

SUPREME COURT OF NIGERIA

4TH MAY, 2012. SC. 106/2006

**CORAM:- W. S.N. ONNOGHEN, I. T. MUHAMMAD,
O. O. ADEKEYE, N. S. NGWUTA, M. U. PETER-ODILI, JJSC**

1. CHRISTOPHER OBUEKE
2. VIRGINIA OBUEKE APPELLANTS
3. GODWIN OBUEKE
AND

1. N. N. NNAMCHI
2. DAVID OGBODO RESPONDENTS
3. ISRAEL NNAJI (For themselves
and on behalf of the Members of
Umuanianona extended family of
Amechi Awkunanaw)

APPEALS - Concurrent findings - Supreme Court will not interfere with the findings - Since there was no perversity (H1)

TRESPASS - Continuing trespass - Statute of Limitation - Applicability - The plea of limitation does not constitute defence - To continuing acts of trespass (H2)

LAND LAW - Trespass - Continuing trespass - Effect on title - The continuing acts of trespass by appellants - Cannot be converted to title (H3)

COURTS - Reliefs - Grant of - Court may not grant unpleaded relief - But may do so to meet the circumstances of a case - More so where there are evidence to rely on (H4)

FACTS

The predecessor in title of defendants/appellants bought his interest in the disputed land (Achara Layout, Enugu) from John Wenata Egbo (deceased) by a deed of lease registered in the Lands Registry Office in Enugu. The deceased had earlier entered into an oral contract with the family of plaintiffs/respondents for the development of the land. A piece of land was thus given to the deceased

as part of his fees for services rendered. A dispute later arose between the parties over the extent of the area of land granted to the deceased.

Respondents commenced suit no. E/67/65 in the then Anambra State High Court, Enugu against the deceased, on the ground that he exceeded the area granted to him. The court held that the registered lease showing land taken by deceased was invalid. Respondents subsequently sued appellants at the same division of High Court for continuing trespass, injunction and damages. The court held appellants liable in trespass. Being dissatisfied, appellants appealed to the Court of Appeal, Enugu Division. The court found for respondents and dismissed the appeal. Aggrieved further, appellants filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

1. Did Exhibit “A” tendered by the respondents in evidence form part of the record of proceedings properly before the Court of Appeal and thereby relevant to the case of the appellants.

If the answer is in the affirmative, what was the effect of its exclusion to the appellants’ appeal?

2. Were the learned Justices of the Court of Appeal right in holding that the limitation of time does not apply in trespass?

3. Whether the judgment directing the defendants/appellants to attorn rent to the plaintiff/respondents and acknowledge them as their landlords within 30 days is a proper order to rate taking into consideration the claim of the plaintiff/respondents without hearing the parties.

HELD (Unanimously dismissing the appeal per **PETER-ODILI JSC**)

APPEALS - Concurrent findings

1. From the stamp of affirmation of the Court of Appeal made after due consideration of the evaluation and finding of the trial court made with clarity and based on the evidence available, leaving nothing for conjecture except what the evidence itself portrayed. It is therefore difficult for me to deviate or even attempt to upset what those two Courts below have done

in keeping with the well settled principles that evaluation of evidence and ascription of probative value are within the province and primary function of the trial court and so it is easy to understand that in a situation such as the present where the trial court creditably carried out this assignment, the Court of Appeal was right in not interfering since no perversity was found nearby. Also the decision arrived at from the evidence laid and the Court of Appeal rightly came to its conclusion in support of what the trial court did again properly guided by laid down principles. (p. 1817 D)

Continuing trespass - Statute of Limitation - Applicability

2. That defence was dumped on the Court in its naked form without any particulars only for the evidence at the trial court to show as undisputed some level of negotiation that had gone on before collapsing and so I see no reason not to go along with learned counsel for the respondent and as earlier accepted by the Court of Appeal that the approaches for settlement by the Appellants created a continuing trespass and thereby removed the operation of the statute of limitation as the limitation runs, ceases, and is revived anew from inception of the trespass to the various times of negotiations at which times the time ceases only to be revived once a breakdown of discussion takes place. This situation makes calculation of the period at which it can be said the trespass had taken place and time elapsed since what is on display is an ongoing infraction without a time bar. The conclusion that has been thrown up is that the plea of laches and acquiescence or a statute of limitation are defences not available in the instant case to the appellants on the factors that should exist for the formation or operation of those defences do not exist in the case at hand. (p. 1819 D)

LAND LAW - Trespass - Continuing trespass - Effect on title

3. As a follow up the appellants need be reminded in the light of the circumstances prevailing that trespass as has been established by the respondents in the Courts below, however long cannot be converted to title, more so where this basis of

their title which was anchored on the title of John Wenata Egbo had been declared null and void by the trial court in Exhibit A.
(p. 1819 H)

COURTS - Reliefs - Grant of

- B ***4. Indeed it is trite law that a court may not grant a relief not specifically pleaded but may do so to meet the circumstances of the case more so where there is in evidence facts it can rely on to grant the relief. From the attitude of the appellants even when given the olive branch by the trial court in extreme magnanimity which the Court of Appeal acknowledged within the exercise of his discretion in order to secure peace even though undeserved when it is clear that there is a challenge to the over lordship of the respondents and the glaring evidence on display.*** (p. 1821 E)

