

SUPREME COURT OF NIGERIA
FRIDAY 10TH MAY, 2013. SC. 216/2004
**CORAM:- C. M. CHUKWUMA-ENEH, M. S. MUNTAKA-
COOMASSIE, S. GALADIMA, C. B. OGUNBIYI,
S. S. ALAGOA, JJSC**

SULE EYIGEBE APPELLANT
AND
MUSA IYAJI RESPONDENT

APPEALS - Issues - Formulation of must be from grounds of appeal
- Which grounds must derive from ratio of the judgment appealed
against - Otherwise the grounds are incompetent (H1)

SUPREME COURT - Appeals - Jurisdiction - Supreme Court does
not hear appeals from State High Courts - But those from the Court
of Appeal (H2)

COURTS - Party - Pleadings - Unclaimed relief - It does not lie within
the power of court - To grant a relief not claimed by a party in his
pleadings (H3)

PLEADINGS - Averments - Proof - Averments do not take the place
of evidence - Since whatever facts that are pleaded - Must be estab-
lished by evidence in support (H4)

COURTS - Jurisdiction - Limitation - Courts are bound by the Con-
stitutional provision - Wherein their powers of operation are defined
- And any act outside its powers is a nullity (H5)

APPEALS - Meaning - Is continuation of case instituted at trial court
- And final end of appeal cannot produce a relief - Different from
that which originated at trial (H6)

FACTS

This land dispute between the parties started at about the year
1960 at Ajaka Area Court, Kogi State and went up to the Supreme
Court. The Supreme Court delivered its judgment in 1987 in Suit

No. SC. 232/1984, wherein plaintiff/respondent was declared to be the owner of the land. Following the judgment, defendant/appellant appeared to have accepted his position as a tenant to respondent in accordance with the rights of the parties based on the said Supreme Court judgment. However, in the year 1999, respondent instituted suit No. CV. 194/99 at the Grade 1 Area Court Ajaka, claiming the enforcement of the Supreme Court of Nigeria judgment. The court, while considering the evidence by the parties also took into consideration the said judgment which was admitted as exhibit D2.

The court dismissed respondent's claim. Dissatisfied, respondent appealed to the Upper Area Court Idah, Kogi State. The court in its judgment reversed the decision of the Ajaka Area Court. It allowed the appeal and ordered forfeiture of the land against appellant. Appellant being dissatisfied appealed to the High Court of Kogi State Idah. The court dismissed the appeal. It however made orders 3 and 4 bordering on possession, which modified the judgment of the Upper Area Court Idah. Respondent was not satisfied with the modifications made by the High Court. Hence, he lodged appeal at the Court of Appeal Abuja Division, challenging the said orders. The court allowed the appeal and set aside the two orders. Aggrieved, appellant filed appeal at Supreme Court.

ISSUE FOR DETERMINATION

"Whether the Court of Appeal was right in setting aside orders 3 and 4 of the High Court Idah, which was the sole complaint before the court?"

HELD (Unanimously dismissing the appeal per
OGUNBIYI JSC)

APPEALS - Issues - Formulation of

1. For purpose of expatiation, I hasten to state that the law is very well settled in plethora of authorities that issues must be formulated from grounds of appeal which in turn must also derive from ratio decidendi of the judgment appealed against. In other words grounds of appeal which are alien to the judgment appealed are incompetent and can in no way produce competent issues for determination and ought to be struck

out. (p. 2335 E)

SUPREME COURT - Appeals - Jurisdiction

2. The law is well crystallized that it does not lie within the jurisdiction of this court to hear appeals from the State High Courts, but those from the Court of Appeal. (p. 2337 C)

Party - Pleadings - Unclaimed relief

3. It is pertinent in this respect to relate and closely review the pleadings as well as the evidence given by both parties at the trial court. This is apt especially where the law is well settled that it does not lie within the power of a court to grant a relief not claimed by a party in his pleadings.

This court while laying down the principle of law in the foregoing authorities for instance affirmatively held that the court is without power to award a relief which a claimant did not ask for.

Similarly, a relief which is inconsistent with the claim should not be granted because the court should not be seen as a charitable institution. It would further follow deductively that a defendant should not also be awarded a remedy which he did not ask for either by way of a counter claim or a cross-appeal. (p. 2339 H)

PLEADINGS - Averments - Proof

4. The law is further well settled that averments on pleadings do not take the place of evidence. In otherwords whatever facts are pleaded, they must be established by evidence in support thereof. (p. 2340 D)

COURTS - Jurisdiction - Limitation

5. The courts are also bound by the Constitutional provision wherein their powers of operation and coverage are well and clearly defined and spelt out. The provisions serve a constant check and surveillance on the courts which must not be seen to act without powers or jurisdiction. Any such exercise of power will have no binding force as it is from inception a nullity. (p. 2342 D)

APPEALS - Meaning

- 6. The law is also trite and well settled that an appeal is a continuation of the case instituted at the trial court. The final end result of an appeal cannot reflect or produce a relief different from that which originated at the trial inception.**
(p. 2342 E)

REPRESENTATION

- P. O. Okolo Esq., with Usman Sani Esq., for the Appellant
Ayo Jonathan with Omoniyi Sunday Esq., and Sabo Ibrahim Esq.,
for the Respondents

