

SUPREME COURT OF NIGERIA

9TH JULY, 2010, S.C. 155/2002

**CORAM:- A. M. MUKHTAR, M. MOHAMMED,
I. F. OGBUAGU, I. T. MUHAMMAD, O. O. ADEKEYE, JJSC**

ALHAJA SILIFATU OMOTAYO APPELLANT
AND

CO-OPERATIVE SUPPLY
ASSOCIATION

..... RESPONDENT

LAND LAW - Trespass - Licencee - Denial of licensor's title - Effect - Where a licensee challenges licensor's title - Having entered lawfully on the land - He becomes a trespasser ab initio (H1)

PLEADINGS - Defence - Land matters - Issues - Where in an action touching on land - Defendant claims ownership of the land by his pleadings - Issue of title becomes the cardinal issue - On which the action is to be fought (H2)

APPEALS - Findings of fact - Interference - Limits - Appellate court should refrain - From coming to different findings - Unless it can show that those of trial court - Could not flow from evidence before it (H3)

LAND LAW - Trespass - Reliefs - Injunction - Propriety - Once a court has found for continuing trespass - It has jurisdiction to grant the equitable remedy of injunction - Notwithstanding that it was not claimed (H4)

FACTS

The plaintiff/respondent sued defendant/appellant before the High Court of Lagos State sitting at Ikeja claiming damages for trespass and injunction. The case of respondent was that appellant was a licensee who was allowed to occupy the land in dispute by PW.2, the caretaker of the land engaged by respondent. Appellant was permitted to mould blocks for sale on the land which was part of a wide expanse of land owned by respondent. However, appellant had extended the area granted to her to cover other parts of the land with-

out the consent of P.W.2. Moreover, when respondent engaged a contractor to erect wall-fence on the land for respondent, appellant obstructed and molested the contractor. On her own part, appellant denied being a licensee of respondent and rather claimed to be an owner in possession.

At the end of trial, the learned trial judge found in favour of respondent and gave judgment accordingly, granting the sum of N100.00 (one hundred naira) as damages for trespass as well as injunction. Aggrieved, appellant appealed to Court of Appeal challenging the various findings of fact made by trial court, but the appeal was dismissed. Appellant has come on a further and final appeal to Supreme Court contending that respondent was not entitled to the reliefs claimed on the evidence before the trial court.

ISSUES FOR DETERMINATION

“1. Whether having regard to the pleadings and evidence led, Plaintiff prove title (sic) to the land in dispute to warrant its claim for trespass to be granted?

2. Whether a claim for trespass would lie against the Defendant, who has been found to be a licensee of the Plaintiff and in possession of the land and whether in any event a case of licences was established against the Defendant?

3. Whether Plaintiff can succeed in its action despite failure to ask for declaration of title” .

HELD (Unanimously dismissing the appeal per **OGBUAGU JSC**)
Licencee - Denial of licensor's title - Effect

1. After answering Issue 1 of the Appellant in the affirmative - which is/was:

“Were the plaintiff entitled to judgment for damages for trespass and an injunction on the issue joined and the evidence before the court”

(which is substantially as Issue 1 of the parties in this appeal.)

It stated thereof inter alia, as follows:

“.....If the defendant/appellant, has admitted the averment in the plaintiff/respondent's pleadings that she was its licensee, by which she would be regarded as having entered upon the land lawfully and she later resorted to challenging the title of the plaintiff/respondent as she has done, she will in law, become a trespasser ab

initio; her misconduct relating back so as to make her initial entry a trespass.....”

I agree. (p. 2286 B)

PLEADINGS - Defence - Land matters - Issues

2. At page 420 thereof, (which relates to Issue 2 of the parties in this appeal) it (Court of Appeal) continued, inter alia, thus:

“.....But the defendant/appellant denied being a licensee of the plaintiff/respondent. She even asserted ownership of the land in dispute and admitted that she was on the land The case of the plaintiff/respondent was clearly proved and it was not upheld because the defendant failed to prove her own case..... I wish to say that having not admitted that she was the licensee of the plaintiff/respondent, the case, as I have said, was not fought on the issue of licensee rather both pleadings raised title as the cardinal issue ”.

[the underlining mine]

The above is borne out by the evidence on the Records. Concluding, it stated inter alia, as follows:

Again on the evidence, it is the plaintiff/respondent who has the right to possession, indeed it is the owner and therefore it, has better title than the defendant/appellant”.

[the underlining mine]

I agree. (p. 2286 F)

APPEALS - Findings of fact - Interference - Limits

3. It is settled that the duty of appraising evidence given in a trial court, is pre-eminently that of the learned trial Judge who saw and heard the witnesses and it is that court that has a right to ascribe values and a Court of Appeal may not interfere with the judgment simply on the ground that it would have come to a different conclusion on the facts as long as the judgment, of the trial court, is supported by the evidence rightly accepted by that court.