REPRESENTATION

C. I. Enechi Onyia for the Appellants

G. E. Ezeuko Jnr. with G. I. Ezeuko and F. C. Mbadugha, for the
E Respondents

CASES REFERRED TO

- Okhurobo v. Aigbe (2002) 9 NWLR (Pt.771) 29
Akinola v. V-C Unilorin (2004) 11 NWLR (Pt. 585) 616
F Ogidi v. State (2005) 5 NWLR (Pt. 918) 286
Agbesi v. Ebikerefe (1997) 4 NWLR (Pt. 502)
UAC v. Macfoy (1961) 3 NMLR 1405
Agbakoba v. INEC (2009) All FWLR (Pt.462) 1037
G Osuji v. Ekeocha (2009) All FWLR (Pt. 490) 614
Adimora v Ajufo (1988) 3 NWLR (Pt.80) 1
Ibrahim v. Gaye (2002) 13 NWLR (Pt. 784) 267
Maskele v. Silli (2002) 3 NWLR (Pt.784) 26
Oniah v. Onyia (1989) 1 NWLR (Pt.99) 514
H Adepoju v Oke (1999) 2 NWLR (Pt.594) 154
Ibenwolu v. Lawal (1971) 1 All NLR 23
Moss v. Kenrow (Nig.) Ltd (1992) 9 NWLR (Pt.264) 207
Ibhafidon v. Igbinu (2001) 8 NWLR (Pt.716) 653

STATUTES & RULES REFERRED TO

Auction Law Cap. 3 Laws of Anambra State, s. 22(2)

Supreme Court Act LFN 1990, s. 22

Supreme Court Rules 1999, O. 8 r. 13 (1)

Anambra State High Court Civil Procedure Rules 1991, O. 25 r. 6

B

LEAD JUDGMENT BY PETER-ODILI JSC

This is an appeal against the judgment of the Court of Appeal sitting at Enugu delivered on the 29th day of June, 2005 dismissing the appeal of the defendants/appellants and affirming the judgment of the trial court dated 24th June, 1997 in Suit No.E/90/82.

C

The appellants were the defendants at the trial court, while the respondents were the plaintiffs at the said court claiming that they, as people of Umuaniona family of Amechi Awkunanaw were the owners in title of the parcels of land known as OKWE-EGHE land.

D

FACTS BRIEFLY STATED

The respondents as plaintiffs at the trial court coram P. K. Nwokedi Honourable Judge (as he then was) per their Amended Statement of Claim dated 7th May 1982 sued the appellants as defendants and sought the following reliefs:-

E

(a) N20,000 damages for trespass

(b) An injunction restraining the defendants by themselves or through their agents, servants and privies from further occupation and use of the plot of land described as Plot 1, Block 32, Achara Layout (and now numbered 7 Umuaniede Street, Achara Layout) Enugu except with the consent of the umuaniona Community.

F

(c) Such further order or orders as the court thinks fit to make in the circumstances.

The predecessor in title of the appellants, late Anselem Obueke, (father of the 1st defendant/appellant and husband of the 2nd defendant/appellant) bought his interest in the disputed land from the late John Wenata Egbo by a deed of lease dated the 19th July, 1963 and registered as No.86 at page 86 in Volume 849 of the Lands Registry in the office at Enugu i.e. Exhibit D.

H

The late John Wenata Egbo entered into an oral contact with the family of the respondents for the development of Achara Layout. He was given a piece or parcel of land as part of his fees for his services. A dispute later arose between the said John Wenata Egbo

and the respondents over the extent of the area granted him. In 1965, the respondent took out the suit NO. E/67/65 against John Wenata Egbo claiming that he exceeded the area granted to him for his services. In that suit, the court held that the deed of lease dated 20th October 1962 and registered as No. 31 at page 31 in Volume B 332 of the Lands Registry Enugu evidencing the land taken by John Wenata Egbo was invalid and void.

The respondents subsequently sued the appellants who had been on the land for over 16 years for trespass, claiming injunction and damages. The trial High Court by a judgment dated 24th June, C 1997 held the appellants liable in trespass, granted the respondents N5,000.00 damages and gave a conditional injunction against the appellants in favour of the respondents. Appellants being dissatisfied with the said judgment appealed to the Court of Appeal by a Notice D of Appeal dated 30th August, 1997 and filed on the 12th September, 1997.

In his brief of argument the appellants' counsel quoted extensively the evidence of the 1st plaintiff, Nsude N. Nnamchi who was the principal witness. In response, the respondents' counsel in his E brief contended that the quotation under reference was nowhere in the judgment of the trial court in suit No. E/97/65 rather it was a quotation culled from the judgment of P. K. Nwokedi J. (as he then was) in Suit No. E/90/82 with John Wenata Egbo a copy of which was tendered as Exhibit A. The Court of Appeal found for the plaintiff/ F respondent and dismissed the appeal. The appellant being dissatisfied with the said judgment has filed a Notice of Appeal to the Supreme Court dated 25th July, 2005 with 3 grounds of appeal. On the 13th February, 2012 date of hearing, learned counsel for the G appellants Mr. Enechi Onyia adopted their Brief filed on 3/3/09 and deemed filed on 3/6/09. A reply Brief filed on 4/10/11. In the appellants Brief were formulated three issues for determination as follows:-

1. Did Exhibit "A" tendered by the respondents in evidence form part of the record of proceedings properly before the Court of H Appeal and thereby relevant to the case of the appellants.

If the answer is in the affirmative, what was the effect of its exclusion to the appellants' appeal?

2. Were the learned Justices of the Court of Appeal right in holding that the limitation of time does not apply in trespass?

3. Whether the judgment directing the defendants/appellants to attorn rent to the plaintiff/respondents and acknowledge them as their landlords within 30 days is a proper order to rate taking into consideration the claim of the plaintiff/respondents without hearing the parties.

