

SUPREME COURT OF NIGERIA

FRIDAY 13TH DECEMBER, 2013. SC. 250/2005

**CORAM:- M. MOHAMMED, C. M. CHUKWUMA-EHEH,
B. RHODES-VIVOUR, C. B. OGUNBIYI, K. B. AKA'AH**

1. PAULINUS CHUKWU
2. LONGINUS AMADIOHA
3. SIMEON NWOSU APPELLANTS
4. BONIFACE NWOSU
5. DONATUS CHUKWU
AND
MATHEW AKPELU RESPONDENT

APPEALS - Issue - Basis - Issue must relate and derive from grounds
- Otherwise such an issue would be rendered incompetent - And
ought to be ignored and struck out (H1)

ACTIONS - Cause of action - Source - Plaintiff's statement of claim
determines - Whether a cause of action is disclosed in a suit (H2)

ACTIONS - Cause of action - Ingredients - The phrase denotes pres-
ence of wrongful act of defendant - And subsequent damage caused
to plaintiff (H3)

ACTIONS - Cause of action - Absence of - Cause of action enthrones
jurisdiction on court - And absence of it renders the suit incompetent
- And liable to be struck out (H4)

LAND LAW - Trespass - Proof - Plaintiff who claims relief for trespass
and injunction - Must prove that he is in exclusive possession of the
land - Or has singular right to its possession (H5)

COURTS - Evidence - Evaluation - Mogaji v. Odofin - Trial court is
bound to evaluate evidence adduced by parties - For the purpose of
arriving at a right conclusion - In adjudication of the case before it
(H6)

LAND LAW - Title - Proof - Admitted facts - DW2 by his confession

4178 Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177; (2014)

and evidence - Gave credence to respondent's claim for title and possession - Hence the facts need no proof (H7)

LAND LAW - Evidence - Interference - By failing to properly weigh evidence of both parties - Trial court occasioned injustice against respondent - And CA rightly interfered by remedying the situation (H8)

FACTS

Before the High Court of Imo State Oguta, plaintiff/respondent filed this action against defendants/appellants, claiming damages for trespass committed by appellants in respondent's palm plantation and for an injunction permanently restraining appellants from the said plantation. Respondent's case is that the land has devolved from his ancestors to him. Respondent further stated that he had farmed on the land from 1959 to 1978 without any challenge and eventually established a palm plantation thereon with the assistance of the Ministry of Agriculture whose officials provided the palm seedlings. Respondent based his case mainly on long undisturbed possession and traditional history as source of his title to the land.

On their own part, appellants claimed that the land in issue belongs to their kindred from time immemorial. At the trial, appellants admitted that respondent was in possession of the farm in dispute as at the time they (appellants) cut down the palm trees on the land. At the end of hearing, the court failed to properly weigh respondent's evidence against that of appellants. In its judgment, the court preferred the evidence of appellants to that of respondent. The court therefore dismissed respondent's claim. Dissatisfied, respondent appealed to the Court of Appeal Port Harcourt Division. The court after a thorough evaluation of the matter set aside the judgment of the trial court. The appeal was thus allowed. Aggrieved, appellants lodged appeal in Supreme Court.

ISSUE FOR DETERMINATION

"Whether upon a calm and reflective view of all the facts and circumstances of the instant case, the Court of Appeal was right in interfering with the findings of fact made by the trial court and in holding thereby that the respondent was entitled to the reliefs sought and granting them to him."

HELD (Unanimously dismissing the appeal per **OGUNBIYI JSC**)

APPEALS - Issue - Basis

1. As rightly submitted by the learned counsel, for an issue to be competent for determination, it must relate and derive from the grounds of appeal. The fact is therefore correct and well established that an issue raised and which is not related to any ground of appeal would be rendered incompetent and ought to be ignored and struck out. (p. 4184 H)

ACTIONS - Cause of action - Source

2. The law is well settled that the statement of claim which is the process filed by the plaintiff, is singularly recognized for the purpose of determining whether a cause of action is indeed disclosed in a suit. (p. 4188 G)

ACTIONS - Cause of action - Ingredients

3. From the various judicial decisions and authorities enunciated, the phrase cause of action denotes the presence of two elements:

(a) The wrongful act of the defendant which gives the plaintiff a cause of complaint, and

(b) The subsequent damage caused to the plaintiff.

(p. 4188 H)

ACTIONS - Cause of action - Absence of

4. A cause of action therefore enthrones jurisdiction on the court; the absence of which renders the suit incompetent and liable to be struck out. (p. 4189 B)

LAND LAW - Trespass - Proof

5. It is elementary to say that the determining factor of an issue is predicated on the claim at the trial court. The only issue at hand has been reproduced earlier in the course of this judgment. On the pleadings as shown on the statement of claim on record, it is evident that the plaintiff's suit at the trial court was for trespass and injunction. In a claim of this na-

ture, it is pertinent that the plaintiff must prove either that he is in exclusive possession of the land in dispute or has a singular right to its possession. The burden of proof required automatically puts the title in dispute. (p. 4189 B)

B COURTS - Evidence - Evaluation - Mogaji v. Odofin

6. It is interesting to note that there is nowhere on record that the appellants led evidence that any wild palms were on the land after plaintiff had established his Agric palm plantation. The trial court I hold failed to evaluate this and make findings of facts on the evidence of D.W.1 and D.W.3 as to whether what they cut down were wild palms or Agric palms. In otherwords and relying on the principle laid down by this court in the long standing case of Mogaji & Ors v. Odofin & Ors (1978) 4 S.C. bounded duty lies on the trial court to adequately evaluate the evidence adduced by the parties for purpose of arriving at a just and right conclusion in the adjudication of the case before it. This will involve the construction of an imaginary scale for purpose of weighing the evidence of both sides with a view of determining in whose favour the pendulum of justice will tilt on the balance of probability. (p. 4194 E)

LAND LAW - Title - Proof - Admitted facts

7. D.W.2 also in his evidence conceded and testified by affirming that it is the plaintiff/respondent's village that farms the location of the land in dispute. He did not further say that the Defendants/Appellants or their people also farm the said land in dispute or in that location. The implication of the evidence is to give credence to the plaintiff/respondent's claim that he is the owner and in exclusive possession of the land in dispute.

