

SUPREME COURT OF NIGERIA

4TH MAY, 2012. SC. 69/2002

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

1. CHIEF SUNDAY ORIORIO
2. MR. JACK ERIMARI & 13 OrsAPPELLANTS
(For themselves and on behalf of the
people of Edepie in YELGA)

AND

1. CHIEF JOSEPH OSAIN
2. SYLVANUS ESEGIRESPONDENTS
3. MR. IBATUA AMOS
(For themselves and as representing
the people of Biogbolo in YELGA)

APPEALS - Preliminary objections - Filing - Supreme Court Rules O.
2 r. 9(1)(2) - Failure to comply - Effect - The objection will be struck
out (H1)

JURISDICTION - Fundamental nature - Once issue of jurisdiction is
raised - It must be resolved - Before further step is taken in a matter
(H2)

ACTIONS - Limitation - Land law - Continuing trespass - The action
is not statute barred - Since the trespass continued - Until when the
action was instituted (H3)

LAND LAW - Appeals - Actions - Need for consistency - Respondents
must be consistent in their case - Since Appellate court cannot go -
Outside issues settled by trial court (H4)

APPEALS - Issues - Fresh issue on appeal - Competence - Appellant
must seek and obtain - Leave of court before raising the issue (H5)

APPEALS - Trespass - Concurrent findings - Supreme Court does
not interfere - Save the findings are perverse - Or not supported by
credible evidence (H6)

LAND LAW - Trespass - Damages - Award of - Where damages are awarded for trespass - And there is claim for injunction - Court will grant same - To prevent multiplicity of actions (H7)

FACTS

Plaintiffs/respondents sued defendants/appellants for trespass by writ of summons filed at Bayelsa (formerly Rivers) State High Court, Yenagoa. They also sought for award of special damages and an order of perpetual injunction restraining defendants/appellants from further trespass on the land. Appellants described the claim as frivolous, speculative, devoid of merit and urged the Court to dismiss same. At the end of trial, the court awarded special damages to respondents but refused to grant the order of perpetual injunction.

Both parties were aggrieved. Hence, respondents filed the main appeal while appellants cross-appealed at the Court of Appeal, Port Harcourt division. The court in its judgment held appellants guilty of trespass. The court allowed the cross-appeal on award of special damages but granted the order of perpetual injunction against appellants. Aggrieved, appellants appealed to Supreme Court. They are asking the court to set aside the judgment of the Court of Appeal on the basis that the action has become statute barred by virtue of section 7(1)(4) of Limitation Act of 1966 (applicable to Bayelsa State).

ISSUES FOR DETERMINATION

“3.01: Whether the Appellants as customary tenants of the Respondents can be adjudged Trespassers on the land in dispute.

3.02: Whether the Court of Appeal was right in granting perpetual injunction against the Appellants over the Area verged ‘BROWN’ on the Respondents’ plan Exhibit A.

3.03: Whether the Court has jurisdiction to entertain the Respondents’ claims for trespass and injunction which have become statute barred by virtue of section 7 (1) (4) of Limitation Act 1966 applicable to Bayelsa State.”

HELD (Unanimously dismissing the appeal per

NGWUTA JSC)

APPEALS - Preliminary objections - Filing

1. A party intending to rely on a preliminary objection to scuttle the hearing of an appeal has to comply with the Supreme Court Rules regarding same - Order 2 rules 9, 1 & 2 of the Supreme Court Rules 1999 (as amended)

There is absolutely no compliance with the rules reproduced above and in the exercise of the discretion vested in the court by r.2 of the order. I refuse to entertain the objection for non-compliance with the rules. The initiating process is the notice which the respondent did not give. The preliminary objection is hereby struck out as incompetent. (p. 2012 G)

JURISDICTION - Fundamental nature

2. Appellants' issue three is on jurisdiction and being a threshold matter, it will be resolved before any more steps is taken in the appeal. This is because jurisdiction is the spinal cord of every litigation and once raised, it must be resolved before further step is taken in the matter. (p. 2013 D)

ACTIONS - Limitation - Land law - Continuing trespass

3. In my view, the statement of claim ought to be read holistically to avoid a miscarriage of justice. For instance, in paragraph 8 of the Statement of Claim, the appellants pleaded:

"8. In or about 1971 and thereafter continuously to the present time and whilst the plaintiffs remain in possession thereon the defendants, their agents, servants and privies without any just cause or exercise or consent entered with force upon parts of the Azi-Biogbolo land..." See page 13 of the record.

This means that the initial trespass was committed by the appellants in 1971 but continued to the present time that is 29/2/84 when the action was instituted. This is a case of continuing trespass and according to the claim, the appellants were on the land on the day the action was commenced. In my view, the action giving rise to this appeal is not statute-barred. (p. 2014 B)

Actions - Need for consistency

4. The claim by the respondents that they are customary ten-

ants on the land in dispute is akin to an attempt to change the goal post in the middle of the football match. They cannot be heard to change their claim midstream. They have to be consistent in their case both at trial and on appeal for the appellate Court cannot go outside the issues raised and settled by the trial Court. (p. 2015 D)

APPEALS - Issues - Fresh issue on appeal - Competence

5. The issue now raised on appeal is a fresh issue on which the appellant cannot be heard without leave of Court first sought and obtained. (p. 2015 E)

APPEALS - Trespass - Concurrent findings

6. In its judgment, the trial court found, after a review of the entire case that:

“It is firmly established that the defendants are in physical occupation of the land in dispute and in view of the fact that their occupation of the land was not with the permission of the plaintiffs they are in my view trespassers. I hold therefore that the defendants are liable in trespass.” See page 66 of the record.

Appellants made an aborted attempt in the Court below to set aside the above findings of the trial Court on the basis that they, the appellants, had been in physical occupation of the land longer than the respondents. The Court of Appeal in its judgment held, inter alia:

“In the circumstances of this case, when the learned trial Judge rightly found the defendants/respondents/cross-appellants to be in the trespass...” See page 137 of the records.

