

SUPREME COURT OF NIGERIA
11TH DECEMBER, 2009 SC. 366/2002
CORAM:- D. MUSDAPHER, M. A. MUKHTAR,
I. F. OGBUAGU, M. S. MUNTAKA-COOMASSIE,
J. A. FABIYI, JJSC

RAUPH BELLO OSENI APPELLANT
AND

1. CHIEF LASISI BAJULU

(Deceased)

2. MR. MUSTAPHA BAJULU) RESPONDENTS

3. MR. ALLIU BAJULU)

(Substituted and joined by order

of the Court of Appeal dated 30/11/98)

LAND LAW - Identity of land - Inconsistency in address used - Effect
- The inconsistency and how it came about having been explained
by plaintiff witness - There was no doubt that both parties - Were
talking of the same property (H1)

APPEALS - Issues - New issue raised without leave - Fate - Appellant's
issue (2) - On alleged failure to evaluate Exhibit K is a new issue -
Having been raised without prior leave of court - It becomes a non
issue and deserves to be struck out (H2)

FACTS

Before the Lagos State High Court, plaintiff, who has been substituted by respondents, sued defendant/appellant claiming possession of two rooms and a parlour at No. 1A Bajulu Street, Lagos. The case of plaintiff is that the property is a Chieftaincy family property occupied by defendant as tenant at will. Defendant denied the claim and asserted that the property beneficially belonged to his great-grand father. Defendant addressed the property as No. 1 Bajulu Street, Lagos. It was in evidence that there were only two premises on Bajulu Street to wit No. 3 which is the Bajulu chieftaincy palace and the premises in dispute.

After hearing, the trial court gave judgment to plaintiff. Aggrieved, defendant appealed to Court of Appeal which dismissed the

appeal. Still dissatisfied, defendant has come on a further appeal to Supreme Court arguing inter alia, that it was wrong for Court of Appeal to have affirmed the judgment of trial court awarding plaintiff possession of No. 1 Bajulu Street when the claim of his claim was for possession of No. 1A Bajulu Street.

ISSUES FOR DETERMINATION

“1. Was the court below right in affirming the judgment of the trial court that the Respondent was entitled to possession of No. 1 Bajulu Street, Lagos when the claim of the Respondent was for No. 1A Bajulu Street, Lagos.

2. Whether the failure of the court below in re-evaluating the evidence of the Defence witnesses in relation to Exhibit K, the Crown Grant occasioned miscarriage of justice on the part of the appellant.”

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

Identity of land - Inconsistency in address used

1. The plaintiff established that the land in controversy forms part of the Bajulu palace of the plaintiff and there was no doubt both the plaintiff and the defendant were talking about the same and one property, which consisted of a parlour and 2 bedrooms. The inconsistency in the number 1 and 1A and how it came about has been explained by the plaintiff witness in the above reproduced evidence, and this was not challenged by the defendant under cross examination.

The heavy weather made by learned counsel for the appellant on the claim in the pleadings vis-à-vis the decision of the two courts below is to my mind unwarranted. (pp. 2458 H & 2459 D)

APPEALS - Issues - New issues raised without leave - Fate

2. The learned counsel for the respondents in their brief of argument submitted that the appellant's issue (2) based on alleged failure to evaluate evidence of Exhibit 'K' is a new issue, not being one of the issues submitted to the lower court for determination. He argued that for the issue to be proper the leave of court to raise it as a fresh issue, is needed and where not obtained, the issue is incompetent. As a matter of fact I have perused the briefs of argument in the lower court and they are bereft of such issue raised. It was definitely not an issue, and so the court below did not even allude to it in its judgment.

It is also not on record that the appellant sought and obtained leave of this court to raise and argue the issue. There are plethora of authorities that fresh issue raised for the first time require leave of court, and where such leave has not been obtained, the issue becomes non issue and deserves to be struck out. (p. 2461 A/E)

NOTABLE POINTS OF INTEREST

OGBUAGU JSC

1. Court deals with issues not grounds of appeal

It is clear from the two issues of the Appellant, that no issues have been raised/distilled or formulated in respect of Grounds ONE (1) and EIGHT (8) of the Grounds of Appeal, it is now firmly settled firstly, that this Court, deals with Issues and not grounds of appeal. This is because, and this is settled that it is on the basis of the issues that the parties find/found their contention(s).

