document is not fundamentally inadmissible evidence in any respect. The tenancy agreement (i.e. Exhibit A) is evidence of grant of the land in dispute to Kukuto Zampo on payment of tribute consisting of native gin, Egbaarin, Ejo Aro and a bottle of palm oil.

I have gone through the facts of this case as per the Record and also the parties' submissions as per their respective briefs of argument as well as the law cited by the parties in this case; the main issue in this appeal is pivoted on the admission of Exhibit A and on the contention of the "heavy and inappropriate, reliance" placed on
 H it by the two lower courts and even then on its admission pursuant to the Evidence Act (Section 12) as well as the wrongful reversal of the burden of proof by placing the same on the Appellant as a "claimant" in the case.

The admission of exhibit 'A' as can be seen so far in this judg-

ment cannot be faulted. The admission of Exhibit A, no doubt has turned the scales against the Defendant/Appellant. It is a document otherwise, .evidencing a tenancy agreement made on 28/11/1933 between the ancestors of the parties to this matter namely Kukuto Zampo (as tenant) and Asade Onitodo Oteniya (as Landlord) and Aina Oya (as witness and sponsor). The Customary Court rejected the document on the ground that one of the signatories to it has not been made a party to the instant matter. Although, Aina Oya has attested Exhibit 'A' as witness/sponsor, oral evidence has been tendered before the trial customary court showing that he has collected tributes oh behalf of Asade family i.e. the plaintiff/respondent. The document Exhibit A, and I must rely on the record has surfaced in the trial Customary Court's judgment and rejected on the ground that Kukuto Zampo, a signatory to the document is not a party in this matter. On appeal to the appellate High Court the document has been admitted on the grounds of relevancy and marked Exhibit 'A'. The High Court has referred to Section 12 of the Evidence Act as empowering it to do so when the Evidence Act, I must emphasize does not apply to Native Courts.

I must remark that as there is nothing which has rendered Exhibit 'A' fundamentally as inadmissible evidence; it is my view that the admission of Exhibit A is properly founded. It cannot be faulted not even on the slenderest reason that Kukuto Zampo is not a party to this suit, which reason I must confess, has nothing to do with its admission in evidence. Besides, Exhibit 'A' as a documentary evidence has not been attacked in any manner perjorative as to its integrity and authenticity and therefore it is; capable of being believed. See: OKPANUM V. S.G.E. (NIG.) LTD. (1998) 7 NWLR (Pt.550) 537. Its rejection therefore, has been rightly deprecated as perverse and occasioning a miscarriage of justice. Content wise it has connoted the state of affairs showing the binding relationship between the parties, i.e. between the overlord/customary tenant relationship with regard to the land in dispute subject to payment of tributes.

The law, I must state has accorded a measure of primacy to documentary evidence as against oral evidence. This conclusion has been firmly established as in the Countess of Rutland's case (1604) 5 Co. Rep 25b at 26b that:

“matters in writing which finally import the certain truth of the agreement of the parties should not be controlled by the uncertain testimony of slippery memory”.