This is a concurrent finding of fact by the two Courts below and in absence of a showing that the findings are perverse or not supported by credible evidence, this Court cannot interfere with it. (p. 2015 H)

Trespass - Damages - Award of

7. The trial Court stated the correct position of law relying on *Obanor v. Obanor* (1976) 1 NMLR 39 cited by the respondents that where damages are awarded for trespass to land

and there is a claim also for injunction, the Court will grant the injunction to prevent multiplicity of actions. See page 67 of the record. The trial Court however declined to grant perpetual injunction for reasons ranging from alleged impossibility of executing the order to the alleged inability of the Court to supervise the enforcement of the order. The lower Court was of the opinion that the trial Court had no good reason for refusing to make the order for perpetual injunction sought by the respondents. I agree with the lower Court. Having found the appellants liable in trespass, the trial court ought to have necessarily made the order for perpetual injunction against the appellants. (p. 2016 D) B
C

NOTABLE POINT OF INTEREST

ADEKEYE JSC

1. Trespass is actionable at the instance of a person in possession

Trespass to land is the wrongful and unauthorized invasion of the private property of another. It is trespass to land provided the entry into the land of another by a person is not authorized. Trespass to land is rooted in a right to exclusive possession of the land allegedly trespassed. Trespass to land is therefore actionable at the instance of a person in possession of the land. Only a person in possession of land at the material time can maintain an action for damages for trespass but when the issue is as to which of the two claimants has a better right to possession or occupation of a piece or parcel of land in dispute, the law will ascribe such possession and or occupation to the person who proves a better title thereto. Equally, when two parties are on land claiming possession, trespass can only be at the suit of that party who can prove that title to the land is in him. (p. 2018 C) D
E
F
G

REPRESENTATION

R. A. OGUNWOLE, SAN with J. D. OLANIYAN ESQ., for Appellants
Respondents not represented H

CASES REFERRED TO

Queen v. Uche (1994) 6 NWLR (Pt. 350) 329

- Olohumde v. Adegoju (2000) 6 SC (Pt. 111) 113
 Itauma v. Akipe-Ime (2000) 7 SC (Pt. 11) 24
 Okegbe v. Chikere (2000) 7 SC (Pt. 1) 106
 Umoru v. Oduogbo (1993) 6 NWLR (Pt. 217) 221
 Agbanele v. UBN (2000) 4 SC (Pt. 233) 256
 B Kapem v. Ogunde (1972) SC 182
 Atani v. Ladapo (1986) 3 NWLR (Pt. 28) 276
 Oludamilola v. State (2010) 5 SCM 166
 Ehimane v. Emhonyon (1985) 1 NWLR (Pt. 2) 17
 C Gbadamosi v. Dairo (2007) 3 NWLR (Pt. 1021) 282
 Okoko v. Dakolo (2006) 14 NWLR (pt. 1000) 401
 Adepoju v. Oke (1999) 3 NWLR (pt. 594) 154
 Oyadare v. Ileyi (2005) 7 NWLR (pt. 925) 571
 Balogun v. Akanji (2005) 10 NWLR (pt. 933) 571

D

LEAD JUDGMENT BY NGWUTA JSC

- In the Writ of Summons issued in the Registry of the Rivers State High Court of Justice, Yenagoa Judicial Division holden at Yenagoa on 20th day of February, 1984, the Respondents were plain-
 E tiffs and the Appellants were defendants. The plaintiffs sued for them-
 selves and on behalf of the people of Biogbolo in Yelga. The defend-
 ants were sued for themselves and on behalf of the people of Edepie
 also in Yelga. The plaintiffs (now Respondents) sued the defendants
 (now Appellants) for:

- F “1. N100,000.00 (One Hundred Thousand Naira) being spe-
 cial and general damages for trespass in that the defendants on or
 about February 1983 without the leave or licence of the plaintiffs
 broke and entered Azi-Biogbolo land which has been in the peaceful
 G possession and ownership of the plaintiffs from time immemorial and
 cut down economic trees and cash crops and have cleared portions
 of the said land for farming.

2. A perpetual injunction restraining the defendants, their serv-
 ants and or agents from further trespass on the land.” See page 5 of
 H the record.

The parties filed and exchanged pleadings. In paragraph 11 of the Statement of Defence, the defendants now Appellants, described the claim as frivolous, speculative, devoid of merit and urged the Court to dismiss same with substantial costs to the defendants.

The plaintiffs opened their case on 6th April, 1987 before Tabai, J. (now Tabai, JSC). Plaintiffs called six witnesses and rested their case on 16/2/87. The defendants opened their case on 12th April 1988, called four witnesses and closed their case on 8/6/88. At the close of copious and extensive addresses of learned Counsel for the parties, the trial Court adjourned the case to 20th September, 1988 B for judgment.

In the judgment delivered as scheduled, the trial court, after a review of the case and Counsel's addresses, concluded thus:

"In conclusion I hold that the sum of N6,000.00 special damages has been proved and so I award the plaintiffs that sum. I also award the sum of N2,000.00 general damages for the trespass committed by the defendants on the plaintiffs' land." See Page 57 of the record. On the claim for perpetual injunction, the trial Court concluded: C

"I am reluctant to grant this relief. If the injunction were to affect only farm lands, its grant would have been a matter of course. But since the relief sought is in respect of an area in which there are dwelling houses and a Generator house, I am reluctant to grant it for the reason stated above. In the circumstances of this case, I would rather err on the side of refusing the injunction than granting it. The injunction is therefore refused." See page 69 of the record. D

Both sides were dissatisfied with the judgment of the trial Court. The plaintiffs, now appellants filed a notice and ground of appeal while the respondents, now respondents filed their notice and grounds of cross appeal. The Court of Appeal Port Harcourt Division, Rivers State, in the judgment delivered on 17th December, 2001 held: F

"In the final result, the defendants' cross-appeal against the decision adjudging them liable in trespass fails and is accordingly dismissed. That decision is affirmed. Their appeal against the order on them to pay special damages of N6,000.00 succeeds and that order is hereby set aside. The plaintiffs' appeal against the decision refusing to award special damages for the juju shrine and Halmus house is also dismissed. That decision is affirmed. As they had successfully proved trespass against the defendants however, they are entitled to an award of general damages assessed at N2,000. That amount is hereby awarded to them. That shall be the order of the trial Court. As there was no basis for the learned trial Judge's decision to refuse H

to make the order of injunction sought, that decision is hereby set aside. In its place is recorded an order of perpetual injunction restraining the defendants, their servants, agents and/or their privies from entering upon and/or further committing any acts of trespass on the land verged brown on survey Plan No. A10/RV021-/86LD
 B dated 20/3/86 and filed by the plaintiffs with their Statement of Claim and received in evidence by the trial Court as Exhibit A.” See page 138 of the record.