I therefore, discountenance the said Grounds 1 and 8 of the Grounds of Appeal and in fact I hereby strike them out. My further reason is that it is settled that when an issue, is not placed before an Appellate Court, it has no business whatsoever to deal with it. (pp. 2463 H & 2464 D)

2. Appeals - Fresh issues may some times be raised without leave

It is settled that when a party seeks to file and argue in this Court, a fresh issue not canvassed in the lower courts - whether the issue pertains to law or otherwise, leave to file and argue such an issue, must be had and obtained. I wish to add quickly as this is well established, that although the above, is the law, but such a fresh issue, can be raised and relied on, upon any new line of argument or new decided authorities judicial or statutory to support his argument in an issue that is properly before the court. (p. 2464 G)

REPRESENTATION

Mr. Toyin Pinheiro, with him Tope Pinheiro, and Doyin Elegbede for the appellant.

Mr. E. A. Oyebanji for the Respondents.

CASES REFERRED TO

Nsirim v. Nsirim (1990) 3 NWLR part 138 page 285

- Obiakor v. State (2002) 10 NWLR part 776 page 612
 Ezendu v. Obiagwu (1986) 2 NWLR part 21 page 208
 Ezedigwe v. Nolichie 2001 12 NWLR part 726 page 37
 Ezekude v. Odogwo (2002) 13 NWLR part 784, page 366
 Adelaja Fanoiki & Anor. (1990) 2 NWLR (Pt.121) 137 @ 148
 B Obasohun v. Omorodion (2001) 13 NWLR part 729 page 206
 Okpala & anor. V. Ibeneme & ors. (1989) 2 NWLR (Pt.102) 208
 Fajemirokun v C.B. Nig. Ltd. (2009) 5 NWLR (Pt. 1135) 588 at 599
 Obiakor & anor. v. The State (2002) 10 NWLR (Pt.776) 612 @ 525
 C Macaulay v. NAL Merchant Bank Ltd. (1990) 4 NWLR (Pt. 114) 283
 Alli & anor. V. Chief Alesinloye & 8 ors. (2000) 6 NWLR (Pt.660)
 127 @212
 Adeusola & 4 ors. v. Akinola & 3 ors. (2004) 12 NWLR (Pt. 887)
 295 @ 311
 D Chief Ogunbadejo v. Otunba A.L. Owoyemi ,(1993) 1 NWLR (Pt.
 271) 517 @ 534
 Attorney General of the Federation v Aideyan (1989) 4 NWLR (Pt.
 118) 464 @ 665

E

LEAD JUDGMENT BY MUKHTAR JSC

- In the Lagos State High Court, the plaintiff, who is substituted
 by the applicants who are the respondents in this appeal, instituted
 an action against the appellant. The plaintiff in the suit claimed pos-
 session of the two rooms and a parlour (a chieftaincy family prop-
 erty) at No. 1A Bajulu Street, Isale-Eko, Lagos occupied by the de-
 fendant as tenant at will. The defendant denied the claim of the plain-
 tiff, but asserted that the property beneficially belonged to his great-
 grand father Aina Adaba. The parties testified, and one of them called
 F witnesses, after which their counsel addressed the court. The learned
 G trial judge after appraising the evidence before him and the addresses
 of learned counsel found in favour of the plaintiff as follows:-

- "I hold that the plaintiff succeeds and that he is entitled to the
 said premises. I hereby order that the Defendant shall vacate and
 H give up possession of No. 1, Bajulu Street to the Plaintiff on or before
 the 16th day of October, 1992."*

Dissatisfied with the judgment the defendant appealed to the
 Court of Appeal on six grounds of appeal. The Court of Appeal found
 no merit in the appeal, so it dismissed it. Again, the defendant was

not satisfied with the outcome of the appeal before the Court of Appeal, so he has again appealed to this court on eight grounds of appeal.

Learned counsel for the parties exchanged briefs of argument, which were adopted at the hearing of the appeal. Two issues formulated in the appellant's brief of argument are as follows:-

"1. Was the court below right in affirming the judgment of the trial court that the Respondent was entitled to possession of No. 1 Bajulu Street, Lagos when the claim of the Respondent was for No. 1A Bajulu Street, Lagos.

2. Whether the failure of the court below in re-evaluating the evidence of the Defence witnesses in relation to Exhibit K, the Crown Grant occasioned miscarriage of justice on the part of the appellant."

Only one issue was formulated for determination in the respondents' brief of argument. The issue reads as follows:-

"Was the court below not right in affirming the judgment of the trial court that the Respondent was entitled to possession of the premises variously and interchangeably described as No. 1 or No. 1A Bajulu Street, Lagos having held that the Respondent also proved his title to the premises."