Mr. Ezeuko Jnr. Learned counsel for the respondents adopted their Brief filed on 27/7/11 and deemed filed on 4/10/11 and in that Brief were distilled three issues, viz:-

1. What is the evidential value of Exhibit A i.e., the subsisting judgment of Honourable Justice P.K. Nwokedi delivered in Suit No. E/97/65 between the respondents and the appellant's predecessor in title with respect to this suit.

2. Whether giving the facts and circumstances of this case does limitation of time apply against the respondents in an action for trespass.

3. Whether the judgment directing the defendants/appellants to attorn rent to the plaintiff/respondents and acknowledge them as landlords within 30 days was the proper order to make given the evidence led, and the reliefs claimed under Order 25 Rule 6 of Anambra State High Court (Civil Procedure) Rules 1991 applicable to Enugu State.

The issues as distilled by the appellants seem more apt to utilize and so I shall use them

ISSUE 1:

This issue has to do with whether Exhibit "A" tendered by the respondents in evidence form part of the record of proceedings properly before the Court of Appeal and thereby relevant to the case of the appellant.

Mr. Enechi Onyia of counsel for the appellants contended that an examination of Exhibit A will reveal that the property in dispute was lawfully granted to late John Wenata Egbo, the grant to the appellants' predecessor-in-title as the judge found out. That there was no evidence as contained in the amended statement of claim that in 1957, John Wenata Egbo entered the land without the consent of the Umuanianona. That there was evidence that the Youths of Umuanianona took John Wenata Egbo and showed him a portion of the land in consideration of his services of laying out Okwe-Eghe land. He said what was in dispute was whether Exhibit "A" deprived

John Wenata Egbo the right to possess that part of Okwe-Eghe land granted him by the plaintiff/respondents in consideration of his services rendered to the plaintiffs/respondents community in surveying and tarring the roads in the privy layout. That it must be noted that Exhibit “A” did not state the part of Okwe-Eghe land that was not granted to John Wenata Egbo. That it only voided the lease not granted John Wenata Egbo.

Learned counsel for the appellants said Exhibit “D”, the Deed of Lease in which John Wenata Egbo granted the original defendant, the subject matter of this dispute is not based on the voided deed of lease dated 20th October, 1962 and the appellants as defendants had nothing to do with that voided Deed of Lease. That the Deed of Lease in Exhibit “A” is valid by virtue of the Land Use Decree. That if the trial court had considered the evidence of both parties properly and judiciously, it would have found that the plaintiffs/respondents did not establish any case of trespass against the defendants/appellants. Also that the Court of Appeal should not have dismissed the case against the appellant if it had exercised Section 16 of the Court of Appeal Act and would have properly entered judgment for the appellant. He said since the judgment in Exhibit “A” formed part of the record of proceedings properly before the Court of Appeal that court was bound to look into it and also the facts in Exhibits pleaded notwithstanding the facts were not independently pleaded. He referred to *Braimoh Babatunde Akinola v. Vice-Chancellor, University of Ilorin* (2004) 11 NWLR (Pt. 585) 616; *Ogidi v. State* (2005) 5 NWLR (Pt. 918) 286; *Agbesi v. Ebikerefe* (1997) 4 NWLR (Pt.502).

Mr. Enechi Onyia went on to submit that the Court below failed to consider the improper evaluation of evidence of the trial court upon which the erroneous inference of the trial court would have been seen, that would have enabled the Court of Appeal to have done what the trial court failed to do. He cited *Okhurobo v. Aigbe* (2002) 9 NWLR (Pt.771) 29.

Respondent, Mr. Ezeuko Jnr. For the respondents said it was not correct as put forward by the appellants that Exhibit A will reveal that the property in dispute was lawfully granted to late John Wenata Egbo, the grants of the appellants predecessor in title. That the trial Judge in Exhibit A found that initially there was an Agreement to grant a portion of “Okwe - Eghe” Land but that the agreement was

not consummated in that the defendants did not make any payment to consummate the grant and also did not perform the customary rite of killing of a goat to complete the transaction. That it is trite that by virtue of Section 132 of the Evidence Act, Exhibit A speaks for itself. That in interpreting a document or judgment it is the law that the document or judgment must be read as a whole and interpreted in that light with effort being made to achieve harmony among the parts. That an examination of Exhibit A shows that, the judgment voided all and any purported grant to John Wenata Egbo from whom the Appellants derived title. That the Appellants cannot seriously be claiming any interest in “Okwe-Eghe” land represented in plan No. GA/331/55 when the interest there from had been nullified in Exhibit A. He cited.

Learned counsel for the respondents said the evaluation of evidence and ascription of probative value is the primary function of the trial court and the appellate court will not interfere as in this case when there was no perversity and the findings supported by the evidence on ground. He cited Agbakoba v. INEC (2009) All FWLR (Pt.462) 1037; Adimora v. Ajufo (1988) 3 NWLR (Pt. 80) 1; Osuji v. Ekeocha (2009) All FWLR (Pt. 490) 614.

From the submissions of counsel above statement it is seen that the appellants and counsel were not impressed with either the summation of the evidence by the learned trial Judge or his evaluation of what was before him. The respondents’ counsel disagreeing put forward a position showing he acquitted himself creditably and within the scope of what had been proffered in evidence particularly the version of evidence of the appellants who were defending at the Court of trial. In the light of the contending very strong positions it seems to me that the needful as cumbersome as it may appear to be is to go into the judgment of the learned trial court and reproduce as much as possible the salient parts for a clearer picture of what transpired at that Court of first instance which really is the foundation on which the appeal to the Court below and now this present one is built.