In any case one of its ripple effects in this case has included shoring up evidence in determining the ownership of the land in dispute howbeit by its direct pertinence in this case as to its terms with regard to the overlord/tenant relationship which has conduced to its confirmation by the court below. ***The evidential quality of the document per se has not been attacked in any respect of the document by the Defendant/Appellant. Exhibit ‘A’ has clearly not only explained how the land in dispute has been granted and not sold to the Defendant/Appellant by the Plaintiff/Respondent as customary tenant but also it has provided the reason why the Defendant and his people are physically in possession of the land in dispute as possession in cases of this nature, as a settled principle of law is a cardinal incidence of customary tenancy hence the usual item of claim of recovery of possession in the Writs of Summons as in this case.*** See: ABODERIN V. MORAKINYO (1967) NSCC (Vol. 5) 100, AGHENGHEN & ORS. V. WAGHEROGHOR & ORS. (1974) NSCC (Vol. 4) 20, OWOADE & ORS. V. OMITOLA & ORS (1988) NSCC (Vol. 19) 802 and LAWANI V. ADENIYI (1964) NSCC (Vol. 3) 231. It also has negated the Defendant/Appellant’s allegation that they are the owners in possession of the land in dispute from time immemorial i.e. as claimed by the Defendant in their evidence, also in the same vein that he and his people as the original settlers have been exercising maximum rights of ownership over the same land before the arrival of the plaintiff/respondent and his people on the land in dispute as their customary tenants. It has rendered the defendant/appellant’s allegation that the plaintiff/respondent and his people have been their customary tenants on the land in dispute otiose. Exhibit ‘A’ as can be seen has therefore made a great impact in unraveling some of the thorny issues in this matter as I have stated above. The admission of Exhibit ‘A’, I must note, has had important direct effect on the whole case. Again, from the angle of the propriety of admitting Exhibit A in evidence, I agree with the two lower courts, that it is based on relevancy and so attributing it as founded on Section 12 of the Evidence Act is merely superfluous. On the effect of receiving the

document - Exhibit A in evidence coupled with the testimonial evidence before the court in sum, has supported the case of the respondent that the trial Customary Court's decision in awarding the case to the Defendant is perverse and has occasioned a miscarriage of justice. I note that in cases founded on pleadings the effect of documents as Exhibit A here should have been pleaded but this case is from the customary court where there are no pleadings and its proceedings have to be construed liberally. Therefore, there can be no doubt as to the relevancy of admitting Exhibit A in the circumstances.

The appellate High Court having admitted Exhibit 'A' it is a settled principle of law that it is in as good a vintage position as the trial court to do its own evaluation of the documentary evidence and ascribe value to it. See: KARIBO V. GRAND (1992) NWLR (Pt. 230) 426, S.B. FASHUN V. M.A. ADEKOYE (1974) 1 ANLR (Pt. 1) 35, ROMAINE V. ROMAINE (1992) 4 NWLR (Pt. 238) 650. ***It is even moreso, in this case where the appellate High Court has found the rejection of Exhibit A as being perverse because the third signatory to it has not been made a party to the suit. It is also settled that where a trial court as here has made a perverse finding that has run counter to evidence and also has taken into account matters {as to Kukuto Zampo not being a party to the suit} which are irrelevant in reaching a perverse conclusion that an appellate court as the appellate High Court here is in as good a position as the trial court to review the perverse conclusion as if it were a trial court.***

See: ATOLAGBE V. SHORUN (1985) 1 NWLR (Pt. 2) 360, ADIMORA V. AJIFO (1988) 3 NWLR (Pt.80) 1, I hold unreservedly that both the admission of Exhibit A and ascription of probative value to it vis-à-vis the totality of the evidence on the printed record before the appellate High Court are well founded. I agree with the respondent that the weight given to Exhibit A is proper and within the confines and purpose for which Exhibit A has been tendered before the court.

The re-evaluation of evidence adduced at the trial is a crucial step to reaching a fair decision in any matter as in the instant case. More profoundly, Exhibit A has settled the fact that all of the three signatories to, Exhibit A have demonstrated that the parties to Exhibit A are agreed as to the true state of affairs as stated in Exhibit A. Also Exhibit A has confirmed that Aina Oya has been the Rent (trib-

ute) collector for Asade family and rightly has been made a party to the case. It has given meaning to the fact that the plaintiff gave land to Kukuto Zampo and that the farmland as found is part of the land in dispute. Having found that the decision of the trial court is perverse, the appellate High Court rightly intervened to avert a miscarriage of justice. “See: EGONU V. EGONU (Supra).”

The issue of the identity of the land in dispute in my view has never been made an issue in this matter. It is settled that courts are not obliged to decide issues not regularly placed before them by the parties. Besides, I have dealt with this point to exhaustion in my discussion of the matters arising under the identity of the land in dispute in the preliminary objection herein. Therefore, it is no use flogging a dead horse.

