

**SUPREME COURT OF NIGERIA**  
FRIDAY 1<sup>ST</sup> FEBRUARY, 2013. SC. 19/2004  
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-  
ENEH, S. GALADIMA, C. B. OGUNBIYI,  
S. S. ALAGOA JJSC**

1. CHIEF AUGUSTINE NDULUE

2. DONATUS EZEANI

(For themselves and on behalf of

..... APPELLANTS

the People of Umuori

Community, Neni)

**AND**

1. IGWE MICHAEL O. OJIAKOR

2. CHIEF EMMANUEL OBI-EZEKWE

3. CHIEF PIUS O. ENEMUO

(For themselves and on behalf of

..... RESPONDENTS

the People of Adazi-Nnukwu)

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APPEALS - Grounds - Not raised from judgment - Fate - Such grounds and issues formulated therefrom - Are liable to be struck out (H1)

EVIDENCE - Documentary & oral evidence - Relationship - The latter throws more light on the former - As documentary evidence is used as hanger on which to hang oral evidence (H2)

EVIDENCE - Unchallenged evidence - Pleadings - Where party fails to give evidence - Or fails to challenge evidence of his adversary - He is deemed to have accepted such evidence (H3)

**FACTS**

Plaintiffs/respondents instituted this action against defendants/appellants at the High court of Enugu State claiming inter-alia, statutory right of occupancy over the parcel of land in dispute. Respondents entered appellants' land and broke down the structures put up by appellants without appellants' consent. This culminated in appellants claiming damages for trespass in suit No.0/65/34. Appellants had judgment entered in their favor. Respondents paid a part of the judgment debt and costs but were unable to pay the balance as a

result of which a writ of fieri facias was taken out against them.

Consequently, an agreement was reached whereby respondents were to pay the judgment debt and costs and in addition extend a portion of land being held by respondents to a point marked with a concrete pillar. However, appellants without the license of respondents trespassed into respondents' land. Consequently, respondents instituted this action. In a considered judgment, the court found in favor of respondents. On Appeal to the Court of Appeal, appellants' appeal was dismissed as lacking in merit. Thus, appellants have further appealed with leave to the Supreme Court.

### **ISSUE FOR DETERMINATION**

*"Whether having regard to the totality of the Plaintiffs' case as pleaded and proved before the trial court the Court of Appeal was right in dismissing the Defendants/Appellants' appeal."*

**HELD** (Unanimously dismissing the appeal per

**ALAGOA JSC)**

*APPEALS - Grounds*

**1. It is settled on the authorities that grounds of appeal against a decision must relate to the decision or judgment appealed against.**

**The list of authorities on this very important subject matter is in-exhaustive. The implication of this can only be that where grounds of appeal do not relate or arise directly from the judgment of the Court such grounds and the issues formulated from them are liable to be struck out.** (p. 779 C)

*Documentary & oral evidence - Relationship*

**2. Oral evidence comes in handy to throw more light on documentary evidence.**

**It is trite law as these authorities show that documentary evidence should be used as a hanger from which to hang oral evidence.** (p. 780 E)

*Unchallenged evidence - Pleadings*

**3. It is trite law that where a party in a case either fails to give**

***evidence in his case as disclosed in his pleadings or fails to challenge the evidence of his adversary or opposing party, he is deemed to have accepted the evidence of the opposing party notwithstanding the general traverse. There is a plethora of case laws on this subject matter.*** (p. 790 G)

### **REPRESENTATION**

Ben Osaka, Esq-, with R. v. Ezeani Lynda C. Ikpeazu Esq, for the Appellants

Emeka Ofodile, Esq, SAN, with Tobechukwu Nweke, for the Respondents

### **CASES REFERRED TO**

Saraki v. Kotoye (1992) NWLR (pt. 264) 156

Egbe v. Alhaji (1990) 1 NWLR (pt. 128) 546

Kalu v. Odili (1992) NWLR (pt. 340)

Uga v. Obiekwe (1989) 1 NWLR (pt. 99) 566

Standard Consolidated Dredging Co. v. Katoncrest Nig. Ltd. (1986) 5 NWLR (pt. 44) 791

Okoye v. NCF Co. Ltd (1991) 6 NWLR (pt. 199) 501

Oje v. Babalola (1991) 4 NWLR (pt. 185) 267

Osinupebi v. Saibu (1982) 7 SC 104

Western Steel Works v. Iron & Steel Workers Union of Nig. (No.2) (1987) 1 NWLR (pt. 49) 284

Eghareuba v. Osagie (2009) 18 NWLR (pt. 1173) 299

Fashanu v. Adekoya (1974) 6 SC 83

Kinder v. Military Gov. Gongola State (1988) 2 NWLR (pt. 77) 445

Mogaji v. Odofoin (1978) 4 SC 91

Ajibade v. Mayowa (1978) 9 & 10 SC 1

FCDA v. Naibi (1990) 3 NWLR (pt. 138) 270

### **STATUTE & RULES REFERRED TO**

Survey Law Cap.124 Laws of Anambra State 1963, s. 17

Supreme Court Rules, O. 8 rr. 2(3)(4)&(5)

### **LEAD JUDGMENT BY ALAGOA JSC**

This is an appeal against the judgment of the Court of Appeal Enugu Division in Appeal No. CA/E/97/99 delivered on the 7th

May, 2001 upholding the judgment of the High Court Awka, Anambra State Suit No. AA/39/90 delivered on the 6th October, 1997. In the said High Court, the present Respondents as Plaintiffs claimed against the Appellants as Defendants as per Paragraph 27 of their Amended Statement of Claim dated the 26th July, 1997 and filed on the 28th July, 1997 at page 90 of the Records, the following reliefs:

i. A declaration that the plaintiffs are entitled to the Statutory Right of Occupancy over all that piece and parcel of land known as Odongwo lying and situate at Adazi - Nnukwu more particularly shown and verged red in Survey Plan No. SC/AN/503/LD/90 prepared by Dr. C.O. Ezeanwusi, Licensed Surveyor with an annual rental value of N10.00.

ii. N50,000.00 (Fifty Thousand Naira) general damages for the acts of trespass committed by the defendants on the land in dispute.

iii. An order of perpetual injunction restraining the defendants, their heirs, agents and assigns from committing further acts of trespass on the land in dispute in this case.

The facts of this case as presented by the Respondents in their Amended statement of Claim are that they are natives of Adazi - Nnukwu town in Anaocha local Government Area of Anambra state and brought this action for themselves and on behalf of the people of Adazi - Nnukwu. The 1st Respondent (then 1st Plaintiff) is the traditional ruler of Adazi - Nnukwu. The Appellants (then Defendants) are natives of Umuori community Neni in the same Anaocha Local Government Area of Anambra State and were defending the action on behalf of themselves and people of Umuori community Neni. The land in dispute according to the Respondents in their pleadings is known and called Odongwo and is situated at Adazi Nnukwu and is more particularly shown and verged red in the survey plan No. SC/AN/503 LD/90 prepared by Dr. C. O. Ezenwere, Licensed Survey which said Survey Plan is attached to the Amended Statement of Claim. The land in dispute is bounded as follows:-

- a) On the North by the Idozu River
- b) On the South by a portion of Ndiagu land otherwise know as Agu Umuori shown in 1938 to the people of Umuori, Neni (Defendants) by the Plaintiffs in lieu of damages awarded by the Court against Adazi - Nnukwu people in Suit No. 0/65/34 PETER O. EZEANI

& 16 ORS V. NNOLI EZENE & 29 ORS.

c) On the West by the land of the people of Otta Village, Oraukwu and;

d) On the- East by Ndiagu Adazi - Nnukwu land on which lies the Girls secondary school, Adazi - Nnukwu).