I would therefore quote verbatim from pages 125-134 of the judgment of P.K. Nwokedi J (as he then was):-

“The issues involved in this suit are primarily matters of fact. It would therefore, be more expedient if the facts adduced by each

party are properly examined in the light of all the evidence before this court. It is agreed by the two parties that the land in dispute is called “Okwe-Eghe” land and was originally owned communally by the two sub-families of Umuogbuachi and Umunnamaniachi who together are called Unuaniona. It is therefore, the onus on the defendant to establish his grant. The extent and area of the land in dispute are agreed as being covered by plan No GA/331/55, attached to the controversial documents, Exhibits 1 and 4. The parties are further agreed that the defendant approached the plaintiffs’ family for a grant of an area of land for residential purposes, and that the said family did agree to make the grant. More than this the plaintiffs’ family took the defendant to the land in dispute to show him the extent of his grant. The first point of disagreement arises at this juncture. Was the defendant shown the entire “Okwe-Eghe” land, as claimed by the defendant and his witnesses, or portion of the said land, as contended by the plaintiffs and their witnesses? To resolve this point, one has to look at the evidence before the court.

Besides the sworn testimony of the witnesses on either side there are other strands of evidence which throw some light on this matter. Exhibit 1 which was executed in 1957 in the habendum stated that the grant was made ‘being a portion of the grantors’ land particularly known as “Okwe-Eghe.” Although there is a reference to the plan attached to the said Exhibit 1 which plan encompassed the entire “Okwe-Eghe” land, yet the above clause in the habendum seems to confirm that the intended grant did not cover the entire land. Exhibit 1 was prepared by a solicitor engaged by the defendant and should therefore, be construed strictly against the defendant. Under cross-examination of the defendant, the following interchange occurred:

Question - Did you instruct your solicitor as in Exhibit 1 that the grant concerned ‘a portion of the grantors’ land Particularly known as “Okwe-Eghe.”

“Answer - That was what the elders told Barrister Nwosu. I protested about this but the elders explained that the whole of Achara Layout is called “Okwe-Eghe” Land and if they said the whole of “Okwe-Eghe”, it would mean that they were transferring land not belonging to them.

The above question was more or less a traumatic shock to the

defendant. He danced around it for a very long time before emerging with the above puerile answer. If his grantors were conveying to him their “Okwe-Eghe” land, and so instructed the solicitor, he would have easily expressed this in the Exhibit 1. If several families own portions of Okwe-Eghe land and one of the families is conveying their own portion to a stranger, the solicitor could have easily expressed this in the Deed of Conveyance. Howbeit, above answer made it categorically clear that the function of “a portion” as a specific instruction to the solicitor drafted Exhibit 1 whether the said instructions were given by the defendant, his grantors or both co-jointly. Exhibit 6 is a document pleaded by defence. It was produced from defendant’s custody and received in evidence by consent of the two sides without reservation.

Though the defendant not being a party to the suit in Exhibit 6, the evidence therein could not be said to bind him yet it is his plea that he is relying on the said exhibit. From the evidence of the witnesses in the said case, it is clear that the grant was for a portion of the land in dispute. There is also one piece of evidence in Exhibit 6 which is vital. An agreement dated 6th November, 1955 was tendered in that case. This agreement the defendant admitted was made following the sale of the said land to him. The agreement was signed by five members of the plaintiffs’ family. The agreement as admitted to be in the possession of the defendant. This earliest agreement would necessarily have contained the original terms arrived at by the parties including the payment if any of the alleged purchase price. Why did the defendant keep away this document which should have formed part of the proceedings in Exhibit 6? I am bound under Section 148 (d) of the Evidence Law to construe the contents of the said document against him. Furthermore, the “Okwe-Eghe” land measures about 2 hectares (5.04 acres). The defendant admitted that his request was for a residential plot. It seems to me more in consonance with common sense to grant about half a hectare or thereabouts for this purpose. P.W.1 in Exhibit 6 (he testified as D.W. 2 in this case) categorically stated that a portion of their land was granted to the defendant.

Accepting the evidence of the plaintiffs in this aspect of the transaction and for the above reasons, I find as a fact that the plaintiffs’ family agreed to make a grant of a portion of their land to the

defendant who was actually shown about one quarter of the land as the area intended to grant to him. Adverting to the plan attached to Exhibit 1, it should be noted that the defendant is a well educated person who was dealing with stark illiterates, while the Exhibit 1 may have been interpreted to the grantors as expressing a grant of a portion of the land, the accompanying plan could only have been interpreted or explained to be that portion intended to be granted. How could the sworn interpreter have explained to the illiterate natives that the plan attached to Exhibit 1 encompassed their entire land and not a portion thereof, unless he had a prior knowledge of the area in question? An interpreter would naturally assume that the plan referred to the portion expressed to have been granted in Exhibit 1.

