

SUPREME COURT OF NIGERIA
FRIDAY 11TH APRIL, 2014. SC. 129/2013
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, O. ARIWOOLA,
C. B. OGUNBIYI, JJSC**

1. ONYIBOR ANEKWE
2. CHINWEZE APPELLANTS
AND
MRS. MARIA NWEKE RESPONDENT

ACTIONS - Cause of action - Determination - Subject matter of claim before court is determined on plaintiff's claim - Per pleadings filed (H1)

PLEADINGS - Statement of claim - Response - Defendants' pleadings should only respond to statements of facts - Averred on plaintiffs' statement of claim (H2)

EVIDENCE - Withholding evidence - Under EA s. 149(d) - It is presumed that production of any member of the Ozo Awka society to confirm evidence of DW1 - Would have operated against interest of defendants (H3)

PLEADINGS - Binding nature - Parties are bound by their pleadings - And plaintiff must succeed on strength of his case - And not rely on weakness of defence (H4)

LAND LAW - Title - When in issue - Where there is claim for trespass and injunction - Title of parties to land in dispute is automatically put in issue (H5)

EVIDENCE - Evaluation - Involves consideration of each set of evidence given by parties - Determination of credibility of witnesses - And ascription of probative value to evidence adduced (H6)

CUSTOMARY LAW - Custom - Inheritance - Right of women - The Awka custom that disinherits daughter from her father's estate - Or

wife from her husband's property - Is barbaric and out rightly condemnable in present realities (H7)

FACTS

Plaintiff/respondent commenced this action at the Mbailinofu District of Anambra State Customary Court. The action was subsequently transferred to the High Court of Anambra State Awka. Plaintiff inter alia claims for the ownership of the disputed property situate at Amikwo village Awka and for injunction restraining appellants from further trespass on the property. Appellants counter-claim for declaration that their father being entitled to the statutory right of occupancy over the property in dispute, 1st appellant being the 1st son of their late father is now deemed to be the owner of the same property in accordance with the native law and custom of Awka people. Respondent's contention is that one Obiora Okonkwo Eli a half brother to one Nwogbo Okonkwo Eli (i.e. father of appellants and respondent's deceased husband), had erected two bungalows on the land in dispute. The houses were shared between appellants' father and respondent's deceased husband. Respondent stated that she inherited the portion given to her deceased husband upon his death and continued living in the house. She went further to narrate that after the death of her husband, appellants' father asked her to vacate her house on the ground that she had no male child. She contended that the custom of Awka people allows a woman to inherit her deceased husband's property, whether or not she has male children. Respondent therefore relied on final arbitration made by the Ozo Awka society on the matter which was not controverted by appellants.

On the contrary, appellants' case is that the property in dispute was never partitioned between their father and respondent's deceased husband. They stated that it was their father who being the only surviving son of Nwogbo Okonkwo Eli, that erected the two buildings on the land out of which he gave two rooms to respondent to occupy as a tenant at will. Appellants contend that the property in dispute is the homestead of Okonkwo Eli and that by the native law of Awka, was inherited by their grandfather (Nwogbo Okonkwo Eli) and then by their father as the only surviving son. And upon the death of their father, the same property is being inherited by 1st ap-

pellant as the eldest son. Respondent testified and called two other witnesses while 1st appellant and three other witnesses testified for appellants. At the end of hearing, the court granted respondent's claim in part and dismissed appellants' counter-claim in its entirety. On appeal by appellants to the Court of Appeal Enugu Division, the appeal was dismissed and judgment of trial court re-affirmed. Aggrieved, appellants appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the learned justices of the Court of Appeal were right in upholding the decision of the trial court which decided the suit on the issue of disinheritance of the Respondent which issue was never canvassed before the trial court.

2. Whether the court below was right in refusing to interfere with the findings of the learned trial judge.

HELD (Unanimously dismissing the appeal per
OGUNBIYI JSC)

ACTIONS - Cause of action - Determination

1. It is pertinent and also elementary to state that a subject matter of a claim before a court is determined on the plaintiff's claim per the pleadings filed. (p. 1370 B)

PLEADINGS - Statement of claim - Response

2. I will also not hesitate to state that at paragraph 14 of their pleadings the defendants/appellants have veered at large by prodding into private life of the plaintiff/respondent which was not an issue before the court.

The law is trite and well settled that the defendants/appellants' pleading should only respond to statements of facts averred on the plaintiff/respondent's statement of claim.

The averments contained in paragraphs 16, 19 and 21 of the defendants, amended statement of defence and counter claim, reproduced here under, are clear vindication of the respondent that the appellants' intention is to disinherit her from the entitlement of her late husband's property. (p. 1371 H)

EVIDENCE - Withholding evidence

3. It is on record that P. W. 2 testified for the plaintiff and also gave evidence under cross-examination that the Ozo Awka society were accepted as being the highest body in settlement of dispute in Awka. The defendants, who claimed through D.W.1 that the society decided in their favour, did not, however, produce any member of the Ozo Awka society to testify and confirm D.W.1's evidence. By the provision of section 149(d) of the Evidence Act, the presumption is conclusive that the production of such evidence would have operated against their interest and hence the withholding of same. (p. 1373 F)

PLEADINGS - Binding nature

4. The law is well settled and elementary, that parties are bound by their pleadings and the plaintiff must succeed on the strength of her own case comprising both pleadings and evidence and not rely on the weakness of the defence in proof of her claim. (p. 1373 H)

LAND LAW - Title - When in issue

5. As rightly submitted by the said counsel, at paragraph 26 of the plaintiff/respondent's amended statement of claim, her claims were in both trespass and an injunction. The law is however, well settled that for a claim of this nature, the title of the parties to the land in dispute is automatically put in issue. (p. 1375 B)

EVIDENCE - Evaluation

6. As rightly submitted by the learned counsel for the appellants, the evaluation of evidence involves the consideration of each set of evidence given by the parties, the determination of the credibility of the respective witnesses and the ascription of probative value to the evidence evaluated.