In the case of Ngillari v. NICON (1998)8 NWLR (pt. 560) 1@ 20 - 21; (1998) 6 SCNLJ. 16 - per Onu, JSC, it was held that where a court of trial which saw and heard the witnesses, has come to specific findings of fact on the evidence and issues before it, (as in the instant case leading to this appeal), an Appellate Court which had no similar opportunity, should refrain from coming to a different finding

or findings, unless it can show that the conclusion or conclusions, could not follow or flow from the evidence before it. (pp. 2288 E/2289 B)

Trespass - Reliefs - Injunction - Propriety

- B 4. In respect of a continuing trespass, as is clear in the instant case, it has been held that for a person to remain in another's land without that other's authority or consent, so that barring the defences properly raised and sustained which defeat the right of the owner of such land to complain of the continuing trespass, the land-owner, is always entitled to protection as appropriate.
- C The protection, is by way of an order of injunction. Even where an injunction was not sought, once a court has found for trespass, it has the jurisdiction to grant the equitable remedy of injunction.
- D An injunction can be made as a consequential order and it will not amount to a court giving or granting to a party what he did not claim. (p. 2289 F)

NOTABLE POINT OF INTEREST

E ***ADEKEYE JSC***

1. Trespasser in possession can sue for trespass

1. In the appellant's issue No. 3, the appellant wants this court to decide whether the plaintiff can succeed in its action despite failure to ask for declaration of title. It has been decided in a number of cases
- F that where a plaintiff has failed to prove title to land, it may be necessary to consider evidence of possession in order to ascertain whether he is in any event entitled to damages and injunction claimed for trespass, if it is shown that he was in possession which was disturbed.
- G This is on the basis that trespass is essentially an issue of who is in possession. A person who is in possession of land even as a trespasser can sue another who thereafter comes upon the land unless that other is the owner or shows some title which gives him a better right to be on the land. There is cogent evidence that the respondent was
- H in possession of the land in dispute and therefore can sue without asking for declaration. (p. 2296 C)

REPRESENTATION

Fagbemi L. O. Esqr. (SAN), for the Appellant with him, H. O. Afolabi

Esqr., K. O. Fagbemi, Esqr., A. O. Popoola, Esqr., Akeem Umaru, Esqr. and Victor Giwa, Esqr.
Otunba Kunle Oyero, Esqr., for the Respondent with him, Adenekan Shodeke, Esqr.

CASES REFERRED TO

Nkado v. Obiano (1997) 5 NWLR pt. 503 pg. 31
Adelaja v Alade (1999) 6 NWLR pt. 608 pg. 544
Chukwu v. Diala (1999) 6 NWLR pt. 608 pg. 674
Jiaza v. Bamgbose (1999) 7 NWLR pt. 610 pg. 182
Adanji v. Anwase (2006) 12 NWLR pt. 993 pg. 183
Akintola v. Lasupo (1991) 3 NWLR pt. 180 pg. 508
Adeoti Madam (1990) 2 NWLR (pt.132) 271 @ 290
Inwelegbu v. Ezeani (1999) 12 NWLR pt. 630 pg. 266
Ezeonwu v. Onyechi (1996) 3 NWLR pg. 438 pg. 499
Ivienagbor v. Bazuaye (1999) 9 NWLR pt. 620 pg. 552
Ogunbiyi v. Adewunmi (1988) 5 NWLR pt. 93 pg. 215
Adegbite v. Ogunfaolu (1990) 4 NWLR pt. 140 pg. 578
Adebanjo v. Oke (1999) 3 NWLR (pt. 594) 154 @ 163 -164
Ajani & anor. v. Ladepo & 2 ors. (1986) 3 NWLR. (Pt. 28) 276 @ E 283
Chief Frank Ebba v. Chief W.Ogodo & ors.(1984) 4 S.C. 84@109 110

BOOK REFERRED TO

Halsbury's Laws of England, vol. 38, page 744, pt. 1214

LEAD JUDGMENT BY OGBUAGU JSC

This is an appeal against the Judgment of the Court of Appeal, Lagos Division, (hereinafter called "the court below") delivered on 10th December, 2001 dismissing the appeal of the Appellant from the Judgment of the High Court of Lagos State sitting in Ikeja - per Desalu, J. delivered on 22nd May, 1981 which found in favour of the Respondent.

Dissatisfied with the said Judgment, the Appellant, has further appealed to this Court firstly, on two (2) grounds of appeal which were further Amended to be five (5) grounds of appeal - (See

the Amended Notice of Appeal filed on 5th April, 2006). She has formulated three (3) issues for determination, namely,

“1. Whether having regard to the pleadings and evidence led, Plaintiff prove title (sic) to the land in dispute to warrant its claim for trespass to be granted?”

B *2. Whether a claim for trespass would lie against the Defendant, who has been found to be a licensee of the Plaintiff and in possession of the land and whether in any event a case of licences was established against the Defendant?*

C *3. Whether Plaintiff can succeed in its action despite failure to ask for declaration of title”.*

I note that it is stated that Issue 1 is covered by grounds 3 and 4 in the Amended Notice of Appeal while Issues 2 and 3, are covered by grounds 1, 2 and 5 of the grounds of appeal.

D On its part, the Respondent, has formulated four (4) Issues for determination which read as follows:

“3.01 ISSUE 1:

E *Whether having regard to the pleadings and the evidence led oral and documentary the court below was right in affirming the Judgment of the trial court on the issues of title, trespass, injunction and licence in respect of the land in dispute.*

3.02 ISSUE 2:

Who has a better title, the Plaintiff or the Defendant.