From the foregoing evidence by D.W.2 it is indicative that while the plaintiff/respondent's people are those who farm in the location of the land in dispute, the defendants/appellants do not. The established principle of law is well founded and settled that facts admitted need no proof.

This court had also held in the case of Olufusoye & Ors. v. Olorunfemi (1989) 1 NWLR (pt. 95) 26 that an admitted fact

is no longer a fact in issue. (p. 4195 A)

LAND LAW - Evidence - Interference

8. For purpose of stressing the point further, where the trial court abdicates its duty by failing to properly evaluate the evidence of witnesses for all parties, the justice of the case would require that the Court of Appeal steps into the shoe to ensure that parties are not left without remedy.

The learned trial judge for instance found at page 57 of the record reproduced earlier in the course of this judgment that the plaintiff was not relying on traditional history but on acts of possession extending over a sufficient length of time to prove his possession. The findings, as rightly held by the lower court were sufficient to have concluded that the plaintiff/respondent had a right of an action in trespass against the Defendants/Appellants. The failure by the trial court had worked great injustice against the plaintiff/respondent and donated a “father Christmas” present to the defendants/appellants as rightly held by the lower court.

On the totality of the case at hand, it is obvious I hold that the learned trial judge greatly erred in failing to be guided by the imaginary scale principle laid down in the case of Mogaji & Ors v. Odojin & Ors supra. He did not in other words weigh the evidence by the plaintiff/respondent and his witnesses against the incoherent testimonies of the defendants/appellants and their witnesses. The line of action taken by the lower court in reversing and remedying the situation was a step in the right direction. (p. 4196 B)

REPRESENTATION

Chief M. B. R. Urombo appearing with F. Otioio, for Appellants
S. M. C. Kamange appeared for Respondent

CASES REFERRED TO

Nwaeze v. Onuorah (2002) 2 SCNJ 31
Olaiya v. Olaiya (2002) 5 SCNJ 145
Ekennia v. Nkpakara (1997) 5 NWLR (pt. 504) 152
Okorie v. Udom (1960) SC NLR 236

- Kareem v. Bare (1972) ALL NLR 75
- Ojo v. Adejobi (1978) 3 SC 65
- Talabi v. Adesoji (1973) NMLR 8
- Idundun v. Okumagba (1976) 9-10 SC 277
- Onwugbufor v. Okeye (1996) 1 NWLR (pt. 424) 252
- B Mogaji v. Odofin (1978) 4 SC 91
- Akunyili v. Ejidike (1996) 5 NWLR (pt. 449) 381
- Kodilinye v. Odu (1935) 2 WACA 336
- Owhanda v. Ekpechi (2003) 9 SCNJ 1
- C Okafor v. Idigo III (1984) 5 SC 1

LEAD JUDGMENT BY OGUNBIYI JSC

This is an appeal against the judgment of the Court of Appeal, Port Harcourt Division, in Appeal No. CA/PH/33/98 delivered on the 8th day of December, 2004 allowing the appeal from the judgment of the trial High Court of Imo State of Nigeria sitting at Oguta and delivered by Njiribeako J. in suit No. HOG/53/2 on the 28th October, 1996.

The facts of this case as originated from the record of the trial court and which arose from the plaintiff/respondent's claim against the defendants/appellants are for:

“(3) The sum of Two Million Naira only as general damages jointly and severally against the Defendants in that on or about the month of February 1992 without his leave, permission and or consent, they with their agents went into the palm plantation of the plaintiff at OGBURUZO OGWU along Nkraha - Owerri Port Harcourt Road cut down and destroyed hundreds of Agricultural palm trees planted by the plaintiff and which have been in his peaceable possession and ownership since they were planted in 1978.

(b) An injunction permanently restraining the Defendants, their agents, servants and or privies from ever entering the palm plantation or interfering with it in whatever form.”

Pleadings were exchanged by both parties. The case was fought on the plaintiff's statement of claim which is set out at pages 4 - 9 of the record of appeal and the defendants' statement of defence which is also set out at pages 13-18 of the record of Appeal.

The plaintiff/respondent testified at the trial court as PW '1' and called a total of four witnesses to prove his case. He traced the

history of the land and how it devolved from his grandfather to his father and to him. It was also the plaintiff's case that he had farmed on the land from 1959 to 1978 without any challenge and eventually established a palm plantation thereon with the assistance of the Ministry of Agriculture whose officials provided the palm seedlings. The plaintiff further stated that the 1st defendant/appellant was his surety in the loan agreement between him and the Imo State Small Holders Oil Palm project which same was admitted in evidence as Exhibit 'B'. He stated that he obtained a certificate of occupancy over the said land in 1986, the document which was never produced at the trial. The felling and destruction of hundreds of palm trees on the said plantation was the cause of the action; admitted in evidence as Exhibits 'E' - 'E2' are the photographs and negatives of the alleged felling and destruction. The plaintiff's claim is centered on long and undisturbed possession and traditional history as his source of title to the said land.

On the part of the defendants/appellants it was their case that the land in dispute known as BEKWESU which the same land the plaintiff calls OGBURU OGWU is owned by their kindred from time immemorial and that their right to the said land had earlier been challenged in court which established that it belongs to them. It was the contention of the defendants/appellants that the plaintiff/respondent had in 1978 trespassed into the land in dispute; that the land was later granted to the latter by the former's family on the condition that the right to repossess vests in the defendants/appellants family at anytime they so desired and without notice. It was also the contention of the defendants/appellants that the plaintiff/respondent by testifying against them as his landlord, in suit No.CC/H/J/51/89 in the Customary Court had breached the traditional dictates of their custom. The consequential effect of the alleged betrayal had therefore given them (the defendants) the right to enter and repossess the land as they did.

At the trial, the learned trial judge preferred the evidence of the defence to that of the plaintiff and on 28th day of October, 1996, the court gave its judgment wherein it dismissed the plaintiff/respondent's claim.

The plaintiff being aggrieved by the said judgment appealed to the Court of Appeal, Port Harcourt Division which on the 8th

December, 2004 allowed the appeal by a majority decision. The defendants/appellants were also unhappy and hence lodged this appeal with the leave of the Court of Appeal granted on the 7th March, 2005. The notice of appeal raised ten grounds.

