

SUPREME COURT OF NIGERIA
30TH APRIL, 2010, SC. 149/2001
CORAM:- M. MOHAMMED, I. F. OGBUAGU,
F. F. TABAI, C. M. CHUKWUMA-ENEH,
S. M. MUNTAKA-COOMASSIE, JJSC

1. CHIEF DANIEL ALLISON IBULUYA
2. LAZARUS CHUAYEKIENKA
3. APPOLOS FUAYEFIKA
4. OSIKIBO IWO APPELLANTS
5. KITARI IYO
6. ALPHEUS OPUDU KOBIPI
(For themselves and as Representing
Ibuluya House)
AND
1. CHIEF KALA DIKIBO
SAMUEL DIKIBO
2. ALPHEUS DIKIBO RESPONDENTS
3. SUNDAY KARIBO DIKIBO
(For themselves and as Representing
Dikibo House)

JUDGMENTS - Basis - Controversion - The basis of trial court's judgment for respondents - Was its finding that the land in dispute adjoins that in PHC/36/72 - Which finding is crucial and unassailable (H1)

EVIDENCE - Proof - Custom - Limit of ownership of waterfront - Whether proved - Appellants who pleaded the custom - Had the onus of proving same by evidence - But failed to discharge the onus (H2)

JUDGMENTS - Mistakes - Mistaken statements - How ascertained - A statement should not be read in isolation - But should be read along with paragraphs before and after it - To ascertain if it is a mistake (H3)

FACTS

The plaintiffs/respondents sued the defendants/appellants before the High Court of Rivers State holden at Port Harcourt. Respondents' claim was for declaration of title to the land in dispute, damages for trespass and perpetual injunction. It was common ground that the parties herein were also the parties in an earlier Suit No. PHC/36/1972 which suit was also a land dispute action. The land in dispute in the earlier suit had been awarded to respondents. It was in evidence that the land now in dispute adjoins that which was in dispute in the earlier suit and which was awarded to respondents. The land now in dispute is a waterfront abutting into the creek from the land in the earlier suit.

The case of respondents was that the instant land had been formed by alluvial accretion over time and their claim to ownership is based on their undisputed ownership of the land adjoining the creek. On the other hand, it was appellants' case that by Okrika native law and custom there was a limit to what can constitute water front adjoining the land of any Okrika person and that beyond that limit, any Okrika person can reclaim land from the Creek and own such land. Accordingly they allege that the instant land was reclaimed by them with the help of the State Government. They deny that the land was formed by alluvial accretion. After hearing, the learned trial judge gave judgment to respondents. Aggrieved, appellants appealed to Court of Appeal which court dismissed the appeal. Still dissatisfied, appellants have come on a further and final appeal to Supreme Court.

ISSUES FOR DETERMINATION

1. *"As the Plaintiffs/Respondents' case is that the land in dispute was a result of a natural phenomenon, alluvial accretion, while the Defendants/Appellants' case was that the land in dispute was a result of man made reclamation of land, whether the judgment of the court below affirming the judgment of the trial court in favour of the Plaintiffs/Respondents would not rightly be said to be perverse in view of the overwhelming evidence to the contrary."*

2. *Whether the court below was right in its conclusion that the trial court was not of the view that the land in dispute in this case was the same as the land in dispute in Suit No. PHC 36/1972."*

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

JUDGMENTS - Basis - Controversion

1. It is clear from the record that one of the things which persuaded the trial court to find for the Plaintiffs/Respondents is its visit to the locus in quo on the 11th of June 1987 and the inspection notes made thereat.

At Page 166 of the record, the court observed and found as follows:-

"It will be recalled that when (he) we went to visit the locus in quo each side showed the land in dispute and the features. Ibiateli's house was shown together with that which was destroyed and where he deposited the petrol tanks and behind the ACB building is Ibiateli's mother's grave and the alleged pipes used by Rural Development and Social welfare of the Rivers State Government. What one can gather both from the inspection notes and exhibit 'D' and 'E' is that the land in dispute adjoins the land in dispute in PHC/36/72."

This finding based on the visit to the locus in quo and the inspection notes made there is crucial on the issue of who has title over the land in dispute. It is, in my view, equally unassailable and it is not surprising therefore that the Appellants made no attempt to impugn it. (p. 1530 H)

Custom - Limit of ownership of waterfront - Whether proved

2. In response to the above the Appellants in paragraph 5 of the Statement of Defence pleaded....Again in paragraph 7 (f) they pleaded as follows:-

"7 (f) That there is a limit to what can constitute waterside (Poku) or waterfront adjoining the land of any Okrika person by Okrika native law and custom and this reclaimed land cannot come within that limit of the Plaintiffs' waterfront (Poku). It is rather part of the Okrika Creek which is communal to all Okrika people and which by Okrika native law and custom can be reclaimed and owned by any Okrika person"

The Defendants/Appellants failed to adduce evidence of the alleged native law and custom copiously pleaded on their paragraphs 5 and 7(f). At Page 167 of the record the learned trial judge noted this failure of the Appellants to lead evidence of the alleged Okrika native law and custom, rejected the contention that the 1st Plaintiff

admitted the existence of the native law and custom and relying on the principle “*he who asserts must prove*” held:

“The only conclusion is that the land in the waterfront are in the exclusive ownership of the owner of the waterfront.”