The Respondents further averred that the land in dispute and the land lying south was formerly occupied by one Idozuka Appellants' ancestor who occupied same by virtue of a grant made to him by the people of Adazi - Nnukwu. Idozuka himself was a farm worker from Nri.

The Respondents also averred that during the time of inter tribal wars, the people of Umuori joined a group of slave raiders from Arochukwu to raid a village in Adazi - Nnukwu called Amaida na Umudiana, sacking the village, dispersing the inhabitants and capturing many of them as slaves which angered the Adazi - Nnukwu people who in a reprisal action waged war against the Umuori people, driving them out of Umuori town and re-possessing the land which they now called Agu Umuori Adazi - Nnukwu. Title to the land is thus vested on the Respondents by right of conquest and as owners in possession of the land in dispute, the Respondents have been exercising diverse acts of possession thereon such as farming, fishing on the Idozu River and tapping the Rafia palms thereon. The Respondents also rent out portions of the land in dispute to tenants. The Respondents went on further to aver that in 1924 one Peter Ezeani from the Appellants' community went to Adazi - Nnukwu and begged to be given a portion of Ndiagu land or Agu Umuori on the Agulu - Nnobi road to settle and carry on his business of palm oil trade.

The Respondents acceded to the request and granted the said Peter Ezeani a customary lease on payment of yearly tribute of eight hens, one fowl, (cock) and a pot of palm wine. A written memorandum of the transaction was later made between Chief Ojiakor the warrant Chief of Adazi - Nnukwu and Peter Ezeani.

It was the averment of the Respondents also that in 1911 six people from the Appellants community entered Agu Umuori land and were warded off by the Respondents. In 1912 the Appellants again entered into Agu Umuori land and constructed huts therein which prompted the Respondents to institute suit No.81/1912 AFORCHETA v. OBUORA against the Appellants at the Native Coun-

cil Court of Agulu claiming title to Agu Umuori land. The Respondents were awarded title to Agu Umuori Land by the then District officer S. W. Sporston and in the course of the hearing of the suit a prominent member of the Appellants' community by name Ifeanwusi gave evidence for the Respondents, admitting that the land in dispute in that case originally belonged to them but was lost to the Adazi Nnukwu people through conquest. One Obiora also of the Appellants' community also made a similar admission. It was also further averred by the Respondents that in 1916 another group of people from Umuori again trespassed on the land in dispute and one Aforcheta from the respondents' community again successfully maintained action against them. It was the further averment of the Respondents that the Appellants again tried unsuccessfully to repossess the land in dispute. One Enidom and Okafor for themselves and on behalf of Umuori people instituted an action (suit No.3 of 1931) against Ojiako and Nnoli on behalf of Adazi - Nnukwu people at the Provincial Court of Onitsha Province Holden at Awka for declaration of title to all that piece and parcel of land situate at Awka known as Umuori lands etc. The claim of the Appellants was dismissed by the Provincial Court. An appeal by the Umuori people was dismissed by the then Supreme Court on the 2nd September, 1932. During the hearing of the said suit No.31 of 1931, one Enidom Okafor who was a star witness of the Appellants admitted that there had been a previous litigation at the Agulu Native Court, the verdict of which was unsatisfactory to the Umuori people. In spite of subsisting judgment against the Appellants, they entered Agu Umuori again and began to erect buildings thereon which led to the arrest and prosecution of twenty persons who were convicted and sentenced in Charge No. 102/32 REX V. P. O. EZEANI & 19 ORS.

The Respondents further averred that on the 9th December, 1932, the people of Adazi Nnukwu entered Ana Umuori and broke down the structures put up by Umuori people without their consent. After the Umuori people served their sentences, they sued thirty people from Adazi- Nnukwu in suit No.0/65/34 - PETER O. EZEANI & 16 ORS V. NNOLI EZENE & 29 ORS. claiming damages for trespass to the goods which they had destroyed or looted in the incident of December, 1932. The people of Umuori had judgment entered in their favour on the 29th June, 1996 by Cecil Geriant Ames J. in the

sum of E1,127:11s:1d (one thousand, one hundred and twenty seven pounds, eleven shillings and one penny) as damages to the Umuori people. The people of Adazi of Adazi - Nnukwu paid a part of the judgment debt and costs but were unable to pay the balance as a result of which a writ of fieri facias was taken out against them. The Adazi - Nnukwu people as a result of this entered into an agreement with the Umuori people whereby both sides agreed that the Adazi - Nnukwu people were to pay '80300 in full and final settlement of the judgment debt and costs and in addition extend the land being held by Peter O. Ezeani to a distance Northwards to a point marked with a concrete pillar. It was averred by the Respondents that the Northern limit to this strip of land that was conceded to the Umuori people by the Adazi - Nnukwu people did not reach the Idozu River as the people of Adazi - Nnukwu reserved their Odongwo for their personal use. A Memorandum of Agreement was made dated 2nd March, 1938.

The Respondents further averred that the boundaries of the land conceded to the people of Umuori are as follows:-

- a) On the North by an Old Foot path
- b) On the South by the Nnobi - Agulu Road
- c) On the East by concrete Beacons Marked "Mark 1-9"
- d) On the West by the land of Oraukwu people.

It was also the averment of the Respondents that sometime in 1989, the Appellants without leave or license of the Respondents crossed their boundary with the Respondents and began to tap raffia palm from the Respondents' Odongwo. The Appellant also cultivated cassava on the land abutting the Respondents' Odongwo. The Respondents further averred that the Appellants have threatened to continue in their act of trespass unless restrained by Court and the said Appellants have even started laying claims to the land North of the Respondents, Odongwo hence the action at the High Court by the Respondents.

The Appellants joined issues with the Respondents by filing their Statement of Defence. The case went on to be heard as both sides called witnesses and exhibits were tendered. Addresses of Counsel on both sides were taken and in a considered judgment Olike J. found in favour of the Respondents. On Appeal to the Court of Appeal, the Appellants' appeal was also dismissed as lacking in merit

hence a further appeal with leave to this Court.

The Notice of Appeal dated the 19th July, 2001 and filed on the 20th July, 2001 consists of the following grounds devoid of particulars:-

1. The court of Appeal erred in law in admitting oral evidence to change and contradict a sixty year old written agreement.
2. The learned Judges (sic) of the Court of Appeal erred in law when they treated the case of the Plaintiffs/Respondents as proved because of the weakness of the case of the Defendants/Appellants.
3. The learned Judges (sic) of the Court of Appeal misconstrued and misinterpreted the 1938 Memorandum of Agreement Exhibits "G", "J" and "M" which stated that the boundary between Adazi and Umuori (plaintiffs/Respondents and Defendants/Appellants respectively) should be as delineated on the map attached with the written agreement.