CASES REFERRED TO

- Awuse v. Odili (2004) 8 NWLR (pt. 874-876) 494
Odife v. Aniemeka (1992) 7 NWLR (pt. 251) 25
Onye v. Kema (2003) 1 WLR 131
K.T.O. v. Unicalabar (2004) 4 SCNJ 121
Adake v. Adamu Akun (2003) 7 SCNJ 59
Edebiri v. Edebiri (1997) 49 LRCN 919
Odukwe v. Ogunbiyi (1998) 6 SCNJ 102
Ogboni v. Ogah (1996) 6 SCNJ 140
Taiwo v. Akinwunmi (1975) 4 SC 143
Ladega v. Akinloye (1969) NSCC 409
Obioma v. Olomu (1967) NMLR 245
Chikere v. Okegbe 2000 (7 SC NJ) 128
Liman v. Mohammed (1999) 6 SCNJ 142
Awoniyi v. ARMOC (2002) 6 SCNJ 141
Obayagbona V. Obazee (1972) 5 SC 159

LEAD JUDGMENT BY OGUNBIYI JSC

- The dispute which culminated into this appeal has a very long and chequered history. It is in respect of a parcel of land in Kogi State called 'Ikare Anama' situate at Ajaka Kogi State. It is very intriguing to also state that the dispute started about 1960 at Ajaka Area Court, and went up to the Supreme Court which judgment was handed down only in 1987 in which the present respondent as plaintiff was declared the owner of the land.

Following the judgment, the appellant in this appeal appeared to have accepted his position as a tenant to the respondent in accordance with the rights of the parties based on the judgment of the Supreme Court. However, on the 21st December, 1999, the respondent instituted a suit No. CV. 194/99 at the Grade 1 Area Court Ajaka, Kogi State and claimed the following relief:-

“Enforcement of the Supreme Court of Nigeria judgment in case No. SC. 232/1984 decided in favour of the plaintiff on 10th July, 1987 by ordering the defendant Sule Eyigebe, his agents, privies and tenants to vacate the land known as ‘Ikare Anama’ situate at Ajaka.”

The manner the claim was phrased, although confusing, was nevertheless interpreted by the Area Court as one for forfeiture. The court, while considering the evidence by the parties also took into consideration the judgment of the Supreme Court admitted as exhibit D2, and it accordingly dismissed the plaintiffs’ claim. Dissatisfied, the respondent brought an appeal against the judgment of Ajaka Area Court before the Upper Area Court, Idah, Kogi State. On 17/9/2001, the Upper Area Court in its judgment reversed the decision of the Ajaka Area Court. It allowed the appeal and ordered forfeiture of the land against the present appellant, who was obviously dissatisfied with the judgment and hence appealed against it before the High Court, Kogi State sitting at Idah.

On 8/3/02, the High Court in its appellate jurisdiction dismissed the appeal by the appellant. It however proceeded to make some orders in modification of the judgment of the Upper Area Court Idah to read as follows:-

1. The defendant/appellants caretaker-ship over the land or portion thereof known as ‘Ikare Anama’ ceased henceforth.
2. The defendant/appellant shall henceforth cease from-
 - a) tampering with, fiddling about with, or harvesting any economic trees on the said land.
 - b) alienating or dealing in whatever form or manner with the said land or portion thereof.
3. The defendant/appellant shall retain-
 - a) his abode, accommodation or dwelling place for having been in occupation for a long period.
 - b) his present farm house or farmstead.

4. *Those who as at the date of this judgment had been apportioned plots on the said land whether or not covered by C of Os are to retain such possession...*"

The respondent having been earlier awarded the ownership of the land, subject of litigation, by the Supreme Court since 1987, was obviously alarmed by the subsequent decision of the High Court; as a consequence, he therefore lodged an appeal to the Court of Appeal Abuja Division by challenging orders 3 and 4 made supra for being draconian and erroneous. The lower court on 2nd July, 2003, in delivering its judgment allowed the appeal and set aside the two offending orders; hence this appeal by the appellant now before us.

The notice of appeal containing five grounds was filed on the 17th September, 2003. In compliance with the rules of this court, the appellant's brief of argument filed on the 23/11/2004 was settled by Chief B. C. Oyibo of counsel while that of respondent filed on 31/1/2005 was also settled by Ayo Jonathan Esq. On the 12th February, 2013 when the appeal was argued, both counsel representing their clients adopted their respective briefs of arguments. While P. O. Okolo, Esq. on behalf of the appellant urged before us that the appeal be allowed, Ayo Jonathan representing the respondent however submitted in favour of dismissing the appeal. Counsel further applied to withdraw their preliminary objection which submission was incorporated in the respondent's brief of argument. The learned appellant's counsel as a consequence also applied to withdraw the reply brief filed in response to the preliminary objection raised. Both the preliminary objection and the argument advanced in respect thereof as well as the response by the appellant having been withdrawn without any objections are all hereby struck out.

