

**SUPREME COURT OF NIGERIA**  
 5TH FEBRUARY, 2009. S.C. 174/2003  
**CORAM:- N. TOBI, A. M. MUKHTAR, I. F. OGBUAGU,**  
**J. O. OGEBE, J. A. FAB1YI, JJSC**

1. MRS. APE SALISU
2. MRS. TINU JAGUN
3. MRS. SIDIKATU ONALAJA
4. MR. RASHEED
5. MRS. MORENIKE ONANUGA
6. MRS. AYISAT ISMAIL
7. MRS. FATIMOT BALOGUN ..... DEFENDANTS/
8. MRS. TAIWO SUKUNA ..... APPELLANTS
9. MR. KEHINDE JATO AJIDAGBA
10. MRS. MULIKAT (NEE AJIDAGBA)
11. MR. KEHINDE AJIDAGBA
12. MR. OLADOKUN AJIDAGBA
13. MR. DOYIN AJIDAGBA

[for themselves and all children of Late  
 Mr. Gafari Folorunsho Ajidagba.]

AND

1. ALHAJI LATEEF ODUMADE ..... PLAINTIFFS/
2. MR. MOJEED MOGAJI ..... RESPONDENTS

[for themselves and on behalf of  
 Lay ode, Liyesi, Oludediro and  
 Adebote/Lapogan Families of Oke Ijasi  
 Quarters, Ijebu-Ode.]

SUBSTITUTED FOR:

1. ALHAJI SHEHU TIJANI ALLI OBILI
2. ALHAJI SALIU KOLAWOLE ARIGBABU

[for themselves and on behalf of  
 Layode Liyesi, Oludediro and Adebote/Lapogan  
 Families of Oke Ijasi Quarters, Ijebu-Ode.]

ACTIONS - Parties - Representative capacity - Absence of leave to  
 sue - Effect - Once it is obvious that a case was fought in a represen-  
 tative capacity - A court will enter judgment as such - Though no  
 leave was obtained to sue in that capacity (H1)

WORDS & PHRASES - "Community" - Definition - It means all the people who live in an area - When talked about as a group - A body of persons in the same locality (H2)

EVIDENCE - Proof by concession - Exhibit H1 - Whether conceding title - In the light of the contents of other material exhibits - Tendered in evidence - There is no concession of title by Exhibit H1 - As claimed by appellants (H3)

JUDGMENTS - Basis - Exhibit C - Treatment by Court of Appeal - Contrary to appellant's contention - Court of Appeal never held that trial court did not rely on the exhibit - But that its judgment would still be valid - In the absence of the exhibit (H4)

### ***FACTS***

The plaintiffs/respondents sued defendants/appellants before the High Court of Ogun State sitting at Ijebu Ode claiming possession of the land in dispute, mesne profit and injunction. Respondents brought the suit in a representative capacity for themselves and on behalf of *"Layode, Liyesi, Oludediro and Adebote/Lapogan families of Oke Ijasi Quarters, Ijebu Ode"*. The case of respondents was that appellants were their tenants in respect of the land in dispute. The land was first let to appellants' father who had during the pendency of the lease, sublet part of the land to Texaco Nigeria Ltd, who built a petrol filling station thereon. After the death of appellants' father, appellants had stepped into their father's shoes and been collecting rent from Texaco. It was subsequent to the death of appellants' father that respondents had invited appellants for a revision of the rent payable by appellants to respondents under the lease.

Several correspondence were exchanged between the parties in the course of the negotiations that followed, including Exhibits C and H1 - Exhibit C was however written in Yoruba language. When negotiation between the parties broke down respondents brought the action leading to the instant appeal. Both Exhibits C and H1 were admitted in evidence during the trial. After hearing, the learned trial judge gave judgment to respondents in terms of their claim. Aggrieved, appellants appealed to Court of Appeal but their appeal was

dismissed. Still dissatisfied, appellants have come on a further and final appeal to Supreme Court. They contend *inter alia*, that the four families of Oke Ijasi Quarters as named on the face of the processes as being represented by respondents were not the same as Oke Ijasi Community.

### **ISSUES FOR DETERMINATION**

1. *Whether the Court of Appeal was right in holding that named the families (sic) on behalf of whom the Plaintiffs/Respondents instituted the action were synonymous with Okejasi Community.*

2. *Whether the Court of Appeal was right by not considering at all issue No. 5, distilled from ground 5 of the grounds of appeal which deals with exhibit H1 through which the Plaintiffs/Respondents conceded title to the land in dispute to the Defendant/Appellants.*

3. *Whether exhibit 'C' which was wrongly admitted in evidence was relied upon by the trial court and the effect of the exhibit on the judgment of the courts"*

**HELD** (Unanimously dismissing the appeal per **OGBUAGU JSC**)  
***Representative capacity - Absence of leave to sue - Effect***

1. It is now firmly settled that even the failure to obtain leave to sue in a representative capacity, does not vitiate the validity of the action.