The respondents had raised a notice of preliminary objection in their brief of argument, but at the hearing of the appeal, the learned counsel withdrew the preliminary objection, and said his objection on the appellant's issue No. (2) remains (*sic*) as it is raised in this court for the first time without leave of the court. The learned counsel for the appellant did not deem it necessary to file an appellant's reply brief of argument to counter argument in the respondents' preliminary objection.

The uncontested first issue in the appellant's brief of argument and its overall argument is hinged on the actual description of the property in controversy. The crux of the matter is whether the address of the property is No. 1A, Bajulu Street, Lagos, or No 1 simpliciter. It is on record that the endorsements in the writ of summons contain inter alia:-

"The plaintiffs claim is for the possession of two rooms and a parlour premises, situate at No. 1 A, Bajulu Street,....."

It is also on record that in their statement of claim the plaintiffs claim read inter alia as follows:-

"8. Plaintiff claim possession of the two rooms and a parlour occupied by the defendant at No. 1A Bajulu street, Lagos."

Then in his amended statement of defence, the defendant made the following denial :-

B *"8. The defendant denies paragraph 7 of the Statement of Claim and avers that the premises belonged to him beneficially by inheritance under the Native Law and Custom. The Defendant is unaware of and does not live in a premises known as No. 1A, Bajulu Street, Lagos that belongs to the Plaintiff or any other person at all."*

C I will reproduce relevant pieces of evidence given by the plaintiff in respect of the description of the property in dispute to prove his case, at this juncture. The plaintiff under examination in chief testified thus:-

D *"When I became Bajulu of Lagos, Defendant prepared a document and forwarded it to me and asked my family (sic) No. 1A Bajulu Street, Isale-Eko, Lagos. If I see the document forwarded to me by the Defendant requesting me to give him and his family No. 1A Bajulu Street, Isale-Eko, Lagos, I would be able to identify it. Document shown to me is the document sent to me by the Defendant requesting that No. 1, Bajulu Street, Isale-Eko, Lagos be given to him....."*

E *I want the Court to grant possession of the No. 1A Bajulu Street, to me today so as to enable the Bajulu family re-build the Palace....."*

F *The head of family of Bajulu by name Bakare Ogundairo build No. 1A Bajulu Street during his period as head of Bajulu Chieftaincy family....."*

G *No. 1A Bajulu Street, Isale-Eko, Lagos belongs to Bajulu Chieftaincy family. No. 1 and No. 3 Bajulu Street, belong to the Palace of Bajulu family. But when the water rate people came the No. 1 was renumbered 1A for the purpose of tenement rate but tenement rate has now been abolished. As at now No. 1A and No. 3 belongs to Bajulu Chieftaincy family."*

H The above pieces of evidence were not in anyway discredited in the course of cross examination of the plaintiff. Indeed, ***the plaintiff established that the land in controversy forms part of the Bajulu palace of the plaintiff and there was no doubt both the plaintiff and the defendant were talking about the same and***

one property, which consisted of a parlour and 2 bedrooms. The inconsistency in the number 1 and 1A and how it came about has been explained by the plaintiff witness in the above reproduced evidence, and this was not challenged by the defendant under cross examination.

In fact, to further buttress my stance that both parties are certainly aware that they are talking about the same property is a piece of the evidence of the defendant, which reads:-

“I was born at No. 1 Bajulu Street, Isale-Eko, Lagos. My fathers name is Oseni Bello. My family has never paid any tenancy rent to anybody in respect of the premises at No, 1 Bajulu Street, Isale-Eko, Lagos.”

In the course of cross-examination he testified thus inter alia:-

“There was no number 1A Bajulu Street. The next house to the house I am living is No. 3, Bajulu Street”

The heavy weather made by learned counsel for the appellant on the claim in the pleadings vis-à-vis the decision of the two courts below is to my mind unwarranted.

The fact that the respondents’ pleading claimed No. 1A and not No. 1 as pleaded and testified by the appellant does not deviate from the fact that issues were not joined on the exact case to be met at the hearing of the suit, the pleading in paragraph 8 of the appellant’s statement of defence, notwithstanding. The case of Ashiru Noibi v. R. J. Fikelati & others (1987) 3 SC. 105 referred to by learned counsel for the appellant in his brief of argument is not apposite to this case and the argument proffered. The most important thing is that both parties knew the property they were fighting over and in their evidence the fact has emerged that it is the same property as the description of them correspond. That the premises were next to another numbered 3 was not in issue as both parties were on common ground on this. The law is trite that evidence must be in line with a party’s pleading, and once the evidence is not successfully challenged, it has not been contradicted and it is relevant to the matter in controversy, a judge can rely on it and make his findings based on such evidence in his judgment, See Adeleke v. Iyanda (2001) 13 NWLR part 729 page 1, Aikhionbare v. Omoregie (1976) 12 S.C. 1 K and Obembe v. Wemabod (1977) 5 S.C. 115.