In accordance with the rules of court, briefs were prepared, filed and exchanged between parties. While the appellants' brief of argument was settled by H. E. Wabara Esq. and filed on the 23rd December, 2005, that of the respondent was settled by S. N. C. Kamange, Esq. and filed on the 7th August, 2006. The appellants' reply brief was also filed on 20th March, 2008.

On the 24th September, 2013 the appeal was heard; both counsel representing parties adopted and relied on their respective briefs of argument and briefly adumbrated on same. The appellants' learned counsel on the one hand finally urged that the majority decision of the court of Appeal be set aside and that of the trial court should be restored. On the other hand and on behalf of respondent however, it was urged that the appeal be dismissed as lacking in merit.

From the ten grounds of appeal filed the appellants distilled a lone issue for determination which same was squarely adopted by the respondent as follows:-

"Whether upon a calm and reflective view of all the facts and circumstances of the instant case, the Court of Appeal was right in interfering with the findings of fact made by the trial court and in holding thereby that the respondent was entitled to the reliefs sought and granting them to him."

I shall also adopt the issue formulated by the appellants. As a forerunner to the determination of this appeal therefore, I wish to briefly deliberate on the attempted move by the respondent to purportedly raise a preliminary objection in seeking to challenge the only issue by alleging that it does not relate to any of the ten grounds of appeal. In other words, that none of the grounds complained of interference by the Court of Appeal with the findings of fact made by the trial court.

As rightly submitted by the learned counsel, for an issue to be competent for determination, it must relate and derive from the grounds of appeal. The fact is therefore correct and well established that an issue raised and which is not related to any ground of appeal would be rendered incompetent and

ought to be ignored and struck out. The relevant authorities in point are: *Western Steel Works Ltd v. Iron Steel Workers Union of Nigeria* (1987) NWLR (Pt. 49) 284, *Olowosago v. Adebajo* (1988) 4 NWLR (Pt 88) 275 at 283 and *Omo v. Judicial Service Committee, Delta State* (2000) FWLR (Pt 20) 676 at 695. It is on record that the respondent has, by paragraph 2.01 of his brief of argument, unequivocally and without hesitation adopted the only lone issue formulated by the appellants as his own and also reproduced same verbatim. The justice of this case would not now indulge him to retract from that which he had adopted and argued in his brief. B

Furthermore, it is also pertinent to emphasize the laid down procedure for raising of preliminary objection in an appeal which nature must be formal and on notice to the opponent. The seeming objection herein is, I hold, without merit and accordingly dismissed. C

Submitting for purpose of substantiating the issue raised, the learned appellants' counsel argued that a claim for trespass and injunction of this nature automatically puts title to question and in issue which onus therefore squarely rests on the respondent to plead and prove his title and/or exclusive possession. The authorities cited in support are: *Ekennia v. Nkpakara & Ors* (1997) 5 NWLR (Pt 504) 152, *Okorie v. Udom* (1960) S.C. NLR 236; *Kareem & Ors v. Bare & Anor.* (1972) ALL NLR 75; *Ojo v. Adejobi* (1978) 3 S.C. 65 and *Talabi v. Adesoji* (1973) NMLR 8. D

Further reference was also drawn to the plaintiff/respondent's statement of claim at paragraph 5 (a) and also the defendants/appellants denial again in paragraph 5 (a) of their statement of defence. F

It is the submission of counsel that for the plaintiff to succeed, he must establish his title in any of the five ways as laid down by this court in the cases of *Idundun v. Okumagba* (1976) 9 - 10 SC 277 and *Onwugbufo v. Okeye* (1996) 1 NWLR (Pt. 424) 252 at 279-280. In other words plaintiff must as a matter of necessity plead his root of title and prove same by evidence to entitle him to judgment. G

Counsel further asserts the settled law that in a claim for trespass to land and injunction, title is put in issue and that this has been well expounded in the case of *Nwadiogbu v. Nnadozie* (2001) 6 SCNJ 161 at 167. The plaintiff, counsel argued must rely on the strength of his own case and not on the weakness of the defence; see the authorities in the cases of *Mogaji v. Odofin* (1978) 4 S.C. 91; *Akunyili v.* H

Ejidike (1996) 5 NWLR (Pt 449) 381; Kodilinye v. Odu (1935) 2 WACA 336; Eboade v. Aformesin (1997) 5 NWLR (Pt 506) 149.

In further submission, the learned counsel re-iterated the constrain put on the plaintiff who could not fall back on long possession and acts of ownership to prove title; that he must rather first
 B prove a valid root before he could claim title on acts of ownership or long possession. The following cases were again cited by counsel in proof of his assertion. Owlanda v. Ekpechi (2003) 9 S.C. NJ 1 at p.14; Okafor v. Idigo III (1984) 5 S.C. 1 at p.36; Regd. Trustees v. James (1957) 2 NWLR (Pt. 61) 556 at p. 567; and Uka v. Irolo
 C (2002) 7 SCNJ 137 at pp 167 - 168. In the light of the foregoing authorities, the Court of Appeal, counsel submitted, was therefore in error in arriving at the decision that the trial High Court ought to have held that the respondent had a right to an action in trespass;
 D that the learned trial judge, after examining the plaintiff's plan, Exhibit 'A' and commenting thereon as well as Exhibit 'J', the certified true copy of the proceedings at the Customary court and also Exhibit 'H' and 'K', the two plans tendered by the defendants, was patently justified in his findings by properly evaluating the documentary evidence
 E before him alongside other evidence in arriving at the findings of fact on the issues as he did, See the case of West African Breweries Limited v. Savannah Ventures Limited (2002) 5 SCNJ 269 at p. 287.

In further postulation, learned counsel held the view that there was hardly any special circumstance warranting the Court of Appeal
 F to substitute its own findings of fact for those of the trial court. In making clarion call therefore counsel affirmed that special circumstances include admission of inadmissible evidence or where the decision on all the evidence before the court was perverse or had led to
 G a miscarriage of justice or where there were clear conflicts and the court failed to resolve them and merely relied on a party's evidence; that none of the above circumstances is prevalent in the instant case. Counsel cited in support the cases of Nwaeze v. Onuorah (2002) 2 SCNJ 31 at 31 and Olaiya v. Olaiya (2002) 5 SCNJ 145 at p.158.

H Submitting further, the learned appellants' counsel opined that as there was patently no perversity in the findings of fact by the learned trial judge, the court of Appeal therefore lacked the competence to have rejected the said findings and supplant its own as it did in the instant case. Cited in reference is also the case of Okochi v.