In fact, once pleadings and evidence establish conclusively, a representative capacity and that a case has been fought in that capacity, a trial court, will be entitled to enter judgment for and against the party in that capacity, even if an amendment to reflect that capacity, had not been applied for and obtained. It will be otherwise, if the case is not made out in a representative capacity. (p. 757 A/C)

### **WORDS & PHRASES - "Community" - Definition**

2. In the Oxford Advanced Learner's Dictionary, "Community" is defined as all the people who live in a particular area, etc. when talked about as a group. In Chambers 20th Century Dictionary, New Edition 1983 referred to in the Plaintiffs/Respondents' Brief, it is defined as people having common rights etc, a body of persons in the same locality. (p. 757 G)

### **Exhibit H1 - Whether conceding title**

3. It can easily be seen that Exhibit 'H1', was a letter written after 'H'.

But the learned counsel for the Appellants, have taken advantage of the trial court especially and the court below, not reproducing in their respective Judgment as at the time of trial, the contents of these vital or material documentary exhibits tendered in evidence, that the Appellants, decided to hang on Exhibit ‘HI’ to falsely assert that the  
 B Plaintiffs/Respondents, conceded title of the land in dispute to the Appellants.

My answer to the said issue, is that assuming that the court below did not consider it, this Court, is entitled to consider it and has  
 C indeed considered it and therefore, holds, that there is no concession and there could never have been any such concession as claimed by the Appellants. (pp. 763 E/764 C)

***Exhibit C - Treatment by court of Appeal***

D 4. With respect, I agree with the Plaintiffs/Respondents that the Appellants, misunderstood the court below - per Omage, JCA and I will add that this is another gross misconception of what the court below stated in this respect or regard. The court below held at page 71 of the Records inter alia, as follows:

E            *In the event of exhibit C, which now said to be written in Yoruba, is expunged from the proceedings the judgment of the Court below will still be valid, and competent based on other exhibits. Exhibit C, should not have been admitted in Evidence Act [sic] in the proceeding, it is expunged, see 16 Court of appeal”. [sic]*  
 F

The above is clear and unambiguous. Having expunged Exhibit “C”, what else? I or one may ask. So, even if Exhibit C was relied on by the trial court (which is not conceded because the trial court merely referred to the exhibit, but did not rely on it), having  
 G been expunged by the court below on the ground that Exhibit C was inadmissible in evidence and should not have been admitted in evidence by the trial court, that is/was the end of the matter. I so hold. (pp. 764 G/765 A)

H **NOTABLE POINT OF INTEREST**

**OGBUAGU JSC**

*Essential allegations must be specially traversed*

I note that the Appellants in paragraph 1 of their Statement of Defence at page 14 of the Records, denied among other paragraphs,

paragraph 3 of the Plaintiffs/Respondents' Statement of Claim. They did not file an Amended Statement of Defence. It is only a mere denial and contrary to the rule that every defence, reply or answer to an averment in a Statement of Claim, must be pleaded specifically. The effect of the rule as stated by Buckley, L.J. in the case of *Re - Robinson's Settlement, Grant v. Hobbs* (1912) 1 Ch. 717, 728 . B

*"is for reasons of practice and justice and convenience, to require the party to tell his opponent what he is coming to court to prove".*

In other words, essential allegations, should be specifically traversed. (754 G) C

### **REPRESENTATION:**

O. E. Kingsley, Esq., for the Appellants.

Adewale Adesokun, Esq., for the Respondents. D

### **CASES REFERRED TO**

Akintola v. Solano (1986) All NLR 395 @ 421

Wallerstein v. Meir (1974) 1 WLR 991 @ 7002

Ibeami & anor. v. Ogbeide & anor. (1998) 9 SCNJ. 77 @ 86 E

S.P.D.C Nig. Ltd v. Edamkue v 2 Ors. (2009) 6-7 SC 74 at 90 and 109

Oba Oseni & 14 ors, v. Dawodu & 2 ors. (1994) 4 NWLR (Pt.339) 390

Sabrue Motors Nig. Ltd, v. Rajah Enterprises Nig. Ltd. (2002) 4 SCNJ. 370 @ 382 F

Alhaji Busari & 3 ors. v. Oba Oseni & 8 ors. (1992) 4 NWLR (Pt.237) 557 @ 582

Prince Ladejobi & 2 ors. v. Otunba Oguntayo & 9 ors. (2004) 7 G SCNJ. 298 @ 310- 311

Gonzee Nig Ltd, v. Nigeria Educational Research & Development Council & 2 ors. (2005) 6 SC (Pt.I) 75 @ 35

Road Transport Employers Association of Nigeria v. National Union of Road Transport Workers (1992) 2 NWLR (Pt. 224) 381 H

Metal Construction (W.A.) Ltd. v. Meridian Trade Corporation Ltd. (1990) 5 NWLR (Pt.149) 152 C.A. (on appeal (1998) 3 SCNJ. 1 @ 10

**RULES REFERRED TO**

Supreme Court Rules, O. 8. r. 2(1)

**BOOK REFERRED TO**

Chambers 20th Century Dictionary, New Edition 1983.

B

**LEAD JUDGMENT BY OGBUAGU JSC**

This is an appeal against the decision of the Court of Appeal, Ibadan Division (hereinafter called “*the court below*”) (stated in the Respondents’ Brief to be “Ibadan Judicial Division”) delivered on 3<sup>rd</sup> April, 2003 affirming the Judgment of the Ogun State High Court holden at Ijebu-Ode Judicial Division delivered on 16<sup>th</sup> January, 1996 - per Oyewole Osidipe, J. entering Judgment in favour of the Plaintiffs/Respondents in respect of all their claims.