This appeal came up to be heard on the 6th November, 2012. Ben Osaka appearing with R.V. Ezeani and Lynda C.

Ikpeazu for the Appellants adopted and relied on the Appellants' Brief of Argument and Reply Brief filed on the 4th March, 2005 and 17th March, 2006 respectively and urged this court to allow the appeal. Emeka Ofodile SAN appearing with Tobechukwu Nweke, for the Respondents drew this Court's attention to the Respondents' Brief of Argument filed on the 6th September, 2005 but deemed filed on the 1st July, 2008 which contains a preliminary objection to the competence of the Appeal. He adopted the said Respondents' Brief and urged this court to dismiss the appeal as lacking in merit. The preliminary objection is contained and argued at pages 4 and 5 of the Respondents' Brief of Argument.

With respect to Ground 1, which complained about the Court of Appeal admitting oral evidence to change or contradict a sixty year old document, the Respondents submitted in their Brief of Argument that what the Court of Appeal did was to highlight the sole remaining issue submitted by the Appellants for determination and also to highlight the parties' submissions. It was therefore submitted that Ground 1 as couched does not arise from the judgment of the Court of Appeal. The same argument was canvassed with respect to Ground 2.

It was argued that Ground 2 is irrelevant to the Court of

Appeal decision, unwieldy, argumentative, narrative and beyond the scope of the single issue adjudicated upon by the Court of Appeal and offends order 8 Rules 2 (3) (4) & (5) of the Supreme Court Rules.

With respect to Appellants' Ground 3 the arguments with respect to Grounds 1 and 2 were adopted. Respondents therefore urged this Court to dismiss the appeal or strike out the incompetent grounds and issues from which they were formulated. Appellants Reply to the Preliminary objection is contained at pages 3 - 6 of the Appellants Reply Brief of Argument.

With respect to the first ground of objection, Appellant has submitted that it was not Appellants' contention that the Court of Appeal called oral evidence. ***It is settled on the authorities that grounds of appeal against a decision must relate to the decision or judgment appealed against.*** See MRS. F. M. SARAHI & ANOR. V. N.A.B. KOTOYE (1992) NWLR (PART 264) 156; (1992) 11/12 SCNJ 26; EGBE v. ALHAJI (1990) 1 NWLR (PART 128) 546 at 590; KALU V. ODILI & ORS (1992) NWLR (PART 340) CHUKWUDI OKWUDILI UGA V. AMAMCHUKWU OBIKWE & ANOR. (1989) 1 NWLR (PART 99) 566 at 580, STANDARD CONSOLIDATED DREDGING CO. V. KATONCREST NIG. LTD. (1986) 5 NWLR (PART 44) 791; OKOYE V. NCF CO. LTD (1991) 6 NWLR (PART 199) 501.

In CHIEF KAFARU OJE & ANOR. V. CHIEF GANIYU BABALOLA & ORS (1991) 4 NWLR (PART 185) 267, this court per Nnaemeka Ago, JSC held that,

*"This Court has of course held in so many cases that issues for determination as well as argument in the appeal should be based on the grounds of appeal duly filed. Any part of a brief or argument which does not arise directly from at least one of the grounds of appeal filed is incompetent and ought to be disregarded."* See also OSINUPEBI V. SAIBU & ORS (1982) 7 SC 104 at Pages 110 and 111; WESTERN STEEL WORK & ORS v. IRON AND STEEL WORKERS UNION OF NIGERIA & ORS No.2 (1987) 1 NWLR (PART 49) 284 AT 304.

***The list of authorities on this very important subject matter is in-exhaustive. The implication of this can only be that where grounds of appeal do not relate or arise directly***

***from the judgment of the Court such grounds and the issues formulated from them are liable to be struck out.***

Ground 1 as couched certainly does not arise from the judgment of the court of Appeal and is liable to be struck out and is hereby accordingly struck out.

B Having dealt with the preliminary objection, I shall now proceed to determine this appeal proper and would wish to and do hereby adopt the issue for determination formulated by the Respondents as being all encompassing. It is “Whether having regard to the totality of the Plaintiffs’ case as pleaded and proved before the trial court the Court of Appeal was right in dismissing the Defendants’/ Appellants’ appeal.” The court below has said as follows, “The only remaining issue for determination as formulated by the Appellants is as follows:-

D “Whether or not the learned trial Judge was right in traveling outside the plain terms of the Memorandum of Agreement of 1938 with its attendant sketch map relied on fully by the parties for the determination of the boundary between the parties and tendered by the Plaintiffs as exhibit “G” and by the Defendants as exhibit “M” and which in turn determines which of the parties own the land in dispute.” It must be stated that the 1938 agreement/sketch - exhibits “G” and “M” cannot tell the full and complete story of the land in dispute between the parties in the absence of oral evidence. **Oral**

F **evidence comes in handy to throw more light on documentary evidence.** On oral evidence vis-a-vis documentary evidence there is a plethora of case law. See VINCENT U. EGHAREUBA v. DR. OROBOR OSAGIE (2009) 18 NWLR (PART 1173) 299; FASHANU v. ADEKOYA (1974) 6 SC 83; KINDER & 11. ORS v. THE MILITARY GOVERNOR OF GONGOLA STATE & ORS (1988) 2 NWLR (PART 77) 445. **It is trite law as these authorities show that documentary evidence should be used as a hanger from which to hang oral evidence.**

H The Respondents’ claim is for a declaration that they are entitled to Statutory Right of Occupancy over a piece or parcel of land known as Odongwo. This is a fallout of the 1938 memorandum of agreement copiously pleaded in the Respondents’ Amended statement of Claim at pages 21 - 25 of the Record, a detailed run down of which was given earlier in this write up. In proof of its claim the Respondents certainly would not have been expected to

be confined to the 1938 memorandum of agreement alone. A look at the Amended statement of Claim earlier highlighted in detail would show that the present Respondents as plaintiffs in the High Court relied in proof of the relief sought on several fundamental issues to aid them in proof such as the boundaries of the land in dispute, conquest of the Umuori people who were Defendants at the High Court by the Adazi Nnukwu people, various acts of possession by the Respondents over the land in dispute, several litigations between the Adazi Nnukwu people and the Umuori people and outcome of same, notably the litigations of 1912, 1916, 1931, 1932 etc reading up to the judgment of Cecil Geriant Ames (Acting Judge) in 1936 where the Respondents as Defendants having been sued by the present Appellants - the Umuori people and awarded damages in the sum of E7,127:11s:1d could not pay the entire judgment debt and had to enter into an agreement with the Appellants - the Umuori people to pay the sum of E300 in full and final settlement of the judgment debt and in addition to extend the land being held by Peter Ezeani a native of the Umuori village - the Appellants to a point marked with a concrete pillar. It was this that was said by the Respondents and Appellants to have culminated in the Memorandum of Agreement of 1938 and the sketch which is attached to the Agreement - exhibits "G" and "M". The sketch was never drawn to scale as would have been the case with a Licensed Surveyor. Lawyer Louis Mbanefo (late) who was later to become Sir Louis Mbanefo, Chief Justice of Eastern Nigeria drew up the said Agreement - exhibit. "G" for the parties. The Respondents as Plaintiffs in substantiation of their claim to the declaratory relief sought involved the services of a Licensed Surveyor who produced exhibit "A" and the Appellants did same and produced exhibit "H" through their Licensed Surveyor.