I am however satisfied that the learned trial judge is right in his

finding when he held as follows in his judgment.

"I hold that both No. 1, Bajulu Street and No. 1A Bajulu Lane refers to one and the same place and that is the two bedroom and parlour presently occupied by the Defendant.

I am satisfied on the evidence before this Court that No. 3 Bajulu Street, is the Palace of Bajulu Street Chieftaincy Family and that No. 1, Bajulu Street, or No. 1A Bajulu Lane form (sic) part of the palace of Bajulu Chieftaincy Family. I believe that the plaintiff (sic) has proved his claim to recover the said premises from the Defendant and I hold that the Plaintiff is entitled to the possession of No. 1 or No. 1A Bajulu Street, Lagos on the ground of personal use of the premises for the purposes of extension of Bajulu Palace and for the renovation of Bajulu Chieftaincy Palace."

The above finding cannot be faulted, and it is obvious that the lower court was convinced that the trial court was correct, for in its lead judgment, the following finding was arrived at:-

"Further evidence given by the 1st Plaintiff at pages 46 and 48 of the "Records shows" he knew very well of the portion and premises he let out to the Defendant. No where did the Defendant deny occupying the premises as described by the 1st Plaintiff or in his testimony on oath occupying a premises different from the description of the Notices. To my mind the Notices clearly described the premises occupied by the Appellant. The question of inaccurate description of premises in the Notice was never in controversy at the hearing."

I subscribe to this as I am satisfied it was based on evidence adduced and I fail to perceive that it is perverse. Again, I will reiterate my earlier resolve that unnecessary heavy weather made by the learned counsel for the appellant about the principle of law that evidence not in support of pleading should never be admitted is not material in the treatment of this appeal, as there is no doubt or dispute about the exact identity or description of the property in controversy. The cases of National Investment v. Thompson Organization & Ors (1969) 1 NMLR 99, Adeoye v. Adeoye (1961) All NLR 792, Cardoso v. Doherty (1938) 4 WACA 78, George & Ors v. Dominion Flour Mills Ltd (1963) 1 All NLR 71, etc cited in the appellant's brief of argument is therefore of no consequence in this appeal. Furthermore, the submission that the court is not a charitable organization, therefore a relief not sought shall not be granted is not appli-

cable or relevant in the instant case.

In the light of the above reasoning the issue dealt with above is resolved in favour of the respondents, and grounds of appeal Nos 2, 3, 4, 5 and 6 fail, and they are hereby dismissed.

The learned counsel for the respondents in their brief of argument submitted that the appellant's issue (2) based on alleged failure to evaluate evidence of Exhibit 'K' is a new issue, not being one of the issues submitted to the lower court for determination. He argued that for the issue to be proper the leave of court to raise it as a fresh issue, is needed and where not obtained, the issue is incompetent. The cases of Ezekude v. Odogwo (2002) 13 NWLR part 784, page 366 and Obiakor v. State (2002) 10 NWLR part 776 page 612 were relied upon. Where this objection arises, the appellant usually files an appellant's reply brief of argument to counter the argument and seek to establish that it is not a fresh issue raised for the first time, and or that leave was obtained where he actually concedes that it is a fresh issue. As I have observed above, this, the appellant did not do, for he did not deem it necessary to file a reply brief. In the circumstance I would say this argument is deemed conceded. ***As a matter of fact I have perused the briefs of argument in the lower court and they are bereft of such issue raised. It was definitely not an issue, and so the court below did not even allude to it in its judgment. It is also not on record that the appellant sought and obtained leave of this court to raise and argue the issue. There are plethora of authorities that fresh issue raised for the first time require leave of court, and where such leave has not been obtained, the issue becomes non issue and deserves to be struck out.*** See Jov. v. Dom (1999) 4 NWLR part 623 page 538, Nsirim v. Nsirim (1990) 3 NWLR part 138 page 285, and Ezedigwe v. Noliche 2001 12 NWLR part 726 page 37.