3.03 ISSUE 3:

F *How does the attitude of the Supreme Court to the issues of concurrent Judgment of 2 Courts after this case. (sic)*

3.04 ISSUE 4:

Whether an Order of retrial is appropriate in this case”.

G I note that there is no ? (question mark) in respect of Issues 3.02 and 3.03. I note also that Issue 1 is stated to be based on grounds 1, 2 and 3, while Issue 2 is based on grounds 4 and 5 of the grounds of appeal. I note also that there is what is headed as “SUPPLEMENTARY AMENDED RESPONDENT’S BRIEF OF ARGUMENT” filed on H 24th June, 2009. Although this is unusual, but a perusal of it by me, shows that it is perhaps, a serious complaint against the Appellant’s Solicitor, - Lateef, O. Fagbemi & Co. evidenced by the letter dated 24th March, 2009 attached thereto and addressed to the leading learned counsel for the Appellant.

The Plaintiff/Respondent, sued the Appellant in the High Court of Lagos State, Ikeja Judicial Division and claimed N500.00 (Five hundred Naira) as general damages for trespass. He claimed also for an injunction. Pleadings were filed and exchanged by the parties. At the end of the trial and addresses by the learned counsel for the parties, the learned trial Judge - Desalu, J, found in favour of the Respondent and awarded N100.00 (one hundred naira) as damages for trespass and granted the injunction sought by the Respondent. The Appellant's appeal to the court below, was unsuccessful, hence the instant appeal. B

When this appeal came up for hearing on 20th April, 2010, the leading learned counsel for the Appellant - Fagbemi, Esqr. (SAN), adopted their Amended Brief of Argument and Reply Brief. He urged the Court to allow the appeal. Oyero, Esq. - the leading learned counsel for the Respondent, also adopted their Amended Brief of Argument. He stated that although they filed a Notice of Preliminary Objection, that it has been overtaken by events. He stated that they were served with the Reply Brief of the Appellant. He urged the Court to dismiss the appeal. Thereafter, Judgment was reserved till to-day. C D E

Since the Notice of Preliminary Objection is said to have been overtaken by events, the Court takes it that the same has been abandoned or withdrawn. In the circumstance, the said Notice of Preliminary Objection, is hereby and accordingly, struck out. Again, since no mention was made by Mr. Oyero about the said "Supplementary Amended Respondent's Brief of Argument", the Court will therefore, discountenance it and say nothing in respect thereof. F

Now coming to the merits of the appeal proper, I will deal with Issue 1 of each of the parties together with Issue 2 of the Appellant and Issue 3.02 of the Respondent as they are substantially similar although differently couched. I will also deal with Issue 3 of the Appellant and Issue 3.03 of the Respondent. The learned trial Judge after thoroughly reviewing the pleadings, the evidence of the parties which included their respective claims, the documentary evidence and the addresses of the learned counsel for the parties, stated at pages 148 - 149 of the Records, inter alia, as follows: G H

"It is the duty of the plaintiffs to prove conclusively that, before the alleged trespass they were in exclusive possession of the land

in dispute. Any act of possession is a legal possession against a wrong doer. See GRAHAM v. PEAT 105. E. R. 94.

The Supreme Court held in the case of AJADI v. OLANREWAJU. 1960 1 A. N. L. R. 382, *that slight evidence of possession is enough in respect of uncultivated land, When the other party has no title or a title manifested to be defective.*

I am satisfied on the evidence in this case that the Plaintiffs were in constructive and or exclusive possession of the entirety of the land granted them by the Ajao family, including the land in dispute.

I am equally satisfied on the evidence in this case that the Plaintiffs have better title to the land than the Defendant and a better right of possession thereof.

I hold therefore that the Plaintiffs were exclusive possession (sic) of the land in dispute, sufficiently enough to found their claim for damages for trespass.

The Defendant admitted all the acts of trespass alleged against her.

I believe the evidence of the Plaintiffs and their witnesses as to their possession of the land in dispute.

From the totality of the evidence in this case, I am satisfied that the Plaintiffs have proved their case. The Plaintiffs claim for damages for trespass therefore succeeds ". [the underlining mine]

The above are findings of facts and holdings by the learned trial Judge He later made the said award of N100.00 (one hundred naira) as damages for trespass.

In respect of the claim for Injunction, His Lordship at pages 149-150 of the Records, stated inter alia, as follows:

"It is trite law that for a Plaintiff to succeed in the claim for INJUNCTION, he must prove that not only are the acts of trespass being continued but also that the Defendant has threatened or is threatening to commit further acts of trespass.

On this evidence abound In favour of the plaintiff.

It is settled law that where damages are awarded for trespass to land and there is an ancillary claim for an INJUNCTION, the Court will grant such an injunction:-

(i) to prevent multiplicity of suits see HANSON V. GARDINER 32 E. R. 125 OR.

(ii) to prevent irreparable damage or injury or irremediable

mischief.

*The attitude of the Court has always been that where award of damages is considered to be an inadequate remedy, the protection of the right **IN SPECIE** is the only mode of doing justice and this could only be achieved by granting an **INJUNCTION**, per **MADARIKAN, JSC** (as he then was) in **OBANOR v. OBANOR**. 1976, ^B 2 S.C. 1 at 6 & 7. " [the underlining mine]*

I completely agree.