Lastly, I examine the parties’ respective traditional evidence as to their respective claims to ownership of the land in dispute. I have earlier on set out how the land in dispute has devolved from Idowu Eyile the first settler to the present plaintiff in unbroken chain of succession. Having weighed this case against the traditional history of the Defendant that is having put the cases of the two sides in the imaginary scales I have unhesitatingly come to the conclusion that the plaintiff has produced a most probable, cogent, consistent evidence based on balance of probability that he and his people are the owners of the land in dispute. Exhibit A has put it abundantly beyond dispute that the defendant and his people are customary tenants of the plaintiff and his people. They have unwitting gambled in challenging their overlords as to the ownership of the land in dispute. Also by the unauthorized granting of interest by Musari’s son of the land in dispute to a total stranger to build a church under a claim of ownership of the land in dispute has constituted a direct challenge to the plaintiffs right as the overlord amounting to misconduct entitling forfeiture. See: ONISIWO V. BAMGBOYE (1941) 7 WACA 69. The Plaintiff/Respondent has therefore successfully sustained the decisions of the two lowers courts. There is a concurrent decision of the two lowers courts here. The appellant has failed to make out a case of exceptional circumstances to enable this court interfere with those decisions.

I resolve the two issues in favour of the Plaintiff/Respondent. In consequence thereof, I find no merit in the appeal which I hereby

dismiss in its entirety. The decisions of the Court below and the appellate High Court are hereby affirmed with N50, 000 .00 costs to the plaintiff.

KATSINA-ALU JSC

B

I have had the advantage of reading in draft the judgment delivered by my learned brother CHUKWUMA-ENEH JSC. I agree completely with it and, for the reasons he has given, I also dismiss the appeal with costs of N50, 000 .00 in favour of the plaintiff.

C

MOHAMMED JSC

My learned brother Chukwuma-Eneh JSC., in his leading judgment had thoroughly dealt with all the issues raised by the *appellant for the* determination of this appeal. I entirely agree with him that the Court of Appeal was indeed right in allowing the appeal before it and in admitting Exhibit ‘A’ in evidence and granting the claims of the Plaintiff/Respondent. Consequently, I also dismiss the appeal and abide by the orders made in the leading judgment including the order on costs.

E

OGBUAGU JSC

F

This is an appeal against the decision of the Court of Appeal, Ibadan Division (hereinafter called “the court below”) delivered on 19th April, 2004 affirming the Judgment of the Appellate High Court of Ogun State sitting at Ota - per Ogundepo, J. setting aside/reversing the judgment of the trial Grade 2 Customary Court, Ado Odo of Ogun State dismissing the Plaintiff’s/Respondent’s Claims.

Dissatisfied with the said decision, the Defendant/Appellant has appealed to this Court on Six (6) Grounds of Appeal. The Appellant, has formulated four (4) issues for determination, namely,

H

“1. *Whether the court below was right to affirm the admissibility of Exhibit “A” pursuant to the provision of the Evidence Act.*

2. *If question is answered in the affirmative, whether the court*

below placed undue probative weight on Exhibit “A” when evaluating the evidence.

3. *Whether the land in dispute (the description of -which both parties agree) was the land originally granted to Akobunla by the Plaintiff’s ancestor.*

B 4. *Whether the court below was right to affirm the decision of the High Court which set aside the decision of the Customary Court on the ground that it was perverse”.*

On His part, the Respondent, has formulated two issues for determination, namely,

C “a. *Whether exhibit “A” was properly admitted and made use of.*
 b. *Whether the Court below was right to have re-evaluated the evidence before the trial Customary Court thereby affirming the decision of the High Court which set aside the decision of the Customary*
 D *Court on the ground that it was perverse (sic)”.*

As can be seen, issue 1 of the Appellant, is substantially the same with issue a. of the Respondent while issue 4 of the Appellant is substantially the same with issue b. of the Respondent. I note that neither of the parties, stated under what ground their said issues,
 E were distilled or raised from. The consequences have been settled in a number of decided cases. See for instance, the cases of *Igago v. The State (1999) 12 SCNJ. 140* citing some other civil cases therein and *Ngileri v. Mother cat Ltd. (1999) 13 NWLR (pt.625) 626; (1999) 12 SCNJ. 101 @ 133* per Ogundare, JSC. - per Ogundare, JSC. (of
 F blessed memory).