This finding cannot be faulted. It is the only reasonable and natural conclusion from the state of the matters pleaded and the evidence in relation thereto. (p. 1531 G/1532 A)

JUDGMENTS - Mistaken statements - How ascertained

3. At Page 172 lines 1-6 of the record the learned trial judge is recorded to have stated thus:

“I am convinced that the land in dispute was reclaimed by the defendants assisted by the Rivers State Government what in effect I have said is that the land in dispute was in the possession and ownership of the Plaintiffs”

Learned Senior Counsel for the Appellants argued rather strenuously that the underlined portion of the above statement was, in view of the evidence a finding in favour of the Appellants and therefore that the court below had no basis to regard it as a minor mistake. With respect, I am not persuaded by that argument. The statement should not be read in isolation. The statement read along with the paragraphs immediately preceding it and those immediately after it shows clearly that the learned trial judge could not have made a finding in favour of the Appellants. (p. 1532 H)

NOTABLE POINT OF INTEREST ***OGBUAGU JSC***

1. Once judgment is correct - Wrong reason is immaterial

It need be stressed as it is also firmly settled that an Appellate Court, will not set aside the decision of a lower court which is right and just merely because the trial Judge, gave wrong reasons for the decision. The paramount consideration for the Appellate Court is whether the decision is right and not necessarily whether the reasons are right.

In other words, there is the need for an Appellate Court to base its decision on the correctness of a judgment and not on the reasons thereof. (p. 1539 B)

REPRESENTATION

A. Ben Anachebe SAN, F. C. Anachebe (Mrs.), Shareef Mohammed and Charles Jibanu for the Appellants.

C. A. N. Nwokeukwu, L. C. T. Eruba, Emeka Eze and F. I. Nwokeukwu (Mrs.) for the Respondents.

B

CASES REFERRED TO

NWAOHAMUO (1992) N.W.L.R (Part 265) 372

TOBBY vs STATE (1995) 2 N.W.L.R (Part 376) 167

C

ASANVA vs STATE (1991) 3 N.W.L.R (Part 180) 422

NWABE vs STATE (1995) 3 N.W.L.R (Part 384) 385

Iroegbu v. Okwordu (1990) 6 N.W.L.R. (Pt. 159) 643

Dibiamaka v. Osakwe (1989) 3 N.W.L.R. (Pt. 107) 101

ACBKTD vs NBISIKE (1995) 8 N.W.L.R (Part 416) 725

D

Odinaka & anor. v. Moghalu (1994) 4 NWLR (pt. 233) 1

ACHIBONG vs AKPAN (1994) 4 N.W.L.R (Part 238) 150

Mba & 2 ors v. Agu & 6 ors. (1999) 12 NWLR (Pt.629) 1

OYEGOKE vs IRIGUNA (2002) 5 N.W.L.R (Part 760) 147

IRAGUNIMA vs R.S.H.P.D.A (2003) 12 N.W.L.R (Part 834) 427

E

Jikantoro & 6 ors. v. Dantoro & 6 ors. (2004) 5 SCNJ. 152 @ 178

United Bank for Africa Ltd. & anor. v. Mrs. Ngozi Achoru (1990) 6

NWLR (pt. 156) 254 @ 270

Integrated Timber & Plywood Products Ltd. v. Union Bank Nig. PLC.

F

(2006) 12 NWLR (Pt.995) 483 @ 504

LEAD JUDGMENT BY TABAI JSC

This action was commenced at the Port Harcourt Judicial Division of the High Court of Rivers State on or about the 23rd of August 1982 when the writ of summons was issued. The Plaintiffs were the Respondents at the Court below and also the Respondents herein and shall hereinafter mainly be referred to simply as the Respondents. The Defendants, on the other hand, were the Appellants at the court of below and also the Appellants herein. I shall hereinafter refer to them mainly as the Appellants. In the writ of summons the Respondents claimed three reliefs. In the statement of claim dated and filed on the 25th of February 1983, the Respondents claimed four reliefs. The statement of claim was however amended on the

H

28th of April 1988. In Paragraph 15 (fifteen) thereof the Respondents claimed against the Appellants jointly and severally the following four reliefs:

(i) *A declaration that the Plaintiffs are entitled to the grant of Customary Right of Occupancy to the foreshore of Okrika Creek forming the waterfront of the land of the plaintiffs in the said creek between the high water and low water mark.*

(ii) *A further declaration that the Plaintiffs are entitled to so much of the foreshore and premises by alluvial accretion appurtenant thereto and contiguous to the land of the plaintiffs known as Dikibo Kiri situate at Okrika within the jurisdiction.*

(iii) *N20,000.00 (twenty thousand naira only) damages for trespass in that in or about the month of May 1982 the Defendants without the leave or license of the Plaintiffs broke and entered the said land which was in the peaceable possession of the Plaintiffs and created a building thereon.*

(iv) *A perpetual injunction restraining the Defendants their servants and agents from recommitting further acts of trespass thereon.*

The case proceeded to trial with three witnesses for the Plaintiffs' case and eight for the defence and at the close of which learned counsel for the parties addressed the court. The trial court also visited the locus in quo. By his judgment on the 2nd day of May 1988 the learned trial Judge B. Gabriel-Whyte J (now late) allowed the claim in the following terms:

"I therefore grant to the Plaintiffs the OTELGA Customary Right of Occupancy to that piece or parcel of land in dispute shown and verged Green including the area verged Pink in the Plan No. DCRS/9/85 dated 26th January 1988 which is Exhibit 'D' in these proceedings and accepted by the court. I also grant to the Plaintiffs as against the Defendants a perpetual injunction restraining them and other members of Ibuluya family from committing further acts of trespass thereon."