In the final analysis, His Lordship proceeded to grant the injunction and stated that,

"the Plaintiffs' case therefore succeeds in its entirety and ^C judgment is entered in their favour accordingly".

The court below - per Aderemi, JCA (as he then was), at page 416 of the Records, stated inter alia, as follows:

*"I do realise that the plaintiff's claim is for damages for tres- ^D pass and an order of injunction. The law is that a claim for trespass is rooted in exclusive possession and all that a claimant need to prove is that he has exclusive possession or that he has the right to such possession of the land in dispute. But once a defendant claims to be the owner of the land in dispute, as in the Instant case, title is put in issue, ^E and to succeed in his action, the plaintiff must establish by credible evidence that he has a better title than the defendant. See (1) **OKORIE VS. UDOM** (1960) SCNLR 326 and (2) **AMAKOR VS OBIEFUNA** (1974) IALL N. L. R. (Pt. 1) 119. And this he does by relying abso- ^F lutely on the strength of his case and not the weakness of the defence except where that weakness tends to strengthen or support the plaintiff's case. See (1) **JULES VS. AJANI** (1980) 5 - 7 S.C. 96 (2) **PLARO VS. JENALO** (1976) 12 S.C. 31 and (3) **NGENE VS IGBO** (2000) 4 N. W. L. R (pt. 651) 131.....".* ^G

I also agree because, the above, is firmly settled law:

It then proceeded to examine the evidence before the trial court and at pages 418 - 419 of the Records, it reproduced part of the findings of facts and holdings of the learned trial Judge part of which, I have also reproduced above in this Judgment. At page 419 ^H where it agreed with the substance of the said findings, it stated inter alia, as follows:

"When the evidence, of the plaintiff's side is placed on one side of imaginary, scale of justice and that of the defendant is placed

on the other side of that imaginary scale that of the plaintiff is eminently rich in evidential value. Based on these findings that the parties established, through credible evidence, better title to the land in dispute and the defendant having openly challenged the title of the plaintiff and gone to the land to commit trespass judgment in favour of the plaintiff/respondent is inevitable”.

[the underlining mine]

After answering Issue 1 of the Appellant in the affirmative - which is/was:

“Were the plaintiff entitled to judgment for damages for trespass and an injunction on the issue joined and the evidence before the court”

(which is substantially as Issue 1 of the parties in this appeal.) It stated thereof inter alia, as follows:

“.....If the defendant/appellant, has admitted the averment in the plaintiff/respondent’s pleadings that she was its licensee, by which she would be regarded as having entered upon the land lawfully and she later resorted to challenging the title of the plaintiff/respondent as she has done, she will in law, become a trespasser ab initio; her misconduct relating back so as to make her initial entry a trespass.....”

I agree. She not only challenged and denied the title of the Respondent, she also, obstructed the agents and workers of the Respondents. For the effect or consequence, see the cases of Francis Okagbue & 2 ors. v. Janet Romaine (1982) NSCC Vol. 13 P. 130 @ 134 and Mrs. Ajibade & anor v. Madam Pedro & anor. (1992) 6 SCNJ. (Pt. 1) 44 also cited and relied on among other cases by the Respondent in their Brief of Argument.

At page 420 thereof, (which relates to Issue 2 of the parties in this appeal) it continued, inter alia, thus:

“.....But the defendant/appellant denied being a licensee of the plaintiff/respondent. She even asserted ownership of the land in dispute and admitted that she was on the land The case of the plaintiff/respondent was clearly proved and it was not upheld because the defendant failed to prove her own case..... I wish to say that having not admitted that she was the licensee of the plaintiff/respondent, the case, as I have said, was not fought on the issue of licensee rather

both pleadings raised title as the cardinal issue "

[the underlining mine]

The above is borne out by the evidence on the Records. Concluding, it stated inter alia, as follows:

"..... it is clear that the defendant/appellant denied being a licensee and on the evidence before the trial court she became a trespasser ab initio.. again on the evidence, it is the plaintiff/respondent who has the right to possession, indeed it is the owner and therefore it, has better title than the defendant/appellant"

[the underlining mine]

I agree.

It finally, found the appeal to be unmeritorious and dismissed it.

On the law, firstly, it is settled that when a trial court had adequately performed its primary role of evaluating and ascribing probative values to the evidence before it, the findings of fact made by it, are entitled to respect by an Appellate Court. In other words, where a trial court, clearly evaluated the evidence of the parties and justifiably appraised the facts before it as appears in the Records as in the instant case leading to this appeal, it is not the business of an Appellate Court to substitute its own view or views of the facts for those of the trial court. See the cases of Akinloye v. Eyiola (1968) NMLR. 92 @ 95; Slac Transport Ltd. v. Olawasegun & anor. (1973) 9 & 10 S.C.17; (1973) 3 ECSLR 1176; Aseni Balogun v. J.R. Akmrimisi (1974) 1 All NLR (Pt. 2) 66 @ 72.73; Chief Frank Ebba v. Chief W.Ogodo & ors.(1984) 4 S.C. 84@109 110; (1980) SCNLR 372 @ 378 and Chief Woluchem & ors. v. chief Gudi & ors.(1981) 5 S.C.291 just to mention but a few.