I note also that the Respondent, raised at page 2 paragraph 2.00 of his Brief, a Notice of Preliminary Objection as to whether there is any competent and valid appeal in the instant appeal, I note
 G that it is in the said Notice, that the Respondent, under the grounds stated and relied on, that issues 1 and 2 of the Appellant for the Objection, are based on Ground 4 of the Notice of Appeal. He contends that more than one issue cannot be tied to a ground of appeal. It is also stated that Grounds 2 and 3, did not arise from the decision
 H of the court below or from any issue canvassed in the said court and therefore, that the same is a fresh point for which leave of Court should have been obtained. Finally, that no issues were formulated from grounds 1 and 5 of the appeal and that the Court, should disregard the same and dismiss the appeal.

When this appeal came up for hearing on 12th October, 2009, Delano, Esq., - learned leading counsel for the Appellant, adopted their main and Reply Briefs. He referred to page 5 of their Brief of Argument and applied to correct or amend Section (4) (c) of the Evidence Act to read Section 1 (4). Thereafter, he urged the Court to allow the appeal. B

Oyajinmi, Esqr. - learned counsel for the Respondent, also adopted their Brief of Argument He referred the Court to their said Notice of Preliminary Objection and applied to effect a minor amendment at page 4 line 6 paragraph 2.09 line 5 of their said Brief to read Order 8(2)5 instead of Order 6 of the Rules of this Court. He urged the Court to dismiss the appeal. Thereafter, Judgment was reserved till today. C

In considering the said Objection, while the objection in respect of issue 1, is sustained by me, I agree that no issue or issues, was or were raised in respect of Ground 6 of the grounds of Appeal. In respect of Ground 2 and Issue 3, I also agree that they were raised for the first time in this Court without the leave either of the court below or this Court. It is now firmly settled that an Appellate Court, deals with issues and not grounds of appeal. See the cases of The Attorney-General of Bendel State & 2 ors. v. Aideyan (1989) 4 NWLR (Pt.118) 646 @ 664 and Adelaja v. Fanoiki & anor. (1990) 2 NWLR (Pt. 131) 137 @ 148; (1990) 3 SCNJ. 131. E

Again, where no issue/issues is or are distilled or raised from a ground or grounds of appeal, such ground or grounds is or are deemed to have been abandoned and should be struck out. See the cases of Osinupebi v. Saibu (1982) 7 S.C. 104 @ 110-111; Western Steel Works Ltd. & anor. v. Iron & Steel Workers Union of Nigeria & anor. (1987) 1 NWLR (Pt. 49) 284, 304; (1987) 1 SCNJ.....; Ugov. Obiekwe & anor. (1989) 1 NWLR (Pt. 99) 566 @ 580; (1989) 2 SCNJ. 95 and Ndiwe v. Okocha (1992) 7 NWLR (252) 129 139; (1992) 7 SCNJ 355. Thus, an issue which has no ground of appeal to support it, is worse than useless. F

Lastly, where any fresh issue or issues is or are raised for the first time which were not raised or canvassed either in the trial court or in the Court of Appeal and It or they is or are raised for the first time in this Court without either the prior leave of the court below or this Court, such issue or issues, are treated or regarded as incomplete. H

tent. See the cases of *Agu v. Ikewibe* (1991) 3 NWLR (Pt. 180) 385 @ 403; (1991) 4 SCNJ 56 - per Karibi-Whyte, JSC (Rtd.) and *Ogbe v. Onwuzo* (2005) All FWLR (pt. 275) 581- @ 589-590 - the latter cited in the Respondent's Brief. The rationale for this rule is derived from the fact that an Appellate Court is expected to hear grievances and complaints against decisions from the court below. The duty of an appellate court, is to correct any error or errors of the court below which has or have resulted in such error or errors.