From the five grounds of appeal raised, three issues were formulated on behalf of the appellant and same are reproduced hereunder:-

1. *Whether the court below was right when it held that the Relief against forfeiture of the Appellant's tenancy granted by the Kogi State High Court's consequential orders 3 and 4 was not solicited for by any of the parties and was granted functus officio.*

2. *Whether it can rightly be held that the court below had afforded a fair hearing to the Appellant on his case before it when it had failed to consider or to properly consider (1) relevant evidence*

of Kadiri Ademur the appellant's sole witness requesting for Relief against forfeiture of the Appellant's tenancy, (2) the contents of Exhibit D2 tendered by the said Kadiri Ademur (3) Appellant's sole issue for Determination in the Appeal before it, and (4) two court judgments cited in his brief to support his case.

3. Whether it can rightly be held that the judgment of the court below amounted to a perverse judgment when in one breadth in the judgment it allowed the Appellant Relief against forfeiture of his tenancy, while in another breadth to the contrary in its same judgment, it disallowed the Appellant the same relief against forfeiture of his same tenancy whereas it gave no explanation for its change of mind."

On behalf of the respondent also a sole issue was formulated and it reads as follows:-

"Whether the Court of Appeal was right in setting aside orders 3 and 4 of the High Court Idah, which was the sole complaint before the court?"

I have carefully read and considered the three issues formulated by the appellant from the five grounds of appeal raised and come to the conclusion that the lone issue distilled by the respondent's learned counsel is very apt in disposing of this appeal. **For purpose of expatiation, I hasten to state that the law is very well settled in plethora of authorities that issues must be formulated from grounds of appeal which in turn must also derive from ratio decidendi of the judgment appealed against.** See the cases of Awuse V. Odili (2004) 8 NWLR (pt.874-876) p.494 at p. 524; Odife V. Aniemeka (1992) 7 NWLR (Pt. 251) 25 and Onye V. Kema (2003) 1 WLR 131. **In other words grounds of appeal which are alien to the judgment appealed are incompetent and can in no way produce competent issues for determination and ought to be struck out.**

The judgment of the lower court sought to appeal is contained at pages 191 to 201 of the record of appeal and the appellant before us cannot by operation of law therefore raise any ground of appeal which is outside the said judgment; to do so would render same as incompetent. It is obvious on the face of the record that the only question or issue presented for determination at the lower court by the appellant, who is now respondent before us, relates to orders

3 and 4 which are the reasons for the present appeal. This is evidenced by the lone ground of appeal lodged against the judgment of the High Court to the Court of Appeal at page 142 of the record which same is reproduced hereunder and reads:-

B *“The Lower Court erred in law when it held in her orders 3 and 4 as follows:-*

a. *“The Defendant/Appellant shall retain his abode, accommodation or dwelling place having been in possession for a long period, his present farm, farm house or farmstead.*

C *b. Those who at the date of judgment have been apportioned plots on the said land whether or not covered by C of O are to retain such possession.”*

Particulars:-

D *1. The Appellant having been found guilty of misconduct cannot enjoy the equitable relief against forfeiture.*

2. The Appellant at no time claimed any relief against forfeiture.

3. The two orders are vague.

E *4. Long possession or social problems are not factors for consideration where a tenant such as the Appellant challenges the title of his overlord.”*

Also at page 152 of the record, and from the foregoing ground of appeal, the appellant then before the lower court formulated the following lone issue in his brief of argument:-

F *“Was the High Court right in law in making or modifying the orders of the Upper Area Court as it did in orders 3 and 4 having found that the defendant/appellant has nothing to urge in his favour regarding this appeal which was dismissed page 116 lines 34 - 36-*
G *records.”*

H From all indications and as rightly borne out on the record, there is only one bone of contention stemming this appeal; that is to say the propriety or not of the lower court in setting aside orders 3 and 4 made by the High Court Idah. This therefore grounds the justification in my adopting and preferring the lone issue formulated by the respondent’s counsel as against those by the appellant. I also wish to state that out of the three issues formulated by the appellant; only the first is congruent to the respondent’s lone issue. While the adjoining issue 2 has no bearing whatsoever to the appeal canvassed

before the lower court, issue 3 can easily be subsumed into the lone issue adopted for purpose of determining whether or not the lower court was perverse by its decision in setting aside orders 3 and 4 made by the High Court Idah. It is significant to re-echo that the complaint before the Court of Appeal centered on just one issue which had to do with the question, whether the High Court Idah, was right in granting orders 3 and 4 having found that the appeal before it lacked merit. Suffice it to say however that the appeal before that court did not in anyway complain against the reasons for the dismissal of the appeal. There was also no cross appeal. The appellant's issue 2 before us appears to be complaining against the judgment of the High Court Idah, as it related to the document Exhibit D2 which was tendered by one Kadiri Ademu.

The law is well crystallized that it does not lie within the jurisdiction of this court to hear appeals from the State High Courts, but those from the Court of Appeal. The following authorities are relevant in point. K.T.O. V. Unicalabar 2004 4 SCNJ 121 at 138; Adake V. Adamu Akun 2003 7 SCNJ 59 and Kwajaffa V. Bank of the North 2004 5 SCNJ 121.