C Appellants (defendants in the Court of trial) were aggrieved and appealed to this court on four grounds. In accordance with the rules of this court, learned counsel for the parties filed and exchanged briefs of argument. In his amended brief of argument filed on 2/3/07, learned counsel for the appellants distilled three issues from the four grounds of appeal. The three issues for determination are:

D “3.01: Whether the Appellants as customary tenants of the Respondents can be adjudged Trespassers on the land in dispute.

3.02: Whether the Court of Appeal was right in granting perpetual injunction against the Appellants over the Area verged ‘BROWN’ on the Respondents’ plan Exhibit A.

E 3.03: Whether the Court has jurisdiction to entertain the Respondents’ claims for trespass and injunction which have become statute barred by virtue of section 7 (1) (4) of Limitation Act 1966 applicable to Bayelsa State.”

F Learned Counsel for the Respondents presented the following two issues for determination in his brief of argument:

“(a) Whether the Court of Appeal was right in upholding the plaintiffs’ case on trespass and also granting the relief of perpetual injunction.

G (b) Whether this action is time-barred by the operation of Rivers State Limitation Law (formerly Edict) 1988.”

H He raised a preliminary objection to particulars (i), (ii), (iii), and (iv) of ground 1 of the grounds of appeal; ground 2 of the grounds of appeal, particulars (i), (ii), (iii), (iv), (v), (v) (sic) of ground 3 of the grounds of appeal. The objection is predicated on following grounds:

(i) The particulars are irrelevant, unrelated to the purported ground of appeal, argumentative and narrative in nature.

(ii) The issue of appellants being customary tenants of the Respondents and applicability of Rivers State Limitation Law 1988 are

matters of evidence and fresh points which were never raised at the trial Courts below.”

Addressing issues 1 and 2 together in his brief, learned counsel for the appellants referred to the claim and the evidence and submitted that it was settled that the appellants are on the land in dispute as customary tenants subject to some stated conditions. He said that the appellants’ claim for free use of the disputed land was dismissed but the conditions of grant of the land to the appellants were confirmed by the Customary Court. He said that the grant was in respect of the entire Azi-Biogbolo land and there was no demarcation. He referred to suit No. PHC/9/71 in which the respondents’ claim for title to Azi-Biogbolo land was dismissed by the High Court but granted on appeal to the Court of Appeal.

He said that the appellants filed appeal against the Court of Appeal’s judgment to the Supreme Court but later withdrew the appeal. It is his case that although the respondents have title to the land the appellants, as customary tenants, are in effective possession of the disputed land. To buttress this point, learned Counsel referred to the evidence of the respondents’ witness PW1 at page 27 of the record to the effect that the appellants are on the land as customary tenants of the respondents. He said that although the claim is that the appellants are in possession of the area verged BROWN, the respondents’ Exhibits A and F show that the appellants are in possession of the area marked Yellow as well as the area marked Brown. He referred to pages 65-66 line 32 of the record to the effect that appellants had farms on the land even though Exhibit F filed by the respondents in their suit No. PHC/9/81 did not show that the appellants had farms on the land.

He contended that the High Court found the appellants liable in trespass but declined to grant perpetual injunction and that the lower court affirmed appellants’ liability in trespass and awarded N2,000 as general damages in error for failure of the Respondents to identify the exact area they granted to the appellants as per terms and conditions contained in the judgment in Suit No. 82/44 in the Native Court, and as such there was no case to entitle the respondent to their claim for perpetual injunction. He relied on *Queen v. Uche* (1994) 6 NWLR (Pt.350) 329; *Simon Ojiaku & Anor v. Obiawuchewuru & Ors.* (1995) NWLR (Pt. 420) 460, 472, 476-

477; Jason Umesie & Ors v. Hyde Onuaguluchi & Ors (1995) 9 NWLR (Pt. 421) 515 at 535; among others.

He contended that the failure of the two lower Courts to consider the proceedings before the Native Court made it impossible for the said Courts to hold that the appellants are on the land in dispute as customary tenants of the respondents. He relied on Richard Ezeanya & Ors v. Gabriel Okeke & Ors (1995) 4 NWLR (Pt. 388) 142, 160-161. Chief Uriah Akpara Adomba & Ors v. Benjamin Odiese & Ors (1990) 1 NWLR (Pt. 125) 165, 178-179. He argued that both lower Courts failed to hold that the onus of proof is on the respondents and that the respondents did not discharge the burden on them. He relied on Olohumde v. Adegoju (2000) 6 SC (Pt. 111) 113; Itauma v. Akipe-Ime (2000) 7 SC (Pt. 11) 24.

He argued further that both Courts failed to hold that possession is an incidence of customary tenancy and it cannot be adverse and so appellants cannot be trespassers over the land in dispute. He referred to Okegbe v. Chikere (2000) 7 SC (Pt. 1) 106. He added that the two Courts below failed to use the exhibits tendered to assess the oral testimony of the respondents. He relied on Umoru v. Oduogbo (1993) 6 NWLR (Pt. 217) 221. Based on his argument on issues 1 and 2, he urged that the respondents' case be dismissed.

In issue 3, learned counsel reproduced the Respondents' claim. He referred to paragraph 11 of the statement of claim reproduced hereunder:

"Wherefore the plaintiffs claim against the defendants jointly and severally as follows:

(i) Special and general damages in the sum of N100,000.00 (One Hundred Thousand Naira) for trespass.

(ii) Perpetual injunction restraining the defendants, their agents and or privies from entering upon and or committing any acts of trespass on the land verged brown on plaintiffs Survey Plan aforementioned."

He referred to Agbanele v. UBN (2000) 4 SC (Pt. 233) at page 256 in support of his submission that the Statement of Claim supercedes the Writ of Summons.

He referred to paragraphs 7 and 8 of the Respondents' statement of claim and said that the respondents alleged that the trespass was committed in 1971. He argued that the suit filed on 29th Febru-

ary 1984, 13 years after the date of the alleged trespass was statute barred by the Rivers State Limitation Law which bans actions in tort and trespass after five years of the alleged commission.

In support of the date of the alleged trespass, he referred to the evidence of PW1 at page 27 lines 29-34 wherein the date of trespass was stated as 1971 counsel argued that even though jurisdiction was not raised in either of the two courts below, it can be raised at any time and argued that the two Courts below had no jurisdiction to entertain a stale claim. He relied on *Madukolu & Ors v. Nkemdilim* (1962) 1 All NLR 587 at 589. In the light of the above, he urged the Court to strike out the suit.