The Appellants were not satisfied with the judgment and proceeded on appeal to the court below. By its unanimous judgment on the 24th of October 2000 the appeal was dismissed and the judgment of the trial court affirmed.

The Appellants were still not satisfied and have therefore come on appeal to this Court. The parties have, through their counsel,

filed and exchanged their briefs of argument. The Appellants' Brief of Argument was dated and filed on the 9th of October 2006. It was prepared by A. Ben Anachebe. The Respondents' Brief was prepared by Chief I. T. Nwogu and same was filed on the 19th of October 2009. In the Appellants Brief Ben Anachebe formulated two issues for defendants as follows:

1. *"As the Plaintiffs/Respondents' case is that the land in dispute was a result of a natural phenomenon, alluvial accretion, while the Defendants/Appellants' case was that the land in dispute was a result of man made reclamation of land, whether the judgment of the court below affirming the judgment of the trial court in favour of the Plaintiffs/Respondents would not rightly be said to be perverse in view of the overwhelming evidence to the contrary."*

2. *Whether the court below was right in its conclusion that the trial court was not of the view that the land in dispute in this case was the same as the land in dispute in Suit No. PHC 36/1972.*

In the Respondents' Brief, Chief I.T. Nwogu also formulated two issues for determination which he couched as follows:

1. *Were the Justices of the Court of Appeal right in holding that no where in his judgment did late Chief B. Gabriel-Whyte say that the land in dispute in 1972 was the same as the land in dispute in the case before him.*

2. *Were the Justices of Court of Appeal right in holding that the learned trial Judge's finding that the land in dispute came into existence by accretion and not by reclamation.*

The issues as proposed by learned counsel for the parties are in substance to the same effect. I shall therefore adopt the issues as formulated by the learned counsel for the Appellants which, in my view, are more comprehensive.

With respect to the 1st issue Ben Anachebe, now Senior Advocate of Nigeria argued that there is overwhelming and conclusive evidence from both sides that would lead any tribunal to the conclusion that the land in dispute came into existence not as a result of alluvial accretion but as a result of land reclamation. He referred to the evidence of the PW1 under cross-examination at page 37 lines 25-32 of the record and submitted that it amounted to an admission of the Appellants' case, the A. C. B. building being a vital fact in issue. On this issue learned senior counsel referred to Paragraph 7 (c) of

the statement of Defence. To confirm this he further referred to the evidence of the PW2 to the effect that the place where the A.C. B. LTD Building is situated was reclaimed by a company. It was argued therefore the PW2's admission about reclamation is inconsistent with their case founded on alluvial accretion. Learned senior counsel B pointed out what he considered to be a discrepancy between the evidence of the PW1 at Page 33 to the effect that the land they allotted to the PW2 was from alluvial accretion and that of the PW2 himself who said he reclaimed it. Counsel further referred to the evidence of the PW3, the surveyor assistant, to the effect that at the time C of the survey the place had just recently been reclaimed.

Learned senior counsel tried to identify areas in the evidence of the defence which confirmed their case that the land in dispute came to be as a result of reclamation. In this regard he referred first D to the evidence of the DW1, Chief Allison Ibuluya at Pages 52-53 of the record that they, assisted by the Rivers State Ministry of Rural Development and Social welfare, reclaimed the area for a market motor park and a causeway. Learned counsel made further and copious references to the evidence of the DW2, John Howard Wright E at Page 57 of the record, the DW4 Silvernus Tomunaro at Page 60 of the record and DW5, Abila John to support their case of reclamation. Still on the evidence in support of reclamation, learned counsel further made references to the evidence of the DW7, Alfred Akosibo F a Civil Engineer in the Ministry of Works at Page 64 of the record and DW8, Alpheus Oraudubipi at Page 65 of the record. It was learned counsel's submission therefore that the totality of evidence on record is overwhelming and compelling in favour of the defence and therefore that the concurrent findings of the two courts below are per- G verse.

Learned counsel for the Appellant then referred to a passage in the judgment of the learned trial judge at Page 172 of the record wherein he said:

H *"I am convinced that the land in dispute was reclaimed by the defendants assisted by the Rivers State Government what in effect I have said is that the land in dispute was in the possession and ownership of the Plaintiffs"*

and submitted that the Court of Appeal was clearly in error to regard the underlined portion of the statement as a minor mistake of the

trial judge. By that statement, counsel argued, the learned trial judge only succumbed to the pressure of the overwhelming weight of evidence. It was the further submission of learned counsel for the Appellants that the subsequent statement to the effect that the land in dispute was in the possession and ownership of the Plaintiffs was completely irrelevant as that issue was not before the court. B

To demonstrate his contention that the statement at Page 172 was not any mistake, learned counsel further referred to the earlier statement of the learned trial judge at Page 163 about the evidence of the PW2 confirming the Defendants' reclamation of the land in dispute. In his view it amounted to a miscarriage of justice for the Court of Appeal to categorise the trial court's statement as a minor mistake. Reliance was placed on ONEJOBI vs OLANIPEKUN (1985) 4 SC 156 at 163. C

At Page 171 of the record the learned trial judge gave his D impression about evidence of the DW1, DW2 and DW3 when he said:

"I have not been particularly impressed by the evidence of DW1, DW2 and DW3 as to the time of the reclamation (if any) undertaken By DW2 and most of the other witnesses for the Defendants. " E

Learned counsel for the Appellants referred to the above impression expressed by the learned trial judge and submitted that in view of the strong evidence in favour of reclamation the impression had no foundation especially in view of the evidence of the DW2, DW3 and DW7, He urged that the issue be resolved in favour of the Appellant and the appeal allowed on that issue. F

With respect to the 2nd issue of whether the learned trial judge at any where in his judgment held that the land in dispute in this case is the same as that in the previous case between the parties, learned counsel agreed with the finding of the Court of Appeal at Page 262 of the record that there was no such finding and that the land in dispute in this case is only an extension of that in the previous case. It was his contention however that the Respondents did not adduce evidence of how the land which they claim to have come into existence by alluvial accretion after the 1972 case came to be in the Plaintiffs' possession and ownership. He referred to the trial court's implicit reliance on Suit No. PHC/36/72 at Page 144 lines 17-28 of the H

record and submitted that the finding was inconsistent with the case fought by the parties. It was counsel's final submission that since the land in dispute in the previous case is not the same as the one in dispute in this case, judgment ought to be given against the Plaintiffs/ Respondents as the evidence is overwhelming in favour of the Defendants'/Appellants case of reclamation. He urged finally that the appeal be allowed.

The substance of the arguments of Chief I. T. Mwogu in the Respondents' brief are as follows. With respect to the first issue of whether the land in dispute was as a result of natural alluvial accretion or by reclamation, it was the contention of learned counsel that it was too late in the day for the Appellants to require the Plaintiffs proof through any of the five ways of proof as laid down on *IDUNDUN vs OKUMAGBA* (1976) 9/10SC 227 at 246-250. On the 2nd issue it was the contention of learned counsel that the Appellants did not successfully attack the judgment of the Court of Appeal to warrant any interference. The appeal, counsel argued, was with the leave of court and is essentially on facts and that in this regard the number of witnesses is immaterial and that what is material is the probative value of their testimony. On this he cited *OYEGOKE vs IRIGUNA* (2002) 5 N.W.L.R (Part 760) 147; *TOBBY vs STATE* (1995) 2 N.W.L.R (Part 376) 167; *NWABE vs STATE* (1995) 3 N.W.L.R (Part 384) 385; *ACBKTD vs NBISIKE* (1995) 8 N.W.L.R (Part 416) 725. It was his contention that scientific evidence was not necessary to prove the alluvial accretion and that there was no legal authority to that effect. As regards discrepancies, it was the contention of learned counsel that it was not enough to point out discrepancies without reference to their effects and the trial court's views on them. An appellate court, should only concern itself with the propriety of a lower court's decision and not with the propriety of the reasons for the decision. Reliance was placed on *IRAGUNIMA vs R.S.H.P.D.A* (2003) 12 N.W.L.R (Part 834) 427. He finally urged this court to dismiss the appeal.

The above is the substance of the address of counsel for the parties. The entire case revolves on the issue of evaluation. The question is whether the concurrent decisions of the two courts below are supported by the evidence on record? There is no doubt that in its judgment of over 80 Pages the trial court made sustained efforts to examine in details the evidence of the various witnesses for the par-

ties and in the course of which it made several unnecessary and avoidable repetitions.

On the first issue learned counsel for the Defendants/Appellants quoted extensively from the evidence of witnesses and the judgment of the trial court and contended that the evidence is overwhelming in favour of reclamation and therefore that the concurrent judgments of the two courts below are perverse. The Appellants relied in particular on the evidence of the PW2, DW2, DW3 and DW7 to urge that the evidence was overwhelming in favour of the Appellants' claim of reclamation. Learned senior counsel however made no reference to the credibility issue highlighted by the trial court for reasons stated in the judgment. The trial court expressed doubts about the credibility of the DW2, DW3 and DW7 whom the Appellants categorized as independent witnesses-

The first of these is the DW2 John Howard Wright. He is the focal point of the Appellants' claim of reclamation of the land in dispute. The trial court expressed its reluctance to accord credibility to his evidence and the alleged reclamation of the land in dispute when at Page 148 of the record it stated:

"What one has to say at this juncture is that whatever area this witness says it is not shown where he gave assistance to the Ibuluya House or the Defendants as this witness rightly observed there was no project site that is to say no plan was ever drawn up to the area which was being reclaimed. If this were in respect of the land in dispute at least a feature of that land could have been either mentioned or described."

Next is the DW3 Iberegu Suware who also gave evidence of reclamation. At Page 150 of the record the trial court expressed its doubt about his being a witness of truth for reasons stated therein. At Page 150 lines 8-14 the court had this to say:

"Could it be said that this man is a witness of truth, he says there is no motor park at the land in dispute nor did he know the 6th defendant who is having a block moulding industry in fact he did not mention that he saw that industry established if he ever went there as all."