Another area of controversy between the parties is whether the defendant did pay a sum of N400.00 (200 Pounds) to the plaintiffs or not. It is the onus on the defendant to establish the alleged payment. According to the defendant, he made the payment in February, 1955, two days after being shown the land, but he was not issued with a receipt. Seeing that Exhibit 1 was made about 2-1/2 years after the said payment, this seems rather unusual in a transaction of this nature. However, in the same year the parties entered into the agreement referred to above in Exhibit 6 which said agreement was not tendered in evidence. The defendant by making contradictory statements in the witness box does not by himself engender belief. His witnesses equally do not inspire belief. In his evidence before this court, the defendant testified that he took the money to the house of Nnamani Achi who was the head of the plaintiffs' family. This gentleman summoned the elders and the young men who accepted the said payment and authorized him. The defendant admitted that he gave evidence in a previous trial of this suit. Under cross-examination he proceeded to retract from that version of the payment which he had testified to in the previous trial. His evidence in the said trial was that he negotiated the purchase price with the elders and made payment to them. This according to him was the custom of his people. Young men he stressed did not participate in this aspect of the transaction. Despite this version of his previous evidence, the defendant has before this court strenuously sought to include all the elders and the young men in the negotiation and payment. If the defendant made a payment to the elders in 1955, one would have

expected him to have called one of the said elders to testify for him in the previous trial if they were alive. Under cross-examination the defendant admitted that two of the said elders were alive during the previous trial of this suit but he did not call any of them. He gave as a reason for this that one of the living elders - Ejim Ogbu was too old to attend court. This is hardly acceptable for he was represented by a counsel who could have moved the court to the house of the said party for his evidence to be taken. In any event, no explanation was offered as to the absence of the other elder then living, namely Nnamani Nwebiem in that trial. Under cross-examination also it was revealed that in the former trial the defendant had testified that P.W.5 was present when the payment was made but before this court, he testified that none of the elders to whom he made payment is now alive and did not even mention the PW5. He excluded PW5 in the present testimony because he denied being present. These sudden reversals and contradictions certainly leave one in serious doubt as to whether the defendant paid any money at all for the land. I am aware of the acknowledgements of payments in Exhibits 1 and 4 but the authenticity, uncertainties and I shall comment specifically on them later in this judgment. On this score the defendant has failed to satisfy me that he paid his alleged purchase price of 200 Pounds (N400.00) to the plaintiffs' family.

It is a well known principle of customary law that in alienation of land among the natives, certain customary rites are observed. That such rites are necessary as evidence by specific references to this in Exhibits 1 and the essence of such rites is that they evidence a completed transaction between the parties involved. The plaintiffs have contended that the defendant did not perform the essential customary rites as further evidence that the transaction had not been concluded. The defendant's contention is that he had performed all customary rites.

What therefore, are the necessary customary rites? The plaintiffs testified that it involves the slaughtering of a goat for the purpose of feasting the landowners. The defendant testified that the ceremony involved the killing of a dog for the same purpose. Both parties are agreed that the young men of the plaintiffs' family were dully feasted and a dog slaughtered for their consumption. The defendant and DW.2 testified that the slaughter of a goat was an innovation. This

was contradicted by D.W.3 under cross-examination. D.W.3 testified that if a purchaser wants land for residential purposes he would have to perform the customary rite of slaughtering a goat. I am satisfied and find as a fact that for a completed transaction amounting to a purchase of a piece of land for residential purposes, the purchaser
 B has to slaughter a goat for the feasting of the landowners as evidence of a completed transaction. By defendant's own admission, this customary rite was not performed which fact lends strong credence to the evidence of the plaintiffs that there was no completed transaction
 C between their family and the defendant in respect of the area of land they proposed to grant to him. I think that at this juncture, Exhibit 5 should be mentioned. It is a letter inviting the defendant to the plaintiffs' family meeting "to settle with you the final conditions under which we intend to lease part of our land at Okwe-Eghe (Uzo-Amo)
 D to you." The defendant produced the said letter on notice. The plaintiffs' evidence is that he did not reply to Exhibit 5 nor did he attend the meeting to which he was invited. It was feebly put to the P.W.1 that the defendant replied to Exhibit 5. No notice to produce the original of the said reply was served on the plaintiffs with the result
 E that whatever was the defendant's reply was not tendered in court nor effort made to give secondary evidence of the said reply. One then wonders why the defendant did not reply to Exhibit 5 which was a letter of very serious importance. Above all things, he had in
 F his possession Exhibits 3 and 4 including the plaintiffs' family copies of these documents for the stamped and registered each of the Exhibits 1, 2, 3 and 4, and did not give any copies to the alleged grantors in the said documents.

I will now advert specifically to Exhibits 1, 2, 3 and 4. The
 G defendant for his title relied on Exhibits 3 and 4. Exhibits 1 and 2 are therefore, in this respect largely irrelevant. Exhibit 3 had been shroud in controversy. Exhibit 3 is dated 2nd October, 1962 on which date the plaintiffs contend that one of the two donors (Nnamani Achi) had long died and the other was ill and bed-ridden and could not
 H have travelled to the Magistrate's Court, Enugu, to execute the said documents. In other words the plaintiffs contend that Exhibit 3 was forged. Considering the question of the death of Nnamani Achi above mentioned, this event has been stated by various witnesses. P.W.1 stated that he died before his father and that his own father died in

1960. P.W.4 stated categorically that he died on 10th November, 1958. It was suggested to the D.W.2 that this gentleman was not sued in the case in Exhibit 6 because he had died before them D.W.2 insisted that he was sued, which is false. D.W.3 admitted that the gentleman was his father and was not sued in the case in Exhibit 6 because he was then dead. He also admitted that his father died before the father of the P.W.1. The case in Exhibit 6 was heard on 10th September, 1959. It seems to me quite clear that Nnamani Achi, one of the executing donors in Exhibit 3 could not have been alive on 3rd October, 1962.