In issue one in his brief, learned Counsel for the Respondents said that the parties joined issues on ownership and possession, and that the trial court was right to have resolved the issue of title and then that of possession. He referred to Exhibits A, B, C and F tendered by PW1, PW3 and PW6 as proof of (a) title, (b) area granted to the appellants and (c) fact of trespass/continuing trespass. He referred to page 66 lines 15-25 of the judgment of the trial court to the effect that where two parties to a land dispute claim to be in possession of the land, the law ascribes possession to the party with title or better title. He relied on *Kapem v. Ogunde* (1972) SC 182; *Atani v. Ladapo* (1986) 3 NWLR (Pt. 28) 276.

He said that the appellants did not appeal the pronouncement of law and the same remains binding. He referred to pages 79-80 of the record and contended that the lower court affirmed the decision of the trial court.

He argued that the appellants pleaded ownership/settlement from time immemorial and the issue of customary tenancy did not arise in the pleadings. He said customary tenancy is a new issue on which the appellant cannot be heard. He relied on *Ehimane v. Emhonyon* (1985) 1 NWLR (Pt.2) 17 at 184. He said that parties and the court are bound by pleadings. Learned counsel said that the Native court case relied on in paragraphs 4.05, 4.06, 4.07 and 4.08 in the appellants' brief was not pleaded by the appellant.

The said judgment was tendered by the appellant who pleaded same. He referred to Exhibit B on page 27 of the record. He said that the Native court dismissed the claim of the appellant as plaintiffs in that court and did not confer any legal rights on the appellants. He

referred to page 27 lines 7-15 of the record and argued that the area of trespass in this case is verged Brown whereas the area over which they are probably customary tenants is verged Yellow as per the evidence of the respondents

B He referred to PHC/9/71 and Appeal No. FCA/E/10/78 Exhibit B and said that the issue of title over Azi-Biogbolo land verged Brown is conclusive and cannot be reopened by evidence. He said that the grant of perpetual injunction is justified since title and trespass had been determined previously in favour of the respondents and injunction is granted to protect legal right once infringed. He C cited *Kele v. Nwerekere* (1998) 3 NWLR (pt. 543) 515. He urged the court to resolve the issue in favour of the respondents. In issue 2, he said that the substantive legislation is the Rivers State Limitation Law 1988. He invoked S.44 of the law reproduced hereunder:

D *“S.44: Nothing in this Edict shall affect any action commenced before the commencement of this Edict.”*

He referred to pages 4 and 5 of the record and said that the respondents’ suit was commenced on 29/2/84 before the commencement date of the Edict 1988. He said that based on S.44 of the law, E the suit commenced in 1984 is not caught by the limitation law that came into effect in 1988. He urged the court to dismiss the appeal.

In his reply brief, learned counsel for the Appellants said that the preliminary objection is misconceived. He relied on *Gbadamosi v. Dairo* (2007) 3 NWLR (Pt. 1021) 282 at 306 for the meaning of a F fresh point of law and argued that a conclusion or inference drawn from the record cannot be branded as fresh issue of law. He referred to the Respondents’ Statement of Claim and proceedings admitted as Exhibits B and C to support his assertion that the appellants are G customary tenants of the respondents on the land in dispute. The rest of the reply brief is a recap of argument already adumbrated in the main brief.

A party intending to rely on a preliminary objection to scuttle the hearing of an appeal has to comply with the Supreme Court Rules regarding same - Order 2 rules 9, 1 & 2 of the Supreme Court Rules 1999 (as amended) provides: H

“Ord. 2 r.9 (1): A respondent intending to rely upon a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice thereof before the hearing, setting out the

grounds of objection, and shall file such notice together, with ten copies thereof with the Registrar within the same time.

Rule 9 (2): If the respondent fails to comply with this rule the Court may refuse to entertain the objection or may adjourn the hearing thereof at the cost of the respondent or may make such other order as it thinks fit.” B

There is absolutely no compliance with the rules reproduced above and in the exercise of the discretion vested in the court by r.2 of the order. I refuse to entertain the objection for non-compliance with the rules. The initiating process is the notice which the respondent did not give. The preliminary objection is hereby struck out as incompetent. C

Issues 1 and 2 in the Respondents’ brief are the same as issues 1 and 2 in the appellants’ brief. I will therefore adopt the appellants’ three issues in determining the appeal. D

Appellants’ issue three is on jurisdiction and being a threshold matter, it will be resolved before any more steps is taken in the appeal. This is because jurisdiction is the spinal cord of every litigation and once raised, it must be resolved before further step is taken in the matter. See Charles Chinwendu E
Odedo v. INEC & Anor (2008) 17 NWLR (Pt. 1117) 554 at 595.

Appellants’ Counsel read some paragraphs of the respondents’ Statement of claim in isolation to support his contention that the cause of action arose in 1971 and is therefore statute barred by virtue of section 7 (1) (4) of the Limitation Act of 1966 applicable in F
Bayelsa State. Learned Counsel did not reproduce the section of the Act he relied on nor did he show how the Act, a Federal legislation, is applicable to proceedings in the High Court of Bayelsa State.

On the other hand, learned counsel for the respondents said G
the action was not statute barred. He said that the action commenced on 29/02/84 was saved by section 44 of the Rivers State Limitation Law of 1988 which he said came into effect on 21/5/88. He reproduced the section thus:

“S.44: Nothing in this Edict shall affect action commenced before commencement of this Edict.” H

This argument is not without some force. The action was commenced on 29/02/84 while the commencement date of the Edict is 21/5/88. Be that as it may, learned Counsel for the respondents did

not link the Limitation Law of Rivers State 1988 upon which he relied to Bayelsa State where the suit was commenced and prosecuted. Learned counsel for the appellants made the valid point that the Statement of claim supersedes the writ of summons. As I stated before in this judgment, learned counsel relied on isolated averments in the statement of claim to show that the action was statute-barred having been commenced in 1984 when the cause of action arose in 1971.

In my view, the statement of claim ought to be read holistically to avoid a miscarriage of justice. For instance, in paragraph 8 of the Statement of Claim, the appellants pleaded:

“8. In or about 1971 and thereafter continuously to the present time and whilst the plaintiffs remain in possession thereon the defendants, their agents, servants and privies without any just cause or exercise or consent entered with force upon parts of the Azi-Biogbolo land...” page 13 of the record.