H In stressing the point further, I seek to emphasize that the very direction in which the pendulum tilts is the course of justice. Therefore, the onus is on the judge, as an adjudicator and umpire to act objectively in the process of arriving at a just evaluation of the evidence for purpose of achieving the

ultimate end result. The determinant factor as to which evidence a court accepts or rejects is not dependant on the quantum or quantity of witnesses called but rather by the quality or probative value of the evidence by the witnesses.

(pp. 1377 A/1378 C)

B

CUSTOMARY LAW - Custom - Inheritance - Right of women

7. I hasten to add at this point that the custom and practices of Awka people upon which the appellants have relied for their counter claim is hereby out rightly condemned in very strong terms. In otherwords, a custom of this nature in the 21st century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society. One would expect that the days of such obvious differential discrimination are over. Any culture that disinherits a daughter from her father's estate or wife from her husband's property by reason of God instituted gender differential should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom. For a widow of a man to be thrown out of her matrimonial home, where she had lived all her life with her late husband and children, by her late husband's brothers on the ground that she had no male child, is indeed very barbaric, worrying and flesh skinning.

It is indeed much more disturbing especially where the counsel representing such perpetrating clients, though learned, appear comfortable in identifying, endorsing and also approving of such a demeaning custom. (p. 1380 C)

REPRESENTATION

Nweke Emmanuel Achukwu with B. C. Hezes, for the Appellants
Emmanuel Odum, for the Respondent

H

CASES REFERRED TO

Sagay v. Sajere (2000) 6 NWLR (pt. 661) 360

- Udengwu v. Uzuegbu (2003) 13 NWLR (pt. 836) 136
- Mogaji v. Odofoin (1978) 3 - 4 SC 91
- Lagga v. Sarhuna (2008) 16 NWLR (pt. 1114) 427
- Bassil v. Fajebe (2001) 11 NWLR (pt. 725) 592
- Sha (JNR) v. Kwan (2000) 8 NWLR (pt. 670) 685
- B Nsirim v. Nsirim (2001) FWLR (pt. 96) 433
- Dada v. Dosunmu (2007) FWLR 388
- Adesanya v. Otuewu (1993) 1 SCNJ 77
- Olobunde v. Adeyoju (2000) 10 NWLR (pt. 10) 562
- C Akintola v. Lasupo (1991) 3 NWLR (pt. 180) 508
- Okorie v. Udom (1960) SC NLR 325
- Onyejekwe v. State (1992) 3 NWLR (pt. 230) 444
- Ogundule v. Olabode (1973) 2 SC 71

D STATUTE REFERRED TO

Evidence Act, s. 149(d)

LEAD JUDGMENT BY OGUNBIYI JSC

E The appeal before us is against the judgment of the Court of Appeal, Enugu Division delivered on the 14th day of February, 2013 wherein their Lordships of that court in their wisdom dismissed the totality of the appellants' appeal and thereby upheld the judgment of the trial High Court Anambra State in granting the Respondent's claims in part and dismissed the appellants, counter claim.

F The genesis of this case was that the Respondent as plaintiff instituted the suit that led to this appeal before the Mbailinofu District of Anambra State Customary Court but subsequently transferred to the High Court upon the order made by Awka Division of Anambra State High Court on 19th February, 1991.

G In her amended statement of claim filed on 30th May, 2000, the respondent herein as plaintiff at paragraph 26 sought the following reliefs against the defendants/now appellants.

H *"26. WHEREOF the plaintiff claims against the Defendants jointly and severally as follows:-*

(a) A declaration that the plaintiff is the person entitled to statutory right of Occupancy of piece or parcel of land which is situate at Amikwo village Awka and verged Red in her plan No. TLD/ANO 1/92 and filed with this statement of claim.

(b) *An injunction restraining the Defendants, their servants, and agents from further trespass on the said piece or parcel of land.*

(c) *An order of court compelling the 2nd Defendant to remove part of his building constructed into the plaintiffs land.*

(d) *And order of court compelling the Defendants to share the Nwogbo Okonkwo Eli family lands averred in paragraph 16 of this Statement of Claim.* ^B

IN THE ALTERNATIVE, an account of the proceeds of the sale of the family lands and payment over to the plaintiff what is due to her? N500.00 (Five Hundred Naira) General damages for Trespass.” ^C

In their amended statement of Defence filed on 6th February, 2007 the defendants denied the plaintiff's claim and also counter claimed for:-

“A declaration that the defendants' father being entitled to the statutory right of occupancy over the piece or parcel of land the subject matter of this suit, the 1st defendant being the 1st son of his late father is now deemed to be entitled to statutory right of occupancy over the same land in accordance with the native law and custom of Awka people.”

For purpose of putting the records straight, the claim was originally instituted against the current 2nd appellant and one Anieke Nwogbo as defendants. The second defendant died in the course of the proceedings and was substituted by one Onyibor Anekwe, the 1st appellant herein. ^E

At the trial high court, the respondent testified and called two other witnesses while the 1st appellant and three other witnesses testified for the defendants/appellants. ^F

It was common ground between the parties that the plaintiff's husband, Nweke Nwogbo was the younger and half brother of the Defendants' father, Anekwe Nwogbo. Nweke Nwogbo (the plaintiff's deceased husband) and Anekwe Nwogbo (the Defendants' deceased father) were sons of Nwogbo Okonkwo Eli who died outside the home town of the parties. Obiora Okonkwo Eli was the senior brother (half brother) of Nwogbo Okonkwo Eli, who did not have a compound of his own at Awka at the time of his death. After the death of Nwogbo Okonkwo Eli, his two widows who had a son each (the husband of the Respondent and the father of the Appellants) went with their sons to live with Nwogbo Okonkwo Eli's half brother, Obiora ^H

Okonkwo Eli before they were eventually moved by Obiora Okonkwo Eli into the compound now known as No. 19 Ogbuagu Lane Amikwo Village, Awka, part of which is now in dispute.