Submitting on the consequential orders 3 and 4 which were granted by the High Court Idah, the appellant's counsel emphatically argued that there was sufficient evidence at the trial Grade 1 Area Court Ajaka showing that the relief was sought for through the appellant's sole witness Kadiri Ademu in his unchallenged evidence. Counsel therefore faulted the lower court when it held that the relief against forfeiture of the appellant's tenancy was gratuitously granted at the time the court had become functus officio. In arriving at this conclusion, the learned counsel relied on the following four reasons.

First, and while anchoring on the evidence of Kadiri Ademu supra, reference was also related specifically to the view held by this court wherein it admonished the lower courts to adopt the liberal approach treatment when handling proceeds from Native Courts before them. The counsel as a point of reference cited the case in SC 232/1984 - Musa Iyaji V. Sule Eyigebe decided on the 10th July, 1987 and reported in the (1987) 3 NWLR page 523.

The second reason advanced by the learned counsel pertains to Exhibit D2, which is the Attah Gala's 'B' Native Court Judgment dated 31/7/1961 wherein the appellant was a privy thereto

and which learned counsel submits serves a perpetual relief against forfeiture of the tenancy, until the order is set aside.

The third reference point had to do with the remarks made by the Kogi State High court which counsel interpreted as a confirmation and recognition that the appellant did in fact seek for the relief granted against forfeiture of his tenancy. The counsel for instance specifically made reference at page 109 of the Record wherein the court said:-

“the appellant demand to “stay there” forever and be paying 9 tins of palm oil.”

The fourth and final reason advanced by the appellant’s counsel had to do with the lower court’s affirmation of the judgment of the Upper Area Court which counsel submitted had granted the controversial relief against forfeiture of the tenancy. In other words, that by the court below affirming the judgment of the Upper Area Court, it had in effect conceded that the relief against forfeiture of the tenancy was sought for by the appellant before it was granted; the court, counsel argued, could not therefore have been functus officio.

In summary and on the totality of the foregoing submissions the learned appellant’s counsel had grossly faulted the lower court in holding that the relief against forfeiture of the appellant’s tenancy as granted by the High Court’s consequential orders 3 and 4 was not sought for but granted when the court had become functus officio. That the appeal should on this issue be allowed.

I have earlier in the course of this judgment held that the 2nd issue sought to raise by the appellant was not considered at the lower court; the appellant cannot now be heard on that issue so as to complain against the judgment of the High Court since this court lacks the jurisdiction to hear appeals from the State High Courts.

The learned appellant’s counsel further alleged and submitted that the judgment of the lower court was perverse and proceeded to base his contention on the argument that both the Upper Area Court and the High court’s consequential order 3 contained the same nature of relief granted by the Upper Area Court’s judgment which the lower court affirmed. That the court below gave no reasons for affirming the Upper Area Court’s judgment in one breadth while setting aside the High Court’s consequential order 3 in another breadth. The learned counsel, on this behalf, stretched further that

such contradictory pronouncements were highly unreasonable and gave rise to a perverse judgment which this court was urged not to uphold.

In reaction to the poser by the appellant's counsel as to whether the orders of the court below are justified, and or inconsistent, contradictory and perverse, the respondent's learned counsel answered in the negative. While urging for the dismissal of the appeal therefore, the said counsel relied on the following reasons wherein he said that the grounds of appeal being of either mixed law or fact or on fresh issues, the necessary pre-requisite leave to appeal against same was never first sought and obtained.

Furthermore and on the order made by the court below, which is now subject of appeal, same, learned counsel argued, was not contradictory; that the allegation of the denial of fair hearing was totally unfounded. Learned counsel further re-affirmed that the appellant has no right of appeal from the High Court to this court. He argued further that in the absence of any cross appeal at the lower court, it is now belated for the appellant to complain about issues not canvassed before that court. On the question of whether the lower court's judgment was perverse, the respondent's counsel affirmatively applauded the court's decision as a product of a careful consideration, which is neither contradictory nor inconsistent as alleged by the appellant. The learned counsel on the totality urged that the appeal be dismissed as it lacks merit.

I have earlier said that the only issue for determination in this appeal relates to orders 3 and 4 which were made by the High Court Idah and set aside by the lower court. The orders have been reproduced earlier in the course of this judgment. The determinant issue by the lower court was whether the High Court Idah, was right in making the orders in question having found that the appeal before it lacked merit.

The learned appellant's counsel vehemently submitted and reiterated that the relief against forfeiture of the appellant's tenancy granted by the High Court's consequential orders 3 and 4 were solicited for and not granted *functus officio* as alleged on behalf of the respondent. The evidence testified to by the appellant's sole witness, Kadiri Adem, was the reason for reliance by the appellant.

It is pertinent in this respect to relate and closely re-

view the pleadings as well as the evidence given by both parties at the trial court. This is apt especially where the law is well settled that it does not lie within the power of a court to grant a relief not claimed by a party in his pleadings. The following authorities in the cases of Edebiri V. Edebiri (1997) 49 LRCN B 919 at 940; Odukwe V. Ogunbiyi (1998) 6 SCNJ 102 and Eyo Ogboni V. Oja Ogah (1996) 6 SCNJ 140 are very relevant on the principle enunciated. **This court while laying down the principle of law in the foregoing authorities for instance affirmatively held that the court is without power to award a relief which a claimant C did not ask for.**

Similarly, a relief which is inconsistent with the claim should not be granted because the court should not be seen as a charitable institution. It would further follow deductively D that a defendant should not also be awarded a remedy which he did not ask for either by way of a counter claim or a cross-appeal.