As regards the other donor, Nnamani Nnaji, his position is equally a matter of controversy. The plaintiffs contend that he was sick and bed-ridden and was incapable of having travelled to the Magistrate's court, at Enugu to execute Exhibit 3. The defendant contends that he carried him to the Magistrate's court in his car. Except to state that he was the donee of Exhibit 3, D.W.2 did not refer to the matter in controversy in this aspect. The same applies to the evidence of D.W.3. There is nothing in Exhibit 3 to show that D.W.2 and D.W.3 were present when it was executed. D.W.2 did not even understand what Exhibit 3 was all about. In any event, I do not consider D.W.2 and D.W.3 as reliable witnesses in view of the contradiction on their evidence. Further on the said Exhibit 3 the concept of the power of attorney was originated by the defendant. He prepared the document. Exhibit 3 does not refer to the sale of an entire area of the land in dispute to the defendant in accordance with a previous agreement which should have been the case if it was made with a view to enabling the donees to effectuate the 1955 sale of the land in dispute. Exhibit 3 refers to "Achara Layout" empowering the donors "to enter into negotiation with anybody or company for lease of the said layout or part thereof." Why particular power to enter into negotiation with anybody or company. Why also power to lease the said layout or part thereof? The general nature of Exhibit 3 does not in any way justify a power for the purpose of effectuating the conveyance of a grant already made. It is remarkable that Exhibit 4 does not in any way refer to Exhibit 3. This is more so considering that the two documents were prepared by the said solicitor within three weeks of each other. Questioned as to the necessity of Exhibit 3 for the elders could have easily executed a Deed of Conveyance for him,

the defendant replied that the elders considered it below their dignity to execute documents. Could this have been true? Exhibit 6 refers to an agreement for the sale of the land signed by five elders, Exhibit 3 itself was executed by two elders who could have easily by themselves executed Exhibit 4. Exhibit 3 is older than Exhibit 4 by only three weeks. This infantile type of answer is characteristic of the defendant. I am inclined to accept that Exhibits 3 and 4 are the handwork of the defendant, D.W.2 and D.W.3. I am satisfied that plaintiffs' family had no knowledge of these documents. D.W.3 in particular probably owed gratitude to the defendant in finding him employment with the Nigerian Railway Corporation.

It seems to me that the defendant approached the plaintiffs' family for a grant of land for residential a purpose which was agreed upon by the parties. The defendant was shown an area of about one quarter of the plaintiffs' "Okwe-Eghe" land, under the ruse that the Government would acquire the entire land if the same was not surveyed, the defendant induced the plaintiffs' family to grant him permission to survey the entire "Okwe-Eghe" land. The defendant was expected to have carved out the area agreed to be conveyed to him. The defendant was aware that the plaintiffs were stark illiterates, conceived a scheme to divest them of their entire land. Pretending that the area granted to him was contained in plan GA.331/55, he proceeded to inveigle the D.W.2 and D.W.3 to execute Exhibit 1 in his favour; when he sensed the incongruity between the recitals in Exhibit 1 and the plan attached to the said exhibit, and also that the grantors in Exhibit 1 not being the heads of the family of the plaintiffs with the necessary consequence that any conveyance executed by them could be successfully challenged by the members of the family, he proceeded to have Exhibit 2 executed cancelling Exhibit 1. Making use of D.W.2 and D.W.3, he procured Exhibit 3 to be prepared and executed by persons other than those stated therein to be the donors. The progression from Exhibit 3 to Exhibit 4 then followed. D.W.2, D.W.3 to my mind were willing minions of the defendant who aided and abetted him in his fraud.

In the final analysis, it is my finding that defendant has no valid title to the plaintiffs' "Okwe-Eghe" land or any portion thereof. That Exhibit 3 is a forgery which in itself renders Exhibit 4 null and void and of no effect. This court therefore, declares that the purported

conveyance of the plaintiffs' "Okwe-Eghe" land delineated on Plan NO.GA.331/55 as evidenced by a Deed of Conveyance dated 20th October, 1962 and Registered as No. 31 at Page 31 in Volume 332 of the Lands Registry, Enugu is invalid, null and void"

On appeal to the Court of Appeal, that court had no difficulty in affirming what the learned trial Judge did and said so in clear terms through Galadima JCA (as he then was). He stated thus:-

"It is my respectful view that the trial court indeed made a definite finding of fact that the respondents were the owners of the Plot of land the appellants purchased from John Wenata Egbo. There was no appeal from this specific finding of fact. As regards the sole witness who testified for the appellants as DW1 (Peter Onyechi), the trial court held that he was not a witness of truth as claimed by the appellants in their brief of argument. DW1 said the husband of DW2 was Gabriel Ejiofor whom (sic) DW2, the wife claimed Anselem D Obueke was her husband. The learned trial judge evaluated in minutest details relevant evidence given by the defence."

From the stamp of affirmation of the Court of Appeal made after due consideration of the evaluation and finding of the trial court made with clarity and based on the evidence available, leaving nothing for conjecture except what the evidence itself portrayed. It is therefore difficult for me to deviate or even attempt to upset what those two Courts below have done in keeping with the well settled principles that evaluation of evidence and ascription of probative value are within the province and primary function of the trial court and so it is easy to understand that in a situation such as the present where the trial court creditably carried out this assignment, the Court of Appeal was right in not interfering since no perversity was found nearby. Also the decision arrived at from the evidence laid and the Court of Appeal rightly came to its conclusion in support of what the trial court did again properly guided by laid down principles. I place reliance on Agbakoba v. INEC (2009) All FWLR (Pt.462) 1037; Adimora v Ajufo (1988) 3 NWLR (Pt.80) 1; Osuji v Ekeocha (2009) All FWLR (Pt.490) 614.