This means that the initial trespass was committed by the appellants in 1971 but continued to the present time that is 29/2/84 when the action was instituted. This is a case of continuing trespass and according to the claim, the appellants were on the land on the day the action was commenced. In my view, the action giving rise to this appeal is not statute-barred. The issue is resolved against the appellants.

Issue 1 in the appellants’ brief is predicated on the alleged status of the appellants as customary tenants on the land in dispute. Appellants and their witnesses gave evidence consistent with their pleadings in their statement of Defence. In the pleading, appellants’ defence is summed up in paragraph 3 (a) of the statement of Defence hereunder reproduced:

“3 (a): The defendants’ ancestors from time immemorial settled on the land and exercised dominion over same without let or hindrance. The land is known and called Azi-Edepie,”

In paragraph 5, the appellants pleaded that:

“5. The defendants deny paragraph 4 of the Statement of Claim and in further answer would state that the traditional history of the defendants’ ownership of the land dates back to centuries as stated hereunder...”

The appellants (as defendants) called four witnesses in the trial

Court. DW1, Chief Jack Okelekele Erimani, the paramount ruler of Edepie, swore that: *"The plaintiffs' historical account in this case is false."* See page 43 of the records.

On the same page, the witness stated:

"Our great ancestor, Chief Aweni, migrated from Otuesega and settled at the present site of Edepie... After they had their settlement the plaintiffs' ancestors (sic) named Ogbolo who was driven from Ayun in Odual District... migrated to Aweni to seek refuge..."

DW3 stated, inter alia:

"I know the Biogbolo people. I never in my life paid any royalties or rents to the Biogbolo people for my use of the land." See page 49 of the record.

DW4 stated:

"I know the Biogbolo people. I have never seen them on the land on which I tap palm wine. They have never asked me to pay rents to them for my use of the land." See page 50 of the record.

The claim by the respondents that they are customary tenants on the land in dispute is akin to an attempt to change the goal post in the middle of the football match. They cannot be heard to change their claim midstream. They have to be consistent in their case both at trial and on appeal for the appellate Court cannot go outside the issues raised and settled by the trial Court. The issue now raised on appeal is a fresh issue on which the appellant cannot be heard without leave of Court first sought and obtained. See *Ojiogu v. Ojiosu* (2012) 5 SCM 143; *Nkebisi & Anor v. The State* (2010) 3 SCM 170. Whether or not the appellants can be adjudged trespassers on the land is predicated on their alleged status as customary tenants. Since it has been demonstrated by their own showing, by their pleading and evidence that they are not customary tenants on the land, the issue is resolved against the appellants.

Issue 2 in the appellants' brief is:

"Whether the Court of Appeal was right in granting perpetual injunction against the appellants over the area verged Brown on the Respondents' plan Exhibit A."

In its judgment, the trial court found, after a review of the entire case that:

"It is firmly established that the defendants are in physi-

cal occupation of the land in dispute and in view of the fact that their occupation of the land was not with the permission of the plaintiffs they are in my view trespassers. I hold therefore that the defendants are liable in trespass.” See page 66 of the record. Appellants made an aborted attempt in the Court below to set aside the above findings of the trial Court on the basis that they, the appellants, had been in physical occupation of the land longer than the respondents. The Court of Appeal in its judgment held, inter alia:

“In the circumstances of this case, when the learned trial Judge rightly found the defendants/respondents/cross-appellants to be in the trespass...” See page 137 of the records.

This is a concurrent finding of fact by the two Courts below and in absence of a showing that the findings are perverse or not supported by credible evidence, this Court cannot interfere with it. See Oludamilola v. State (2010) 5 SCM 166.

The trial Court stated the correct position of law relying on Obanor v. Obanor (1976) 1 NMLR 39 cited by the respondents that where damages are awarded for trespass to land and there is a claim also for injunction, the Court will grant the injunction to prevent multiplicity of actions. See page 67 of the record. The trial Court however declined to grant perpetual injunction for reasons ranging from alleged impossibility of executing the order to the alleged inability of the Court to supervise the enforcement of the order. The lower Court was of the opinion that the trial Court had no good reason for refusing to make the order for perpetual injunction sought by the respondents. I agree with the lower Court. Having found the appellants liable in trespass, the trial court ought to have necessarily made the order for perpetual injunction against the appellants. I therefore resolve issue 2 against the appellants.

The three issues having been resolved against the appellants, I hold that the appeal is devoid of merit. It is hereby dismissed and the judgment of the lower Court affirmed. Appellants shall pay costs assessed and fixed at N50,000.00 to the respondents.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother NGWUTA, JSC just delivered.

I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed. I therefore order accordingly and abide by the consequential orders made in the said lead judgment including the order as to costs. Appeal dismissed. B

MUHAMMAD JSC

I have had the advantage of reading the judgment of my learned brother, Ngwuta, JSC just delivered. I am in agreement with my learned brother that the appeal lacks merit and should be dismissed. I, too, dismiss the appeal. C

I abide by consequential orders made in the lead judgment D including one on costs.

ADEKEYE JSC

I had read in advance the judgment just rendered by my learned brother N. S. Ngwuta JSC. The background facts of the case are as meticulously narrated in the lead judgment. I agree that the action of the plaintiff before the trial court would have been affected by the Limitation Law but for the fact that the trespass of the defendant was a continuous one. The cause of action accrued in 1971. The plaintiff pleaded in their statement of claim that in 1971 the defendants, their agents, servant, and privies without any just cause or consent of the plaintiffs in possession entered some parts of the disputed land with force. E F

The unauthorized intrusion of the defendant continued until the 29th of February, 1984 when the plaintiff instituted an action in court against them. The mere fact that the cause of action accrued in 1971 and the plaintiff did not commence an action in court until 1984 is not a solid ground to arrive at the conclusion that the action was statute barred. The provision of the Rivers State Limitation Law of 1988 which came into effect on 21/5/88 did not specify that it has a retrospective effect. Section 44 of the Law stipulates that:- G H

“Nothing in this Edict shall affect any action commenced be-

fore the commencement of this Edict.”

The claim of the plaintiffs/respondents is as follows: -

(1) N100,000 (One Hundred Thousand Naira) being special and general damages for trespass in that the defendants on or about February 1983 without leave or licence of the plaintiffs broke and entered A3, - Biogbolo land which has been in the peaceful possession and ownership of the plaintiffs from time immemorial and cut down economic trees and cash crops and have cleared portions of the said land for farming.