The law is further well settled that averments on pleadings do not take the place of evidence. In other words whatever facts are pleaded, they must be established by evidence E in support thereof.

At pages 35 - 36 of the record of appeal for instance, the plaintiff/respondent, at the trial court and now the respondent before us testified as the only witness and said:- F

"I also know Abdul Abdullahi, he is nephew to respondent. Respondent is making use of these men and others to disturb me on the land. Respondent and his people trespassed into this land when I wanted to build and destroyed my water tank I kept on site. I took G them to C.M.C. Idah where they denied liability. They went ahead and allocated the same portion of land where I had wanted to build to their son who has erected his own house now. I know Jibrin Abdullahi, younger brother to respondent. He is building in my land without my consent. At times the respondent's representatives come H to this land with gun to disallow my people from harvesting my economic trees. I did not consent to the building been done in my land by Jibrin Abdullahi. The area Jibrin is building part of the land S.C. had awarded me vide Exhibit M. They also harvest and destroy my economic trees such as Oro Aikpele planted by grand fathers. They

harvested them. Egili trees planted by my grand fathers are being harvested by respondent's people aforementioned. They also harvested my Cashew nuts planted by my grandfather and some by me and my children. They harvest my Mangoes for sale. This act is being done by respondent and 12 others who had sued me earlier. They have been on the rampage for about 3 years now. All these economic trees are in Ikare Anama - Ajaka my land vide Exhibit P1. I am not happy that respondent and his people are harvesting and destroying my economic trees. I had reported their acts to Police in Idah and when they were not treating the issue fine I now wrote to the Police in Lokoja, their head quarters. My Counsel Jegede wrote petition to the Commissioner in Lokoja (COP) I have a copy of the letter written by Jegede with me. I reported them to High Court Idah who contacted DPO Ajaka or referred the matter to DPO Ajaka. There was a time I reported to Kogi State Chief Judge over the matter. I reported to the CJN Chief Justice of Nigeria in Abuja. I have all the copies of these letters to these various people. These are the letters as I handed over to my counsel."

Also at page 40 of the record of appeal and before the Ajaka Grade 1 Area Court one Kadiri Ademuyiwa testified as the sole witness representing the defendant/appellant now before us. In his testimony before the trial area Court, this is what he said:-

"Plaintiff has no right by Exhibit D2 to harvest economic trees in this land. Instead plaintiff is supposed to collect tributes from the land. It is not true that I have being intimidating plaintiff with gun. Jibrin resides in this land. He built his house about 20 years ago. He is not intimidating plaintiff either. It is not true that we are destroying the economic trees in this land. When we give this land to some people, such people build after obtaining C of O from the local government. These people fell trees in course of building their houses we have being paying tributes to plaintiff from this land. Supreme Court did not say that we should quit this land for plaintiff. We were invited by Police in respect of letter written to them by the plaintiff. We were taken to CMC Idah recently by virtue of such letters by Plaintiff. Those taken to CMC Idah are Sule Eyigebe, Salifu Odidi, Alhaji Yunusa, Alhaji Abdullahi and Alhaji Musa. The case was thrown out because according to the court, there was no truth in it. I also pray this Court to strike out this case. That is all."

For all intent and purpose, there is no indication on the evidence by both parties from their witnesses supra suggesting that the appellant sought a relief against forfeiture. Rather, it was his case that he was not in breach of his obligations but a consistent and faithful tenant to the respondent, who was the plaintiff.

B The pertinent question to pose at this juncture is obvious. That is to say, in the absence of the appellant specifically asking for a relief against forfeiture, was the High Court empowered in granting that which was never pleaded and asked for at the trial court? The answer to this question will be given in due course.

C I have clearly spelt out earlier in the course of this judgment that the pleadings of the parties are the binding force controlling their case. No party can by law go outside that which he had pleaded. The courts are also not known to be a Father Christmas in giving a relief D which was not asked for. The scripture is also sacrosanct in the saying that “*you cannot reap where you have not sown.*”

The courts are also bound by the Constitutional provision wherein their powers of operation and coverage are well and clearly defined and spelt out. The provisions serve a constant check and surveillance on the courts which must not be seen to act without powers or jurisdiction. Any such exercise of power will have no binding force as it is from inception a nullity. The law is also trite and well settled that an appeal is a continuation of the case instituted at the trial court. The final end result of an appeal cannot reflect or produce a relief different from that which originated at the trial inception.