Animkwoi (2003) 2 SCNJ 260 at p.277.

The learned appellants' counsel therefore copiously submitted and applauded the learned trial judge for properly evaluated the documentary evidence as well as oral evidence in arriving at the findings of fact on the issues before him. Counsel on this score argued the absence of any special circumstance warranting the lower court in substituting its own findings of fact for those of the trial court. That the lower court in other words was clearly in error when it disturbed the unimpeachable findings of fact by the trial judge as borne out on the record.

In conclusion, it was submitted by counsel that by the very nature of the claim for trespass and injunction, respondent's title was put in issue and hence the misconception by the lower court that respondents' case was simply rooted in trespass. The counsel on the totality has therefore urged that the appeal be allowed on the premise that the lower court erred in refusing to see that the findings of fact by the trial judge were amply supported by the evidence before him.

In response to the foregoing submission, it was contended for the respondent that the suit before the trial court was based on trespass committed by the appellants on the respondent's palm plantation; that the appellants admitted that the respondent was in possession of the farm in dispute as at the time they cut down the palm trees on the land. Counsel therefore re-echoed the legal position of law wherein facts admitted need no proof. This is as enshrined in the cases of *Narinder Trust Ltd v. N.I.C.M.B. Ltd.* (2001) FWLR 1546 at 1558 and *Nwankwo v. Nwankwo* (1995) 5 NWLR (Pt. 894) 158; that although the respondent had put his title in issue by asking for an injunction, it is submitted that the two are separate heads of claim wherein one is not dependent on the other. See the case of *Tiamiyu Adewole v. Joseph Popoola Dada* (2003) 1 S.C. Pt. 111 p.66 at 71.

Again and in further submission, the respondent's counsel reiterated the error committed by the learned trial Judge when he based his decision on proof of title without answering the question he posed, that is to say, "*whether the plaintiff was in long undisturbed possession and using the land in dispute before 1997.*"

The counsel, in retrospect, noted that this error which was also observed by the lower court arose because the trial judge refused to consider the plaintiff's evidence and his witnesses by failing to weigh

them against the incoherent testimonies of the defendants; that with the plaintiff having vested his case in trespass, he did not need to plead his root of title to the land. In other words, that the root of title pleaded by the plaintiff could not possibly be defective because all that he needed to prove were the facts of the trespass on the piece of
B land in his exclusive possession.

The learned counsel further opined that by the very nature of the claim and in the absence of any counter claim by the defendants, the trial court was wrong in declaring title in their favour; that
C once a court is therefore shown to have drawn wrong inference from established facts, or applied wrong principles of law to such facts, the Court of Appeal is bound to interfere: See Igodo v. Owulo (1999) 5 NWLR (Pt 601) 10 at 77, Njoku v. Osimiri (1990) 5 NWLR (Pt 601) 22 at 30, Abeki v. Amboro (Pt 61) ALL NWLR 368 at 370 and
D Princewill v. Usman (1990) 5 NWLR (Pt 50) p. 274.

In summary and on the totality of this appeal, the learned respondent's counsel has urged for the dismissal of same on the ground that:-

(1) The defendants/appellants have admitted trespassing into
E the plaintiff/respondent's land and cutting down his agric palm trees.

(2) The defendants/appellants did not prove a better title over and above the plaintiff/respondent.

(3) The defendants/appellants admitted that the plaintiff/re-
F spondent was in possession and is also their boundary neighbor.

(4) The proof of long possession as required by the law was sufficient for the plaintiff/respondent to succeed in a claim for damages for trespass.

(5) The learned trial court judge was greatly misconceived
G when he held that the plaintiff/respondent's case was rooted on title to land.

(6) The Court of Appeal is bound by law, practice and precedence to make findings of facts where a trial court fails to do so.

***The law is well settled that the statement of claim which
H is the process filed by the plaintiff, is singularly recognized for the purpose of determining whether a cause of action is indeed disclosed in a suit.*** See the case of Nissan (Nig) Ltd. v. Yaganathan (2010) 4 NWLR (Pt. 1183) 149 at 154.

From the various judicial decisions and authorities enun-

ciated, the phrase cause of action denotes the presence of two elements:

(a) The wrongful act of the defendant which gives the plaintiff a cause of complaint, and

(b) The subsequent damage caused to the plaintiff.

A cause of action therefore enthrones jurisdiction on the court; the absence of which renders the suit incompetent and liable to be struck out. See *Chevron (Nig) Ltd. v. Lonestar Drilling (Nig) Ltd.* (2007) ALL FWLR (Pt 386) 533 at 641-642. B

It is elementary to say that the determining factor of an issue is predicated on the claim at the trial court. The only issue at hand has been reproduced earlier in the course of this judgment. On the pleadings as shown on the statement of claim on record, it is evident that the plaintiff's suit at the trial court was for trespass and injunction. In a claim of this nature, it is pertinent that the plaintiff must prove either that he is in exclusive possession of the land in dispute or has a singular right to its possession. The burden of proof required automatically puts the title in dispute. See the case of *Olohunde v. Adeyoju* (2000) 10 NWLR (Pt 676) 562 at 580. Where this court held:- C

"It is an elementary principle of law that whenever a claim for trespass is coupled with claim for an injunction, the title of the parties to the land in dispute is automatically put in issue." See also *Akintola v. Lasupo* (1991) 3 NWLR (Pt 180) p. 508 and the *Registered Trustees of The Apostolic Church v. Olowoleni* (1990) 6 NWLR (Pt. 158) p.514. D

Trespass is an unjustified interference or intrusion with possession of land. See *Ogunleye v. Adewunmi* (1988) 5 NWLR (Pt 93) p. 215, *Onagoruwa v. Adeniyi* (1993) 5 NWLR (Pt 293) p.350 and *Yusuf v. Akindipe* (2000) 8 NWLR (Pt. 669) p. 376. At page 62 lines 25 - 27 of the record of appeal, the learned trial judge at the conclusion of the case gave judgment against the plaintiff and dismissed his claims with costs in favour of the defendants. On appeal to the Court of Appeal however, the decision of the trial court was set aside and judgment was given in favour of the plaintiff/respondent with the lower court holding in the following terms at page 133 of the record:- E

"In these days of unabated acts of lawlessness an exemplary

damage should be awarded to deter other like-minded persons. I would award the sum of N300,000.00 as general damages to the Plaintiff/Appellant and it is hereby so ordered. It is further the order of this court that Defendants/Respondents either by themselves, their agents or privies are hereby prohibited and permanently restrained from entering into the palm plantation or interfering with it in whatever form and under whatever guise and for whatever purpose.