The Appellants as Defendants in the High Court also prepared a statement of Defence. It should thus be clear by now that the 1938 Agreement and Sketch were never meant to be considered in isolation to other pieces of relevant evidence. It is not only about exhibits "G" and "M" but about exhibits "A" and "H" and other exhibits which we shall soon come to see. It is also about the oral testimonies of witnesses assembled by the Respondents as Plaintiffs and Appellants as Defendants. All this constitute the totality of the Respondents' case as plaintiffs. It is thus clear and let it be said for the umpteenth time

that the Respondents' case at the High Court as can be deciphered from the Records was never on the 1938 memorandum of agreement alone. To prove its claim the Respondents as plaintiffs in the High Court called three witnesses - PW1 Dr. Charles Onuako Ezenwere, Licensed surveyor who prepared the Respondents Plan No. SC/AN B 503LD/90 of 25th September 1990 admitted as exhibit "A". His evidence is at pages 34 - 35 of the Record; PW 2 and star witness of the Plaintiffs/Respondents Igwe Michael Ojiakor who was then and probably still is the traditional ruler of the Plaintiffs/Respondents Adazi C Nnukwu people and also Adama III of Adazi Nnukwu whose evidence is at pages 35 - 46 of the Record; and PW3 Anthony Obiora, a farmer living at Adazi Nnukwu and whose evidence is at pages 47 - 49 of the Record. The Appellants called two witnesses DW 1 Chigbo D Ejike Okeke, a Licensed Surveyor who prepared the Appellants, Survey Plan - exhibit "H" and whose evidence is at pages 50 - 54 of the Records and DW2 Donatus Ezeani whose evidence is at pages 54-66 of the Records. The said DW2 Donatus Ezeani is the son of Peter Ezeani who the Respondents in paragraphs 9 and 10 of their Amended statement of Claim at pages 22 and 23 of the Records was E said to have in 1924 approached the Plaintiffs/Respondents Adazi Nnukwu community and begged to be given a portion of Ndiagu land or Agu Umuori to settle and carry on his business of palm oil trade.

F The Respondents were said to have acceded to his request and granted him a customary lease on the payment of yearly tribute of eight (8) hens, one fowl (cock) and a pot of palm wine. A written memorandum of the transaction was later said to have been made between Chief Ojiako the warrant Chief of Adazi Nnukwu and Peter G Ezeani. The same Peter Ezeani it will be recalled earlier in this write-up had with other Umuori (Appellants' people) sued thirty people from Adazi Nnukwu in Suit No. 0/65/94 PETER O. EZEANI & 16 ORS v. NNOLI EZENE & 29 ORS claiming damages for trespass to the goods destroyed or looted by the Respondents in 1932 leading H to the award of damages by Cecil Geriant Ames J. in the sum of E1,127:11s:1d in favour of the Defendants/Appellants which judgment debt could not be paid in full as a result of which, threatened by a writ of *fifa* the plaintiffs/Respondents had agreed to a settlement of the sum of '80300 (sic) in full and final settlement of the judgment

debt and costs and the extension of the land held by Peter Ezeani which eventually culminated in exhibits “G” and “M.” DW 2 is the star witness of the Appellants. It is from a totality of all these pieces of evidence, the exhibits and an evaluation of same that the trial High Court came to a judgment in favour of the Respondents against the Appellants which judgment was affirmed by the Court of Appeal. B  
 Could the High Court and the Court below have been right? Dr. Charles Onuako Ezenwere Licensed surveyor who produced exhibit “A” for the Respondents as Plaintiffs said his services were engaged by the Respondents to produce exhibit “A” and before he produced exhibit “A” he went to the land in dispute. The Respondents showed C  
 him a portion they called Odongwo. He inserted all the features he saw in exhibit “A”.

At the Northern portion verged red is an old concrete pillar planted to the ground. It is a pillar planted to the ground or projecting above the ground. It is a pillar made of cement and probably chippings and about six inches from the ground. D

There is also there what he inserted as Mark 1 boundary Beacon. There is a foot path on the left hand side from the old concrete pillar to Mark 1. Mark 1 boundary pillar runs south to Mark 9 E  
 boundary pillar. He based his insertions of Marks 1 - 9 on the marks existing on the ground and on a plan attached to an Agreement made in 1938. He saw the plan and studied it critically before he made the marks. He saw the compound of Girls Secondary School F  
 Adazi Nnukwu in the course of his survey and he went into it. Between the compound of the Girls Secondary School and the Odongwo is a concrete wall.

Under cross examination PW1 said he could not see the plan number of 1938 but it is part of the agreement. The disputants in the G  
 instant case he said, are the parties to the 1936 agreement. Suffice it to say that this evidence of PW1 was not discredited by cross examination.

PW2 Igwe Michael Ojiako’s evidence was very much in line with the averments in the Amended Statement of Claim of the Respondents. He said he knew the land in dispute called Odongwo and identified the Respondents’ Survey plan exhibit A.” He gave a detailed account of the conflicts and conquest of the Umuori people by the Respondents and tendered the Court judgments in all the previ- H

ous litigations between the Respondents and the Appellants to wit exhibit “B”, “C”, “D”, “E”, “F” - “I” and “G”. He went on to testify that the portion of land conceded by the Respondents to the Appellants which is in addition to the ‘80300 (sic) pounds judgment debt as a result of the judgment against the Respondents in suit No. 0/65/34 was marked with concrete pillars from Mark 1-9 which was shown to their surveyor when he came to survey the land. Under cross examination PW 2 said he was about 17 years old at the time some 57 years previous (sic, ago) having been born in 1921. He said the Respondents did not indicate Odongwo in exhibit “G” but tombo palms and that Tombo palms means Odongwo. He further said the Agreement established the boundary between the land, the Respondents gave the Appellants from Mark 1-9. He said exhibit “G” is correct and the Respondents have no problem with the Appellants on exhibit “G” but on Odongwo land. Exhibit “G” is the Agreement made in 1938 while exhibit “A” is their (Respondents’) Survey Plan. PW3 also testified and while being re-examined at page 48 of the Record said that in lieu of the court’s fine imposed on the Respondents, they (Respondents) gave the Appellants the area from Mark 9 to Mark 1 and that the cause of the trouble is that the Appellants went beyond Mark 1 and encroached on the Respondents’ portion. He went on further to say that from Mark 1 to the stream is not part of what the Respondents gave the Appellants in lieu of the court’s fine.

Appellants’ witnesses DW1 Chigbo Ejike Okeke a licensed surveyor and DW2 Donatus Ezeani gave evidence. Of their evidence this is what the Court of Appeal had to say at page 208 of the Record, “The two witnesses of the Appellants and the Appellants’ exhibit “H” were very much discredited and rightly too in my view by the lower court (High Court).