D Dissatisfied with the said decision, the Appellants who were the defendants in the trial court, have appealed to this Court on four (4) grounds of appeal which without their particulars, read as follows:

E “1. *The Justices of Court of Appeal erred in law by holding that “Therefore Okejasi Community is a party to the proceedings where the names of the families are stated and the name of the families within the Community may be interchangeably used to describe the same people as Okejasi Community, the distinction of the names sought to be made by the appellants in issue one is misconceived and refused”.*

F “2. *Justices of Court of Appeal erred in law when it (sic) held inter alia that “By payment of the rent paid to the plaintiffs there is acknowledgment of the plaintiffs the over Lordships of the entire land”*

G “*The evidence of possessory right of the plaintiffs/respondents to the land is unassailable”.*

“3 *The Justices of Court of Appeal (just as — the trial court) erred in law by not considering at all issue No. 5 which was distilled from ground 5 of the Ground (sic) of Appeal.*

H “4. *The Justices of Court of Appeal erred in law and on the facts when they held that “I have read with care, the printed record. I do not see in the record any reliance on the contents of exhibit ‘C’ in the judgment”.*

The Plaintiffs/Respondents in the trial High Court, brought the

action leading to this appeal, in a representative capacity (with the approval of the court) for themselves and on behalf of Layode, Liyesi, Oludediro and Adebote/Lapogan families of Okejasi Quarter people of Ijebu-Ode, claiming against the Defendants/Appellants described as the children of late Mr. Gafari Folorunsho Ajidagba, in paragraph 23 of their Amended Statement of Claim as follows:

*“(1) Possession of the piece or parcel of land situate lying being along Abeokuta Road, Oke-Ijasi, Ijebu-Ode which the Plaintiffs lease (sic) out to the Defendants’ father late Mr. Gafari Folorusho Ajidagba.*

*(2) Mesne profit from January 1985 at the rate of N400.00 per year payable on the said piece or ‘parcel of land until the final determination of the above suit.*

*(3) Injunction restraining the Defendants their agents, servants and anyone claiming through them from dealing and/or leasing out the said piece or parcel of land or part thereof”.*

Pleadings were filed and exchanged by the parties. The original Plaintiffs, called one witness in support of their case. He was the 2<sup>nd</sup> Plaintiff and who was the Secretary of the said families so represented. He tendered some documents. The Defendants/Appellants, called two witnesses in their defence. After addresses by the learned counsel for the parties, the learned trial Judge, in a well considered judgment, granted all the reliefs/claims of the Plaintiffs/Respondents. Aggrieved by the said Judgment, the Appellants appealed to the court below that dismissed their appeal and affirmed the said judgment of the trial court hence the instant appeal.

The Appellants have formulated in their Brief of Argument, three issues for determination, namely:

*1. Whether the Court of Appeal was right in holding that named G the families (sic) on behalf of whom the Plaintiffs/Respondents instituted the action were synonymous with Okejasi Community.*

*2. Whether the Court of Appeal was right by not considering at all issue No. 5, distilled from ground 5 of the grounds of appeal which deals with exhibit H1 through which the Plaintiffs/Respondents H conceded title to the land in dispute to the Defendant/Appellants.*

*3. Whether exhibit ‘C’ which was wrongly admitted in evidence was relied upon by the trial court and the effect of the exhibit on the judgment of the courts”.*

I note that the Appellants stated that Issue 1, covers ground 1 of the grounds of appeal while Issue 2, deals with grounds 2 and 3 of the grounds of appeal.

On their part, the Plaintiffs/Respondents, have also formulated three issues for determination. They read as follows:

B *“(i) Whether the Okejasi Community was made a party to this action (Ground 1).*

ii). *Whether the Court of Appeal was right in holding that the learned trial Judge did not rely on the contents of Exhibit ‘C’ in arriving at this judgment. (Ground 4).*

C *iii). Whether the Court of Appeal erred in law in failing to consider Issue No. 5 of the Appellants’ Brief before it and if so, whether it could have had any major contrary impact of the decision of the lower Court. (Grounds 3)”.*

D When this appeal came up for hearing on 10<sup>th</sup> November, 2009, both learned counsel for the parties, adopted their respective Brief. While the learned counsel for the Appellants - Kingsley, Esqr., urged the Court to allow the appeal, Adesokun, Esq. -the learned counsel for the Plaintiffs/Respondents, urged the Court to dismiss the  
E appeal. Thereafter, Judgment was reserved till to-day.

Since the issues are substantially the same although differently numbered and couched, I will deal with them thus:

#### ISSUE 1 OF BOTH PARTIES:

F The Appellants submit that the court below, was wrong to have held that Oke Ijasi Community is a party to the proceedings and that the name of the Community may be used interchangeably with the named families. That this is because, it is not part of the pleadings that the four families, are otherwise known as Oke Ijasi Community.  
G I note that the Appellants in paragraph 1 of their Statement of Defence at page 14 of the Records, denied among other paragraphs, paragraph 3 of the Plaintiffs’/Respondents’ Statement of Claim. They did not file an Amended Statement of Defence. It is only a mere denial and contrary to the rule that every defence, reply or answer to  
H an averment in a Statement of Claim, must be pleaded specifically. The effect of the rule as stated by Buckley, L.J. in the case of *Re - Robinson’s Settlement, Grant v. Hobbs* (1912) 1 Ch. 717, 728 .