This appeal has merit and is hereby upheld. The decision of the trial court and all the orders made therein is hereby set aside.”

It is the submission of the appellants’ counsel that the lower court erred in reversing the learned trial judge; counsel relied on the decision of this court in the cases of Ogunleye v. Oni (1990) 2 NWLR (Pt 135) 745 and Ugoji v. Onukogu (2005) 16 NWLR (Pt 950) 97 at 112 & 119 - where in proving title it was held as necessary that the root or origin of the grantor’s title has to be averred on the pleadings and proved by evidence. At page 58 of the record of appeal the trial court judge anchored his judgment on proof of title. The respondent’s counsel submitted this as erroneous because of the court’s inability or refusal to consider the evidence by the plaintiff and his witnesses which counsel argued was never weighed against the incoherent testimonies of the defendants.

It is pertinent to state that the lower court, while reviewing the proceedings that took place at the trial court had the following to say at page 117 of the record of appeal:-

“As earlier noted in this judgment, the suit of the appellant before the trial court was rooted in the “Defendants’ act of trespass” the plaintiff’s palm on plantation.

Pages 13 - 18 of the Records of this appeal bear the statement of defence filed by the Respondents before the trial court. No counter claim is incorporated therein nor is any filed nor exhibited anywhere in the Records before this court. No supplementary records were filed. It is necessary to make these observations because there seems to be no nexus between the judgment of the trial court and the case made out by the Defendants in the suit before the trial court.

The court is not a father Christmas, it is not allowed to give that which is not asked for.”

The learned justices of the Court of Appeal in the circumstance, could not, I hold, be faulted in their observations and conclusions

arrived thereat. This is because the trial court, in making out a case and giving the defendants judgment for what was not asked for, certainly acted as a Father Christmas.

Just for purpose of emphasis, I hasten to restate again that since the plaintiff/respondent's case was vested in trespass, it was not required of him to plead his root of title to the disputed land, as it was automatically put in issue. All that he needed to plead and prove were the facts of the trespass on the piece of land which is in his exclusive possession. B

As rightly signaled by the respondent's counsel therefore, the question to be resolved in this appeal is not whether the respondent should have pleaded the origin of his title but rather, whether he pleaded and proved his claim in trespass being a person in an exclusive and undisturbed possession devolving from his forefathers to the time of the alleged trespass. The learned trial court judge was himself initially on the right track with his pronouncement made at page 57 of the record, but intriguingly and for reason which could best be explained as confusion, he turned the table upside down in his final conclusion. This is the trial judge's pronouncement at page 57:- C D

"The traditional history of the land as pleaded in paragraph 5 of the statement of claim fell far short of what should be pleaded that it is very safe to say that the plaintiff is not relying on traditional history but only acts of possession extending over a sufficient length of time, numerous and positive enough to lead to the inescapable conclusion that he is indeed in possession of the land as the owner." E F

From the foregoing deduction, it is obvious therefore that the significant point of reference which was made an issue is not the traditional history relating to title but acts of long possession for purpose of determining whether trespass has been committed or not. All that the law requires of the plaintiff herein is for him to prove acts of trespass to the land in his possession. See *Chiroma v. Suwa* (1986) 1 NWLR (Pt.19) p.756; *Amakor v. Obiefuna* (1974) 3 S.C. p.75 and *Ekpan v. Uyo* (1986) 3 NWLR (Pt. 20) p.63. G

At the trial court for instance, the plaintiff/respondent testified H and called a total of four witnesses to prove his case while three witnesses gave evidence on behalf of the defence. The plaintiff/respondent in the main pleaded and led evidence that he is the owner in possession of the land in dispute. He equally and also testified how

he has been performing diverse acts of ownership and possession in recent times including planting Agric palm on the land without any protest or challenge from anybody.

The proofs in corroboration are the facts pleaded at paragraphs 4 and 5 of the statement of claim at pages 4 - 6 of the record of appeal as follows:-

“4. The plaintiff is in long, recent and effective possession and radical owner of the land in dispute from time immemorial exercising maximum acts of ownership thereon without let or hindrance save as authorized by him.

5. The plaintiff’s ancestors cleared the land - in - dispute virgin. They made extensive use of it as aforesaid in their lifetime without let or hindrance.

b. The plaintiff has continued to make extensive use of this land and no one in the whole Njikaraha Mgbuisii has challenged him let alone the defendants who are from another town altogether.

c. Sometime in 1978, the Ministry of Agriculture and Natural Resources Owerri Imo state under its Shall (sic) Holder Oil Palm Project Unit, advised the plaintiff’s people to invest in palm plantation. The plaintiff took the advice, cleared his land i.e. the land - in - dispute ready for the venture... the plaintiff filed his papers with the said Ministry where it was approved. The memorandum to that effect was drawn up and executed by both parties and their witnesses...

d. One striking thing in the said document is that the 1st Defendant was a surety to the loan that was granted to the plaintiff in pursuit of this his ambition to establish a palm plantation.”

The plaintiff/respondent in substantiation and proof of the averment of the foregoing facts pleaded was unshaken and consistent in his evidence at pp. 24 - 25 of the record. This is what he said:-

“The land in dispute was my father’s land and I inherited it after my father’s death in 1959. I continued to farm in it from 1959 to 1978. Throughout that period nobody challenged me. In 1978 Small Holders Oil Palm Project came to our area and distributed for land owners who may be interested in the development of palm plantations. I obtained a form which I filed (sic) and took officials of the Ministry of Agriculture and showed them this land now in dispute as my land which I would like to develop into a palm plantation. I was advised to clear the land and thereafter they will provide palm

seedlings. I cleared the land and prepared it for the plantation project. Palm seedlings were sent to me. I planted two hectares that same year 1978. Nobody challenged me. The 1st defendant is the Chairman of our local meeting of all the kindred involved in the Small Holders project. He signed as my surety when I signed the agreement with the officials for the project in my own land.” B

Intriguingly and on the side of the defendants, paragraph 4 of their statement of Defence at page 14 of the record of appeal is also relevant wherein they pleaded and said:-

“4 ... The plaintiff trespassed into a portion of the land in dispute in 1978 which was later granted to him by defendants’ family.” C

Also at page 15 of the said record the Defendants/appellants further pleaded thus:-

“5(d)... The plaintiff later approached the Defendants’ family and requested for a portion of the land in dispute verged violet to add to what he has in order to establish palm plantation and as a member of Umanna Onaji Oil Palm Planters Multipurpose Co-operative Society.