The learned trial Judge described exhibit “H” as “unreliable, obtrude, uncertain and useless made purposely to suit the defence of the Defendants.” The Court of Appeal then went on as follows:

*“And this is a case where the survey plan is very important. In fact having discredited the two witnesses of the Appellants and their survey Plan there is not much left to be put on the side of the imaginary scale for the Appellants.”*

We shall now go into so much of the evidence of DW1 and DW 2 that are germane to this discourse and may have elicited this

comment by the learned trial Judge. DW1 had stated in his evidence in chief as follows at page 51 of the Record. "Their Mark 1 does not correspond with my BB 273 in exhibit "G". Mark III in exhibit "A" corresponds with BB 263 in exhibit "H". Mark IV in exhibit "A" corresponds with BB 263 in exhibit "H". Mark V in exhibit "A" corresponds with BB 263 in exhibit "H". Mark VI in exhibit "A" corresponds with BB 261 in exhibit "H". Mark VII in exhibit "A" corresponds with BB 260 in exhibit "H".

Inside the small square where there is Mark VIII in exhibit "A" corresponds with BB 259 in exhibit "H". Mark IX in exhibit "A" corresponds with BB 252 in exhibit "H". It is only Mark 1 in exhibit "A" that does not correspond with BB 273 in exhibits "G" and "H". Under cross examination DW1 said as follows, "I saw the premises of the Girls Secondary School Adazi. I did not go looking into the compound of the school. My interest was the boundary line of my clients' land which has a boundary with the school. I saw the boundary of the Adazi Nnukwu Girls secondary School concrete walls of above 6ft. The Odongwo land in dispute has the Eastern boundary with Adazi Nnukwu Secondary School wall fence. I did not indicate the full length of the wall fence in my plan. I made my plan before I took a look at the sketch attached to exhibit "G". Asked whether his plan agreed with the Plaintiffs/Respondents' plan with regards to Mark 1 and the Odongwo land immediately North of Mark 1, DW1 said that it did not. The learned trial Judge while summing up the evidence of the Appellants' witnesses at Page 117 of the Record had made very numerous scathing remarks on the credibility and integrity of the Appellants and their witnesses. The learned trial Judge had noted that while proceedings were still on, an unknown man had surreptitiously inserted with biro the points Marks 1 - 9 in exhibit "H" the Appellants' plan to fit the evidence of the surveyor and the Appellants' failure to insert Marks 1 - 9 in their plan exhibit "H" raised the presumption that if they did it would be unfavourable to them. The trial Judge in the opinion of the Court below and I must also say that this is correct and absolutely right in holding that the Respondents' plan was more to be believed and accepted. DW2 Donatus Ezeani in his evidence under cross-examination was something else. At Pages 58 - 66 of the records, he admitted that it was not the Appellants' instruction to their Surveyor DW1 that Marks 1 - 9 should be accu-

rately reflected in their survey plan exhibit “H”.

He also admitted that the Appellants did not show DW1 the surveyor exhibit “M” before he produced exhibit “H” and that exhibit “H” was shown to the surveyor after he had produced exhibit “H”. On the question, “why did you show your surveyor exhibit “M” after he had produced exhibit “H”, his answer was - “We are peace lovers and allowed him to first do his work and produce a plan before we showed him exhibit “M”. This answer it will be noted is as evasive as it is unconvincing and did not fail to evoke the scathing remarks of the trial Judge. On the question “You did not find any physical pillar on the land? His reply was that the pillars Marks 1 - 9 were there. Still under cross examination DW2 said the Respondents’ plan was served on the Appellants before the Appellants’ Surveyor went on the land and that the Respondents’ plan contained Marks 9 D - 1 from bottom to the top. DW2 denied the averments in paragraphs 10 and 11 of the Plaintiffs/Respondents’ Amended Statement of Claim where the Respondents said that in 1911 six people from the Appellants’ community entered Agu Umuori land without the Respondents’ consent and were warded off only to enter the land again in 1912 where they constructed “huts therein leading to the Respondents’ institution of suit No. 81/1912 - AFORCHETA v. OBUORA against the Appellants at the Native Council Court of Agulu claiming title to Umuori land. The Respondents contended that they were awarded title to the Agu Umuori land by the District officer S. F W. Sporstson. DW2 said that event never happened and was mere fiction. DW 2 said he was 37 years old when his father died and he never mentioned litigation to him. He also denied having been told by any elderly man in Umuori of any previous litigation with the Respondents before the case of 1938 that ended in the Agreement of that year. He said he was aware of suit No. 0/65/34. He said the Respondents were able to pay E300 being part of the judgment debt in suit No. 0/65/34 and have never paid the balance not even by surrender of their (Respondents’) land when this was put to him as a question. He denied the claim of the Respondents that the entire land verged the question whether having become aware of the outcome of previous litigations by the Respondents and Appellants as shown in exhibits “B”, “C”, “D”, and “E” he denied the suggestion. He denied having given any instruction to DW1 regarding the posi-

tion of the School wall having seen Respondents' plan and the position of the wall in exhibit "A".

He said it was not correct that the Respondents reserved the Odongwo for their own use. He admitted that the Appellants did not show DW1 their Surveyor both the Respondents plan and the Sketch attached to exhibit "G". The learned trial Judge in his summing up of this evidence of DW 2 was irked by DW 2's denial of previous litiga-<sup>B</sup>tions between the Respondents and the Appellants even in the face of previous records tendered to that effect namely exhibits "B", "C", "D" and "E". Also worrisome is the fact that DW 2 denied the land concessions made to the Appellants in addition to the '80300 judg-<sup>C</sup>ment debt with respect to the action in 0/65/34. The learned trial Judge had also noted other inadequacies in the Appellants' case.

Their non compliance with the mandatory provision of Reg 31(G) Survey Regulations made under S.17 Survey Law (Cap 124) D Laws of Anambra State 1963 which provides as follows-

*"The original plan of a Survey shall show the following information-*

*G - The position and nature of all beacon and boundary marks whether permanent or temporary including all Government survey beacons to which connection has been made or the co-ordinates and description of some point shown on the plan which is tied to such beacons, also any measurements to permanent features which will assist in locating the marks on the ground."* The learned trial Judge's angst is better reproduced at page 115 of the record." *"This is a mandatory provision and should be complied with by any Licensed or Chartered Surveyor. It is therefore strange and contrary to the regulations that the Defendants' Surveyor DW1 who claimed he visited the land and saw the beacons (Marks 1 - 9) carefully omitted to insert them in exhibit "H" the plan he prepared for the Defendants. He preferred to distort the picture by inserting his own survey numbers as against what he saw on the ground. If indeed he was on the land and saw the beacons as he claimed he should have been put on enquiry, he should have asked questions; he should have inserted them. This he did not do."* The learned trial judge was not done yet and at Page 116 of the record, he descended on DW1, *"It is incredible as testified by DW2 Donatus Ezeani in cross examination that they did not show their surveyor (DW 1) the sketch (Exhibits "G",*<sup>E</sup><sup>F</sup><sup>G</sup><sup>H</sup>

*“M” or “J”) before he produced their plan exhibit “H”.*

The sketch it must be emphasized is the main feature in the contest, the anchor or prank of their defence. When asked again in cross examination why they failed to show their surveyor the Sketch before he produced their plan he gave a plausible reason that they are peace lovers, that they allowed him to first do his work before they showed him the sketch. The question then is having shown him the sketch what did the Surveyor do? The court may never know. He admitted that the Plaintiffs served them with their Statement of Claim and Plan with Marks 1 - 9 clearly inserted before they filed their Statement of Defence and Plan ... It is suspicious that of the nine pillars Marks 2 - 9 correspond with their insertions in the Plaintiffs’ plan exhibit “A” and their plan exhibit “H” but not Mark 1 which is the area in dispute.” The learned trial Judge made other findings of fact not all of which can be conveniently reproduced in this write up but which findings are quite compelling. It was on the basis of these findings that he adjudged the Respondents’ plan, pleadings and evidence on Mark 1 worthy of being accepted and accepted same. The learned trial Judge alluded to the demeanour of DW1 and DW 2, the two witnesses of the Appellants and said he did not believe them. Exhibit “H” as earlier said was discredited by the learned trial Judge.