(2) Perpetual injunction restraining the defendants, their servants and or agents from further trespass on the land.

Trespass to land is the wrongful and unauthorized invasion of the private property of another. It is trespass to land provided the entry into the land of another by a person is not authorized. Trespass to land is rooted in a right to exclusive possession of the land allegedly trespassed. Trespass to land is therefore actionable at the instance of a person in possession of the land. *Okoko v. Dakolo* (2006) 14 NWLR pt. 1000 pg. 401, *Adepoju v. Oke* (1999) 3 NWLR, pt. 594 pg. 154, *Oyadare v. Ileyi* (2005) 7 NWLR, pt. 925 pg. 571, *Balogun v. Akanji* (2005) 10 NWLR, pt. 933 pg. 571, *Imona & Russel v. Niger Construction Ltd.* 1987, 3 NWLR, pt. 60 pg. 298. Only a person in possession of land at the material time can maintain an action for damages for trespass but when the issue is as to which of the two claimants has a better right to possession or occupation of a piece or parcel of land in dispute, the law will ascribe such possession and or occupation to the person who proves a better title thereto. Equally, when two parties are on land claiming possession, trespass can only be at the suit of that party who can prove that title to the land is in him.] *Umeobi V. Otukoya* (1978) 4 SC 33.

In their findings, the two lower courts appreciate that once there is a finding of trespass, the claim for damages must be awarded so as to restrain further trespass, and prevent multiplicity of action. The lower courts adjudged the appellants as trespassers as they were in occupation of the land without the permission and authority of the plaintiffs/respondents. The attitude of the Supreme Court to concurrent findings of fact by the two lower courts has always been that it will not disturb such findings unless they are shown to be perverse, or there is a substantial error apparent on the record of proceedings or

there is a miscarriage of justice. Where there is sufficient evidence supporting such concurrent findings this court will not disturb same. The findings of fact of the two lower courts are impeccable in the prevailing circumstance of the appeal. *Ibodo v. Enarofia* (1980) 5-7 SC, pg. 42, *Enang v. Adu* (1981) 11-12, SC pg. 25, *Njoku v. Eme* (1973) 5 SC, 293, *Akinola v. Oluwo* (1962) 1 SCNLR, pg. 352, *Are v. Ipaye* (1990) 2 NWLR pt.132 pg. 298, *Atuyeye v. Ashamu* (1987) 1 NWLR, pt.49 pg.267. B

With fuller reasons given by my learned brother N.S. Ngwuta, JSC in the lead judgment, I hold also that this appeal lacks merit and it is hereby dismissed. I abide the consequential orders in the lead judgment including the order of costs. C

PETER-ODILI JSC

This is an appeal against the judgment of the Court of Appeal, Port Harcourt Division, Rivers State of Nigeria which judgment was delivered on the 17th day of September, 2001. D

The Appellants were Defendants in the High Court and Respondents Cross-Appellants at the Court of Appeal whilst the Respondents were Plaintiffs/Appellants/Cross-Respondents. The Appellants' Cross-Respondents Appeal was allowed. The Appellants were dissatisfied with the judgment hence this appeal to the Supreme Court. E
The background facts of this appeal are as follows:-
FACTS: F

The case of the Plaintiffs/Respondents from their pleadings and evidence of witnesses are that they were the owners of a large parcel of land known and called "*AZI BIOGBOLO*" part of which they granted to the Appellants. The entire area of land was shown on Exhibit "A", the Respondents' Survey Plan NO. A 10/RU021/86 LD dated 20th March, 1986, whereupon the area granted to the Appellants was shown verged YELLOW, while the area into which the Appellants were alleged to have trespassed is shown verged '*BROWN*'. G
The Respondents' star witness, the 1st plaintiff who testified as PW1 confirmed that the appellants had their settlement, known as EDEPIE VILLAGE on the area verged BROWN. The Respondents through PW1 claimed that they gave the area verged GREEN on their survey plan for the building of a school in 1956 which area was within the H

area granted to the Appellants as customary Tenants but this Testimony was contradicted by their witness CHIEF VICTOR LAGUMA who testified as PW5, who confirmed that he was a councillor with Northern Ijaw County Council when the primary school was established at the Appellants' EDEPIE VILLAGE.

- B The Respondents further testified that the Appellants' act of trespass commenced in 1971, and that the said land dispute was previously the subject matter of SUIT NO. 82/44 before the native court and also SUIT NO. PHC/9/71 before the High Court, which
C went to the Court of Appeal and the Supreme Court and was decided in their favour. The processes, proceedings and judgments in the said previous suits SUIT No. 82/44, SUIT No. PHC/9/71 and Appeal No. FAC/PC/107078 were contained in Exhibit 'B' while Exhibit 'C' was the judgment of the Supreme Court in Appeal No. SC/104/82.
D There was no survey plan of the land which formed the subject matter of the dispute in SUIT No. 82/44 before the Native Court of EPIE-ATISSA. The Survey Plan No. OK/RSD2/71 dated 7th October, 1971 was tendered by the Respondents and admitted as Exhibit 'F' as the land in dispute in SUIT No. PHC/9/71. But the area allegedly granted
E to the Appellants as Customary Tenants in the 2 plans Exhibits 'A' and 'F' are at variance and completely different.

- The Appellants' case on the other hand was that they were the owners and in possession of the areas of land in question which said land they called 'AZI EDEPIE'. It was firmly established that the Appellants' settlement of EDEPIE VILLAGE and their farms and fish
F ponds were on the areas of land in dispute while the Respondents, 'BIOGBOLO' VILLAGE settlement was over two kilometers away from the said land in dispute and actually separated by three (3)
G villages lying in between contrary to the pleadings of the Respondents' PW2, EMOS ZIGWE testified that there was no pre-conditions or conditions attached to the grant of the land to the Respondents. The Appellants and their witnesses denied the acts of the trespass alleged to have been committed on the land occupying and using
H the same without any interruption or interference by the respondents' Survey plan NO. CTH/72/LD dated 7th September, 1956 was tendered and admitted in evidence as Exhibit 'L'. The appellants also tendered three (3) documents (Exhibit 'G' dated 18/8/80; Exhibit 'H' dated 23/1/81 and Exhibit 'J' dated 1/10/77) indicating that they

had prior to the commencement of the said suit been receiving monetary benefits from persons who sought their permission to use the said land or portions thereof.