(e) ... The defendants acceded to request...

(f) The 1st Defendant was the surety to the Application of the plaintiff for loan...” E

Without having to overstretch the point, it is apparent from the Defendants/Appellants’ foregoing averments that they did concede that the plaintiff/respondent is in possession of the land in dispute and that he did establish Agric Palm Plantation thereon. In addition, it is pertinent to also hold that the evidence by the defendants/appellants’ witnesses are in further confirmation of their pleadings. It is manifestly obvious on record therefore that the Defendants/Appellants did not only concur in their pleadings but also in evidence on oath that the plaintiff/respondent is in possession of the land in dispute and that he planted Agric Palms thereon. Suffice it also to say that at page 17 of the record they pleaded and conceded further that they trespassed into the land in dispute which they agree is in possession of the plaintiff/respondent. F G H

The 1st Defendant/Appellant testified as D.W.1 and confirmed the facts pleaded by the plaintiff/respondent that he signed Exhibit ‘B’ the loan agreement used in buying palm seedlings planted on the land in dispute. The evidence of the witness is at page 39 of the

record and he said:-

“...I see Exhibit “B” I signed it, I know Gregory Ohaji (Pw2) he has a poultry near my land.”

Also at page 40 of the record the said witness D.W.1 under cross examination said:-

B *“I agree that when the plaintiff applied for loan to establish his palm plantation I was his witness. I did not observe the establishment of the plantation. I share common boundary with plaintiff where he developed his palm plantation.”*

C Further still and at page 39 of the same record, D.W.1 agreed that they cut down some palms on the land in dispute when he said:-

“We cut down some old and wild palms but it was after the judgment at the customary court.”

D This is a confirmation that the Defendants/Appellants admitted cutting down palms on the land in dispute though they claimed that they were wild palms. In corroborating the evidence by D.W.1, the testimony of D.W.3 at page 44 of the record relating the questions and answers under cross examination are of interest:-

“Q. You destroyed the entire Palm trees in the land.

E *A. Not all*

Q. Which did you leave?

A. We had not cut down all before the Plaintiff sued us. What we cut down were wild Palms.”

F ***It is interesting to note that there is nowhere on record that the appellants led evidence that any wild palms were on the land after plaintiff had established his Agric palm plantation. The trial court I hold failed to evaluate this and make findings of facts on the evidence of D.W.1 and D.W.3 as to whether what they cut down were wild palms or Agric palms. In otherwords and relying on the principle laid down by this court in the long standing case of Mogaji & Ors v. Odofin & Ors (1978) 4 S.C. bounded duty lies on the trial court to adequately evaluate the evidence adduced by the parties for purpose of arriving at a just and right conclusion in the adjudication of the case before it. This will involve the construction of an imaginary scale for purpose of weighing the evidence of both sides with a view of determining in whose favour the pendulum of justice will tilt on the balance of probability.***

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D.W.2 also in his evidence conceded and testified by affirming that it is the plaintiff/respondent's village that farms the location of the land in dispute. He did not further say that the Defendants/Appellants or their people also farm the said land in dispute or in that location. The implication of the evidence is to give credence to the plaintiff/respondent's claim that he is the owner and in exclusive possession of the land in dispute. At page 42 of the record, the witness D.W.2 said:-

"...my village is Umudin in Nkarahia. The plaintiff is from Umutobo village. We of Umudin people do not have land in the location of the land in dispute.

Q. The people of Nkarahia who have land in the location are the Umutobo people?

A. I agree: They farm in the location of the land in dispute."

From the foregoing evidence by D.W.2 it is indicative that while the plaintiff/respondent's people are those who farm in the location of the land in dispute, the defendants/appellants do not. The established principle of law is well founded and settled that facts admitted need no proof. See the case of *Narinder Trust Ltd. v. N.I.C.M.B. Ltd.* (2001) FWLR 1546 at 1558 and *Nwankwo v. Nkwankwo* (1995) 5 NWLR (pt 894) 158. **This court had also held in the case of *Olufusoye & Ors. v. Olorunfemi* (1989) 1 NWLR (pt. 95) 26 that an admitted fact is no longer a fact in issue.** The same principle was enunciated in *Bunge v. Governor Rivers State* (2006) 12 NWLR (Pt. 995) 573 where it was held at page 600 that:-

*"When a fact is pleaded by the plaintiff and admitted by the defendant, evidence on the admitted fact is irrelevant and unnecessary. There is no dispute on a fact which is admitted. "In the face of unchallenged evidence and clear admission of trespass and destruction, the learned trial judge grossly ignored same and proceeded to dismiss the plaintiff/respondent's suit. The law is well founded in plethora of authorities that where a trial court, failed in its duty to properly evaluate the evidence and exhibits placed before it the Court of Appeal is in a position to interfere and right the wrong. The decision of this court in the case of *Okon Ito v. Okon Ndo Ekpe* (2000) FWLR (Pt.6) 927 at 942 firmly held and said:-*

"It is the duty of Court of Appeal or any appellate court to

interfere with trial court's findings of fact where the trial court never adverted to the important facts in the pleading and evidence, the court of Appeal is empowered to do this under Section 16 Court of Appeal Act." See also the case of Fashanu v. Adekoya (1974) ANLR p.35.