In this vein I strike out issue (2) in the appellant's brief of argument. This is an appeal on concurrent findings of the two lower courts, which the law says cannot and should not be interfered with, unless the findings are perverse and not supported by credible evidence. The law is trite that the findings of court that are based on credible and unchallenged evidence that are relevant to issues in controversy must not be disturbed as they are in that circumstance, not

perverse. See Lakeyi & Ors v. Olojo (1983) 8 SC page 61, Ezendu v. Obiagwu (1986) 2 NWLR part 21 page 208, and Obasohun v. Omorodion (2001) 13 NWLR part 729 page 206.

I fail to see that there is any shortcoming in the judgment of the Learned Court of Appeal, or the learned trial Court. The judgment of the Court of Appeal is hereby affirmed. The appeal has no merit whatsoever, and so it is dismissed in its entirety. I assess costs at N50,000.00 in favour of the respondents, against the appellant.

C

MUSDAPHER JSC

I have read before now the judgment of my colleague Hon. Justice Mukhtar, JSC just delivered with which I entirely agree. This appeal is based on concurrent findings of facts by the two lower courts and the appellant has woefully failed to persuade me that there is any thing wrong with the Findings. The law is very clear that findings of fact by court which are based on credible and unchallenged evidence and relevant to the dispute, cannot and should not be interfered by an appeal court. That is why, I too, dismiss this appeal as lacking in merit. I abide by the order for costs proposed in the aforesaid judgment.

OGBUAGU JSC

F

This is an appeal against the Judgment of the Court of Appeal, Lagos Division (hereinafter called “the court below”) delivered on 25th March, 2002 dismissing the two appeals of the Appellant against the decisions of the learned trial Judge - Olugbani, J. delivered on 2nd October, 1992 wherein, the Appellant was ordered to quit or vacate the property the subject-matter of the dispute on 16th October, 1992 (hereinafter called “the 1st decision”) and the refusal of the application of the Appellant for change of counsel (hereinafter called “the 2nd decision”).

H

Dissatisfied with the said Judgment, the Appellant, has filed eight (8) Grounds of Appeal one of them ground eight, being against the Judgment in respect of the 2nd decision. The Appellant, has formulated two (2) issues for determination only in respect of the 1st decision. He did not formulate any issue in respect of the 2nd decision.

sion. The said issues, read as follows:

“1. *Was the court below right in affirming the judgment of the trial court that the Respondent was entitled to possession of No. 1 Bajulu Street, Lagos when the claim of the Respondent was for No. 1A Bajulu Street, Lagos, (Grounds 2,3,4,5 and 6).*

2. *Whether the failure of the court below in re-evaluating the evidence of the Defence witnesses in relation to Exhibit K, the Crown Grant occasioned miscarriage of justice on the part of the Appellant (Ground 7)”.*

The Respondents on their part, have formulated a sole issue for determination, namely:

“Was the Court below not right in affirming the judgment of the trial court that the Respondent was entitled to possession of the premises variously and interchangeably described as No. 1 or No. 1A Bajulu Street, Lagos having held that the Respondent also proved his title to the premises (grounds 2 -7).”

I note that the two Respondents on Record, substituted the only Respondent - Chief Lasisi Bajulu who is deceased and who in fact, instituted and prosecuted the suit leading to the instant appeal by the order of the Court of Appeal.

When this appeal came up for hearing on 28th September, 2009, the leading Counsel to/for the Appellant - Toyin Pinheiro, Esqr, adopted their Brief and he urged the Court, to allow the appeal. Oyebanji, Esqr, - the learned counsel for the Respondents, also adopted their Brief. He applied to the court to withdraw their Preliminary Objection contained at page 2 paragraph 3.00/3.02 of their Brief of Argument except the objection in respect of Issue 2 of the Appellant, as according to him, the said issue, is a new issue raised for the first time in this Court without leave. He urged the Court to dismiss the appeal. Thereafter, Judgment, was reserved till to-day. Since the objection has been withdrawn, it is accordingly struck out.

However, although the Objection has been withdrawn, I or this Court, is obliged to raise the issue of the competence of Grounds 1 and 8 of the Grounds of Appeal, on its own as it raises a fundamental point of law in my respectful but firm view, which does not call for hearing or addresses by the learned counsel for the parties.