On the one hand, the Respondent as plaintiff on her amended statement of claim and evidence at the trial court contended that Obiora Okonkwo Eli erected two separate bungalows on the subject property and shared them between the sons of Nwogbo Okonkwo Eli (i.e. the Appellants' father and Respondent's husband) and that she, (the plaintiff) inherited the portion given to her husband upon his death. It was also the Respondent's case that after her husband died and was buried in their own house immediately before the civil war, she continued to live in the portion of land as was shared between her husband and the 1st defendant; that the defendants' father asked her to vacate her house on the ground that she had no male child in the house.

The plaintiff/respondent therefore, in the quest of asserting her right of inheritance, affirmatively contended on her claim that a woman according to the customs of Awka people inherits the property of her husband whether she has a male child or not: that in confirmation of the foregoing assertion, she conclusively relied on the final arbitration made by the Ozo Awka society on the matter which she claimed was not controverted by the appellants.

On the other hand, and Contrary to the view taken by the respondent, the appellants on their amended statement of defence and evidence contended that the subject property in question was never partitioned and shared by Obiora Okonkwo Eli for the sons of Nwogbo Okonkwo Eli: rather that at the time Obiora Okonkwo Eli moved them into the subject property, he only built a mud house therein and that it was their (appellants') father who (having inherited the compound as the first and lone surviving son of Nwogbo Okonkwo Eli) eventually erected two buildings on the land out of which he gave two rooms to the plaintiff to occupy as a tenant at will.

It was also the appellants' case that the subject land (now known as No. 19 Ogbuagu Lane Amikwo Village, Awka) was the homestead of Okonkwo Eli and that by the Native Law and Custom of Awka people, the land was inherited by the appellants' grandfather Nwogbo Okonkwo Eli and then by the appellants' father Anekwe Nwogbo as the first and only surviving son of Nwogbo Okonkwo Eli and upon

the death of Anieke Nwogbo, same had been inherited by the 1st appellant as the eldest son of the late Aniekwe Nwogbo.

The trial high court in its considered judgment on the 13th March, 2008 gave judgment in favour of the plaintiff/respondent and granted the declaration and injunction sought but proceeded to dismiss the defendants/appellants' counter claim.

On an appeal to the lower court, same was accordingly dismissed and the judgment of the trial court was re-affirmed. Hence the appeal now before us wherein the appellants filed notice of appeal and raised two grounds of appeal therein.

In compliance with the rules of this court, parties filed and exchanged briefs of arguments. While that of the appellants was settled by one Emmanuel Achukwu, Esq. and filed on the 21st May, 2013, the respondent's brief was settled by Chief Emma Odum and filed on the 24th July, 2013.

On the 27th January, 2014 when the appeal came up for hearing, both counsel adopted and relied on their respective briefs of arguments with the appellants urging that the appeal be allowed while a dismissal order was sought on behalf of the respondent.

I wish to state that the counsel representing parties are at consensus on the two issues formulated from the two grounds of appeal which are as follows:-

1. Whether the learned justices of the Court of Appeal were right in upholding the decision of the trial court which decided the suit on the issue of disinheritance of the Respondent which issue was never canvassed before the trial court.

2. Whether the court below was right in refusing to interfere with the findings of the learned trial judge.

On behalf of the appellants, it was argued by their learned counsel that the main issue before the trial court was whether the subject property was partitioned between the father of the Appellants and the husband of the Respondent, and not whether it remained as one unit and therefore had nothing to do with the propriety or otherwise of disinheritance of a widow. It is therefore the counsel's submission that the learned trial judge misapprehended the germane issue before it and veered into the realm of the propriety or otherwise of the disinheritance of a widow which he maintained was not the main issue which the court was called upon to determine;

that the trial court judge ought to have reviewed the evidence of both parties in this regard and made a specific finding thereon. Copious reference was made to the pronouncement in the case of *Sagay V. Sajere* (2000) 6 NWLR (Pt. 661) 360 at 375 - 376; that the lower court greatly erred in its reliance on the plaintiff's pleadings at paragraphs 12 and 15 of the Amended Statement of Claim, 16 and 19 of the defendants, amended statement of Defence and also the testimony of D.W.1. Counsel therefore lamented that had the lower court constructed the entire pleadings of the parties as a whole, its findings would have been different; that the erroneous stance taken by the lower court in affirming the trial court's decision was an issue of legal pronouncement by this court in the case of *Udengwu V. Uzuegbu* (2003) 13 NWLR (part 836) 136 at 151 - 152. The counsel, in the circumstance had called upon us to resolve the 1st issue in favour of the appellants.

The 2nd issue is whether the court below was right in refusing to interfere with the findings of the learned trial judge. Submitting in the negative, the appellants' counsel in support of his argument cited the authorities in the cases of *Sagay V. Sajere* (supra), *Mogaji V. Odofin* (1978) 3 - 4 SC 91; *Lagga V. Sarhuna* (2008) 16 NWLR (pt. 1114) 427 at 460, *Bassil V. Fajebe* (2001) 11 NWLR (pt. 725) 592 at 608 - 609 and *Sha (JNR) V. Kwan* (2000) 8 NWLR (Pt.670) 685 at 705. That the trial court judge concentrated his assessment only on the evidence of the respondent's witnesses and not those of the appellants' especially that of D.W.2 and D.W.3.

The totality of the appellants' submission is challenging the trial judge in failing to have properly evaluated the evidence before him; that the consequential effect was an erroneous finding which the lower court had refused to re-evaluate.

Furthermore, that with the respondent claiming a declaration of title, injunction and damages for trespass, she was in the circumstance duty bound to plead and prove her title in any of the five ways as laid down in the case of *Idundun V. Okumagba* (1976) 9 - 10 SC 227. The court is therefore urged to allow this appeal, set aside the judgment of the lower court in upholding that of the trial court and in its stead to dismiss the suit of the Respondent (as plaintiff at the trial court) and enter judgment in favour of the appellants (as Defendants/Counter-claimants) in terms of their counter-claim.