ISSUE 2:

This issue raises the question as to whether the learned justices of the Court of Appeal erred in law when they held that limitation of

time in law does not apply to trespass. On this learned counsel for the appellants said that time for action starts to run in trespass from the date of the unlawful breaking and entering of a property. He said from what is on ground the entry of the land the subject matter of the dispute was lawful as John Wenata Egbo the appellants' grantor
B was granted the land by the owners and therefore the appellants were in lawful possession. That the institution and pendency of Suit No.E/97/65 was never made known to the defendants/appellants who took possession of the land in 1963, built on it before the suit against
C John Wenata Egbo by the plaintiff was taken out in 1965. That it was only made known to them in 1979 when the judgment in Exhibit A was delivered, a period of nearly 15 years.

Mr. Enechi Onyia of counsel for the Appellants contended that the trial Judge did not consider the provisions of Section 22 (2) of
D Law of Auction (Cap. 3 Laws of Anambra State, applicable to then to Enugu State) which takes into consideration occupation of land for a period of 12 years. That if the trial judge had taken it into consideration he would have found that the action was statute barred, incompetent and should have been dismissed. He said a successful plea of
E limitation ousts the jurisdiction of the court. He cited Ibrahim v. Gaye (2002) 13 NWLR (Pt.784) 267 at 303. Going on, Mr. Enechi Onyia submitted that there is nothing in the case of the plaintiffs/respondents to defeat the long possession of the defendants/appellants. He
F stated that the Court of Appeal erred in holding that there was no evidence supporting the issue of estoppel or limitation of time. That if the appellate court had evaluated the evidence they would dismissed the suit. He referred to Maskele v. Silli (2002) 3 NWLR (Pt.784) 26 at 229 - 230. Learned counsel for the appellants urged this court to
G exercise its statutory power under section 22 Supreme Court Act Laws of the Federation, 1990 and enter judgment for the appellants. He also referred to this court's powers under Order 8 Rule 13 (1) of the Rules of Court 1999 as amended. In response learned counsel for the respondents, Mr. Ezeuko Jnr., said the respondents as plain-
H tiffs pleaded copiously the appellants continuing acts of trespass and this was well supported by the evidence of PW1, Nsude Nwankwo Nnamchi who also is 1st respondent. That in continuing trespass successive actions can be maintained from time to time in respect of its continuance. He cited Adepoju v. Oke (1999) 2 NWLR (Pt.594) 154

at 169. He further stated that the Court of Appeal had rightly held that even if the issue in the instant proceedings is not a continuing trespass when one Anselem Obueke (the father and husband respectively of the appellants) approached the respondents for terms of occupation of the plot the statute of limitation ceased to run and revived a new cause of action when the appellants reneged from the negotiation. Also that trespass however long cannot be connected to title. He cited Oniah v. Onyia (1989) 1 NWLR (Pt.99) 514. In the statement of defence on this issue of the equitable defences of laches and acquiescence culminating in a limitation of action. The appellant had at paragraph 15 pleaded thus:-

“The plaintiffs slept over any right which they have from 1963 to 1982 when the action was instituted. The defendants will rely on laches (sic) and acquiescence at the trial.”

That defence was dumped on the Court in its naked form without any particulars only for the evidence at the trial court to show as undisputed some level of negotiation that had gone on before collapsing and so I see no reason not to go along with learned counsel for the respondent and as earlier accepted by the Court of Appeal that the approaches for settlement by the Appellants created a continuing trespass and thereby removed the operation of the statute of limitation as the limitation runs, ceases, and is revived anew from inception of the trespass to the various times of negotiations at which times the time ceases only to be revived once a breakdown of discussion takes place. This situation makes calculation of the period at which it can be said the trespass had taken place and time elapsed since what is on display is an ongoing infraction without a time bar. The conclusion that has been thrown up is that the plea of laches and acquiescence or a statute of limitation are defences not available in the instant case to the appellants on the factors that should exist for the formation or operation of those defences do not exist in the case at hand. See Adepoju v Oke (1999) 2 NWLR (Pt.594) 154 at 169; Taiwo v Taiwo 3 FSC 80 at 82; Ibenwolu v. Lawal (1971) 1 All NLR 23; Moss v. Kenrow (Nig.) Ltd (1992) 9 NWLR (Pt.264) 207 at 224.

As a follow up the appellants need be reminded in the light of the circumstances prevailing that trespass as has been

established by the respondents in the Courts below, however long cannot be converted to title, more so where this basis of their title which was anchored on the title of John Wenata Egbo had been declared null and void by the trial court in Exhibit A.

I resolve this issue in favour of the Respondents.

B ISSUE 3:

This issue raised is to do with whether the Court of Appeal was right to have affirmed the decision of the trial court directing the appellants to attorn rents to the respondents and acknowledge them as their landlord within 30 days when such a relief was not in the claim of the respondent as plaintiffs. Mr. Enechi Onyia, learned counsel for the appellants submitted that there was evidence from both the appellants and the respondents that the appellants had been in possession of the land before 1960 without let or hindrance from the respondents. That the respondents did not seek possession of the land before 1960 without let or hindrance from the respondents. That the respondents did not seek possession from the court and so the order made by the court amounted to giving the plaintiffs/respondents that which they did not claim. He cited *Sudberry v. A.G. Bendel State* (1991) NWLR (Pt.169) 252 at 602; *Akago v Hakeem Habeeb & Ors* (1992) 2 NSCC (Pt.110) 313 at 334.

Responding, Mr. Ezeuko Jnr. said Court may not grant a relief not specifically pleaded but may do so to meet the circumstances of the case more so where there is in evidence facts it can rely on to grant the relief. Also in court's exercise of its equitable jurisdiction, it can grant such reliefs to meet the justice of the case. He cited *Nimanteks Associates v. Marco Construction* (1987) 2 NWLR (Pt.56) .