I agree entirely with the findings of the lower court at page 207 of the Records that “the learned trial Judge reviewed extensively the evidence led by both sides of the dispute. He made his findings of fact. He carefully observed the principle for evaluating evidence as laid down by the Supreme Court in *MOGAJI v. ODOFIN* (1978) 4 SC 91 at 94, where the apex Court said:

*“In short before a judge before whom evidence is adduced by the parties in a civil case comes to a decision as to which evidence he believes or accepts and which evidence he rejects, he should first of all put the totality of the testimony adduced by both parties on an imaginary scale; he will put the evidence adduced by the Plaintiff on one side of the scale and that of the Defendant on the other side and weigh them together. He will then see which is heavier not by the number of witnesses called by each party but by the quality of the probative value of the testimony of those witnesses.”*

We have been able to see that the evidence of the Respondents’ witnesses were consistent, free flowing and credible and could

not be punctured by cross examination. In proof of their claim they led evidence as to the boundaries of the land in dispute, the conquest of their neighbouring Umuori community in various wars, acts of possession and details of litigation between them and the Appellants notably 1912, 1916, 1931, and 1992. PW2 Igwe Michael Ojiako did a yeoman's job and was consistent in his evidence. Through him exhibits "B", "C", "D" and "E" previous court actions between the Respondents and the Appellants were tendered. Before him PW1 Dr. Charles Onuako Ezenwere, licensed Surveyor had given evidence. He produced the Respondents' Survey Plan exhibit "A". He said Mark 1 boundary pillar runs south to Mark 9 boundary pillar. He went on to say that he based his insertion of marks 1 - 9 on the marks existing on the ground and on a plan attached to the 1938 agreement made by the Respondents and Appellants. His evidence is that of a competent and sincere surveyor, who wanted to do the correct thing because on seeing the plan he first studied it CRITICALLY before he made the marks. In carrying on with his assignment, he not only saw the compound of the Girls Secondary School but went into it. DW1 the surveyor of the Appellants on the other hand while coming face to face with the same Girls Secondary School did not see the need to go into it. While PW 1 complied with the mandatory provisions for all Surveyors stipulated in Reg 31 (G) Survey Regulations made under S.17 Survey Law (Cap.124) Laws of Anambra State, 1963 earlier reproduced in this write up, DW1, Appellants' Surveyor did not comply. Of nine pillars Marks 2 - 9 it was only Mark 1 that did not correspond with insertions in the Respondents plan exhibit "A" and the Appellants plan exhibit "H". DW 2 Donatus Ezeani could not even admit that before the incident leading to the 1938 Agreement, there had been previous litigations between the Respondents and the Appellants.

Not even the stark reality of the true position of things after exhibits "B", "C", "D", and "E" had been tendered by PW2 Igwe Ojiako was enough to sway him. He denied knowledge that certain land concessions had been made by the Respondents as a result of the judgment of Cecil Geriant Ames J. in June, 1936. His insistence was that the Respondents were still fully indebted to the Appellants. Little wonder that the Respondents' Counsel made mincemeat of the Appellants witness discrediting them during cross examination.

Attention must now be drawn to the general traverse made by the Appellants in answer to the Respondents pleadings. The Appellants had said in paragraphs 5 and 6 of their Statement of Defence as follows:-

B “5. The Defendants deny paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the statement of Claim and put the Plaintiff to strict proof therein.

C 6. In further answer, the Defendants aver that the concocted facts and fiction contained in the said paragraphs so denied are wholly and completely to the simple issue in this case to wit: the extent of the area verged green in the plaintiffs, plan and also verged violet in the Defendants' plan which said area is admitted by the Plaintiffs as belonging to the Defendants.”

D This is no doubt a general traverse. A look at the paragraphs of the Amended Statement of claim referred to by the Appellants namely Paragraphs 5 - 18 show that they cover quite a substantial chunk of the Respondents case in support of their claim - indeed the Respondents' case up to and including paragraph 18 of the Amended Statement of Claim where the Respondents averred as follows:-

E “18. In spite of the subsisting judgments against the people of Umuori they again entered into Agu Umuori and began to erect buildings thereon, twenty people from Umuori were consequently arrested and charged before the Onitsha Provincial Court sitting at Adazi Nnukwu for forcibly entry. They were all found guilty and sentenced to prison in Charge No.102/32 REX V. P.O. EZEANI & 19 ORS. The Plaintiffs shall at the hearing rely on the proceedings in Charge No.102/32.”

G It will be observed that earlier in this write-up the Respondents Amended statement of Claim was virtually reproduced. **It is trite law that where a party in a case either fails to give evidence in his case as disclosed in his pleadings or fails to challenge the evidence of his adversary or opposing party, he is deemed to have accepted the evidence of the opposing party notwithstanding the general traverse. There is a plethora of case laws on this subject matter.** See ALHAJI USMAN BUA V. BASHIRU DAUDA (2003) 13 NWLR (PART 838) 657; IMANA V. ROBINSON (1979) 3 - 4 SC 1; MERIDIEN TRADE CORPORATION V. METAL CONSTRUCTION (WA) LTD. (1998) 3 SC 20; SAMPSON

AJIBADE V. MAYOWA & ANOR. (1978) 9 & 10 SC 1 at Page 6; FEDERAL CAPITAL DEVELOPMENT AUTHORITY V. NAIBI (1990) 3 NWLR (PART 138) 270 at 281. The effect of this traverse in the Appellants Statements of Defence coupled with the denial, inability or unwillingness of the Appellants to give evidence on them notably their star witness DW 2 Donatus Ezeani is that the Appellants have accepted the evidence of PW2 Igwe Ojiako on these paragraphs and all the exhibits tendered by him in proof of the Respondents' claim notably exhibits "B", "C", "D" and "E".