In reply to the appellants' submission, the respondent's counsel argued the two issues together and proceeded to endorse the evaluation of evidence made by the trial court judge particularly that of P.W.1 the respondent herself, P.W.2 Ozo Nwogbo Okafor and also D.W.1. Reference was further made to the pleadings of the parties; that the trial court in its evaluation rightly considered the totality of the evidence of parties in arriving at its findings and conclusion; that for the court to adequately determine the real controversy between the parties, there has to be an objective analysis of the pleadings; that contrary to the view held by appellant's counsel, the trial court judge clearly understood the subject matter of the complaint laid before him. In substantiating his arguments further, the learned counsel for the respondent submits that an appellate court shall only reverse the finding of a trial court where such does not reflect a proper assessment of the totality of the evidence before it or the judgment turns out to be perverse so as to show lack of judicious or judicial exercise of discretion.

On the refusal of the lower court to interfere with the decision of the trial court therefore, it is the counsel's submission that the need did not arise in the case at hand in view of the absence of the judgment being perverse; that the case of *Mogaji V. Odofin* (1978) 3 - 4 SC 91 cited by the appellants is strongly in support of the respondent's case. The case of *Nsirim V. Nsirim* 2001 FWLR (Pt.96) p.433 at 445 was also cited in reference.

Submitting further on the question of proof of title, the respondent's counsel affirmatively stood the ground that the appellants cannot at this stage raise such an issue which was never canvassed before the lower courts; albeit, and that notwithstanding, the counsel nevertheless maintains that the proof of title was by, "*proof of acts of ownership, proof of ownership by acts of long possession and Enjoyment in respect of the land to which the acts are done, also by traditional Evidence.*" As Reference to substantiate the submission, counsel relied on the clear evidence given by the plaintiff/respondent herself as P.W.1. In the result, therefore, this court is urged and called upon to refrain and not disturb the findings of the Court of Appeal as it is not perverse; that the appeal should, in the circumstance and on the totality be dismissed as being oppressive and devoid of any merit.

For the determination of this appeal, the two issues would be best taken together. This is because they are interwoven with the arguments of one overlapping into the other.

On the totality of the appeal before us, therefore, it is clear from the appellants' submission that they are grudging the two tower
B courts for misconstruing the main cause of action before the trial court, which the appellants argued relates to question of partition of the subject property and not issue of disinheritance.

It is pertinent and also elementary to state that a subject matter of a claim before a court is determined on the plaintiff's claim per the pleadings filed. The respondent's claim
C on the one hand is in respect of a piece or parcel of land at Amikwo village, Awka. On the other hand however the appellants as defendants counter claimed in respect of the same piece or parcel of land
D subject matter of this suit. The pleadings of the parties are very relevant as points of reference.

At paragraphs 10, 12, 13, 15, 17, 18, 19, 20 and 21 of the Amended statement of claim for instance, the respondent, as plaintiff, had this claim to make:-

E *"(10) Shortly after, Obiora Okonkwo Eli built two bungalows and share them between the husband of the plaintiff and the first Defendant. The first defendant got the House on the right with a gate while the Husband of the plaintiff got the House at the left with a gate..."*

F *(12) The plaintiff inherited all properties belonging to her husband after his death. Under native law and custom of Awka the wife of a deceased husband inherits all properties belonging to the husband where she has no male issue by him and also where she has a male child after his death.*

G *(13) The land in dispute is contained in plan No. TLD/AN 01/92 made for the plaintiff by THEO A. AJOKU licensed surveyor and filed along with her statement of claim. The plan is specifically pleaded and the plaintiff will rely on the features thereon and the boundary men. The plaintiff's portion of land is verged PINK in the plan...*

H *(15) The plaintiff aver that the Defendants have seized all lands belonging to 1st Defendant and the husband of the plaintiff jointly which the plaintiff is entitled to on the death of her husband and have refused to allow her to share in the lands and have sold some of*

them...

(17) After the war, the 1st Defendant asked the plaintiff to leave the compound as she no longer acquire any share in Nwogbo's property since she has no male issue.

(18) When the plaintiff refused to leave the compound, the 1st Defendant reported her to Umuogbuagu extended family who after deliberations asked the 1st Defendant to allow the plaintiff to stay in the land in dispute because that portion of land belong to her husband and under the custom, she is entitled to live therein.

(19) The 1st Defendant still refused. He took the matter to a larger extended family called Ezi-Offor who after deliberation upheld the decision of Umuogbuagu family or in the alternative to provide a living compound for the plaintiff but he still refused. (20) The 1st Defendant further took the matter to Umuokpu forum, the Umuokpu asked him to leave the plaintiffs House and go to his side of the compound. After the deliberation by Umuokpu, 2nd Defendant and his step mother continued to live in plaintiff's house.

(21) When the 2nd Defendant and his stepmother refused to leave the House of the plaintiff, which they entered immediately after the war, the plaintiff reported the matter to Ozo title holders who decided in favour of the plaintiff and upheld the decision of the Umuogbuagu."

It is on record that the appellants have, by their amended statement of defence, conceded the status of the respondent. In otherwords, at paragraph 1 of their pleadings they have admitted that the respondent is the widow of the deceased Nweke Nwogbo. On a careful perusal of the totality of the appellants, pleadings therefore, it is obvious that their top most priority was the preservation of the age-old, male dominated custom and cultural practices of Awka people on inheritance. The appellants also sought to highlight the active role played by each of their prominent ancestral forefathers, who were the originators of the existing structures built on the subject matter.

I will also not hesitate to state that at paragraph 14 of their pleadings the defendants/appellants have veered at large by prodding into private life of the plaintiff/respondent which was not an issue before the court.

The law is trite and well settled that the defendants/ap-

pellants' pleading should only respond to statements of facts averred on the plaintiff/respondent's statement of claim.

The averments contained in paragraphs 16, 19 and 21 of the defendants, amended statement of defence and counter claim, reproduced here under, are clear vindication of the respondent that the appellants' intention is to disinherit her from the entitlement of her late husband's property.

The paragraphs state as follows:-

“16. The defendants state that under Awka native law and custom, a married woman without a male issue cannot contest title to land of her late husband with the male member(s) of her late husband's family. More so, when the defendants' father inherited the present land in dispute and has before this time even further asserted ownership by planting economic trees thereon, to wit: coconut, banana, pears, orange, avocado etc...”