Now to the main appeal in my respectful view, the crucial issue in this appeal for determination, is in respect of the admissibility of Exhibit "A" by the Appellate High Court and affirmed by the court below. It is the agreement between the Respondent's ancestors, and the Appellant's ancestor. Exhibit "A" was rejected by the trial court" on the ground that Kukuto Zampo, was not a party to the suit. See page 22 of the Records.

It is now firmly settled that in determining the admissibility of evidence, it is the relevance of the evidence such as a document, that is important and not how it was obtained.

In other words, admissibility of evidence and particularly documents, depends again, on the purpose for which it is being tendered. There are too many decided authorities in regard to admissibility of documents. See the cases of *Elias v. Disu* (1962) 1 All NLR. 214; *Ogbuanyinya & 5 ors. v. Obi Okudo & 2 ors.* (1979) 6-9 S.C. 32; (1979) ANLR 105 @ 112; (1979) IMSLR 731; (1979) 3 LRN 318 @ 324; (1979) 6-9 S.C. (Reprint) 34; *Kuruma v. R.* (1955) A.C. 197 @, 203; *Oshurinde v. Akande* (1996) 6 SCNJ. 193 @ 199 - 200; (1996) 6 S.C. 193; *A. K. Fadallah v. Arewa Textile Ltd.* (1997) 7 SCNJ. 202 @ 217 - per Ogwuegbu, JSC.; *Agbahomovo & 2 ors. v. Eduyegbe & 6 ors.* (vice versa) (1999) 2 SCNJ. 94 @ 105; (1999) 2 S.C. 79 @ 86 - per Onu, JSC.; *Okonji & 2 ors. v. Njokanma & 2 ors.* (1999) 12 S. C. (Pt. II) 150; (1999) 12 SCNJ. 259 @ 273 - 275 - per Achike, JSC (of blessed memory) and *Alli & anor.v. Chief Alesinloye & 8 ors.* (2000) 6 NWLR (Pt. 660) 177 @, 213, 215; (2000) 4 SCNJ. 264 - per Iguh, JSC. I hold that Exhibit "A", was not only relevant, but it was/is admissible.

In concluding this Judgment, it is noted, by me that the court below, noted that the document, came from proper custody. Exhibit "A", shows also customary grant and not an outright sale. It must be

noted, that the identity of the land in dispute, was known to the parties. I also note that at page 162 of the Records the court below, stated that the Appellant did not in his Brief and even in his Reply Brief, deny the possession of the Respondent. The Appellate High Court and the court below, made vital findings of facts and holdings which are borne out from the Records and they are not perverse. Thus, there are concurrent findings of facts and holdings by the two lower courts and the attitude of this Court, is not to disturb or interfere. See the cases of *Onafede v. Alhaji Olayiwola & 6 ors.* (1990) 7 NWLR (Pt 161). 130; (1990) 11 SCNJ.....; *Bamgboye v. University of Ilorin & anor.* (1999) 14 NWLR (Pt.602) 290; (1999) 6 SCNJ. 225 and *Daniel Holdings Ltd, v. United Bank For 'Africa Plc* (2005) 7 SCNJ. 247; (2005) 7 S.C. (Pt.II) 18; (2005) All FWLR (Pt. 277) 895 @ 902 just to mention but a few.

It is from the foregoing and the fuller Judgment of my learned brother, Chukwuma-Eneh, JSC, just delivered and which I had the privilege of reading before now and which reasoning and conclusion, I agree with, that I too, find no merit in this appeal which fails. I too dismiss it. I abide by the consequential order in respect of costs.

MUNTAKA-COOMASSIE JSC

I have had the advantage of reading in draft the lead judgment of my learned brother Chukwuma-Eneh JSC, in this appeal. I find no merit whatsoever in the appeal too dismiss same. I endorse the order as to costs.