The Appellants are also deemed to have admitted that the land in dispute and the land lying south was formerly occupied by one Idozuka, Appellants' ancestor upon a grant from the Respondents; that the Appellants joined some Arochukwu slave raiders to raid Amaida na Umudiana Village of the Respondents and sacked same; that the Respondents being angered drove them out of Umuori town and repossessed the land which they renamed Agu Umuori Adazi Nnukwu; that title to the land vests on the Appellants by right of conquest; that as owners in possession they have been exercising diverse acts of possession such as fishing, farming etc. They also rent out parts of the land as they wish; Respondents are also deemed to have admitted that in 1924 one Peter Ezeani from the Appellants' community went to the Respondents and begged to be given a portion of Ndiagu or Agu Umuori land to settle and carry on with his oil palm business trade; that the Respondents acceded to his request and granted him a portion of the land in respect of which he entered into a written memorandum with Chief Ojiako the then warrant Chief of the Respondents, community.

One only needs to look at the Amended Statement of Claim of the Respondents substantially reproduced earlier in this write-up to appreciate the extent of the Appellants' admission. I think that the court below was right in holding that there has been a Proper appraisal of the entire evidence by the learned trial Judge.

On proper attitude of an Appellate Court to findings of fact by the trial court, this Court per Belgore JSC, in AMOS BAMGBOYE & ORS. V. RAIMI OLAREWAJU (1991) 4 NWLR (PART 184) 132 held as follows:-

*"Once a court of trial has made a finding of fact, it is no more within the competence of the Appellate Court to interfere with those*

*findings except in certain circumstances. The real reason behind this attitude of Appellate courts is that the court hearing the appeal is at a disadvantage as to the demeanour of the witnesses in the lower court as they are not seen and heard by the Appellate court. It is not right for the Appellate court to substitute its own eyes and ears for those of the trial court which physically saw the witnesses and heard them and thus able to form opinion as to what weight to place on their evidence."*

See also FRANK EBBA v. WARRI OGODO & ANOR. (1984) 4 SC. 84; SOLEH BONEH OVERSEAS NIG. LTD v. AYODELE (1989) 1 NWLR (PART 99) 549; CHIEF VICTOR WOLUCHEM V. CHIEF NELSON GUDI & ORS. (1981) 5 SC 291 at 295; AWOTE v. OWODUNNI (1986) 5 NWLR (PART 46) 941.

This is a case that first came up before the High Court of Justice Awka in Anambra state where judgment was given in favour of the present Respondents who were then plaintiffs against the present Appellants as Defendants. The defendants as Appellants appealed to the Court of Appeal Enugu which dismissed their appeal necessitating a further appeal to this court.

The attitude of the Supreme Court to concurrent findings of two lower courts has been stated and restated in a plethora of decided cases. On the position of the Supreme Court on the concurrent findings of two lower courts, this court in TAIYE OSHOBOJA V. ALHAJI SURAKATU AMIDA & ORS. (2009) 18 NWLR (PART 1172) 188 held as follows:-

*"The attitude of this court in the circumstances has been stated and restated in a line of decided authorities. In other words and as a matter of policy which is now firmly established, this court will not disturb or interfere with the concurrent findings of two lower courts unless in exceptional and very clear circumstances. These include inter alia substantial error on the face of the records or the decision is not supported by evidence or the decision is reached on the application of wrong principles of law or procedure which had been violated or inadmissible evidence or no evidence at all or in respect of findings which are perverse, unreasonable or unsound."*

See also LAYINKA & ANOR. v. MAKINDE (2002) 5 SC (PART 1) 109 at 113; OGBU V. WOKOMA (2005) 14 NWLR (PART 944) 118; CHIKWENDU v. MBAMALI & ANOR. (1980) 3 & 4 SC 11;

ENANG v. ADU (1981) 11/12 SC 25 at 42; EMMANUEL OKPALA IGWEGO & ORS V. FIDELIS OJUKWU EZEUGO & ANOR (1992) 6 NWLR (PART 249) 561; ALADE V. ALEMULOKE (1988) NWLR (PART 69) 207.

The Appellants in their Brief of Argument at page 36 have drawn the attention of this court to the case of MOJEKWU V. IWUCHUKWU (2004) 11 NWLR (PART 883) 196 at 219 - 220 where this court stated thus:

*"In order that concurrent finding of fact may stand the test and enjoy respect they must be such that can justifiably be defended primarily from the available evidence. Such findings notably foster a miscarriage of justice and this court will not be inhibited from entertaining an appeal from them and setting them aside."*

This is very well said, and it also represents the law.

The present appeal falls short in more ways than one. It is bereft of merit and ought to fail. It fails and is hereby dismissed and the judgment of the Court of Appeal Enugu Division in Appeal No. CA/E/97/99 affirming the judgment of Olike J. of the High Court Awka in suit No. AA/39/90 delivered on the 6th October, 1997 is hereby affirmed.

I have considered the fact that the Respondents Adazi Nnukwu and the Appellants Umuori or Umunri communities are contiguous and in the same local Government Area and there is the need for them to maintain and live in peace. I therefore make no order as to costs.

### **ONNOGHEN JSC**

I have had the benefit of reading in draft the lead judgment of my learned brother ALAGOA, JSC just delivered. I agree with his reasoning and conclusion that the preliminary objection has merit and should therefore be sustained.

On the merit of the appeal it is very clear from the issues before the lower court and this Court that the appeals before the courts are primarily on the facts, and that this appeal is on the concurrent findings of fact by the lower courts. It is a settled attitude of this Court on concurrent findings of fact, which is also a matter of policy, that the Court will not disturb or interfere with the concurrent

findings of the lower courts unless in exceptional and very clear circumstances, which include, amongst others, substantial error on the face of the record or that the decision is not supported by evidence or the decision is reached on the application of wrong principles of law or procedure which had been violated, or inadmissible evidence  
 B or no evidence at all or in respect of findings which are clearly perverse, unreasonable or unsound, see *Layinka vs Makinde* (2002) 5 S.C (pt.1) 109; *Obu vs Wokoma* (2005) 14 NWLR (pt. 944) 118; *Enang vs Adu* (1981) 11/12 S.C 25 at 42; *Oshoboja vs Amida* (2009) 18 NWLR (pt 1172) 188 etc, etc.

C I have carefully gone through the briefs of argument and the record and I agree with my learned brother, *ALAGOA, JSC* that appellants have not brought their case within any of the exceptional circumstances recognised by law to warrant this Court interfering with  
 D the concurrent findings of fact made by the lower courts. In the circumstances, the judgment of the lower court cannot be disturbed.

I therefore agree that the appeal lacks merit and subject to an order of dismissal and consequently order accordingly.

E I abide by the consequential orders made in the said lead judgment including the order as to costs. Appeal dismissed.

### ***CHUKWUMA-ENEH JSC***

F I have been opportuned to read in draft the judgment of my learned brother *Alagoa JSC* in this matter with which I agree entirely and that there is no merit in the appeal and should be dismissed.

This is an appeal based on facts and my learned brother has carefully gone into the facts of this matter before arriving at his  
 G findings and conclusions.

Besides, there is a concurrent findings of the two lower courts in this matter in favour of the respondents which the appellants have not been able to displace by showing that the concurrent findings are not supported by evidence as per the record and are otherwise  
 H perverse or have occasioned a miscarriage of justice. See: *Chukwendu v. Mbamali & Ors.* (1980) 3/4 SC 11, and *Okulate v. Awosanya* (2000) 1 SC 107.

Therefore, there are no grounds for the complaints raised by the appellants in this appeal, which I also dismiss. I abide by the or-

ders contained in the lead judgment.