19. The defendants plead the custom of Awka people that the first son of a man inherits his “Ngwutu” compound...”

21. By the reasons of the premises the defendants counter claim against the plaintiff as follows:-

A declaration that the defendants father being entitled to the statutory right of occupancy over the piece or parcel of land the subject matter of this suit; the 1st defendant being the 1st son of his late father is now deemed to be entitled to statutory right of occupancy over the same land in accordance with the native law and custom of Awka people.”

The counter claim by the defendants was as a result of the custom of Awka people; in other words that the right of the 1st defendant being the 1st son, should operate to disinherit the plaintiff in this case.

The crucial evidence worthy of note is the testimony of P.W.2 one Ozo Nwogbo Okafor at pages 106 - 107 of the record of appeal and it states thus:-

“The Ozo Awka society had occasion to look into this dispute between the parties in this case. I was one of the people who looked into the matter between the parties. The dispute between the parties borders on ownership to a piece of land. The Ozo people visited the land in question. The land in dispute is at Amikwo Awka.

The problem is that where the husband of the plaintiff built a

residential house where the plaintiff is currently living, that the defendant is asking her to pack away from the building. The Ozo Awka society deliberated over the matter. We concluded the matter by saying that the plaintiff is entitled to live in the husband's compound. I am conversant with Awka Native law and custom to a great extent. Under Awka custom if a man dies without a male child, the wife will not be driven away from her husband's compound." ^B

D.W.1 by name Onyibo Anekwe also gave evidence on behalf of the defendants/appellants and testified at pages 114, 115 and 117 of the record of appeal as follows:-

"The plaintiff has 6 female children without a single male. I know Awka custom in relation to inheritance over lands. A woman without a male issue in Awka has no right of inheritance of any land except the one she purchased with her money. When the plaintiff started claiming a portion of my father's land, my father went and reported her before Amikwo Akamanese meeting. After the deliberation over the report made by my father, the plaintiff was told that she had no right to contest for any part of the compound but that my father should accommodate the plaintiff as the brother's wife by allowing her to remain in the compound.... The immediate family said that since my father was the 1st son of Nwogbo Okonkwo Eli that he is the person entitled to the entire compound. The Ozo Awka equally looked into this matter. The Ozo Awka also said that my father is the owner of the entire compound.... The husband of the plaintiff was buried within the compound where we now live. The place where the husband was buried is within the place now in dispute." ^C ^D ^E ^F

It is on record that P. W. 2 testified for the plaintiff and also gave evidence under cross-examination that the Ozo Awka society were accepted as being the highest body in settlement of dispute in Awka. The defendants, who claimed through D.W.1 that the society decided in their favour, did not, however, produce any member of the Ozo Awka society to testify and confirm D.W.1's evidence. By the provision of section 149(d) of the Evidence Act, the presumption is conclusive that the production of such evidence would have operated against their interest and hence the withholding of same. ^G ^H

The law is well settled and elementary, that parties are bound by their pleadings and the plaintiff must succeed on the

strength of her own case comprising both pleadings and evidence and not rely on the weakness of the defence in proof of her claim. See Dada V. Dosunmu (2007), FWLR 388 at 410, Alhaji Moriyamo Adesanya V. Adetayo Olaitan Otuewu & Ors. (1993) 1 SCNJ p. 77 at 97.

B From the evidence on record and as rightly pleaded and proved by the plaintiff/respondent, at the death of her husband, he was buried inside the building now occupied by the plaintiff and subject of contention or litigation. This assertion is well confirmed by the evidence of D. W. 1. The identity of the subject matter is therefore not in issue. It is also an accepted common denominator by all parties that when the contention started, the plaintiff was asked by Amekwo Nwogbo to pack out from her matrimonial home on the ground that she had no male issue for her late husband. Series of arbitrations were constituted and put in place by the late husband's immediate family and also the Umuogbuagu Amikwo; the outcome was to ask Amekwo Nwogbo to leave the plaintiff to stay in her husband's house. The record of appeal reveals that the evidence of PW.1, PW.2 and also D.W.1 are all in confirmation of this claim. I seek to state further that as rightly submitted on behalf of the Respondent, the totality of the evidence adduced by D.W.1 was a confirmation that the complaint at the trial court was not only limited to whether the compound, (No. 19 Aguegbe Street), the subject matter of this case, was partitioned between the father of the appellants and the husband of the respondent or whether it remained one compound, but rather and more importantly it also raises the question, "*whether the respondent who has no male child can inherit the property of her late husband?*"

G As a matter of fact the pre-occupation of the respondent's claim had to do with the question of her disinheritance which, once decided in her favour, would relegate the issue of partition of no significance. This is more so especially where evidence avails on the record that the property in question has two gates, one of which leads to the plaintiff's compound and serves as the entrance and thus confirming the respondent's averment at paragraph 10 of her amended statement of claim under reference supra. All that the respondent sought to claim was the house within the portion belonging to her late husband and which did not encroach upon the portion belonging to the

1st defendant/appellant.

The learned counsel for the appellants submitted strongly and reiterated the failure by the respondent to specifically plead her title and proving same as required by law in accordance with the authority in the case of Idundun V. Okumagba (supra).

As rightly submitted by the said counsel, at paragraph 26 of the plaintiff/respondent's amended statement of claim, her claims were in both trespass and an injunction. The law is however, well settled that for a claim of this nature, the title of the parties to the land in dispute is automatically put in issue.

See the cases of Olobunde V. Adeyoku (2000) 10 NWLR (pt. 10) p. 562; Akintola V. Lasupo (1991) 3 NWLR (pt. 180) page 508; Okorie V. Udom (1960) SC. NLR p. 325; The Registered Trustees of the Apostolic Church V. Olowoleni (1990) 6 NWLR (pt. 158) p.514 and Ige V. Fagbohun (2001) 10 NWLR (pt. 721) p.468.

The implication therefore holds true that the heavy weather submitted by the appellants on the respondent's failure to specifically plead title is of no moment. All that the plaintiff was required to do was to adduce evidence in proof of her claim; the onus which she had discharged.