*“is for reasons of practice and justice and convenience, to require the party to tell his opponent what he is coming to court to*



prove”.

In other words, essential allegations, should be specifically traversed. See the cases of Wallarstein v. Meir (1974) 1 WLR 991 @ 7002; Joseph Constantine Steamship Line v. Imperial Smething Corporation (1952) A.C. 154 @ 174; Metal Construction (W.A.) Ltd. v. Meridian Trade Corporation Ltd. (1990) 5 NWLR (Pt.149) 152 C.A. B (on appeal (1998) 3 SCNJ. 1 @ 10) citing some other cases including Lewis & Peat (N.R.I.) Ltd, v. A.E. Akhimien (1976) 1 ANLR (Pt.1) 365, 369; Akintola v. Solano (1986) All NLR 395 @ 421 and Ibeanu & anor. v. Ogbeide & anor. (1998) 9 SCNJ. 77 @ 86 - per C Mohammed, JSC. just to mention but a few. See also Bullen & Leak & Jacobs Precedent of Pleadings 12<sup>th</sup> Edition pages 83 - 84.

However, as rightly submitted in the Plaintiffs/Respondents' Brief, in the said paragraph 3 of the Amended Statement of Claim at page 21 of the Records, the following is pleaded: D

*“The plaintiffs take this action for themselves and on behalf of all other members of Layode, Liyesi, Oludediro and Adebote/Lapogan families of Oke-Ijasi Quarter people of Ijebu-Ode”.*

At page 6 of the Records, the Plaintiffs/Respondents sought and obtained the approval of the trial court to sue in a representative capacity. In (a) of the said application, the following appear: E

*“An order giving approval to the authority given by Layode, Liyesi, Oludediro and A debote/Lapogan families of Oke-Ijasi quarter people, Ijebu-Ode to the Plaintiffs to sue in a representative capacity (i.e. for themselves and on behalf of the said families of Oke-Ijasi quarter people)”.* F

In the affidavit in support of the said application, in paragraphs 3 and 4 of the affidavit in support at page 7 of the Records, the following are averred: G

*“3. That the 1<sup>st</sup> Plaintiff is the Head and Oloritun of Oke-Ijasi quarter people of Ijebu-Ode.*

*4. That the said Oke-Ijasi quarter people comprise Layode, Liyesi, Oludediro and Adebote/Lapogan families of Oke-Ijasi quarter of Ijebu-Ode”.* H

In Exhibit “A” which appears at page 9 of the Records, the following appear inter alia: . . .

*“After a brief discussion on the matter the meeting decided that Alhaji Shehu Tijani Alii Obili, the Oloritun from Oludediro Fam-*

*ily and Alhaji Saliu Kolawole Arigbabu from Layode Family be and are hereby chosen and empowered to prosecute the case in the Court on behalf of the four families which constitute Oke-Ijasi Community namely, Layode, Liyesi, Oludediro and Adebote/Lapogan". [the underlining mine]*

B At page 11 of the Records, the trial court ordered as follows:  
*"Approval is hereby given to the authority given by Layode, Liyesi, Oludediro and Adebote/Lapogan families of Oke-Ijasi Quarters people, Ijebu-Ode to the Plaintiffs/Applicants to prosecute in a representative capacity this suit No. HCJ/61/93 against the children of Late G.F. Ajidagba in connection with family land at Abeokuta Road....."*

C PW1 - Saliu Kolawole Arigbabu, tendered Exhibit "A" at page 28 of the Records, and he testified inter alia, as follows:

D *"The four families that Plaintiffs represent constitute what is invariably described as "Oke-Ijasi Community" in respect of the land in dispute, Both the families and the Okejasi Community mean the same thing in respect of the land in dispute"*

In his Judgment, the learned trial Judge at page 34 of the Records,  
 E stated inter alia, as follows:

*"The Plaintiffs -who brought this action in a representative capacity for themselves and on behalf of Layode, Liyesi, Oludediro and Adebote/Lapogan families of Okejasi Quarter people of Ijebu-Ode....."*

F The court below in its Judgment at page 79 of the Records, stated inter alia, as follows:

*"In the High Court of Ogun State sitting at Ijebu-Ode, the Plaintiffs applied to commence proceedings against the defendants in a representative capacity. The action therefore commenced "with the leave of the court for the plaintiffs named in the proceedings and on behalf of all the other members of Layode, Liyesi, Oludediro and Adebote/Lapogan families at Oke-Ijasi quarter people of Ijebu-Ode....."*

H The Appellants quarrel or contend that Oke-Ijasi quarter people, is not the same as Oke Ijasi Community. Wonders it is said, can never end. D.W.I in his evidence at page 30 of the Records, testified in-chief inter alia, as follows:

*"I know the Plaintiffs as well as the land in dispute....."*

*1<sup>st</sup> Plaintiff is a member of the Community but holds no position within the community”.*