In the case of Taiwo v. Akinwunmi (1975) 4 SC 143, this court per Fatayi-Williams (JSC) as he then was, while discussing the nature G of forfeiture under customary law, clearly stated that the complaint and the acts must be well founded. This cannot be determined without specifying the nature of the complaints and the acts on the pleadings and which must culminate into the relief sought in respect thereof. His Lordship Fatayi-Williams at page 183 in the foregoing authority H for instance had this to say:-

“...Moreover, we are of the view that whether the act committed by the tenant constitutes a misbehaviour or not or whether such misbehaviour can incur forfeiture depends on the particular circumstances of each case. The list of such act which constitutes

misbehaviour is not closed. It is still open to the court in every case brought before it to consider the complaint of the overlord against his customary tenant and to determine whether the complaint is well founded and whether having regard to the circumstances; the acts complained of are so serious as to warrant the forfeiture of the customary tenancy.” B

Again this court in the case of *Ladega V. Akinloye* (1969) NSCC 409 at 413 held the view that where a suit is brought against a customary tenant for forfeiture of tenure, such a tenant cannot be granted a relief from forfeiture unless he asks for it. In the matter at hand, the High Court was seized of the case in its appellate jurisdiction. It goes without saying therefore that there was no claim laid before it relating relief of forfeiture. The 3rd and 4th reliefs granted on its judgment were not therefore asked of the court by any of the parties. Put differently and for emphasis, I will repeat that a court has no power to award a party that which he did not claim. An appeal is not a different case from that which was instituted at the trial court. It is simply a mere continuation. See the case of *Obioma V. Olomu* (1967) NMLR 245. C D

As rightly held by the lower court, the orders made by the High Court and the subject of complaint are particularly objectionable because they were made after the court had dismissed the appeal. In other words in dismissing the appeal, the learned High Court Judges at page 116 of the record said:- E

“In the light of all we have said above, we are of the strong opinion that the defendant/appellant has nothing to urge in his favour regarding this appeal which must be dismissed ...” F

I further wish to recapitulate as shown on the record that in its earlier findings and before the dismissal order made at page 116 G as spelt out supra the High Court at page 114 of the record held the view that:-

“The defendant/appellant it must be said, admitted the unlawful alienation of his landlord’s land and its felling of economic trees by lessees or grantors who had secured of C of Os over the said land. In our view, the conduct of the defendant/appellant in this regard amounts to an arrant and manifest display of misconduct aided by the members of his family.” H

Intriguingly, and subsequent to the foregoing condemnation

of the appellant by their Lordships of the High Court, this was what they said also at page 116 and just before the dismissal order:-

“In the circumstances and on ground of equity and fairness we are therefore inclined to whittle down a bit from the stern order of outright forfeiture clamped down on the defendant/appellant and those deriving titles from him at p. 27 of the lower court’s judgment.”

As rightly concluded by the lower court Justices, the conduct of the respondent now appellant before us as found by the High Court did not merit the kind of unsolicited kindness or generosity extended to him on grounds of equity and fairness. Having found that the conduct was condemnable, an attitude of reprimanding was most appropriate as against a whittling down denoting approval.

The lower court in my view could not be faulted in arriving at the conclusion that, the moment the High Court arrived at the decision to dismiss the appellant’s appeal, it had become functus officio and the only order it could make at that point in time was not more than that which must be consequential upon the said order of dismissal. It is within the power of every court and in fact its duty and obligation to make consequential orders in the interest of justice; it is also irrelevant that, that particular order was not specifically asked for. See the case of *Musa Iyaji V. Eyigebe* SC 232/1984 reported in (1987) NWLR (Pt. 30) 523.

The purpose of a consequential order is to give effect to the judgment. It must therefore flow from the circumstances of the decision of the court. It must not be at a cross purpose or in anyway contradictory to the decision of the court. See the case of *Chikere v. Okegebe* 2000 (7 SC NJ) 128 at 145.

With the High Court having pronounced an order of a dismissal of the case, the subsequent orders 3 and 4 did not correctly flow from the judgment of the court but were inconsistent, contradictory and unnecessarily far reaching. A consequential order is not one merely incidental to the decision but one which necessarily flow directly and naturally there from; it is inevitable and consequent upon the decision made by the court: It must in otherwords give effect to the judgment already given and not a granting of fresh and unclaimed or un proven relief. It can only relate to matters adjudicated upon. Where it flowed from nothing decided, as it is in the case at hand, the subsequent orders made must be nullified. This was the view held by

this court in *Dr. M.T.A. Liman V. Alhaji Mohammed* (1999) 6 SCNJ 142. Also in *Henry O. Awoniyi V. ARMOC* 2002 6 SCNJ 141, it was further held that where a principal order sought was refused by a court, an incidental order cannot be made. This is because a consequential order by its very nature is predicated on a principal order, without which it must crumble. In other words it ought to be cut off/ or severed. B

Another related authority is the decision in the case of *Obayagbona V. Obazee* (1972) (reprint) 5 SC 159 wherein this court again per Sowemimo, JSC while considering an order made subsequent to a judgment restated clearly at page 162 and said:- *“With respect it is quite wrong for the learned trial judge having declared plaintiffs successful “as claimed” to make consequential orders which had the effect as in this case of varying his judgment and which in any case were not specifically asked for. The learned trial judge was functus officio, immediately after he gave his judgment.”* C D

Also at page 163 of the same report the learned jurist went further and said:-

“...A consequential order therefore made subsequent to a judgment which detracts from the judgment or contains extraneous matters is not an order made within jurisdiction because at that stage, having determined the rights of the parties, by giving judgment for plaintiffs as claimed the judge has become functus officio except for any act permitted by law or rules of court.” E