In the case of Sagay V. Sajere cited by the learned appellants, counsel supra it was held at pages 375 - 376 that *"The trial judge is required to consider issues joined by properly reviewing the evidence and making proper findings."* In the case at hand, the trial court judge found that the subject matter of complaint was whether the plaintiff was entitled to inherit or not. The main issue therefore was not the question of joint property as sought to portray by the appellants.

At page 203 of the record of appeal for instance, the lower court held and said:-

"In the instant case, the record of appeal shows that the learned trial judge extensively reviewed and assessed the evidence of the witnesses and gave value to the evidence before making the findings thereon and based on this evaluation, came to the conclusion in the judgment. Having effectively evaluated the evidence, I do not find any basis for a re-evaluation of the same evidence."

I completely endorse the findings arrived thereat and consequent upon which the case of Sagay V. Sajere (supra) does not work in favour of the appellants but the respondent's case. It also goes well

therefore, to state that the case of Udengwu V. Uzuegbu (2003) 13 NWLR (Pt.836) 136 also cited by the appellants is not in support of their case. This, I say because the learned trial judge from all perspective did not misconceive the issues joined by the parties but was very much in command and well informed.

B In Udengwu V. Uzuegbu's case (supra) this court, while capturing the position of the law had the following to say at pages 151-152:-

C *"It is obvious that the learned trial judge completely went wrong, with due respect, in his approach to the resolution of the dispute placed before him by the parties. This is because he seemed to have misconceived the issues joined. The result was that he did not consider and make relevant findings on the evidence throughout the judgment. This led to a miscarriage of justice. A judgment of court*
D *must demonstrate that the court understood the case before it and elicit an open and full consideration of the issues properly raised by the parties on their pleadings as supported by evidence. The conclusions reached ought to reflect and justify such an exercise ...Once a court has misapprehended the nature of the case in respect of which*
E *it is required to give a dispassionate and rational decision, the chances are that the decision otherwise reached will be perverse. This is because when an adjudicator fails to discern the real question which he is to consider and decide or answer, his reasoning will inevitably be*
F *addressed to a collateral matter which is irrelevant, or to an aspect which is beside the point in issue. Such an adjudicator is said to suffer from Ignoratio elenchi. A perverse decision of a court can arise in several ways. It could be because the court ignored the facts or evidence; that it misconceived the thrust of the case presented, or took*
G *irrelevant matters into account which substantially formed the basis of its decision; or went outside the issues canvassed by the parties to the extent of jeopardizing the merits of the case; or committed various errors that faulted the case beyond redemption. The hallmark is invariably in all this, a miscarriage of justice, and the decision must be*
H *set aside on appeal."*

Contrary to the submission made out on behalf of the appellants, in the case under consideration, the record before us reveals that the trial court construed the pleadings by the parties and properly evaluated the totality of their evidence, before arriving at the

correct decision as it did which was affirmatively endorsed by the lower court.

As rightly submitted by the learned counsel for the appellants, the evaluation of evidence involves the consideration of each set of evidence given by the parties, the determination of the credibility of the respective witnesses and the ascription of probative value to the evidence evaluated. This fundamental principle has long been laid down by this court in the case of Mogaji V. Odojin (1978) 3 - 4 SC page 65 at 67 wherein Fatayi-Williams reading the lead judgment said:-

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

This is what is meant when it is said that a civil case is decided on the balance of probabilities. Therefore, in determining which is heavier, the judge will naturally have regard to the following:-

- a. Whether the evidence is admissible;*
- b. Whether it is relevant;*
- c. Whether it is credible;*
- d. Whether it is conclusive; and*
- e. Whether it is more probable than that given by the other party*

Finally, after invoking the law, if any, that is applicable to the case, the trial judge will then come to his final conclusion based on the evidence which he has accepted.”

In the result, their Lordships in the foregoing authority did not therefore allow the judgment to stand because the learned trial judge failed to have followed the fundamental principles of procedure in the case. The same principle governing the evaluation of evidence was also applied in the cases of Lagga V. Sarhuna (2008) 16 NWLR (pt. 1114) 427 and Bassil V. Fajebe (2001) 11 NWLR (pt. 725) 592 at 608 - 609. In the earlier case for instance, this court, at page 460

had the following to say:-

“Now in evaluating any piece of evidence placed before it by parties, a court of law is bound to consider the totality of the evidence led by each of the parties. It shall then place it on the imaginary scale of justice to see which of the two sides weighs more creditably than the other. Thus evaluation of evidence entails the assessment of same so as to give value or quality to it. Evaluation of evidence by a trial court should necessarily involve a reasoned belief of the evidence of one of the contending parties and disbelief of the other or a reasoned preference of one version to the other.”

In stressing the point further, I seek to emphasize that the very direction in which the pendulum tilts is the course of justice. Therefore, the onus is on the judge, as an adjudicator and umpire to act objectively in the process of arriving at a just evaluation of the evidence for purpose of achieving the ultimate end result. The determinant factor as to which evidence a court accepts or rejects is not dependant on the quantum or quantity of witnesses called but rather by the quality or probative value of the evidence by the witnesses. See the case of Sha (jnr) V. Kwan (2000) 8 NWLR (Pt. 670) 685 at 705.

Also at page 203 of the record of appeal the lower court in affirming the judgment by the trial court did not in any way hesitate when it unequivocally pronounced the following and said:-

“In the instant case, the record of appeal shows that the learned trial judge extensively reviewed and assessed the evidence of the witnesses and gave value to the evidence before making the findings thereon and based on this evaluation, came to the conclusion in the judgment. Having effectively evaluated the evidence, I do not find any basis for a re-evaluation of the same evidence.”