For purpose of stressing the point further, where the trial court abdicates its duty by failing to properly evaluate the evidence of witnesses for all parties, the justice of the case would require that the Court of Appeal steps into the shoe to ensure that parties are not left without remedy. See again the cases of Igudo v. Owulo (1999) 5 NWLR (Pt.601) 70 at 72 and Idundun v. Okumagba (1976) 9-10 S.C. 277. ***The learned trial judge for instance found at page 57 of the record reproduced earlier in the course of this judgment that the plaintiff was not relying on traditional history but on acts of possession extending over a sufficient length of time to prove his possession. The findings, as rightly held by the lower court were sufficient to have concluded that the plaintiff/respondent had a right of an action in trespass against the Defendants/Appellants. The failure by the trial court had worked great injustice against the plaintiff/respondent and donated a "father Christmas" present to the defendants/appellants as rightly held by the lower court.***

On the totality of the case at hand, it is obvious I hold that the learned trial judge greatly erred in failing to be guided by the imaginary scale principle laid down in the case of Mogaji & Ors v. Odofin & Ors supra. He did not in other words weigh the evidence by the plaintiff/respondent and his witnesses against the incoherent testimonies of the defendants/appellants and their witnesses. The line of action taken by the lower court in reversing and remedying the situation was a step in the right direction.

The lower court's judgment in other words cannot be interfered with but I also affirm same and dismiss the appeal as lacking in merit. With costs following events, I will award the sum of N100,00.00k in favour of the respondent against the appellants. Appeal is dismissed with N100,000.00k costs.

MOHAMMED JSC

By a Writ of Summons dated and filed on 19th May, 1992 by the Plaintiff now Respondent in this Court against the Appellants in this Court who were the Defendants at the trial High Court of Justice of Imo State, the Plaintiff/Respondent in his paragraph 11 of his statement of claim dated 14th July, 1992, claimed against the Defendants/Appellants as follows -

“11. As a result of the Defendants’ act of trespass the Plaintiff claims from the Defendants jointly severally as follows:-

The sum of Two Million Naira as general damages jointly and severally against the Defendants in that on or about the month of February 1992, without his leave, permission and or consent they with their agents went into the palm plantation of the Plaintiff at OGBOROZO OGWO along Nkaeana-Owerri-Port Road within jurisdiction cut down and destroyed hundreds of Agricultural Palm Trees Planted by the Plaintiff and which have been in his possession and ownership since they were planted in 1978.

2. An injunction permanently restraining the Defendants, their agents, servants and or privies from ever entering the Palm Plantation or interfering with it in whatever form.”

The Defendants/Appellants in their statement of Defence dated 18th March, 1993 in reaction to the claims of the Plaintiff/Respondent against them averred in paragraph 14 as follows -

“14. The Defendants seriously contend that the Plaintiff is not entitled to any of the reliefs he seeks. At the hearing the Defendants shall rely on all the Legal and Equitable Defences whether pleaded or not and shall urge the Court to dismiss the suit as same lacks merit.”

What is quite clear from the pleadings of the parties is that the Plaintiff did not claim for any declaration of title to the palm plantation alleged to have been destroyed by the Defendants nor did the Defendants counter-claim for declaration of title to the land in possession of the Plaintiff on which the Plaintiff’s Palm Plantation was established. The case at the trial High Court therefore was principally a claim for damages for trespass resulting in the destruction of hundreds of palm trees on the Palm Plantation of the Plaintiff by the Defendants and an injunction permanently restraining the Defendants from ever entering or interfering whatsoever with Plantation.

In the course of the hearing at the trial Court, that Court was not satisfied that any of the parties had proved satisfactorily, title to the land in dispute and hence asked learned Counsel to the parties to address the Court on the need or otherwise of ordering non-suit to the case of the Plaintiff. However, after hearing learned Counsel, the trial Court did not consider and rule on the issue of non-suit but merely turned round to dismiss the case of the Plaintiff/Appellant.

On appeal to the Court of Appeal, that Court allowed the Plaintiff/Respondent's appeal by setting aside the judgment of the trial Court and replacing the same with a judgment in favour of the Plaintiff/Respondent resulting in granting his claims for damages for trespass and destruction of his Palm Plantation and injunction restraining the Defendants/Appellants from further interfering with the Palm Plantation.

From the 10 grounds of appeal filed on behalf of the Appellants by their learned Counsel many of which grounds are grounds of law, the learned Appellant's Counsel decided to pitch his tent on the omnibus ground by framing a lone issue for the determination of this appeal which issue was adopted by the Respondent in the Respondent's brief of argument. The lone issue reads -

"Whether upon calm and reflective view of all the facts and circumstances of the instant case, the Court of Appeal was right in interfering with the finding of fact made by the trial Court and in holding thereby that the Respondent was entitled to the reliefs sought and granting them to him."

As stated in this issue based on the facts and circumstances of this case, to put it bluntly, the felling and destruction of hundreds of palm trees on the Plaintiff/Respondent's Palm Plantation by the Defendants/Appellants, was the main cause of action put on ground for hearing before the trial Court. In other words, the case was a simple claim for damages for trespass and injunction against the Appellants for their undisputed acts of invasion and destruction of the Respondent's Palm Plantation. Even the Appellants do not dispute the fact that the Respondent is the owner and in effective undisputed possession of the Palm Plantation destroyed by the Appellants.

Trespass is a civil wrong against possession in that it is an unlawful and unauthorized invasion of the right of the party in possession who can maintain an action in trespass against the whole world

except the owner. In other words, trespass to land is actionable at the instance of the person in possession where exclusive possession gives the person in possession the right to retain the land and to undisturbed enjoyment of it against all wrong doers except a person who can establish a better title. See *Adepoju v. Oke* (1999) 3 N.W.L.R. (Pt. 594) 154 and *Balogun v. Akanji* (2005) 10 N.W.L.R. (Pt. 933) 571. Therefore, having regard to the facts and circumstances of this case and the law, the Respondent had clearly established his case at the trial Court to have been entitled to judgment as found by the Court below. I am therefore at one with my learned brother Ogunbiyi, J.S.C. in the lead judgment that this appeal is without merit and ought to be dismissed.

Accordingly I also dismiss this appeal and abide the orders in the lead judgment including the order on costs.

D

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the leading judgment prepared by my learned brother, Ogunbiyi, J.S.C. I agree with it. I propose though, to add only a few observations. The respondent as plaintiff claimed from the defendants/appellants jointly and severally as follows:

The sum of two million Naira (N2M) only as general damages jointly and severally against the defendants in that on or about the month of February 1992, without his leave, permission and or consent they with their agents went into the Palm Plantation of the plaintiff at OGBURUZO OGWU along Nkaraha-Owerri - Port Harcourt Road within jurisdiction, cut down and destroyed hundreds of Agricultural Palm Trees planted by the Plaintiff and which have been in his peaceable possession and ownership since they were planted in 1978.