It is clear from the two issues of the Appellant, that no issues have been raised/distilled or formulated in respect of Grounds ONE

(1) and EIGHT (8) of the Grounds of Appeal, it is now firmly settled firstly, that this Court, deals with Issues and not grounds of appeal. See the case of *Attorney General of the Federation v Aideyan* (1989) 4 NWLR (Pt. 118) 464 @ 665 (1989) 9 SCNJ. 80. This is because, and this is settled that it is on the basis of the issues that the parties
 B find/found their contention(s). See the cases of *Niger Progress Ltd. v. North East Lines Corporation* (1989) 3 NWLR (pt.107) 68 @ 111; (1989) 4 SCNJ. 232; *Adelaja Fanoiki & Anor.* (1990) 2 NWLR (Pt.121) 137 @ 148; (1990) 3 SCNJ. 131 and *Macaulay v. NAL Merchant Bank Ltd.* (1990) 4 NWLR (Pt. 114) 283; (1990) 6 SCNJ
 C 117 just to mention but a few.

Secondly, any issue not distilled from any ground of appeal, is incompetent and must be discountenanced by the Court together with the argument(s) advanced thereunder in the consideration of
 D the appeal. See the cases of *Okpala & anor. V. Ibeneme & ors.* (1989) 2 NWLR (Pt.102) 208; (1989) 3 SCNJ. 152; *Din v. African A* (1990) 3 NWLR (Pt.139) 392 @ 403; (1990) 5 SCNJ. 209 and *Adeusola & 4 ors. v. Akinola & 3 ors.* (2004) 12 NWLR (Pt. 887) 295 @ 311; (2004) 5 SCNJ. 235 @, 246 and many others. I therefore, discounten-
 E tence the said Grounds 1 and 8 of the Grounds of Appeal and in fact I hereby strike them out. My further reason is that it is settled that when an issue, is not placed before an Appellate Court, it has no business whatsoever to deal with it. See also the cases of *Olusanya v. Olusanya* (1983) 3 S.C. 41 *Ebba v. Ogodo* (1984) 1 SCNLR 372
 F and *Alli & anor. V. Chief Alesinloye & 8 ors.* (2000) 6 NWLR (Pt.660) 127 @212; (2000) 4 SCNJ. 264 just to mention but a few.

In respect of paragraph 3.03 dealing with Grounds 2 - 7 of the Grounds of Appeal, firstly, since the Appellant, did not file a Reply
 G Brief, I take it that the Objection is conceded.

However, it is settled that when a party seeks to file and argue in this Court, a fresh issue not canvassed in the lower courts - whether the issue pertains to law or otherwise, leave to file and argue such an issue, must be had and obtained. See the case of *Obiakor & anor. v. The State* (2002) 10 NWLR (Pt.776)612 @ 525; (2002) 6 SCNLR
 H 193. I wish to add quickly as this is well established, that although the above, is the law, but such a fresh issue, can be raised and relied on, upon any new line of argument or new decided authorities judicial or statutory to support his argument in an issue that is properly before

the court. So said this Court in the case of *Chief Ogunbadejo v. Otunba A.L. Owoyemi*, (1993) 1 NWLR (Pt. 271) 517 @ 534; (1993) 1 SCNJ. 148 - per Nnaemeka-Agu, JSC.

A reading or perusal by me of both the grounds of appeal and the issues raised in the court below, puts me and one in no doubt that issue 2 of the Appellant is certainly a fresh issue for which no leave was sought by the Appellant or ever granted by this Court. The consequence is that the said issue, is incompetent and stands to be struck out, I accordingly strike out the said issue.

I even note that in paragraph 3.05 of the Respondents' Brief, Objection was taken as regards grounds 2-7. As I noted earlier in this Judgment, the Appellant never re-acted to the said Objection by filing a Reply Brief or even proffering any oral argument at the hearing of the appeal with the leave of the Court. The effect in law, is that the Appellant, has conceded to the said Objection. What emerges in consequence, is that there are no competent grounds of appeal and issues by the Appellant in this Court. So, this appeal, is accordingly struck out by me for being incompetent. The Preliminary Objection, is accordingly upheld and sustained by me.

I have noted that the Respondents, formulated one issue based or distilled from the same grounds 2-7 of the grounds of appeal. In spite of this fact, the Appellant, also, did not file a Reply Brief. Incidentally, my learned brother, Mukhtar, JSC, has gone ahead and treated the appeal on its merits. My brief contribution by way of emphasis, is that at the trial, the late original plaintiff, testified on oath why the property in dispute, is/was called No. 1A which originally, was known as and called No. 1 when the Water Rate collectors or people, came and re-numbered it. I note from the Records that the subject-matter of the suit leading to the instant appeal, concerned the possession of the premises therein. Whilst the late original plaintiff, in paragraphs 7 to 8 of the Statement of Claim, called the property No. 1A Bajulu Street, Lagos - See pages 4 - 5 of the Records, the Appellant, called it No. 1 Bajulu Street, Lagos - See paragraph 4 of the Amended Statement of Defence at page 7 of the Records. The trial court, found as a fact and held that the said pleadings of the parties and evidence, refer to the same premises in dispute. Said His Lordship at page 120 of the Records inter alia, as follows:

"..... I hold that both No. 1, Bajulu Street, and No. 1A

Bajulu Lane (sic) refers to one and the same place and that the two bedrooms and parlour presently occupied by the Defendant”

At page 227 thereof, the court below, affirmed the above said finding of fact and holding of the trial court. It referred to and reproduced part of the evidence of the Appellant under cross-examination, thus:

“I live at No. 1 Bajulu Street, Isale- Eko, Lagos. I know the next house to No. 1 Bajulu Street. There was no number 1A Bajulu. The next house to the house I am living is No. 3 Bajulu Street”. [the underlining mine]

and stated inter alia as follows:

“It can be seen that in his judgment, the learned trial judge described the premises as No. 1 or 1A. He held that both description refer to one and the same place, and that she two bedrooms and parlour was then occupied by the Defendant. I do not flunk the learned trial judge gave judgment and awarded a claim that the plaintiff did not ask for”.

Before the above reproduction, it had reproduced, inter alia, the relevant evidence of the late plaintiff. So., with the said admission of the Appellant above underlined by me, this should have been the end of this appeal and as far as I am concerned, it is the end of this appeal. This is because and It is well settled that what is admitted, need no further proof. See the cases of Chief Okparaeke v. Egbuonu (1941) 7 WACA 53; Owosho V. Dada (1984) 7 S.C 149 @ 163 – 164 and Adeye & 8 ors. v. Chief Adesanya & 2 ors. (2001) 2 SCN.J. 97 @ 86 – 87 to mention but a few. Afterwards, an admission is relevant against the party who made it or his agent. What is more, I note that there was/is no appeal against the said finding of fact and holding of the trial court at the court below. The effect is that such finding and holding subsists. See the cases of *Ejiwhomo v. Edoke – Eter Mandillas Ltd.* (1986) 9 S.C 41 @ 47 and recently, *Daba v. Alhaji Abdullahi* (2005) 7 NWLR (Pt.923) 181; (2005) 2 SNCJ 76 @ 95; (2005) 2 S.C. (Pt. 1) 75 @ 91 of importance is and this is also settled, that an Appellate Court has no power and it is not entitled to delve into such an issue and pronounce on it. See the case of *Alhaji Adeyemi & anor. V. Olakunri & 10 ors.* (1999) 14 NWLR (Pt.638) 204 @ 211, 212, 213, 214; (1999) 12 SCN.J. 234- Per Kalgo, JSC Again, there is *the concurrent findings of facts* and holdings by the

two lower courts which I am unable and cannot fault as they are borne out from the Records. There are two many decided authorities by this Court as to the effect of such concurrent findings of facts. See the cases of Kade v. Coker (1982) 12 S.C. 252 @ 271 citing some other cases and Engr. Osolu v. Engr. Osolu & 6 ors. (2003) 11 NWLR (Pt.832) 608 @ 631-632, 645-646; (2003) 6 SCNJ. 162 ^B and many others.

What the Appellant has relentlessly been doing, can be likened by me to the story of “The Washerman’s Donkey”, who after pleading that it be allowed into the tent and was accordingly let into the tent, eventually, ousted the master from the tent and in fact wrecked the tent. The Appellant after being let into the Premises as a tenant, now turns round to claim ownership of the same. He may not have known and this is long established that long possession of a property (except where a plea of laches and acquiescence are successfully ^C raised), does not and will not, ripen to ownership of or confer title to the property. See the cases of Akinloye v. Eyiola (1968) NMLR 93; Isibe v. Hamson (1967) 1 ANLR 8; Agboola v. Abimbola (1969) 1 ANLR. 277 and Gbadamosi & 2 ors. v. Alhaji S.A Bello (Mogaji) & 2 ors. (1985) 1 NWLR (Pt. 2) 211 @ 216 S.C. Greed and ingratitude ^E always, are responsible for such conduct. It is a pity.

It is from the foregoing and the fuller Judgment of my brother, Mukhtar, JSC which I had the privilege of reading before now, that I too, see no merit in this appeal which with respect, is grossly misconceived. I too, affirm the decision of the court below affirming the ^F Judgment of the trial court. The 2nd Appeal with respect, is also worthless and it also stands dismissed, I abide by the order in respect of costs.