I also endorse the concurrent findings by the two lower courts. As a consequence, the conclusion has affirmatively answered the question posed by the appellants’ counsel as to whether the court below was right in refusing to interfere with the findings of the trial court. This has been made very evident on the judgment of the lower court at pages 201 - 202 when it said:-

“I have gone into the pleadings and evidence of the parties which demonstrate beyond any equivocation that the parties did not only plead the custom relating to inheritance and disinheritance, there

is also evidence in that respect on record. It is therefore not correct as argued by the appellants that the finding was at large or not based on the issues raised by the parties. I am of the strong view from the foregoing pleadings and evidence that the finding is quite profound and resounding having been based on the pleadings and evidence of the parties.” B

The law is well settled and has often been pronounced time without number that this court will not ordinarily disturb the concurrent findings of two lower courts except it is shown to have occasioned a miscarriage of justice or to have been perversely reached. See Onyejekwe V. The State (1992) 3 NWLR (pt. 230) 444, Ogundule V. Chief Olabode (1973) 2 SC 71; Balogun V. Akani (1988) 1 NWLR (pt. 70) 301; and Posu V. The State (2011) All FWLR (pt. 565) 234 at 249 where it was held by this court that:- C

“The Supreme Court will not interfere with concurrent findings of lower courts unless compelling reasons are shown. In the instant case the concurrent findings of the lower courts were not perverse, therefore the Supreme Court will not interfere with it.” D

A related further authority is the earlier case of Tiza V. Begha (2005) 5 SC 1 at 17 wherein Onu, JSC held and said thus:- E

“It is now trite law that concurrent findings of the trial court and the Court of Appeal cannot be set aside by this court except such finding is not supported by evidence. See Emeagwara V. Stan PPL (2000) 78 Ircan 1701 at 1720. The trial court found that the plaintiff is the owner of the land in dispute and that Orasoho is the natural boundary between the plaintiff and the defendants. The Court of Appeal confirmed this finding.” F

The appellants in the case at hand have fallen far short of their expectation by calling upon this court to upset the judgment of the lower court. They have not justified any reason warranting the cause or reason for interference. G

In the case of Nsirim V. Nsirim (2001) FWLR Pt 96 P. 433 at page 445 the learned jurist Iguh, JSC also had the following to say on issue of concurrent findings of court: H

“I think both courts are perfectly right in the above findings. In the first place, it is trite law that a trial judge having had the opportunity of hearing witnesses and watching their demeanour in the witness box is entitled to select witnesses to believe or facts he finds

proved and the Court of Appeal should not interfere with such facts unless they are perverse. So to this court will not ordinarily interfere with the concurrent findings of the trial court and the Court of Appeal on essentially issues of fact where there is sufficient evidence on record to support them and where there is no substantial error apparent on the record of proceedings unless special circumstances are shown such as violation of some principle of law or procedure or where such findings are shown to be perverse or patently erroneous and a miscarriage of justice will result if they are allowed to stand.”

In the same vein and as held out in the foregoing authorities, the concurrent findings of the two lower courts are also endorsed by me, and cannot be interfered with.

I hasten to add at this point that the custom and practices of Awka people upon which the appellants have relied for their counter claim is hereby out rightly condemned in very strong terms. In otherwords, a custom of this nature in the 21st century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society. One would expect that the days of such obvious differential discrimination are over. Any culture that disinherits a daughter from her father’s estate or wife from her husband’s property by reason of God instituted gender differential should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom. For a widow of a man to be thrown out of her matrimonial home, where she had lived all her life with her late husband and children, by her late husband’s brothers on the ground that she had no male child, is indeed very barbaric, worrying and flesh skinning.

It is indeed much more disturbing especially where the counsel representing such perpetrating clients, though learned, appear comfortable in identifying, endorsing and also approving of such a demeaning custom.

In a similar circumstance as the case under consideration, this court in Nzekwu V. Nzekwu (1989) 3 SCNJ page 167 held amongst

others and ruled *“that the plaintiff had the right of possession of her late husband’s property and no member of her husband’s family has the right to dispose of it or otherwise whilst one is still alive.”*

The impropriety of such a custom which militates against women particularly, widows, who are denied their inheritance, deserves to be condemned as being repugnant to natural justice, equity and good conscience. The repulsive nature of the challenged custom is heightened further in the case at hand where the widow of the deceased is sought to be deprived of the very building where her late husband was buried. The condemnation of the appellants’ act is in the circumstance without any hesitation or apology.

The clarion call made by the appellants and asking that the lower court’s judgment be upset cannot be acceded to. Consequently, the appellants’ two issues raised in this appeal are both resolved against them. The appeal is without merit and is hereby dismissed while the Judgment of the Court of Appeal, Enugu Division which affirmed that of the trial High Court Anambra State, Awka is hereby also affirmed by me. On the question of costs I will award a punitive sum of N200,000.00k against the appellants and in favour of the respondent.

Appeal is dismissed with costs of N200,000.00k in favour of the respondent.

MUHAMMAD JSC

My learned brother, Ogunbiyi, JSC, afforded me with a copy of her leading Judgment which I read before now. I agree with my Lord’s analysis and conclusion arrived at in determining the appeal.

It battles one to still find in a civilized society which cherishes equality between the sexes, a practice that disentitles a woman (wife in this matter) to inherit from her late husband’s estate, simply because she had no male child from the husband. This practice, I dare say, is a direct challenge to God the Creator who bestows male children only; female children only (as in this matter), or an amalgam of both males and females, to whom He likes. He also has the sole power to make one a barren. There is nothing virtually one can do if one finds oneself in any of the situations. To perpetuate such a practice as is claimed in this matter will appear anachronistic, discrimina-

tory and unprogressive. It offends the rule of natural justice, equity and good conscience. That practice must fade out and allow equity, equality, justice and fair play to reign in the society.

This appeal is very unmeritorious. I too, dismiss it and abide by all consequential orders made in the lead judgment of Ogunbiyi, JSC.

B

MUNTAKA-COOMASSIE JSC

The Respondent, as the plaintiff, instituted the suit that led to this appeal, at Mbailinofu District of Anambra State Customary Court but later the suit was transferred to the High Court on the order made by Awka Division of Anambra State High Court, that was on 19th February, 1991.

In the amended statement of claim, the plaintiff, now Respondent sought the following reliefs against the defendants/now appellants.

“26. Whereof the plaintiff claims against the defendants jointly and severally as follows:-

(a) A DECLARATION that the plaintiff is the person entitled to statutory right of occupancy of piece or parcel of land which is situate at Amikwo Village Awka and verged Red in her plan No. T. L. D. ANO 1/92 and filed with this statement of claim.