The grouse of the Appellants herein is whether in view of the claim of the Respondents as plaintiffs in the Court of trial, the trial court and affirmed by the Court below granted an attornment of rents by the Appellants to the Respondents an order completely outside the claim in the pleadings of the Respondents as plaintiffs. The claim of the Respondents at the Court of first instance is stated as follows:-

"WHEREOF the Plaintiffs claim against the Defendants -

a. N3,000 damages for trespass.

b. An injunction restraining the Defendants by themselves or through their agents, servants and privies from further occupation

and use of the said plot of land described as Plot 1, Block 32, Achara Layout, Enugu (and now numbered as No. 7 Umunaiede Street, Achara Layout, Enugu) except with the consent of the plaintiffs.

c. Such further order or orders as the Court thinks fit to make in the circumstance”

Mr. Enechi Onyia laying emphasis for their grouse on what the two Courts below did said the claim above quoted were all the plaintiffs asked for and no more. Countering this, Mr. Ezeuko Jnr. for the respondents said the Courts below were empowered pursuant to Order 25 Rule 6 of the High Court of Anambra State (Civil Procedure) Rules 1991 applicable to Enugu to order the Defendants/Appellants to attorn rents to plaintiffs/respondents and acknowledge them as landlords within 30 days and failure by the defendants to satisfy the attornment within the time specified would bring into operation the injunction sought by the respondents for the appellants seizure from further occupation and use of the plot of land subject of the dispute. That Order cited would be stated verbatim below:-

“Subject to any particular rule, the court may in all causes and matters make any order which it considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not.”

Indeed it is trite law that a court may not grant a relief not specifically pleaded but may do so to meet the circumstances of the case more so where there is in evidence facts it can rely on to grant the relief. From the attitude of the appellants even when given the olive branch by the trial court in extreme magnanimity which the Court of Appeal acknowledged within the exercise of his discretion in order to secure peace even though undeserved when it is clear that there is a challenge to the over lordship of the respondents and the glaring evidence on display. I cannot see how in the prevailing circumstances and guiding judicial authorities like *Nimanteks Associates v Marco Construction Ltd* (1987) 2 NWLR (Pt.56) 267; *Amaechi v INEC* (2008) All FWLR (Pt. 407) 1, I can make a resolution in favour of the grouchy Appellants in the face of such generosity, the issue is indeed for the Respondents and I so resolve.

All the issues resolved in favour of the Respondents as canvassed, I see no reason for a departure from the concurrent findings

of the two Courts below, therefore I dismiss this appeal in its entirety while I affirm the judgment of the Court of Appeal in its affirmation of the judgment and orders of the trial High Court. I order N50,000.00 costs against the Appellants in favour of the Respondents.

B

ONNOGHEN JSC

I have had the privilege of reading in draft the lead judgment of my learned brother, PETER-ODILI, JSC just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

It is settled law that trespass, however long it remains in existence with reference to a portion/parcel of land, does not ripen or translate to title to the land in question - see Oniah vs Onyia (1989) 1 NWLR (Pt.99) 514. Also settled is the principle of continuity of trespass or successive acts of trespass constituting separate and independent actionable wrongs in trespass. It follows that where there is continuity of acts of trespass, successive actions can be maintained by a plaintiff from time to time in respect of the continuance of trespass - see Adepoju vs. Oke (1999) 2 NWLR (Pt.594) 154 at 169.

It is from a combination of the above principles that emerged the doctrine of continuing trespass giving rise to actions from day to day as long as the wrong lasts. In such a situation/circumstance an action for trespass cannot be defeated by a plea of limitation of time - in this case the assertion that the trespass has been on for more than six years.

It is for the above and the more detailed reasons contained in the said lead judgment of my learned brother that I too dismiss the appeal and abide by the consequential orders contained therein including the order as to costs. Appeal dismissed.

MUHAMMAD JSC

I have had the advantage of reading before now, the judgment of my learned brother, Odili, JSC. I agree with her conclusion and reasoning. I abide by consequential orders made therein.

ADEKEYE JSC

I had a preview of the judgment just rendered by my learned brother Mary U. Peter-Odili JSC. My learned brother gave an elaborate and meticulous consideration to all the issues formulated by the appellant for consideration in this appeal. I have nothing to add.

With fuller reasons given in the lead judgment of my learned brother M. Peter-Odili, JSC, I also dismiss this appeal. I abide the consequential orders made in the lead judgment. B

NGWUTA JSC

I have had the privilege of reading in draft the lead judgment just delivered by my learned brother, Peter-Odili, JSC. The appeal is against the concurrent findings of fact by the two lower courts; that is the finding of fact by the trial court, confirmed by the lower court. C
See *Ibhafidon v. Igbinu* (2001) 8 NWLR (Pt.716) 653 at 663. D

This is so because every determination of a Court consists of findings of fact and based on the facts so found and the inference drawn therefrom, the court comes to its ultimate conclusion which may be of fact or law or both law and fact. See *Metal Construction (WA) Ltd v. Migliore* (1990) 1 NWLR (Pt.126) 299 at 313. E

This Court will not disturb concurrent findings of fact unless such findings are perverse or not supported by credible evidence. See *Alhaja Silifatu Anotayo v. Cooperative Supply Association* (2010) 7-8 SCM 169 at 188. It is the duty of the appellant to satisfy this Court that the judgment of the trial Court affirmed by the lower Court is perverse or not founded on credible evidence before the trial Court, and this the appellant failed to do. F

For the above and the fuller reasons in the lead judgment, I agree with His Lordship that the appeal be dismissed and I also dismiss same with N50,000.00 costs to the Respondents. G

H