The above expression of doubts about the credibility of the witness would, no doubt, have arisen partly from the court's observations when it visited the *locus in quo* and for which therefore an

appellate court cannot provide a substitute. The DW4 and DW5 each also gave evidence of the Appellants' Ibuluya Family's reclamation of the land in dispute which the trial court, for reasons stated therein, disbelieved. At pages 152-153 of the record the trial court observed:

"The only observation which can be made is the evidence that when the suit between the parties was going on in the 1972 case PW1 did not allow the dredger to be around the area in dispute, then would it be possible to have used the dredger in reclaiming the present land in dispute or the 1972 land in dispute. The question that always comes to mind is, can a dredger reclaim any land adjoining in a waterside or waterfront? What is meant by a dredger? That the dredger given to the witness for that purpose particularly in the land in dispute is too good to be true."

The trial court also examined the evidence of the DW6, DW7 and DW8 which, for reasons contained in the judgment, it disbelieved. Its rejection of the evidence of the Appellants was premised essentially on its assessment of the credibility of witnesses. It is settled law that the assessment of the credibility of witnesses in a case is primarily the function of the trial court which alone has the opportunity of seeing and hearing witnesses and therefore an appellate court has no basis for interference with findings based thereon. See *SUNDAY ONUOHA vs THE STATE* (1989) 2 N.W.L.R. (Part 101) 23; *MADUAGWU vs MADUAGWU* (1991) 8 N.W.L.R. (Part 212) 684; *ONYEMAECAN vs NWAOHAMUO* (1992) N.W.L.R (Part 265) 372; *ASANVA vs STATE* (1991) 3 N.W.L.R (Part 180) 422. The court below relying on *ACHIBONG vs AKPAN* (1994) 4 N.W.L.R (Part 238) 150 and *BALOGUN vs LABIRAN* (1988) 3 N.W.L.R (Part 80) 66 adopted this principle and decided not to interfere with the findings of the trial court. It is my view that the court was right and I shall therefore also not interfere particularly having regard to the fact that the findings are now concurrent.

It is to be noted that learned counsel for the Appellants did not react to the trial court's impression about the credibility of their witnesses. Further more ***it is clear from the record that one of the things which persuaded the trial court to find for the Plaintiffs/ Respondents is its visit to the locus in quo on the 11th June 1987 and the inspection notes made thereat.***
At Page 166 of the record, the court observed and found as

follows:

“It will be recalled that when (he) we went to visit the locus in quo each side showed the land in dispute and the features. Ibiateli’s house was shown together with that which was destroyed and where he deposited the petrol tanks and behind the ACB building is Ibiateli’s mother’s grave and the alleged pipes used by Rural Development and Social welfare of the Rivers State Government. What one can gather both from the inspection notes and exhibit ‘D’ and ‘E’ is that the land in dispute adjoins the land in dispute in PHC/36/72.”

This finding based on the visit to the locus in quo and the inspection notes made there is crucial on the issue of who has title over the land in dispute. It is, in my view, equally unassailable and it is not surprising therefore that the Appellants made no attempt to impugn it.

There is yet another aspect of the case of the Appellants which the trial court examined to find against them. In paragraph 7, 8 and 9 of the amended statement of claim the Respondents pleaded as follows:

“7. The Plaintiffs will at the trial contend that by the said judgments they had exclusive possession and occupation in perpetuity of the area of land verged GREEN in Plan No. SL 36/72 aforesaid and verged PINK in Plan No. EC RS/9/83 filed along with this statement of claim.

8. The Plaintiffs will further contend that by the Defendants admission in the High Court suit aforesaid (which admission was confirmed on appeal) the waterfront or waterside should belong to those resident in the area abutting thereto.

9. In the said admission and decision the area verged PINK and the waterside/waterfront adjoining thereto belong to the Plaintiffs, ”

In response to the above the Appellants in paragraph 5 of the Statement of Defence pleaded:-

“5 paragraphs 7, 8 and 9 are denied as the custom in Okrika is that waterfronts are never in exclusive possession of abutting land owners. In any event the land in dispute does not form part of any frontage to a piece of land owned by the Plaintiff. It is a reclaimed land from the territorial water of Okrika.”

Again in paragraph 7 (f) they pleaded as follows:-

“7 (f) That there is a limit to what can constitute water-side (Poku) or waterfront adjoining the land of any Okrika person by Okrika native law and custom and this reclaimed land cannot come within that limit of the Plaintiffs’ waterfront (Poku). It is rather part of the Okrika Creek which is communal to all Okrika people and which by Okrika native law and custom can be reclaimed and owned by any Okrika person.”

The Plaintiffs/Respondents adduced both oral and documentary evidence in support of their paragraphs 7, 8 and 9 of the Statement of claim. ***The Defendants/Appellants failed to adduce evidence of the alleged native law and custom copiously pleaded on their paragraphs 5 and 7(f). At Page 167 of the record the learned trial judge noted this failure of the Appellants to lead evidence of the alleged Okrika native law and custom, rejected the contention that the 1st Plaintiff admitted the existence of the native law and custom and relying on the principle “he who asserts must prove” held:***

“The only conclusion is that the land in the waterfront are in the exclusive ownership of the owner of the waterfront.” This finding cannot be faulted. It is the only reasonable and natural conclusion from the state of the matters pleaded and the evidence in relation thereto. And with respect to the totality of the cases presented by the parties the learned trial judge at Page 171 of the record stated:

“I have examined the evidence adduced by the Plaintiffs and the Defendants in the light of the above facts as given by them and in accordance with the principles I have stated earlier, I have weighed them and find that the Plaintiffs account from a totality of the whole evidence is more probable than that of the Defendants.”