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### **GALADIMA JSC**

I have had the privilege of reading in draft the Lead Judgment of my Learned Brother ALAGO JSC. I agree with his reasoning and conclusion leading to the dismissal of the appeal. B

This appeal is against the judgment of the court of Appeal Enugu in Appeal No. CA/E/97/99 delivered on 7/5/2001 upholding of the trial High court, Anambra state in suit No.AA/39/90 delivered on 6/10/1997. In that court the present Respondents, as Plaintiffs C claimed against the Appellants as Defendants as per paragraph 27 of their Amended statement of claim for the following reliefs:-

(i) A declaration that the plaintiffs are entitled to the Statutory Right of Occupancy over all that piece and parcel of land known D as Odongwo lying and situated at Adazi-Nnukwu more particularly shown and verged red in Survey Plan No. SC/AN/503/LD/90 prepared by C.O. Ezeanwusi, Licensed Surveyor with an annual rental value of N10.00.

(ii) N50,000.00 (Fifty Thousand Naira) general damages for E the acts of trespass committed by the defendants on the land on dispute.

(iii) An order of perpetual injunction restraining the defendants, their heirs, agents and assigns from committing acts of trespass F on the land in dispute in this case.”

The fact of this case has been meticulously set out in the lead judgment.

The Appellants joined issues with the Respondents by filing their statement of Defence. The case was heard on trial. G

Both sides called witnesses and tendered exhibits. After the addresses of Counsel for the parties, in a considered judgment, the learned trial judge OLIFE J. found in favour of the Respondents. On appeal to the lower court the Appellants’ appeal was also dismissed as lacking in merit. Hence, a further appeal with the leave of this H Court was lodged in this court.

Learned Counsel for the parties filed and exchanged their respective briefs of argument and at the hearing of the appeal same were adopted and relied upon.

Learned Counsel for the Respondents drew our attention to the Respondents' Brief of argument which contains a Preliminary Objection to the competence of the Appeal. The Preliminary Objection is contained and argued at pages 4 and 5 of their Brief of Argument.

B I agree that Ground of the ground of Appeal as couched does not arise from the judgment of the court below and is liable to be struck out and it is accordingly struck out. On the merit of this Appeal, the issue identified by the Respondents is all encompassing. It is as follows:

C *"Whether having regard to the totality of the plaintiffs' case as pleaded and proved before the trial court, the Court of Appeal was right in dismissing the Defendants/Appellants' appeal."*

D In the lead judgment, my learned brother has carefully considered the arguments and submissions of the respective counsel for the parties. The details of his reasons for dismissing the appeal have been lucidly set out. The issues before the court below and this court are primarily on facts. This appeal is primarily on concurrent findings of facts by the two lower courts. This court has decided in a number of cases that it will not disturb or interfere with the concurrent findings of the lower courts, unless in exceptional circumstances. These include substantial error on the face of the records or that the decision is not supported by evidence on record. Also where the decision of the Court is reached on the application of wrong principles of law or procedure which had been violated, or in a case of inadmissible evidence or absence of any evidence at all or in respect of findings which are clearly perverse, and unreasonable. See *OBV v. WOKOMA* (2005) 14 NWLR (pt. 944) 118 and *ENANG v. ADU* (1981) 11/12 SC 25 at 42.

G In the instant case, the appeal fails as it is not within the ambit of the above policy of this court. Upon a careful consideration of the argument of the Appellants and the Respondents in their brief and from the record of proceedings, the Appellants have not brought H their case within any of the exceptional circumstances stated above, to urge this court to interfere with the concurrent findings of facts by the trial High Court and the Court of Appeal.

In summary, I therefore agree that the appeal lacks merit and it is dismissed. I abide by the consequential orders made in the lead

judgment, including the order as to costs.

### OGUNBIYI JSC

This is an appeal against a concurrent finding of both trial High Court Anambra State and Court of Appeal Enugu. The judgment of the trial court was delivered on 6th October, 1997 while that of the lower court was dated 7th May, 2001. The judgment was in favour of the Respondents. B

The appellants being dissatisfied with the concurrent decision of the lower court have initiated this appeal by filing Notice and Grounds of appeal containing 3 grounds, from which two issues were formulated as follows:- C

1) Whether based on a proper appreciation and interpretation of Exhibits G, J and M, the Court of Appeal was right in sustaining the decision of the High Court that the land in dispute did not form part of Appellants' land but was reserved "by the Respondents for their own use." D

2) Whether having regard to the case of the party on whom the onus lies and the criteria for establishing a case of declaration of title, the Court of Appeal was right in sustaining the decision of the High Court granting the Respondents' claims. E

On behalf of the Respondents, only one issue was formulated. Also embedded and submitted upon in the respondents' brief of argument is a preliminary objection against the competence of grounds 1, 2 and 3 of the appellants' grounds of appeal. F

On a collective deduction of the preliminary objection raised, I agree with my learned brother's reasoning and conclusion that same should and is sustained in part. In other words, ground 1 of the grounds of appeal which does not arise from the judgment of the lower court is obviously incompetent and is therefore struck out. G

On the merit of this appeal however, it is relevant to restate that the determinant consideration of the claim was predicated on Exhibits M, G and J which were the 1938 Memorandum of Agreement entered into by the parties which the trial court found as a fact at pages 118 and 119 of the record. This is what the trial court held and said:- H

*"For the avoidance of doubt and for clarity, Exhibits M, G and*

*Jare the same that is the 1938 agreement and sketch. But Exhibit H, the defendant's plan is of doubtful credibility, distorted and not based on what is physically on the ground today. It is not a surprise that the surveyor (DW1) claimed he did not see Exhibits M, G or J before he prepared Exhibit H (the defendants' plan). I carefully watched his*  
 B *demeanour and DW2 give this piece of evidence in the witness box and do not believe them...*

*It is the plaintiffs' case that mark 1 is on dry land before the swamp with cluster of tombo palms north of mark 1 to Idozu River. I*  
 C *believe them, and accept their plan Exhibit A as what is on the ground today...*

*I have already accepted the plaintiffs' plan; Exhibit A as reflecting or a mirror of what is on the ground today."*

There is no appeal whatsoever against the findings of fact by  
 D the trial court supra. The lower court did affirm the findings of fact by the trial court. In the face of the two concurrent findings by the two lower courts therefore, the law is well settled that where the trial court has shown a proper appraisal of evidence, a Court of Appeal ought not to embark on a fresh appraisal of the some evidence in order to  
 E arrive at a different conclusion. See Balogun V. Agboola (1974) 10 SC 111; Woluchem V. Gudi (1981) 12 N.S.C.C page 216 per Nnamani JSC. This is the situation with the case at hand and as rightly submitted by the learned counsel representing the respondents, the  
 F lower court creditably carried cut its role as an appellate court by reviewing the decision of the trial court as it is on record and ensuring it was in line with settled legal principles. In otherwords, the decision is neither perverse nor is it against the natural drift of evidence.

My learned brother Shenko Stanley Alagoa, JSC in my view  
 G rightly sustained the judgment of the lower court which is also endorsed by me in the same terms as the lead judgment inclusive of the order made as to costs.

H