2. An Injunction permanently restraining the defendants, their agents, servants and or privies from ever entering the Palm Plantation or interfering with it in whatever form.

According to the plaintiff's pleadings, he has been in long, effective possession of the land. He planted Agricultural Palm trees on the land. The defendants trespassed on the land and destroyed several of these Agricultural Palm Trees. The plaintiff did not claim for

H

title. His claim is for trespass and injunction. On the other side of the fence the defendants pleaded that the land was deforested by their ancestors and devolved on them. The defendants did not counter claim for title.

It is abundantly clear that title to the land is not in issue. The B issue is Trespass and Injunction. Whether on the facts the plaintiff is entitled to both. Trespass is actionable by plaintiff who is in exclusive possession (i.e. actual or constructive possession) of land at the time of the trespass by the defendants. If a plaintiff has always been in C exclusive possession of land and the defendant trespasses on the land he will be liable for damages for trespass and a restraining order of injunction. See *Odunukwe v. Administrator General* 1978 1 S.C. p.25.

Once the defendant goes further to counterclaim for title to the land in dispute, title to the land would be in issue and to succeed D plaintiff would have to satisfy the court that he has a better title than the title of defendant. See *Amakor v. Obiefuna* 1974 3 S.C. p.67

The plaintiff led evidence to show that he was in exclusive possession of the land, that he planted agricultural trees etc on the land. Further evidence reveals that the defendants trespassed on the land E and destroyed several agricultural trees, a fact admitted by the defendants and made unassailable by photographs which showed extensive destruction and admitted as exhibits. This is high quality evidence which the Court of Appeal was satisfied with and to my mind F rightly justified upsetting, the High Court's decision.

For the defendant's case to have any redeeming features, they ought to have gone further to claim title to the land in dispute by-way of filing a counterclaim. In the absence of a counterclaim for title to the land in dispute the defence crumbles with the resultant G effect that the plaintiff's claims for trespass and injunction were correctly granted by the majority decision of the Court of Appeal.

The learned trial judge fell into grave error when he held that the defendants are the owners of the land and proceeded to dismiss the plaintiff's case. I must observe that once title to the land is not in H issue since none of the parties claimed title the learned trial judge ought to have restricted himself to examine the evidence before him to see if the plaintiff was in exclusive possession of the land at the time the defendants trespassed on it. The findings and pronouncements of the learned trial judge were in the circumstances wrong.

The defendants pleaded that the land in dispute devolved on them from their ancestors but failed woefully to counterclaim for title to the land. Counsel setting pleadings must have an all round understanding of his case and know how to articulate facts to achieve desired results. Failure to counterclaim for title on these facts is strange and unfortunate. B

For these brief reasons as well as those more fully given by my learned brother Ogunbiyi, J.S.C. I would dismiss the appeal with costs of N100,000.00

C

AKA'AH'S JSC

I had a preview of the judgment of my learned brother, Ogunbiyi, J.S.C. The plaintiff (now respondent) sued the defendants (appellants) at the Imo State High Court holden at Oguta in Suit No. HOG/S3/92 claiming the sum of Two Million Naira as general damages for trespass and injunction. He alleged that in February 1992 the defendants without his leave, permission and or consent, went into his palm plantation at OGBURUZO OGWU along Nkaraha - Owerri Port Harcourt Road, cut down and destroyed hundreds of agricultural palm trees which he planted and had been in peaceable possession since 1978. E

The Defendants claimed that the land in dispute is known as BEKWESU which is owned by their kindred and it was the latter's family that granted the land to the Plaintiffs family on the condition that the right to repossess same vested in the defendants' family at anytime they so desired and without notice. They claimed that the occasion arose when the Plaintiff testified against them in Suit No. CC/HJ/51/89 denying their over lordship; consequently they entered and repossessed the said land. F G

It is significant to point out that neither the Plaintiff nor the Defendants claimed for declaration of title to the land. However where a claim for trespass is coupled with a claim for injunction, the title of the parties is automatically put in issue. See: Kponuglo v. Kodadja 2 H WACA 24; Ogunfaolu v. Adegbite (1936) 5 NWLR (Part 43) 549; Ajani v. Ladepo (1986) (Part 28) 276. Akintola v. Lasupo (1991) 3 NWLR (Part. 180) 508; Olohunde v. Adeyeju (2000) 10 NWLR (Part 676) 562 and Oriorio v. Osain (2012) 16 NWLR (Part 1327) 562.

The plaintiffs claim will not be defeated on the ground that he failed to establish his root of title unless the Defendant establishes a better title. The Defendants admitted that they entered the disputed land in order to repossess it. This action in itself is an admission of the trespass which the Plaintiff complained about. In order to escape liability for the trespass, it was incumbent to establish their title to the land. Even on their own admission, the Plaintiff was in lawful occupation of the land since they pleaded that it was their family that granted the land to the Plaintiffs family. At the trial the 1st Defendant/Appellant agreed that he cut down some of the palms but claimed that they were wild ones. This action by the 1st Defendant is tantamount to self help which the law frowns at. See: *Ojukwu v. Governor of Lagos State* (1986) 3 NWLR (Part 26) 39. They were entitled to bring an action for foreclosure and repossession of the land.

The evidence adduced by the Defendants/Appellants did not disclose they had a better title. DW2 conceded that it is the plaintiff/respondent's village that farms in the area in dispute when he stated in answer to a question thus:

"We of Umudin people do not have land in the location of the land in dispute".

He further agreed that the people of Nkaraha who have land in the location are the Umotobo people, the village from where the plaintiff/respondent hailed.

The evidence of DW2 goes against the claim by the defendants/appellants that it was theft kindred who gave the land to the Plaintiffs family on the understanding that they could repossess the land. If the learned trial Judge had properly evaluated the evidence, he would have reached the conclusion which the majority decision of the lower court arrived at. The findings made by the trial court which led to the dismissal of the Plaintiff/respondent's claim at the trial court was perverse and the lower court was right to re-evaluate the evidence.

I also find as my learned brother, Ogunbiyi found, that the appeal has no merit and it is accordingly dismissed with N100,000.00 (One Hundred Thousand Naira) costs in favour of the respondent against the appellants.