Following from the foregoing authority therefore and with the High Court, having dismissed the appeal, it had at that stage become functus officio. The making of subsequent consequential orders which had the effect of varying its judgment and which in any case was not specifically asked for, was erroneous. This is because by nature, the order must be one giving effect to the judgment; it follows as a result to inference; following or resulting indirectly. F G

In the matter before us, the orders 3 and 4 are not in any way incidental; they do not also flow from the judgment of the High Court which dismissed the appeal. The orders as rightly held by the lower court are inconsistent and the High Court which made them had no power in granting that which a party had not claimed or asked for. The orders I hold are at cross - purpose with the judgment of the High court. The lower court could not therefore be faulted in H

making an order setting aside same. The court cannot, in the circumstance be held to have arrived at a perverse decision as wrongly conceived and submitted by the appellant's learned counsel. In otherwords, the orders of the court below are justified and not inconsistent, contradictory or perverse. The main issue as well as the other related ancillary issues raised is resolved against the appellant. The appeal on the totality is lacking in dire merit and I hereby dismiss same. The judgment of the lower court delivered on the 2nd July, 2003 is upheld. In the result, and as rightly held by the lower court, orders 3 and 4 made by the Kogi State High Court on 8th March, 2002 are also set aside by this court. As a consequence therefore, I hold the view that while the judgment of the Kogi High Court is set aside that of the Idah Upper Area Court is affirmed.

The appeal is dismissed with costs of N100,000.00k in favour of the respondent against the appellant.

MUNTAKA-COOMASSIE JSC

This is a land dispute which started at the Ajaka Area Court in present Kogi State in 1960. The land in dispute is called "IKARE ANAMA", somehow the legal tussle reached the supreme court. The Supreme Court delivered its judgment in 1987 in favour of Musa Ajayi who is presently the Respondent before us and who was the plaintiff in the first instance. The matter appears to be finally settled. The appellant accepted his position imposed by the Supreme Court, namely, he is now a tenant of the respondent. That in reality does not finally and conclusively settle the dispute as the victorious respondent on 21/12/1999, instituted a suit No. CV 194/99 at the Grade 1 Area Court of the same Ajaka in Kogi State and claimed the following relief:-

"Enforcement of the Supreme Court of Nigeria judgment (sic) in case No. SC. 232/1984 decided in favour of the plaintiff on 10th July, 1987 by ordering the defendant Sule Eyigebe, his agents, privies and tenants to vacate the land known as 'IKARE ANAMA' situate at Ajaka".

The Area Court that heard the matter treated the claim, rightly or wrongly, as a forfeiture claim, and based on the Supreme Court Exhibit D2, that court dismissed the Plaintiff/Respondent's claim

herein. The respondent appeared to be dissatisfied and successfully appealed to the Upper Area Court Idah, in Kogi State. The latter allowed the appeal of the Respondent herein, and ordered forfeiture of the land in dispute. The appellant not satisfied, appealed to the High Court Kogi State sitting at Idah in its appellate jurisdiction. After considering the records and the evidence therein the High Court on 8/3/2002 dismissed the appeal, and proceeded to make some modification or variation vis-a-vis the judgment of the Upper Area Court Idah, thus:-

“1. The Defendant/Appellant’s caretaker - ship over the land or portion thereof known as “Ikare Anama” ceased henceforth.

2. The defendant/appellant shall hence forth cease from -
(a) tampering with, fiddling about with, or harvesting any economic trees on the said land.

(b) alienating or dealing in whatever form or manner with the said land or portion thereof.

3. The defendant/appellant shall retain -
(a) his abode, accommodation or dwelling place for having been in occupation for a long period.

(b) his present farm house or farm stead.
4. Those who as at the date of this judgment had been apportioned plots on the said land whether or not covered by C of Os are to retain such possession ...”

The victorious party in the Supreme Court who had been granted the ownership of the land in dispute in 1987, appealed against the decision of the High Court to the Court of Appeal Abuja Division wherein he specifically challenged orders 3 and 4 as totally erroneous. The lower court on 2/7/2003 allowed the appeal filed by the respondent. The said lower court set aside orders 3 and 4 made by the High Court. The appellant, Sule Eyigebe, not being satisfied with the judgment of the lower court as a result appealed to this court on a Notice of Appeal containing five grounds of appeal.

Both the Appellant and the respondent filed and exchanged their respective briefs of argument. Again both counsel on behalf of their respective clients adopted their respective briefs of argument. The appellant urged this court to allow the appeal and set aside the judgment of the lower court. The respondent’s counsel applied to withdraw the preliminary objection raised and incorporated in its brief

of argument. The appellants counsel similarly withdrew their reply briefs in response to the preliminary objection as it is related. This court found that both preliminary objection as well as the reply being withdrawn without any objection was accordingly struck out and so also the arguments advanced in respect thereof.

B From the five grounds of appeal three issues were formulated by the appellant thus:-

1. Whether the Court below was right when it held that the relief against forfeiture of the Appellant's tenancy granted by the Kogi State High Court's consequential orders 3 and 4 was not solicited for by any of the parties and was granted *Functus Officio*.