There is no where in the Records, where the Appellants claimed that they are members of the families the Plaintiffs/Respondents claim to represent. **It is now firmly settled that even the failure to obtain leave to sue in a representative capacity, does not vitiate the validity of the action.** See the cases of *Alhaji Busari & 3 ors. v. Oba Oseni & 8 ors. (1992) 4 NWLR (Pt.237) 557 @ 582 C.A.* and *Anabaraonye & 3 ors. v. Nwakaihe (1997) 1 NWLR (Pt. 482) 374 @ 382; (1997) 1 SCNJ. 161.*

**In fact, once pleadings and evidence establish conclusively, a representative capacity and that a case has been fought in that capacity, a trial court, will be entitled to enter judgment for and against the party in that capacity, even if an amendment to reflect that capacity, had not been applied for and obtained. It will be otherwise, if the case is not made out in a representative capacity.** See the cases of *Osinrinde & 7 ors. v. Ajamogun & 5 ors. (1992) 7 SCNJ. (Pt.1) 79 @ 114-115* and *Oba Oseni & 14 ors. v. Dawodu & 2 ors. (1994) 4 NWLR (Pt.339) 390; (1994) 4 SCNJ. (Pt.1) 197* citing some other cases therein. Afterwards, a representative action, is seen and considered as an action brought by the body of persons represented, rather than the named plaintiffs only. See the case of *Prince Ladejobi & 2 ors. v. Otunba Oguntayo & 9 ors. (2004) 7 SCNJ. 298 @ 310- 311.* See also Exhibits B, C and E -the letter headed papers of Oke-Ijasi Community showing that it is made up of the four families. As a matter of fact, in Exhibit ‘B1’ - the Reply letter from the DW1 to the PW1, he referred to the co-operation that had existed between “you people of Oke-Ijasi and late Pa G.F. Ajidagba”. Exhibits “E” and ‘F’ were addressed to Oke Ijasi Community.

**In the Oxford Advanced Learner’s Dictionary, “Community” is defined as all the people who live in a particular area, etc. when talked about as a group. In Chambers 20<sup>th</sup> Century Dictionary, New Edition 1983 referred to in the Plaintiffs/Respondents’ Brief, it is defined as people having common rights etc., a body of persons in the same locality.** The court below held at pages 69-70 of the Records inter alia, as follows:

*“The answer to the appellant’s question is contained at the*

*commencement of the proceedings in the court below. At the beginning, the respondents sought and obtained the leave of the court to act for the named plaintiffs. The four named families of the plaintiffs are all of Okejasi Community in Ijebu Ode. The clear effect of the order granted by the court is that the named plaintiffs as parties all belong to Okejasi Community, Ijebu Ode. No evidence has been presented in court to the contrary. Therefore Okejasi Community is a party to the proceedings where the names of the families are stated and the name of the families within the Community may be interchangeably used to describe the same people as Okejasi Community, the distinction of the names sought to be made by the appellants in issue one is misconceived and refused”.*

*[the underlining mine]* I completely agree. The above findings of facts and holdings, are clear and unambiguous. I have hereinabove in this Judgment, demonstrated this obvious fact.

I have gone this length because of the unnecessary fuss and the hollow and misconceived misconception by the Appellants, that the court below erred in holding that the named families on behalf of whom the Plaintiffs/Respondents instituted the action, were synonymous with Oke-ljasi Community. Even commonsensically, I hardly see the relevance in this Issue 1 of the Appellants. It is time wasting and I will eventually touch on why they are hanging on a straw so to say/speak like a drowning man. I have no hesitation in rendering my answer to Issue 1 of the parties, in the Affirmative/Positive.

#### **ISSUE 2 OF THE APPELLANTS AND ISSUE 3 OF THE PLAINTIFFS/RESPONDENTS**

The complaint of the Appellants in my respectful view in effect, is that firstly, the court below regarded or treated the payment of rent to the Plaintiffs/Respondents as amounting to an acknowledgment of the Plaintiffs/Respondents as overlords of the entire land or the land in dispute. That it erred in holding that the evidence of possessory right of the Plaintiffs/Respondents to the land in dispute, is unassailable. Secondly, that the court below failed to consider the failure of the trial court, to advert its mind to Exhibit HII and its effect on the case of the Plaintiffs/Respondents. The court is urged to send back the case for re-trial.

Since an appeal is in the nature of a re-hearing in respect of all issues raised in respect of a case, I will deal with Exhibit HII and its

effect, if any. See case of *Sabrue Motors Nig. Ltd, v. Rajah Enterprises Nig. Ltd.* (2002) 4 SCNJ. 370 @ 382; Order 8 rule 2(1) and of the Supreme Court, Rules. The Appellants insist that in Exhibit HI, the Plaintiffs/Respondents conceded title of the land in dispute to the Appellants. With the greatest respect to the learned counsel to the Appellants, this is a gross misconception. I will show this hereunder. It is firmly settled that an Appellate Court is in as good a position as a trial court, in the evaluation of documentary evidence. This Court, can examine an exhibit or exhibits in question and draw necessary inferences. See the case of *Gonzee Nig Ltd, v. Nigeria Educational Research & Development Council & 2 ors.* (2005) 6 SC (Pt.I) 75 @ 35; (2005) All FWLR (Pt.274) 235 @ 247- 248 and Order 8 Rule 12(2) of the Rules of this Court.