The learned trial Judge found the appellants liable in trespass and awarded the sum of N6,000.00 as special damages against them. He however refused to grant the order of perpetual injunction sought by the respondents as he found that some of the acts of trespass complained of took place before 1971 but the Court of Appeal while allowing the cross-appeal on the award of special damages granted Respondents' Claim for Perpetual Injunction hence this Appeal herein.

On the 14th February, 2012 date of hearing, the appellants had adopted on their Brief, the Appellants' Brief settled by R.A. Ogunwole SAN and filed on 7/3/07 and a Reply Brief of 14/2/12. In the Appellants' Brief were couched three issues which are, viz:-

1. Whether the Appellants as Customary Tenants of the Respondents can be adjudged Trespassers on the land in dispute.

2. Whether the Court of Appeal was right in granting Perpetual Injunction against the appellant over the Area verged '*BROWN*' on the respondents' plan Exhibit '*A*'.

3. Whether the Court has jurisdiction to entertain the respondents claims for trespass and injunction which have become statute barred by virtue of Section 7 (1) (4) of Limitation Act of 1966 applicable to Bayelsa State.

The Brief of the Respondents settled by F. Chukwuemeka Ofodile SAN and filed on 7/4/09. In the Brief were framed two issues for determination which are as follows:-

1. Whether the Court of Appeal having regards to the pleadings, Evidence and the Law was right in upholding the Plaintiffs/Respondents' case on the trespass and also granting the relief of perpetual injunction.

2. Whether having regard to the Law/Principle of continuing trespass this action is statute-barred, (Limitation Act 1966).

Arguing the Appeal, learned counsel for the appellant said it was settled that the appellants were on the land in dispute as customary tenants subject to some conditions. That although the appellants' claim for the free use of the land in dispute was dismissed, the conditions of grant were confirmed by the Customary Court. He said from the findings of the two Courts below that both courts fell into error in

their respective judgments. That the respondents had failed to identify the exact area granted to the appellants as per Terms and Conditions contained in Suit No. 82/44 the Native Court judgment and so respondents had not made out a sufficient case to entitle them to perpetual injunction. He cited *Queen v. Uche* (1994) 6 NWLR (pt. 350) 329; *Simeon Ojiakor & Anor v. Obiawuchewuru & Ors* (1995) 9 NWLR (Pt. 420) 460; *Jason Umese & Ors V. Hyde E. Onuaguluchi & Ors* (1995) 9 NWLR (Pt. 421) 515 at 535; *Anthony Idesoh & Anor v. Chief Paul Ordia & Ors* (1997) 3 NWLR (Pt. 491) 17 at 2; *Adesanya v. Aderonwu & 2 Ors* (2000) 6 SC (Pt. II) 18; *Lordye v. Ihyambe* (2000) 12 SC (pt. 11) 126.

Senior counsel for the appellant further stated that the High Court and the Court of Appeal failed to look at the proceedings before the Native Court, the evidence taken and the judgment therein to confirm what exactly was decided. That it was the failure to do this that made it impossible for the High Court and the Court of Appeal to hold that the appellants are on the land in dispute as Customary Tenants of the respondents. Also that both the High Court and the Court of Appeal failed to hold that the onus of proof was on the respondents and they failed to discharge the burden. Again learned counsel for the appellants stated that the two Courts below failed to hold that the possession was an incidence of Customary Tenancy and could not be adverse possession which implication is that appellants would not be trespassers over the disputed land. He referred to *Richard Ezeanya & Ors v. Gabriel Okeke & Ors* (1995) 4 NWLR (pt. 388) 142 at 160 -161; *Chief Uriah Akpara Adonuba & Ors v. Benjamin Odiese & Ors* (1990) 1 NWLR (Pt. 125) 165 AT 178 - 179; *Olohunde v. Adegoju* (2000) 6 SC (pt. III) 113; *Ituama v. Akipe-lime* (2000) 7 SC (Pt. II) 24.

For the appellants was contended that the High Court and Court of Appeal did not properly consider the Exhibits tendered with a view to using them as hangers from which to assess the oral testimony given by the respondents. He cited *Umaru v. Oduogho* (1993) 6 NWLR (Pt. 217) 221.

On whether the court had jurisdiction to entertain the Respondent's Claim for trespass and injunction which had become Statute Barred, learned counsel for the appellant said the trespass which the respondents alleged happened in 1971 and the action was filed on

29th day of February 1984, 13 years when the trespass was committed. That under Section 7 (1) (4) of the Limitation Act 1966, the period for instituting an action for Tort of trespass was 6 years from the date on which the cause of action was founded but this action was commenced 13 years after the trespass. He referred to the evidence of PW1 on the trespass happening in 1971. He stated that it is B trite law that parties certainly cannot by consent or waiver confer jurisdiction on a court where there is none and that jurisdiction can be raised at any stage of the proceedings up to first determination of an appeal by the highest court of the land. He cited *Oyeniran v Egbetola* (1997) 5 NWLR (Pt. 504) 122 at 125; *Ogigie v. Obiyan* C (1997) 10 NWLR 179 at 185.

Mr. Ogunwole SAN of counsel went on to contend that though the issue of jurisdiction was not raised in the Statement of Defence the court will still entertain it. That a court will not close its eyes to the D question of jurisdiction or competence merely because an objection was not raised at the trial court by the defendant in his defence. That a court is competent when the condition precedent to the exercise of the jurisdiction has been fulfilled. He referred to *Mobil Producing Nig. Unlimited v. Lagos State Environmental Protection Agency & Ors.* (2001) 8 NWLR (Pt. 715) 489 at 493; *Madukolu v. Nkemdilim* E (1962) 1 All NLR 587 at 589.

In response, Mr. Ofodile SAN submitted for the Respondents that the Court of Appeal having regard to the state of pleadings and evidence, oral and documentary especially Exhibits “B”, “C”, “D” F and “F” was justified in upholding the High Court’s decision on the trespass. That it is trite law that once a party proves title, every other defence collapses in a case of trespass. He said the later submission of the appellants on customary tenancy would not stand as that fact of G customary tenancy was never pleaded by the defence and so it was not an issue joined or adjudicated upon by the two Court below. That what the defence pleaded was ownership/settlement from time immemorial. That the law has since been settled that a party would not be allowed to change his case at various stages of the proceed- H ings which is what the appellants are attempting to do by the novel defence of Customary Tenancy. He cited *Ehimare v. Emhonyon* (1985) 1 NWLR (Pt.2) 17 at 184; *Oredoyin v. Arowolo* (1989) 3 NSCC Vol. 20 Part 111.