The test to be applied where the findings of a trial court are supported by the evidence on Record, was stated by this Court in the case of Odofoin v. Ayoola (1984) 11 S.C 72 @113 as follows:

"The question at this stage will then be, was there any evidence, no matter how slight, to support the above findings? If the answer in Yes (as in this case) that concludes the findings' and puts on them a stamp of finality."

See also the case of *Lions Building Ltd. v. Shodipe* (1976) 12 S.C. 135.

Also, the attitude of an Appellate Court in respect of a case from the trial court, is whether substantial justice has been done looking at the proceedings as a whole. See the case of Ajuwon & ors. v. Adeoti Madam (1990) 2 NWLR (pt.132) 271 @ 290; (1990) 3 SCNJ. 159 and Nwoke & ors. v. Okere & ors. (1994) 5 NWLR (pt.343) 159; B (1994) 5 SCNJ. 102.

In the case of Obodo & anor. v. Ogbe & ors. (1987) 3 S.C. 459 @ 460 -61 - per Eso, JSC,; 466 - per Coker, JSC; 480 - 482 and 485 – per Oputa, JSC,; (1987) 2 NWLR (Pt. 54) 1; (1987) 3 C SCNJ. 82, it was held that the function of assessment of credibility of witnesses, is essentially for the trial court and not that of the Appellate. Court. The case of Akpapuna @ ors. v. Nzeke & ors. (1983) 2 S.C.N.L.R 1@ 14 was referred to. See also the cases of Babatunde Ajayi v. Texaco Nig. Ltd. & ors. (1987) 3 NWLR (Pt. 62) 577; (1987) D 9 11 S.C. 1 @ 27; (1987) 9 10 SCNJ. 1; Mrs. Lydia Thomas & anor .v. Alhaji Arowolo (2003) 4 S.C.N.R. 20 @ 43, 49 and Agbaje& ors .v. Chief Ajibola & ors (2002) 2 NWLR (pt.750) 127 @ 132, 134 @ 135; (2002) 1 SCNJ. 64 and many others. Therefore, the attitude of an Appellate Court, is to be slow to interfere with such decision of a trial court. See the case of Jonason Triangle Ltd. & anor. v. Charles Moh Partners Ltd. (2002) 15 NWLR (pt. 789) 176 @ 194; (2002) 10 SCNJ.1; (2002) 103 LRCN 2310 @ 2321. This is because and ***it is settled that the duty of appraising evidence given in a trial court, is pre-eminently that of the learned trial Judge who saw and heard the witnesses and it is that court that has a right to ascribe values and a Court of Appeal may not interfere with the judgment simply on the ground that it would have come to a different conclusion on the facts as long as the judgment, of the trial court, is supported by the evidence rightly accepted by that court.*** See the cases of Ogundulu & ors. v. Chief Phillips & ors. (1973) 2S.C 71 & 80; Fashanu v. Adekoya (1974) 1 ANLR (Pt.1) 35 @ 46 and Egri v. Uperi (1974) (1) NMLR 22. I have gone this length, in order to show that the court below, was right in its H decision.

There is the presumption that a person having title to the land in dispute, is in, possession. See the case of Jones v. Chapman & ors. (1847) 2 Ex.803.

It is now firmly established that where two persons claim to

be in possession of land in dispute, the law ascribes possession to the one with a better title (as in the instant case). See the cases of Mogaji & ors. v. Madam Odofin & ors. (1978) 1 ANLR (Pt. 1) 101 @ 112-115; (1978) 4 S.C. 91 @ 96 and Ajani & anor. v. Ladepo & 2 ors. (1986) 3 NWLR. (Pt. 28) 276 @ 283.

In the case of Ngillari v. NICON (1998) 8 NWLR (pt. 560) 1 @ 20 21; (1998) 6 SCNLJ. 16 - per Onu, JSC, it was held that where a court of trial which saw and heard the witnesses, has come to specific findings of fact on the evidence and issues before it, (as in the instant case leading to this appeal), an Appellate Court which had no similar opportunity, should refrain from coming to a different finding or findings, unless it can show that the conclusion or conclusions, could not follow or flow from the evidence before it. It referred to the cases of Odofin v. Ayoola, Ebba v. Ogodo and Ajayi 's case (all supra).

As regards the position of an Appellate Court, it has been stated and restated in a line of decided authorities, that it is in as much a good position, as the trial court to deal with facts. See the cases of Fabamiyi & ors. v. Obaje & ors. (1968) (1) NMLR. 242 @ 247; Woluchem & ors. v. Chief Gudi & ors. (supra) also reported in (1981) 12 NSCC 214; Ogbochie & ors. v. Onochie & ors. (1986) 2 NWLR 484 just to mention a few. In my respectful view, the learned trial Judge, clearly comprehended the entire case from the abundant evidence before him and came to the conclusions which are supported by the said evidence. See the case of Akinloye v. Eyiola (supra).