Now, Exhibit HI was shown to the PW1 and was tendered through him during cross-examination without objection. In paragraph 8 of the Amended Statement of Claim, it was/is pleaded as follows:

*“The Defendants’ father during the pendency of the lease, sublet part of the land in dispute to Texaco Nigeria Ltd. who has since built a Petrol Filling (sic) Station thereon. The Defendants have, since the death of their father, been receiving ground rent from Texaco Nigeria”.*

In paragraph 22 thereof, it is averred as follows;

*“The Defendants through the 12<sup>th</sup> Defendant, collected ground rents from Texaco Nigeria and have failed and/or refused to pay to the Plaintiffs since January 1985, the rent of N400.00 per year in respect of the piece of land in dispute, despite an agreement reached between the Plaintiffs and Defendants through the 12<sup>th</sup> Defendant. The Plaintiffs will at trial tender and rely on a letter dated February 25, 1987, written to the 1<sup>st</sup> Plaintiff by Texaco Nigeria Limited”.*

Exhibit ‘G’ is the letter from Texaco Nigeria Ltd. It is not in dispute that the land in dispute was leased to Texaco Nig. Ltd. by the said late father of the Appellants who tendered Exhibit “J” made during the pendency of the lease to the Appellants’ said late father. Exhibit HI, is a letter to the 12<sup>th</sup> Defendant -i.e. DW1. It is dated 25<sup>th</sup> May, 1984 and it is clearly headed “Texaco PETROL FILLING STATION ABEEKUTA ROAD IJEBU ODE OGUN/S”

My or the reading of the contents of the letter, leaves me in no

doubt that “the landed property” refers to and it is the Petrol Filling Station above stated in the said letter. The Plaintiffs/Respondents had invited the DW1 to a meeting with them in respect of the land in dispute and the payment of the rent of N400.00 (four hundred naira) agreed to by the DW1 with the Plaintiffs/Respondents. More importantly, there is Exhibit ‘B1’ - a letter written by the DW1 on behalf of his Family, to the Plaintiffs/Respondents dated 28<sup>th</sup> October, 1983 through their Secretary which was tendered without objection. It reads as follows:

*“TENANCY AGREEMENT EXPIRATION*

*We acknowledge the receipt of your letter dated 25<sup>th</sup> day of October 1983 under the above subject matter and to express thanks for your past cooperation which has existed within you people of Oke-Ijase and the late Pa G.F. Ajidagba for over 30 years without any dispute or rancor may God continue to bless you. We took notice of paragraph 3 of your letter and to express our desire for the continue usage of the premises as a filing (sic) petrol station for Texaco of Nigeria Ltd, which still up to the time of-writing this letter have vested interest in the premises, we shall therefore, be grateful for an opportunity to meet you people for the negotiation of a rent revision, and exercising of lease options in due course at your earliest convenience.*

*We thank you for your co-operation”*

[the underlining mine]

The said letter referred to above in Exhibit ‘B1’ is Exhibit ‘B’ and its said paragraph 3, reads inter alia, as follows:

*“The then lease agreement was prepared on the 1<sup>st</sup> day of January, 1974 for (10) Ten years expires on the 31<sup>st</sup> day of December, 1983, as aforementioned and therefore claiming for the possession as early as possible”.*

Exhibit “B” acknowledged the receipt of the payment of N240.00 (two hundred and forty naira) being the last payment and therein, informed the said family of the Appellants, that the said lease to their late father, would be expiring on 31<sup>st</sup> December, 1983. It was as a result of the above correspondences, that gave rise to a meeting of the Plaintiffs’/Respondents’ family with the DW1 on 11<sup>th</sup> March, 1984. Thereafter, the PW1 then wrote Exhibit ‘H’ to the DW1 which reads as follows:

*“Dear Sir,*

TEXACO PETROL FILLING STATION  
ABEOKUTA ROAD IJEBUODE OGUN/S

*At the general meeting of the above named Community Ijebuode held on Monday 11 March 1984 of which you were present by our invitation*

*Our purpose of inviting you to this meeting was to inform you that monthly rental charges for the above land is N120. 00 per month which is N1 440.00 per year. Beginning 1<sup>st</sup> January 1984. Your reply then was you will go home to ponder over it; That your decision would be communicated to us soon.*

*On Tuesday the 13<sup>th</sup> March 1984, we received your letter dated 12/3/84. Content Offering to pay N400. 00 a year which is N 30.3 4k per month against our N120. 00 per month.*

*We regret our inability to accept this offer due to the fact that you have drastically cut it down, it is very low, Four hundred naira a year.*

*In conclusion, we can only agree to a fix rate of N600.00 a year please. Should you agree to this amount of N600. 00. You can proceed immediately for the preparation of lease agreement for five years only.*

*Looking forward to hearing from you soon.*

*Yours faithfully  
Signed  
L.A Oduwole. for".*

In Exhibit E, the DW1 wrote as follows:

*"Ladokun Ajidagba Organisation  
Installer and Supplier of Private Automatic Branch Exchange (PABX) G  
Private Branch Exchange (PBX) Inter Comm and Radio Phone.  
BUILDER, TRANSPORTER & GENERAL CONTRACTOR.  
ADDRESS"*

*Ajidagba's Compound  
Abeokuta Road, Ijebu Ode*

*Phone 433928*

*POSTAL ADDRESS  
P.O. Box 478  
Ijebu Ode.*

*BANKER  
UNION BANK OF NIGERIA  
Ijebu Ode.*

*Our Ref.*

*Your. Ref.*

*Date: J 2-3-84*

*The Oke-Ijasi Community*

*c/o 10 Oke-Ijasi Street*

B *Ijebu Ode.*

Tenancy Agreement

C Further to our discussion on the above subject matter, I am to say that after due consideration of the matter, I shall be grateful if the Community will allow me to be paying the sum of N400. 00 per year in view of the downward trend in Oil trade in the country.