Again it is my view that this finding is unassailable same having been supported by the totality of the evidence on record. The finding cannot, in any conceivable sense, be said to be perverse. There was therefore no basis whatsoever for any interference either by the court below or by this Court.

Still on this issue, ***at Page 172 lines 1-6 of the record the learned trial judge is recorded to have stated thus:***

“I am convinced that the land in dispute was reclaimed

by the defendants assisted by the Rivers State Government what in effect I have said is that the land in dispute was in the possession and ownership of the Plaintiffs”

Learned Senior Counsel for the Appellants argued rather strenuously that the underlined portion of the above statement was, in view of the evidence, a finding in favour of the Appellants and therefore that the court below had no basis to regard it as a minor mistake. With respect, I am not persuaded by that argument. The statement should not be read in isolation. The statement read along with the paragraphs immediately preceding it and those immediately after it shows clearly that the learned trial judge could not have made a finding in favour of the Appellants. In the statement at Page 171 lines 19-26 which I have reproduced above, he expressed unequivocally that the evidence of the Plaintiffs/Respondents was more probable than that of the Defendants/Appellants. And in lines 27-31 of the same page he stated clearly that he was not impressed with the evidence of reclamation put forth by the DW1, DW2, DW3 and other witnesses for the defence. In view of these surrounding circumstances therefore the learned trial judge could not have made a finding in favour of the Appellant’s story of reclamation. In the light of the foregoing considerations I resolve the 1st issue in favour of the Respondents.

The arguments of the Appellants on the 2nd issue are substantially to the same effect as those in the 1st issue. In my view the resolution of the first issue has taken adequate care of the 2nd issue.

In conclusion I hold that the appeal lacks merit and same is accordingly dismissed by me.

I assess the costs of this appeal at N50,000.00 (Fifty Thousand Naira) only against the Appellants.

MOHAMMED JSC

The land dispute between the parties in this appeal arose in 1982 when on 23-8-1982 the Respondents as Plaintiffs in a representative capacity sued the Defendants who are now the Appellants in this Court and claimed in their Amended Statement of claim as

follows-

“1. A declaration that the Plaintiffs are seized of and entitled to the foreshore off Okrika creek forming the water-front of the land of the Plaintiffs in the said Creek between the High-Water and lower-water mark and also much of the foreshore and premises by alluvial accretion appurtenant thereto and contiguous to the land of the Plaintiffs known as Dikibo Kiri situate at Okrika within the Jurisdiction.

2. N20,000.00 damages for trespass in that in or about the month off May 1982 the Defendants without the leave or licence of the Plaintiffs broke and entered the said land which was in the peaceable possession of the Plaintiffs and erected a building thereon.

3. A perpetual injunction restraining the Defendants their servants and agents from committing further acts of trespass thereon.”

After hearing the parties and their witnesses, the learned trial Judge also took time with the parties to visit the land in dispute. The notes that were recorded in the course of the visit is part of the record. At the end of the hearing, the trial Judge on close examination of the evidence placed before him by the parties, made specific findings before coming to the conclusion that the Plaintiffs/Respondents had proved their claims to have been entitled to judgment and consequently granted the reliefs claimed by them against the Defendants/Appellants. The Defendants/Appellants’ appeal principally based on findings of fact by the trial Court and on the application of the customary law of the Okrika people residing in the area where the land in dispute is located, was also dismissed by the Court of Appeal Port-Harcourt. The present appeal is from the judgment of the Court of Appeal. The issues arising from the appeal are entirely on questions of fact. What calls for determination therefore is whether or not the Appellants have shown enough grounds upon which this Court should disturb the concurrent findings of the two Courts below.

It is significant to observe that after going through the evidence before him, the learned trial Judge at page 144 of the record, captured the main issue for *determination in the dispute between the parties as -*

“*It will therefore be apparent that main issue to be determined in this case is whether the land now in dispute belongs to the Plaintiffs by virtue of the alluvial accretion subsequent to the decision of the suit PEC/36/72 or that the land now in dispute is one re-*

claimed by the Defendants either by themselves or by the Rivers State Government through Mr. John Wright came to that and by the process of sand filling made out the area verged violet on the plan. Subject to alleged customary law of the Okrika people and the legal consequences of the acts done by the Defendants in these circumstances.” B

It is also observed that the learned trial Judge in considering the claim of the Defendants/Appellants that the land in dispute was reclaimed by them with the assistance of the Rivers State Government, found at page 147 of the record as follows -

“It will be observed that it is not known when the reclamation was started. No receipt tendered by this witness that they are owners of the A.C.B. Building or the Bridge Head. As to the Block Moulding Industry it is not known when the reclamation commenced and when it ended. 6th Defendant erected his building on the land in dispute around May 1982. There is no Motor Park Market or cause way at the land in dispute nor what the dredger did which was alleged supplied by DW2.” C D

The above findings show clearly why the learned trial Judge rejected the case of the Defendants/Appellants before granting the Plaintiffs/ Respondents’ claims which was affirmed by the Court below. This also explains the final conclusion of the learned trial Judge at page 171 of the record where he said -

“In another part of his Evidence PW.1 said “The area now in dispute was land and water. Some of the land which was dredged out of the Okrika Rivers filled up some of the land now in dispute alluvial accretion is a natural phenomenon. NOT one aided by or done by anyone. It is correct to say that what the land in dispute is at present is the work of men and materials. It is not correct to say that the Defendants and the Rivers State Government were responsible for the present state of the land in dispute but rather it is contractors around who have been responsible for the present state of the land in dispute.” F G

I have examined the evidence adduced by the Plaintiffs and the Defendants in the light of the above facts as given by them and in accordance with the principles I have stated earlier I have weighed them and find that the Plaintiffs accounts from a totality of the whole evidence is more probable than that of the Defendants. I have not H

(sic) particularly impressed by the evidence of D.W.1, D.W.2 and D.W.3 as to the time of the reclamation (if any) undertaken by D.W.2 and most the other witnesses for the Defendants.”