In respect of a continuing trespass, as is clear in the instant case, it has been held that for a person to remain in another's land without that other's authority or consent, so that barring the defences properly raised and sustained which defeat the right of the owner of such land to complain of the continuing trespass, the land-owner, is always entitled to protection as appropriate. See the case of Adebajo v. Oke (1999) 3 NWLR (pt. 594) 154 @ 163 -164 ; (1999) 3 SCNJ. 46. ***The protection, is by way of an order of injunction. Even where an injunction was not sought, once a court has found for trespass, it has the jurisdiction to grant the equitable remedy of***

injunction. See the case of Sorungbe v. Omotunwase. (1988) 19 NSCC (Pt. 2) 252 @ 268. **An injunction can be made as a consequential order and it will not amount to a court giving or granting to a party what he did not claim.** See the, cases of Garba

v. University of Maiduguri (1986) 1 NWLR (pt. 18) 550 and Ilona v. Idaleno & anor. (2003) 11 NWLR (Pt. 830) 53 @ 87. In the case of Olorunfemi & 8 ors. v. Chief Agho & 2 ors. (1999) 1 NWLR (pt. 585) 1 @ 9; (1999) 1 SCNJ. 1 @ 7, Belgore, JSC (as he then was later CJN) stated inter alia, thus:

".....*There ought to be a finding in trespass which the trial court did. Consequent upon findings in trespass there must be verdict of perpetual injunction asked for. Similarly for trespass there must be an award of damages*".

I think I have "flogged" this matter and perhaps, have gone to some length. The court below, I hold, was right in its findings and conclusions. I have no alternative other than to affirm its said Judgment affirming the Judgment of the trial court. My answers therefore, to the said Issue 1 of the Appellant and Issue 3.01 of the Respondent, are in the Affirmative/Positive. As to Issue 3.02 of the Respondent, the evidence in the Records, definitely show undoubtedly, that it is the Respondent that has a better title as found as a fact and holdings by the two lower courts. As regards Issue 2 of the Appellant, I hold that it is a non-issue. The said Issue 2 of the Appellant, was adequately dealt with by the court below as I have shown in this Judgment. For the avoidance of doubt, the case was not fought on the issue of licensee the Appellant, having denied that she was the licensee of the Respondent. The pleadings of the parties, raised title as the crucial issue. On the basis of such denial, she became a trespasser ab initio as rightly held by the court below.

As regards issue 3 of the Appellant, it is now firmly settled that a claim for trespass, is not dependent on a declaration of title. See the cases of Oluwi v. Eniola (1967) NMLR 339 @ 340 and Nwosu v. Otunola (1974) 4 S.C. 21. Afterwards, trespass, is an injury to a possessory right and therefore, the proper plaintiff in an action for trespass to land, is the person who was or who is deemed to have been in possession at the time of the trespass See the cases of Will v. Will 5 NLR 76; Pan Bros. Ltd. v. Landed Property Ltd. @ anor. (1962) 2 ANLR (pt. 1) 22 Wuta-Ofei v. Danqua (1961) 1 WLR. 1238 and

Halsbury Laws of England Vol. 38 Page 744 Pt. 1214.

As regards to Issue 3.03 of the Respondent, I think I have dealt with the said issue at some length in this Judgment. In effect, this Court, does not readily disturb or interfere with concurrent judgments of two lower, courts except in certain circumstances. In respect of issue 3.04 of the Respondent, the issue in the circumstances of this case and findings of facts by the two lower courts, is with respect, irrelevant and does not arise in this Judgment. B

In the final result or analysis, I hold that this appeal, with the greatest respect and humility, lacks substance and merit. It fails and it is hereby and accordingly dismissed. C

Costs follow the event. The Respondent is entitled to costs fixed at N50,000.00 (Fifty Thousand Naira) payable to it by the Appellant.

D

MUKHTAR JSC

I have had the opportunity of reading in advance the lead judgment of my learned brother Ogbuagu JSC. I am in full agreement with the reasoning and conclusion reached in the lead judgment, that the appeal lacks merit and substance. The appeal is against concurrent findings of facts, which will not ordinarily be disturbed by this court. The findings in this case are supported by credible evidence and they were not perverse to deserve the interference of this court. The position and the principles of the law in respect of such concurrent findings of facts are enunciated in many cases in this court. F
See *Dabo v. Abdullahi* 2004 7 NWLR part 923 page 181, *Nwadike v. Ibekwe* 1987 4 NWLR part 67 page 718, and *Afegbai v. Edo State* 2001 14 NWLR part 733 page 425.

In the circumstance, I also dismiss the appeal in its entirety. I G
abide by the order as to costs.

MOHAMMED JSC

I was privileged to read in advance the judgment of my learned H
brother Ogbuagu JSC which has just been delivered. I agree with him that there is no substance at all in this appeal.

The appeal is from the decision of the Court of Appeal Lagos Division given on 10th December, 2001 dismissing the Appellant's

appeal from the judgment of the High Court of Justice of Lagos State sitting at Ikeja in favour of the Respondent in this appeal granting its claims for damages for trespass and injunction against the Appellant who was the Defendant. The issues arising for determination in this appeal as identified in the Appellant's brief of argument filed in this Court are -

"1. Whether having regard to the pleadings and the evidence led, Plaintiff prove title to the land in dispute to warrant its claim for trespass to be granted.

2. Whether a claim for trespass would lie against the Defendant who has been found to be a licensee of the Plaintiff and in possession of the land and whether in any event a ease of licensee was established against the Defendant?