2. Whether it can rightly be held that the court below had afforded a fair hearing to the Appellant on his case before it when it had failed to consider or to properly consider (1) relevant evidence of Kadiri Ademur the Appellant's sole witness requesting for relief against forfeiture of the appellant's tenancy, (2) the contents of Exhibit D2 tendered by the said Kadiri Ademur (3) Appellant's sole issues for determination in the Appeal before it, and (4) two court judgments cited in his brief to support his case.

3. Whether it can be held that the judgment of the court below amounted to a perverse judgment when in one breath in the judgment it allowed the Appellant relief against forfeiture of his tenancy, while in another breath to the contrary in its same judgment it distilled the appellant the same relief against forfeiture of his same tenancy whereas it gave no explanation for its change of mind.

On behalf of the respondent a sole issue was formulated as follows:- *"Whether the Court of Appeal was right in setting aside orders 3 and 4 of the high Court Idah, which was the sole complaint before the court?"*

I have gone through this elaborate judgment of my learned brother Ogunbiyi JSC before today and the reasons and conclusions tally with my understanding of the law on the subject, hence I adopt them as mine. I too allow the appeal and set aside the decision of the lower court. I also hold that the judgment of the Idah upper Area court should not have been set aside by the lower court. I therefore restore the judgment of the Idah Upper Area Court and affirm same. While the judgment of the Kogi State High Court is quashed. I endorse the orders as to costs.

GALADIMA JSC

I have the benefit of reading in draft the lead Judgment of my learned brother OGUNBIYI, JSC just delivered. I agree entirely with his reasoning and conclusion, dismissing this appeal which is devoid of any merit. I too uphold the Judgment of the Court of Appeal, Abuja delivered on the 2nd July, 2003. Consequently, while Orders 3 and 4 made by the High Court of Kogi State on 8th March, 2002 are set aside, the judgment of the Upper Area Court, Idah is affirmed. The Appeal is dismissed with costs of N100,000 in favour of the Respondent.

ALAGOA JSC

This is an appeal against the judgment of the Court of Appeal, Abuja Division delivered on the 2nd July, 2003.

The Appellant as Plaintiff had instituted action against the Respondent sometime about 1960 at the Ajaka Area Court in present day Kogi State claiming ownership of a parcel of land called “Ikare Anama.” The matter went right up to the Supreme Court which granted ownership of the land to the Appellant and the Respondent had over the years reconciled himself with that judgment as a tenant of the Appellant. However sometime in 1999 the Appellant in Suit No. CV 94/99 before the Ajaka Area Court sought that court’s order for the Respondent, his agents, privies and tenants to vacate the said land. The Ajaka Area Court interpreted the claim of the Appellant as being one for forfeiture of the land by the Respondent and in that court’s judgment dismissed the claim of the Appellants on the ground that enough evidence had not been adduced by the Appellant to warrant forfeiture of the land by the Respondent.

The Appellant appealed to the Upper Area Court which reversed the decision of the Area Court and ordered forfeiture of the land by the Respondent. The Respondent appealed to the High Court which in its judgment dismissed the appeal of the Respondent but went on to make orders which to all intents and purposes were not in the interest of the original Appellant Musa Iyayi in its paragraphs 3 and 4 which allowed the Respondent to retain his dwelling house and farmstead on the land. The order also allowed those to whom

plots of land had been apportioned whether with Certificate of Occupancy or not before the judgment to retain them. The Appellant then appealed against the judgment of the High Court especially with regard to orders 3 and 4 in the judgment of the High Court referred to. The Court of Appeal allowed the appeal and set aside orders 3 and 4 of the High Court judgment. It affirmed the judgment of the Upper Area Court. Dissatisfied the Respondent has appealed against that judgment of the Court of Appeal hereinafter referred to as the Court below or the lower court to the Supreme Court. The Appellant formulated 3 issues for determination from five grounds of appeal while the Respondent distilled a single issue. The Notice of Preliminary objection filed by the Respondent was at the hearing of this appeal withdrawn and consequently struck out.

It is pertinent to examine orders 3 and 4 of the High Court judgment which were set aside by the below:-

3. The Defendant/Appellant shall retain (a) his abode, accommodation or dwelling place for having been in occupation for a long period (b) his present farm house or farmstead.

4. Those who as at the date of this judgment had been apportioned plots on the said land whether or not covered by Certificate of Occupancy are to retain such possession.

As far as can be ascertained, the only issue in this appeal is the propriety of the Court below setting aside orders 3 and 4 made by the High Court in its judgment on appeal. Curiously the High Court had dismissed the appeal before it. Having so dismissed the appeal before it as lacking in merit were orders 3 and 4 appropriately made by the same High Court? The orders made by the High Court are preposterous and are undoubtedly at cross purposes with the judgment of the same High Court. The Court below was therefore to my mind right to have set aside orders 3 and 4 made by the High Court. It was also right to have affirmed the judgment of the Upper Area Court. It is for these reasons and the fuller reasons given in the lead judgment of my learned brother Clara Bata Ogunbiyi JSC, which I had the privilege to read in draft before now and which I entirely agree with that I too dismiss the appeal while abiding by the order on costs contained in the said lead judgment.