In spite of the heavy weather made by the Appellants on findings in part of the judgment of the trial Court which does not flow from the earlier findings of the trial Court and which slip was taken care of by the Court below, it is just to say the obvious that the Court below was right in dismissing the Appellants' appeal and in affirming the decision of the trial Court having regard to the evidence placed by the parties before the trial Court.

Taking into consideration of the circumstances of this case therefore, I am of the strong view that since the findings of the two Courts below are reasonably justified by the evidence on record and in the absence of any error in law, substantive or procedural that resulted in any miscarriage of justice in the case at hand, I find no reason whatsoever in disturbing the judgment of trial High Court as affirmed by the Court of Appeal. See *Dibiamaka v. Osakwe* (1989) 3 N.W.L.R. (Pt. 107) 101; *Are v. Ipaye* (1990) 2 N.W.L.R. (Pt. 132) 298 and *Iroegbu v. Okwordu* (1990) 6 N.W.L.R. (Pt. 159) 643.

It is for the above and fuller reasons outlined in the leading judgment of my learned brother Tabai JSC just delivered with which I entirely agree, that I also dismiss this appeal and abide by the orders in that judgment including the order on costs.

OGBUAGU JSC

This is another appeal this time, against the Judgment of the Court of Appeal, Port-Harcourt Division (hereinafter called “the court below”) delivered on 24th October, 2000, affirming the decision of the High Court of Rivers State sitting at Port-Harcourt on 2nd May, 1988 - per Briel-Whyte, J. in favour of the Respondents who were the Plaintiffs in the trial court.

Dissatisfied with the said Judgment, the Appellants have appealed to this Court. In their Brief of Argument, they have formulated two (2) issues for determination namely,

“1. *As the Plaintiffs/Respondents' case is that the land in dispute was a result of a natural phenomenon, alluvial accretion, whilst the Defendants/Appellants' case was that the land in dispute was a*

result of man-made reclamation of land, whether the judgment of the court below affirming the Judgment to the trial (sic) in favour of the Plaintiffs/Respondents would not rightly be said to be perverse in view of the overwhelming evidence to the contrary.

2. *Whether the court below was right in its conclusion that the trial court was not of the view that the land in dispute in this case was the same as the land in dispute in Suit No. PHC 36/1972".* ^B

On their part, the Respondents, have also formulated two (2) issues for determination. They read as follows:

“1. *Were the justices of the court of the appeal (sic) right in holding that no where in his judgment did late Chief B. Gabriel-Whyte J. say that the land in dispute in 1972 was the same as the land in dispute in the case before him.*” ^C

2. *Were the justices of court of appeal (sic) right in holding that the learned trial judge’s finding that the land in dispute came into existence by accretion and not by reclamation”.* ^D

I note that there is no ? (question mark in the above issues.)

When this appeal came up for hearing on 8th February, 2010, Anachebe, Esq. (SAN) - leading learned counsel for the Appellant, adopted their Brief of Argument. He urged the Court to allow the Appeal. He cited and relied on two decided authorities which he said, he had not yet filed. He told the Court that the issue relates to whether the land in dispute, was brought about by alluvial accretion or by reclamation. They are Joe Golday Holding Co. Ltd. & 5 ors. v. Co-operative Development Bank PLC (not Ltd) (2003) 5 NWLR (Pt.814) 586 (it is also reported in (2003) 2 SCNJ. 1). About an averment that is not denied and is deemed admitted, he cited the case of Mba & 2 ors v. Agu & 6 ors. (1999) 12 NWLR (Pt.629) 1 (it is also reported in (1999) 9 SCNJ. 84. He submitted that the burden is on the Respondent to call scientific evidence in support of alluvial accretion. In respect of their Issue 1 he submitted that they called evidence in support of reclamation. ^E ^F ^G

Nwokeukwu, Esq. - the leading learned counsel for the Respondents, also adopted their Brief of Argument. He told the Court that all the oral submissions canvassed by his learned friend for the Appellant, should have been contained in a Reply Brief. He urged the Court to dismiss the appeal as according to him, there is nothing in the Appellants’ Brief to dislodge the concurrent findings of the two ^H

courts below. He therefore, urged the Court to affirm the same. Thereafter, Judgment was reserved till to-day.

The dispute between the parties, is/was in relation to a piece or parcel of land situate at Okirika in the Rivers State of Nigeria. Both parties filed and exchanged pleadings. At the close of the case for the parties and addresses by the learned counsel for the parties, and a visit to the locus in quo by the learned trial Judge, in a very lengthy considered Judgment spanning from page 94 to page 177 of the Records, the learned trial Judge found in favour of the Respondents. The appeal by the Respondents to the court below, was unsuccessful hence the instant appeal.