3. Whether Plaintiff can succeed in its action despite failure to ask for declaration of title."

Close examination of these issues shows plainly that the resolution of all the issues lies on the question of proof by evidence, The learned trial Judge having played his role effectively and satisfactorily by evaluating the evidence before him and making his findings therefrom in favour of the Plaintiff/Respondent, the Court below having affirmed these findings on appeal, the concurrent findings can only be disturbed by this Court if exceptional shown by the Appellant to warrant doing so. See *Lawal v. Duwodu* (1972) All N.L.R. 707 at 722 and *Ebba v. Ogbodo* (1984) I. S. C. N.L.R. 372 at 385. As no exceptional circumstances have been shown by the Appellant to justify any interference with concurrent findings of fact by the two Courts below, the appeal must fail. Accordingly, I also dismiss the appeal and abide by the orders made in the lead judgment of my learned brother Ogbuagu JSC, including the order on costs.

MUHAMMAD JSC

I have had the privilege of reading the lead judgment of my learned brother, Ogbuagu, JSC. My learned brother has done full justice to the issues raised by the parties in the determination of this appeal. I do not think I need to add anything which would otherwise appear repetitive and not improving the quality of the lead judgment. I, therefore, agree with my learned brother in his conclusion

that the appeal lacks substance and merit. I, too, hereby dismiss the appeal. I abide by orders made therein including one on costs.

ADEKEYE JSC

I had read in draft the judgment just delivered by my learned brother I. F. Ogbuagu, JSC. My Lord had in his character and style meticulously considered the issues identified by the parties for determination. I agree with his reasoning and conclusion. B

The plaintiff now respondent before this court, claimed before the trial court as follows - C

(1) N500.00 damages for trespass committed about September 1977 on plaintiff's piece or parcel of land lying and situate at Palm Avenue, Mushin covered by a deed of conveyance dated 21st July 1958 and registered as No. 16 at page 16 of volume 264 Ibadan D Land Registry now in Lagos being plots 96 to 99 thereof as per plan attached herewith.

(2) Injunction to restrain the defendant her servants and agents from continuing the aforesaid acts of trespass. Ordinarily, where a claim for trespass is coupled with a claim for an injunction the title of the parties to the land in dispute is automatically put in issue. E

Akintola v. Lasupo (1991) 3 NWLR pt. 180 pg. 508.

Okorie v. Udom (1960) SCNLR pg. 326.

The Registered Trustees of the Apostolic Church v. Olowoleni (1990) 6 NWLR pt. 158 pg. 514. F

Moreover, when the issue is as to which of two claimants has a hotter right to possession or occupation of a piece of or parcel of land in dispute, the law will ascribe such possession and/or occupation to the person who prove a better title thereto. G

Aromire v. Awoyemi (1972) 1 ALL NLR pt. 1 pg. 101.

Fasoro v. Beyioku (1988) 2 NWLR pt 76 pg. 263.

Finally, where two parties are on land claiming possession, the possession being disputed, trespass can only be at the suit of that party who can show that title of the land is in him. H

Umeobi v. Otukoya (1978) 4 SC 33.

Mogaji v. Cadbury Nigeria Ltd. (1985) 7 SC 59.

Onwuka v. Ediala (1989) 1 NWLR pt. 96 pg. 182.

The respondent as plaintiff before the trial court based, its

competing claim to title/ownership of the disputed land on the Deed of Conveyance dated 21/7/58, registered as number 6 at pg. 16 in volume 264 of Ibadan Land Registry now in Lagos. It was executed by the Ajao Family. The Deed of Conveyance of its immediate vendor was dated 24/12/53 and registered as 71/71/1028 of the Register of Deeds Lagos on page 114 of the Record of proceeding. It was executed by the Aboki Dada, Isape and Aiyelegun families as original owners.

The appellant as defendant at the High Court, Ikeja, Lagos joined issues with the respondent by setting up her competing title on pages 90-92 of the Records in paragraphs 3, 4, 5, 5^A and 8 of her Amended Statement of Defence. The defendant/appellant described her Deed of Conveyance as that dated 28 of March 1977 and registered as 89/89/1615 of the Lagos Land Registry. It was executed by an Attorney of Iyalode Tinubu. Madam Iyalode Tinubu claimed through Oloto family.

The act of vesting legal title in respect to a piece of land in a person is a matter of law to be deduced from the facts and evidence admitted.

Nasim v. Abubaka (1997) 4 NWLR pt. 497 pg. 32.

There are five ways of proving or establishing title to land or Ownership of land. These are by –

(1) Traditional evidence.
(2) Production of documents of title duly authenticated in the sense that their due execution must be proved unless they are documents twenty or more years old produced from proper custody.

(3) By Positive acts of ownership extending over a sufficient length of time.

(4) By acts of long possession and enjoyment of the land.

(5) By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

The establishment of one of the five ways is sufficient proof of ownership.

Ayoola v. Odofin (1984) 11 SC 120.

Emo v. Ani (2004) 17 NSCQR 36.

Piaro v. Tenalo (1976) 12 SC 31.

Idundun v. Okumagba (1976) 9-10 SC 227.

Ndukuba v. Izundu (2007) 1 NWLR pg. 1016 pg. 432.