I shall be grateful if my application is considered. Thanks for your Co-operation.

D

*Your Son,*

*SIGNED*

*L. AJIDAGBA. ”.*

Then in Exhibit “F”, he replied as follows:

*“Ladokun Ajidagba Organisation*

E

*Installer and Supplier of Private Automatic Branch Exchange (PABX) Private Branch Exchange (PBX) Inter Comm and Radio Phone. BUILDER, TRANSPORTER & GENERAL CONTRACTOR*

F *ADDRESS,*

*Ajidagba’s Compound*

*Abeokuta Road, Ijebu Ode*

*POSTAL ADDRESS*

*P.O. Box-478*

G *Ijebu Ode.*

*Phone 433928*

*BANKER*

*UNION BANK OF NIGERIA*

*Our Ref.*

*Your Ref;*

*Date: 20-3-84*

*The Oke-Ijasi Community*

H *c/o 16 Oke-Ijasi Street*

*Ijebu Ode.*

*Dear Sir,*



Texaco Filing Station Abeokuta Road Ijebu Ode

I received your letter of 19/3/84, and to thanks the Community for giving me an opportunity to use again the Community Land for up bringing late my father's name who was the first user of the said land.

On the issue of payment I beg to appeal to the Community to consider the proposed payment of N400.00 per year in view of the situation in the Country and more over the Ogun State Government has also demanded another N300.00 per year on all the petrol stations apart from the yearly tax on land use.

You will take note and see that I have made over 300% increase on the new rate of payment to what you use to pay before, and since we are all the same in the Community I beg that my payment proposal be approved in the name of God.

May God bless you all Amen.

Yours

SIGNED.

I. AJIDAGBA".

***It can easily be seen that Exhibit 'H1', was a letter written after 'H'. But the learned counsel for the Appellants, have taken advantage of the trial court especially and the court below, not reproducing in their respective Judgment as at the time of trial, the contents of these vital or material documentary exhibits tendered in evidence, that the Appellants, decided to hang on Exhibit 'H1' to falsely assert that the Plaintiffs/Respondents, conceded title of the land in dispute to the Appellants.*** Of course, there is Exhibit J. in which the late father of the Appellants, gave to the Oil Company, the impression that he was the "owner" instead of a tenant in the land in dispute. When the PW1 wrote Exhibit H1, of course, the Petrol Filling Station could be said to be "owned" and "belonged" so to speak, to the father of the DW1.

In Exhibit 'G', the Company in their reply to the letter from a member of the Plaintiffs/Appellants' family - The original 1<sup>st</sup> Plaintiff, H stated inter alia, as follows:

*"It is pertinent to say that any accrued rents due to you can only be recovered by you from our present landlord, Mr. L. Ajidagba".*

Learned counsel for litigants, must please, always bear in mind

that they are Ministers in the Temple of Justice and must therefore, (however tempted) avoid any act or thing that will ridicule or impugn the integrity of any trial Judge or Appellate Justice as has been with respect deliberately done in the case leading to this appeal. It is unfortunate. I have no hesitation whatsoever, in holding that this issue is also bogus, a ruse and made in very bad faith in order to deceive and mislead the court or on the unwary, hence the scanty reply/or response by the learned counsel for the Plaintiffs/Respondents to their Brief. The Appellants and their learned counsel I believe, thought that this issue, is/was their strongest “wicket”. But it has turned out to be so to speak, their weakest “wicket”. However, **my answer to the said issue, is that assuming that the court below did not consider it, this Court, is entitled to consider it and has indeed considered it and therefore, holds, that there is no concession and there could never have been any such concession as claimed by the Appellants.**

#### ISSUE 3 OF THE APPELLANTS AND ISSUE ii) OF THE PLAINTIFFS/RESPONDENTS

The Appellants concede that the court below, rightly held that exhibit ‘C’ which was not written in the language of the court, is not admissible. But it is submitted that it erred when it held that the trial court did not rely on the exhibit at the trial. That this is because, the trial court relied on the exhibit at page 43 lines 11 to 17 of the Records. That if the court below, had adverted its mind to the fact that the trial court relied on exhibit ‘C’, it would have come to a different conclusion and that this Court should allow the appeal on this ground. Although it is not indicated in the Appellants’ Brief of Argument, I take it that this issue, is distilled from Ground 4 of the grounds of Appeal, I will deal with it. **With respect, I agree with the Plaintiffs/Respondents that the Appellants, misunderstood the court below - per Omage, JCA and I will add that this is another gross misconception of what the court below stated in this respect or regard. The court below held at page 71 of the Records inter alia, as follows:**

*“I have read with care, the printed record, I do not see in the record any reliance by the Court below on the contents of exhibit C in the judgment. Exhibit C did not feature in the determination of*