For the Respondent was further submitted that the judgment of the Epie-Atissa Native Court was neither pleaded by the defence nor was it part of their case. That it was the plaintiffs who pleaded and tendered the said judgment which decision was a dismissal of the case of the appellants as plaintiff in that native court with costs. That
 B the said judgment Exhibit “B” did not confer any legal right or customary tenancy status on the present appellants over any piece of land whatsoever. He referred to the documents tendered as Exhibit “A” and “B” etc. That the issue of title and possessory rights cannot be
 C reopened or raised having been dealt with in previous proceedings and well concluded. He referred to the case of *Iyaji v. Eyigebe* (1987) 3 NWLR (Pt.61) 523; *Basil v. Honger* 14 WACA 596; *Agbasi v. Obi* (1998) 2 NWLR (Pt. 536) 1 at 18.

Mr. Ofodile SAN said the grant of the perpetual injunction was
 D justified in the circumstances, title and trespass having been decreed previously in favour of the plaintiffs/respondents. That it is the law that injunctions are granted to protect or support a legal right once infringed and to ensure future litigation or trespass. He cited *Kele v. Nwerekere* (1998) 3 NWLR (Pt. 543) 515 at 526; *Elendu v. Ekoaba*
 E (1998) 12 NWLR (pt. 578) 320 at 336.

On the issue of the application of the Limitation Act and the action being statute barred, learned counsel for the respondent said the exception to that law on limitation is as in this case where the
 F trespass complained of is of a continuing nature. He cited *Onagoruwa v. Akinremi* (2001) 13 NWLR (Pt.729) 38 at 61; *Adepoju v. Oke* (1999) 3 NWLR (Pt. 594) 154; *Onabanjo v. Efunpitan* (1996) 7 NWLR (Pt. 463) 756 at 767; *Konskier v. Goodman Ltd.* (1928) 1 KB 421.

G From the submission of counsel on either side, the summary of the two conflicting positions are:-

The appellants contended that the appeal should be allowed in that the two Courts below had failed to find the appellants are customary tenants of the respondents as per Native Court Judgment
 H in Suit No. 82/44. That the respondents plans Exhibits “A” and “F” are contradictory as to the area granted to the appellants and had failed to show the precise boundaries of the area granted to the appellants in the light of the Native Court judgment cited above, the implication being that the court cannot grant a perpetual injunction.

Also that since possession is an incidence of customary tenancy it cannot be taken as adverse to sustain either a trespass or the relief of injunction. Furthermore, learned counsel for the appellant are of the view that the two Courts below lacked jurisdiction as the claims of the respondents are statute barred in keeping with Section 7 (1) (4) of the Limitation Act 1966 applicable to Bayelsa State. That the issue of jurisdiction as in this case can be raised at any stage or any time. B

For the respondents were put forward that there had been previous litigation involving the parties viz: Suit No. 82/44. Native Court; BA/RP/2/44 Residents Court; PHC/9/71 High Court; FCA/E/107/28 Supreme Court SC/104/1982. That the trespass complained about and pleaded is a continuing trespass. That the plaintiffs/respondents' case on title (Previous/Present) based on documentary evidence is unassailable and that the issue of the appellants being Customary Tenants of the respondents was a novelty and completely strange to this case. That the action is not caught by the Limitation Law. C D

The trial High Court in its judgment stated its findings that the defendants/appellants did not specifically plead or controvert the assertion of the plaintiffs/respondents that title over the land had been confirmed in the previous suits mentioned above. Also found by the trial court is that the appellants occupation of the land in dispute was with the permission of the plaintiffs/respondents and no trespass was established. These findings were affirmed by the Court of Appeal when it held as per Ikongbeh JCA:- E

"Having regards to the state of the law, I have little difficulty in supporting the learned Judge in his decision in this regard. Trespass is unjustified interference by one person with the possession or right to possession of another of land. For the purpose of trespass there cannot be such thing as concurrent possession of land and by two contesting parties. Where both appear to be in physical occupation, the one who shows a better title to the land is the one in possession and who can maintain an action in trespass. The other is a trespasser. As the cross-respondents showed a better title to the land involved in the case, it follows that they were in possession and could maintain their action. As the cross appellants could not show a better title, the learned judge was justified in adjudging them trespassers." F G H

What is apparent in the case of the appellants is their current claim of customary tenancy and interestingly this was not borne out

in the pleadings or even in evidence. At the Courts below, what was put forward by the Appellants is ownership and the right to be on the land unhindered. This is in breach of the principle that one is not allowed to change course mid stream i.e. a litigant is not at liberty to change the case in which he is either the plaintiff or defendant introduce a new issue at will and at whatever point the party desires. I place reliance on *Ehimare V. Emhonyon* (1985) 1 NWLR (Pt. 2) 17 at 184; *Oredoyin V. Arowolo* (1989) 3 NSCC Vol. 20 (Pt. III).

Again the appellants attempt to lay claim to the land based on the previous litigation tendered as Exhibit “B” has not been sustained since the land in dispute in the previous suit is different from what is the basis of the current dispute. What the appellants posit are in line with the pleadings and evidence and the appellants cannot call up that earlier judgment to save their case herein. See *Iyaji v. Eyigebe* (1987) 3 NWLR (Pt. 61) 523; *Basil V. Honger* 14 WACA 596; *Agbasi v. Obi* (1998) 2 NWLR (Pt. 536) 1 at 18. The appellants had taken umbrage over the Court of Appeal’s award of the perpetual injunction against them which the trial court did not. I see no basis for the attack on the award as the Court below having found that title was in the respondents and trespass established against the appellants and being the remedy provided by law and the practice thereof to protect and support a legal right which had been infringed and a right in danger of further infraction, it was logical to grant the perpetual injunction. In other words it was ordered to settle the matter with the finality it deserved. I cited *Kele v. Nwerekere* (1998) 3 NWLR (Pt. 543) 515; *Elendu v. Ekoaba* (1998) 12 NWLR (Pt. 578) 320 at 336.

From the foregoing and the better articulated leading judgment of my learned brother, Nwali Sylvester Ngwuta JSC, I too dismiss this appeal and affirm the judgment of the Court of Appeal and its orders. I award N50,000.00 costs against the Appellants and in favour of the Respondents.

H