Adanji v. Anwase (2006) 12 NWLR pt. 993 pg. 183.

Nkado v. Obiano (1997) 5 NWLR pt. 503 pg. 31.

Nkwo V. Iboe (1998) 7 NWLR pt. 558 pg. 354.

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Chukwu v. Diala (1999) 6 NWLR pt. 608 pg. 674.

Inwelegbu v. Ezeani (1999) 12 NWLR pt. 630 pg. 266.

Adesanya v. Aderounmu (2000) 6 SC pt. 11 pg. 18.

Adeosun v. Jibesin (2001) 11 NWLR pt. 724 pg. 290.

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The parties here in establishing title to the disputed land produced documents of title - Deeds of conveyance and not traditional history. Where a party relies on a document in proof of his title to land, he must tender the document in evidence, as extrinsic evidence of its contents is not admissible in evidence.

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Adelaja v Alade (1999) 6 NWLR pt. 608 pg. 544.

Jiaza v. Bamgbose (1999) 7 NWLR pt. 610 pg. 182.

It is also not permitted for a plaintiff who pleads a particular root of title and fails to prove that particular root of title, to rely on another mode of acquisition of land not pleaded by him as his root of title to support his claim.

Ude v. Chimbo (1998) 12 NWLR pt. 577 pg. 169.

The trial court was dissatisfied with the evidence adduced by the appellant in support of her claim to ownership of plots 96-99 which formed parts of plots 90-99 of Ajao Layout. She was found to be a licensee of the plaintiff/respondent having been allowed to occupy the disputed land by P.W.2, a caretaker of the land engaged by the plaintiff/respondent. She was permitted to mould blocks for sale on one of the plots of land. There were other licensees placed on the land by the caretaker like mechanics, welders and spray painters on the payment of a token fee to the caretaker P.W.2. The defendant/appellant extended the area granted to her to cover four plots of the respondent's land. She obstructed and molested the respondent's contractor who was erecting wall-fence on the land for the respondent. The law is trite that where a person who initially entered upon land lawfully or pursuant to an authority given by the true owner or person in possession, subsequently abuses his position or that authority, he becomes a trespasser ab initio, his misconduct relating back

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so as to make his initial entry a trespass. The appellant here became a trespasser the moment she extended the area of land given to her and acted in excess of her authority on the land. Since the respondent was able to establish a better title to the disputed land, the appellant was liable in trespass. Every unlawful and unauthorised entry on land in the possession of another is a trespass for which an action in damages lies even if no actual damage is done to the land and fixture on it. When a person alleges to have possession, an interference with it is an actionable trespass.

In the appellant's issue No. 3, the appellant wants this court to decide whether the plaintiff can succeed in its action despite failure to ask for declaration of title. It has been decided in a number of cases that where a plaintiff has failed to prove title to land, it may be necessary to consider evidence of possession in order to ascertain whether he is in any event entitled to damages and injunction claimed for trespass, if it is shown that he was in possession which was disturbed. This is on the basis that trespass is essentially an issue of who is in possession. A person who is in possession of land even as a trespasser can sue another who thereafter comes upon the land unless that other is the owner or shows some title which gives him a better right to be on the land. There is cogent evidence that the respondent was in possession of the land in dispute and therefore can sue without asking for declaration.

- F Oluwi v. Eniola (1967) NMLR 339.
- Kareem v. Ogunde (1972) 1 ALL NLR pt. 1 pg. 73.
- Amakor v. Obiefuna (1974) 1 ALL NLR 119.
- Oduola v. Nabhan (1981) 5 SC 197.
- Aromire v. Awoyemi (1972) 2SC 57 (supra).
- G Adesanya v. Otueh (1993) 1 SCNLR pg. 77
- Jodi v. Salami (2009) ALL FWLR pt 458 pg. 385.
- Ekpo v. Uyo (1986) 3 NWLR pt. 26 pg. 63.

The respondent claimed for injunction. Once the court found the claim for damages for trespass in his favour, the claim for injunction must equally succeed so as to protect the possession in the defendant.

- Enang v. Adu (1981) 11-12 SC 25.
- Adegbite v. Ogunfaolu (1990) 4 NWLR pt. 140 pg. 578.
- The Court of Appeal dismissed the appeal of the appellant

and like the trial court, found In favour of the respondent. The Supreme Court will not interfere with the concurrent findings of fact by the trial court and the Court of Appeal where there is sufficient evidence in support of such findings and where no substantial error is apparent on the record such as miscarriage of justice or violation of some principle of law or procedure. There is not such error or miscarriage of justice in the instant case to warrant interference by the Supreme Court with the decisions of the lower courts. B

Sayol v. Ahemba (2001) 9 WRN 109.

Dogo v. State (2001) 9 WRN 70.

Ezeonwu v. Onyechi (1996) 3 NWLR pg. 438 pg. 499. C

Ivienagbor v. Bazuaye (1999) 9 NWLR pt. 620 pg. 552.

Ogunbiyi v. Adewunmi (1988) 5 NWLR pt. 93 pg. 215.

With fuller reasons given in the leading judgment of my Lord I.F. Ogbuagu, JSC I also hold that the appeal lacks merit and I hereby D dismiss same. I abide by the consequential orders including the order made as to costs.

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