*the issue -which awarded judgment to the Plaintiffs. Exhibit C in Yoruba is not as potent in persuasion as exhibit D - D1 which established the existence of the tenancy between the father of the Plaintiffs and the father of the Defendants now Appellants. **In the event of exhibit C, which now said to be written in Yoruba, is expunged from the proceedings the judgment of the Court below will still be valid, and competent based on other exhibits. Exhibit C, should not have been admitted in Evidence Act [sic] in the proceeding, it is expunged, see 16 Court of appeal". [sic]***

**The above is clear and unambiguous. Having expunged Exhibit "C", what else? I or one may ask. So, even if Exhibit C was relied on by the trial court (which is not conceded because the trial court merely referred to the exhibit, but did not rely on it), having been expunged by the court below on the ground that Exhibit C was inadmissible in evidence and should not have been admitted in evidence by the trial court, that is/ was the end of the matter. I so hold.** I see no substance in this issue which is accordingly dismissed by me.

Finally, there is also the concurrent findings of fact and holdings by the two lower courts. For the umpteenth time, the attitude of this Court has remained and will remain, except in exceptional circumstances that are obvious having regard to the facts of each case, that it will not disturb or interfere with such findings and facts as in the instant case. The documentary evidence in this case, is overwhelming and damning. If there are any appeals that are worthless and hopelessly unmeritorious and lack substance in all their circumstances, this is one of them. It fails and it is accordingly dismissed. This Court in no unmistakable language, deprecates the greed and ingratitude brazenly displayed by the Appellants and those they represent in this matter leading to this appeal. I have no doubt in my mind that it is the income they derive from the company, that is responsible for their later most disgraceful and condemnable claim of ownership of the land in dispute.

Costs follow the event. The Plaintiffs/Respondents are entitled to costs of N50,000 (Fifty thousand Naira) payable to them by the Appellants. I wish the Rules had given this Court a discretion in respect of award of costs. I should have awarded punitive costs against the Appellants. I accordingly, affirm the decision of the court below

affirming the Judgment of the trial court.

**TOBI JSC**

I have read the judgment of my learned brother, Ogbuagu, B JSC and I agree with him. The most crucial issue is Issue No. 1 of both parties. The Issue has been very well examined in the lead judgment. As I cannot do better, I should adopt it, and I so adopt it.

I too agree with the judgment of my learned brother. The appeal is dismissed. C

**MUKHTAR JSC**

I have had the opportunity of reading in advance the lead judgment delivered by my learned brother Ogbuagu, JSC. I am in full agreement that the appeal lacks substance and merit and should be dismissed. I also dismiss the appeal, and abide by the orders in the lead judgment. D

E

**OGEBE JSC**

I read in advance the lead Judgment of my learned brother F Ogbuagu JSC just delivered and I agreed entirely with his reasoning and conclusion and I adopt the Judgment as mine.

G

**FABIYI JSC**

I have read before now the judgment just delivered by my learned brother, Ogbuagu, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal is devoid of H merit and should be dismissed.

The relevant facts of the matter leading to this appeal have been lucidly stated in the lead judgment. I only wish to comment on the appellants' issue 1 which reads as follows:-

*"1. Whether the Court of Appeal was right in holding named*

*the families (sic) on behalf of whom the plaintiffs/respondents instituted the action were synonymous with Okejasi Community.”*

In paragraph 3 of the Amended Statement of Claim at page 21 of the transcript record of appeal, the Plaintiffs/Respondents pleaded as follows:-

*“The plaintiffs take this action for themselves and on behalf of all other members of Layode, Liyesi, Oludediro and Adebote/Lapogan families of Oke-Ijasi Quarter people of Ijebu-Ode.”*

It is extant in the Record of Appeal that the plaintiffs sought and obtained the approval of the trial court to sue in a representative capacity; after depicting that they were mandated to prosecute the case in court on behalf of the four families which constitute Oke-Ijasi Community namely, Layode, Liyesi, Oludediro and Adebote/Lapogan.’

It beats one’s imagination that the appellants are trying to make an undeserved fuss that ‘Oke-Ijasi quarter people’ is not the same as ‘Oke Ijasi Community.’ I feel tempted to ask the appellants to say the difference “between six and half a dozen. It sounds ludicrous that in this respect, they contend that the four families had no *locus standi* to sue. Such was to no avail. The case of *Road Transport Employers Association of Nigeria v. National Union of Road Transport Workers (1992) 2 NWLR (Pt. 224) 381* cited on behalf of the appellants is completely irrelevant in the prevailing circumstance.

Even then, it should be briefly stated that where the evidence in the case depicts that the parties prosecuted same in a representative capacity as done in this matter, the trial court was entitled to enter judgment for and against the parties in that capacity even if there was no amendment in that respect. See *Anusiem v. Anusiem (1993) 2 NWLR (Pt. 276) 485*, *S.P.D. C Nig. Ltd v. Edamkue v 2 Ors. (2009) 6-7 SC 74 at 90 and 109*.

For the above reasons and the detailed ones contained in the judgment of my learned brother, I have no doubt in my mind that the appeal lacks merit and should be dismissed. I order accordingly and hereby endorse all consequential orders therein contained inclusive of that relating to costs.