In my respectful but firm view, the crucial is issue for determination as also identified by the trial court at page 144 of the Records, is whether the land in dispute came into existence by alluvial accretion or by reclamation. This is confirmed by Issue 1 of the Appellants in respect of their Ground 1 of their grounds of appeal and Issue 2 of the Respondents. It seems to me also as appears at page 4 paragraph 4.02 of the Respondent's Brief, that the Appellants are battling with the stonewall of the concurrent findings of fact and holding of the two lower courts. It appears to me also that the Appellants have not appealed on any point of law. Their appeal, is only on facts hence they sought and obtained the leave of the court below to appeal on grounds other than that of law. See pages 269 and page 274 of the Records. Let me straight away with respect, state that I do not see any relevance of the case of Joe Golday Holding Co. Ltd. v. Co-operative Development Bank Plc (supra) to the said real issue in controversy between the parties and which called for determination in the trial court especially, the court below and this Court. The said case dealt with the recovery of debt, on what arguments on appeal should be based, and findings of fact by a trial court, the attitude of an Appellate Court and pleadings in a statement of defence were not specifically denied.

At page 172 of the Records, the learned trial Judge stated inter alia as follows:

"I am satisfied that the reclamation to by P. W. 1 is that resulting from alluvial accretion or from a natural sitting up of sand gravel and the like and that the accretion is "so slow" and gradual as to be in a practical sense imperceptible in its course and progress as it oc-

curs.....

I therefore grant to the plaintiffs the OTELGA Customary right of Occupancy to that piece or parcel of land in dispute.....”

The court below - per Ogebe, JSC, at page 264 of the Records stated inter alia, as follows:

“..... However at the end of the day he came out clearly to find in favour of the respondents.....”

It need be stressed as it is also firmly settled that an Appellate Court, will not set aside the decision of a lower court which is right and just merely because the trial Judge, gave wrong reasons for the decision. The paramount consideration for the Appellate Court is whether the decision is right and not necessarily whether the reasons are right. See the case of United Bank for Africa Ltd. & anor. v. Mrs. Ngozi Achoru (1990) 6 NWLR (pt. 156) 254 @ 270; (1990) 10 SCNJ. 17 @ 26. In other words, there is the need for an Appellate Court to base its decision on the correctness of a judgment and not on the reasons thereof. See the cases of Sowemimo v. Alhaji Somisi & ors (1982) 1 ANLR (Pt.1) 49; Gbafé v. Gbafé (1996) 6 NWLR (Pt.455) 417; (1996) 6 SCNJ. 167 @ 178; Oladele v. Aromolaran II (1996) 6 NWLR (Pt.453) 180; (1996) 6 SCNJ. 1; Jikantoro & 6 ors. v. Dantoro & 6 ors. (2004) 5 SCNJ. 152 @ 178 and Integrated Timber & Plywood Products Ltd. v. Union Bank Nig. PLC. (2006) 12 NWLR (Pt.995) 483 @ 504; (2006) 5 SCNJ. 289 just to mention but a few. The Respondents have cited in their Brief, the cases of Shell International Petroleum B.V. v. F.B.I.R. (2004) 3 NWLR (Pt.859) 46; Okonkwo v. Okonkwo (2004) 5 NWLR (pt.865) 87 and Umara v. Attah (2004) 7 NWLR (Pt.871) 176 C.A.

At page 266 of the Records, Pats-Acholonu, JCA (as he then was and of blessed memory) in his concurring Judgment, had this to say inter alia:

“I must however state that it is a great mistake on the part of the trial court to say that the land was reclaimed by the defendants with the assistance of the Rivers State Government when that Court had held that the land was brought into existence by alluvial accretion. The two statements are inconsistent. It was the work of over-worked mind which in no way affected the substantiality and merit of the case”.

I agree. I hold that the said slip, mistake, or error, did not occasion

any miscarriage of justice. See the case of *Dr. Irogunima v. Rivers State Housing & Property Development Authority & ors.* (2003) 12 NWLR (Pt. 834) 427 cited and relied on in the Respondents' Brief (it is also reported in (2003) 5 SCNJ. 207).

In concluding this Judgment, I have noted that there are current findings of fact and holdings by the two lower courts which in my respectful view, are not perverse or wrong in law. The attitude of this Court not to disturb or interfere in those circumstances, is now firmly settled in a line of decided authorities. See the cases of *Woluchem & ors. v. Gudi & ors.* (1981) 5 S.C. 291; *Odinaka & anor. v. Moghalu* (1994) 4 NWLR (pt. 233)1; (1992) 4 SCNJ. 43 and the several other cases cited and relied on in the Respondents' Brief.

It is from the foregoing and the detailed and fuller lead Judgment of my learned brother, Tabai, JSC just delivered, that I too, find no merit whatsoever in this appeal which fails and I too, dismiss the same. I too affirm the said Judgment of the court below affirming the decision of the trial court. I abide by the said order in respect of costs in the said lead Judgment.

CHUKWUMA-ENEH JSC

I have before now been privileged to read in advance the lead judgment prepared and delivered by my learned brother Tabai JSC, and I agree with him that there is no merit in the appeal and that it should be dismissed. I too dismiss it and endorse the costs contained in the same.

MUNTAKA-COOMASSIE JSC

I have had the opportunity of reading the lead judgment just delivered by my learned brother Francis Tabai JSC. I entirely agree with his lordship's conclusion. Based on the reasons he adumbrated I also agree that the appeal lacked merit same is dismissed by me. I endorse the order as to costs.