^G

MUNTAKA-COOMASSIE JSC

I have read in draft from the judgment of my learned Lord Mukhtar JSC just delivered I am in complete agreement with the reasoning and conclusion adumbrated therein. I agree also that in ^H this appeal there are concurrent decisions of two lower Courts which are not perverse. The decision of the Court of Appeal therefore cannot be disturbed.

I too accordingly dismiss the appeal of the Appellant and af-

firm the decision of the lower court. I endorse the orders as to cost in favour of the Respondents.

FABIYI JSC

B I have had a preview of the judgment just delivered by my learned brother, Mukhtar, JSC. I agree with the reasons ably advanced to arrive at the conclusion that the appeal is devoid of merit and should be dismissed.

C The original plaintiff, as owner, claimed possession of two rooms and a parlour at No. 1A Bajulu Street, Lagos in possession of the defendant at the trial court. The defendant denied the claim and called the premises No. 1 Bajulu Street, Lagos. Based upon settled pleadings, both sides adduced evidence. The plaintiffs evidence point D at the direction that the premises was No. 1 Bajulu Street originally but later on, the Water-rate people renumbered it as No. 1A Bajulu Street, Lagos. The defendant remained silent on this point. The defendant, under cross-examination admitted that there were only two (2) houses with the other one being No. 3 Bajulu Street, Lagos.

E The learned trial Judge found that both No. 1 Bajulu Street, Lagos and No. 1A Bajulu Street, Lagos refer to one and the same premises claimed by the plaintiff and entered judgment in his favour on 2nd October, 1992. The defendant appealed to the Court of F Appeal which dismissed the appeals in its judgment, handed out on 25th March, 2002. Still not feeling contented, the defendant has further appealed to this court.

In compliance with rules of court, parties filed briefs of argument. I wish to comment briefly on the sole pungent issue distilled by G the respondents for the due determination of the appeals. It reads as follow:-

H *“Was the court below not right in affirming the judgment of the trial court that the Respondent was entitled to possession of the premises variously and interchangeably described as No. 1 or No. 1A Bajulu Street, Lagos having held that the Respondent also proved his title to the premises.”*

It is glaring at page 62 lines 20 - 23 of the Record of Appeal that the defendant, under cross-examination, stated as follow:-

“I live at No. 1 Bajulu Street, Isale-Eko, Lagos. I know the next

house to No. 1 Bajulu Street. There was no number 1A Bajulu Street. The next house to the house I am living is No. 3 Bajulu Street."

The above evidence was given after the original Plaintiff had explained that No. 1 Bajulu Street was renumbered by 'Water-rate people' as No. 1A Bajulu Street, Lagos. The defendant did not say a word in respect of same. He admitted that there were only two (2) ^B houses with the other being No. 3. It was clearly an admission against interest and is admissible in proof of the fact based on pleading. See *Aniagbolu v. Uchejigbo* (2002) 10 NWLR (Pt. 776) 472.

The ploy embarked upon by the defendant got punctured. It ^C is clear that the same property which he tenaciously referred to as No. 1 Bajulu Street, Lagos is the one the plaintiff called No. 1A Bajulu Street, Lagos. The trial court rightly found it to be so and the court below affirmed same. Based on evidence rooted in pleadings, the concurrent finding is not perverse and this court will not lightly disturb it: unless compelling reasons are shown. And no plausible reason has been depicted. See *Kale v Coker* (1982) 12 SC 252; *Seatrade v. Awolaja* (2002) 2 SC (Pt. 1) 35; *Oduntan v. Akibit* (2000) 7 SC (Pt. 2) 106; *Anaeze v. Anyaso* (1993) 5 NWLR (Pt. 291) I; *Echi & Ors v. Nnamani & Ors.* (2000) 5 SC 62 at 70; *Seven Up Bottling Co. v. Adewale* (2004) 4 NWLR (Pt. 862) 183; *Fajemirokun v C.B. Nig. Ltd.* (2009) 5 NWLR (Pt. 1135) 588 at 599.

I cannot, for one moment, see why I should tamper with the balanced concurrent finding of fact of the two courts below. Same ^F remains faultless and inviolate. I have no hesitation in resolving this issue against the appellant and in favour of the respondents.

For my above observation and the fuller reasons articulated in the lead judgment, I also feel that the appeal lacks merit and should be dismissed. I order accordingly and abide by all consequential orders contained in the lead judgment; that relating to costs inclusive.