(b) AN INJUNCTION restraining the Defendants, their servants, and agents from further trespass on the said piece or parcel of land.

(c) AN ORDER of court compelling the 2nd Defendant to remove part of his building constructed into the plaintiff’s land.

(d) AN ORDER of court compelling the Defendants to share the Nwogbo Okonkwo Eli family lands averred in paragraph 16 of this statement of claim.

IN THE ALTERNATIVE, an account of the proceeds of the sales of the family lands and payment over to the plaintiff what is due to her? N500.00 (Five Hundred naira) General damages for trespass”.

In their amended statement of defence filed on the 6th February, 2007, the defendants denied the plaintiff’s claim intoto and also counter claim the subject matter.

At the trial High Court, the respondent gave evidence and called two other witnesses while the 1st Appellant, Onyibor Anekwe,

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and three other witnesses testified for the defendants/appellants.

In her effort to establish her right of inheritance, strongly contended on her claim that a woman according to the customs of Awka people inherits the property of her husband whether she has a male child or not, that in confirmation of the foregoing assertion, she conclusively relied on the final arbitration made by the Ozo Awka society on the matter which she claimed was not controverted by the Defendants/Appellants. B

The trial High Court entered judgment in favour of the plaintiff/respondent and granted the declaration and injunction sought, however proceeded to dismiss the defendants/appellants' counter claim. C

On appeal, the Court of Appeal dismissed the appeal of the Defendants and affirmed the decision of the trial court.

It is now clear that the appeal is against the judgment of the Court of Appeal Enugu Division which upheld the judgment of the trial high court Anambra State. Hence the appeal now before the Supreme Court. D

In obedience to the Rules of the Supreme Court, parties have filed and exchanged briefs of argument. Both counsel adopted and relied on their respective briefs of argument. The appellants urged this court to allow the appeal while the Respondent counsel urged this court to dismiss the appeal for lacking in merit. E

I was opportune to have read before now the all encompassing lead judgment rendered by my learned Lord, Clara Ogunbiyi, JSC. I have read closely the reasons and conclusions relied upon by my learned brother in holding that the appeal is devoid of any merit, and I adopt same, with respect, as mine. The two issues, therefore, raised by the appellants are resolved against them. The said custom is clearly repugnant to natural justice even the community had stayed away from it, it should be declared void at all time. Same be condemned by all. The appeal therefore is dismissed. I endorse the consequential orders made in the lead judgment including the order as to costs. F G H

NGWUTA JSC

I had the privilege of reading in draft the lead judgment just

delivered by my learned brother, Ogunbiyi, JSC. I agree entirely with the exhaustive reasoning and conclusion arrived at in the lead judgment.

I wish, however, to chip in a few words in support and by way of emphasis.

B Paragraph 16 of the defendants' amended statement of defence captures the genesis and the essence of the dispute between the parties. It reads in part:

C *"16. The defendants state that under Awka native law and custom, a married woman without a male issue cannot contest title to land of her late husband with the male member(s) of her late husband's family..."*

My noble Lords, the custom pleaded herein, and is a similar custom in some communities wherein a widow is reduced to chattel D and part of the husband's estate, constitutes, in my humble view, the height of man's inhumanity to woman, his own mother, the mother of nations, the hand that rocks the cradle.

E The respondent is not responsible for having only female children. The craze for male children for which a woman could be denied her rights to her deceased husband or father's property is not justified by practical realities of today's world. Children, male or female, are gifts from the Creator for which the parents should be grateful.

F The custom of Awka people of Anambra State pleaded and relied on by the appellant is barbaric and takes the Awka community to the era of cave man. It is repugnant to natural justice, equity and good conscience and ought to be abolished. See *Lewis v. Bankole* (1908) 1 NLR 81; *Eshugbayi Eleko v. Secretary Government of Southern Nigeria* (1931) AC 662; *Dawodu v. Dimmole* (1962) 2 G SCNLR 215.

H Above all, this appeal is against a finding of fact of the trial Court affirmed by the Court below. The concurrent findings of fact by the two Courts below will not be disturbed by this Court without a showing by the appellants that the finding is either perverse or there is a substantial error either in substantive or procedural law which if not corrected, will lead to miscarriage of justice. See *Bankole v. Pelu* (1991) 8 NWLR (Pt. 211) 23; *Lokoyi & Anor v. Olojo* (1983) 8 SC 61 at 68.

For the above and the fuller reasons in the lead judgment, I also dismiss the appeal as devoid of merit. I adopt the order for costs in favour of the Respondent.

ARIWOOLA JSC

The respondent herein was the plaintiff in the action she had instituted against the appellants as defendants before the Madilinofo District Customary Court of Anambra State, but the matter was later transferred to the Awka Division of Anambra State High Court.

The fact of this case that culminated into this appeal has been beautifully stated in the lead judgment of my learned brother, Ogunbiyi, JSC. I need not repeat same.

As clearly shown in the pleadings exchanged by parties and the testimonies adduced at the trial, the respondent challenged the action of the appellants in attempting to disinherit her. Perhaps it is necessary to state what the appellants shamelessly state in their pleadings in defence to the respondent's action before the trial court. The averments read thus: Paragraph –

“16. The defendants state that under Awka native law and custom a married woman without a male issue cannot contest title to land of her late husband with the male member(s) of her late husband's family. Moreso, when the defendant's father inherited the present land in dispute and has before this time even further asserted ownership by planting economic trees thereon, to wit: coconut banana, pears, orange, avocado etc.”

In the oral testimony, the appellants had stated that the reason why their custom forbid the respondent from entitlement to inheritance of any land or landed property in her matrimonial family was the fact that she *“has six female children without a single male child”*. By this, it meant that the said six female children of the respondent were denied their entitlement to inherit their father's property simply because of their gender. There is no doubt, this custom pleaded and canvassed by the appellants against the respondent is, to say the least, repugnant to natural justice, equity and good conscience. It is even barbaric. One wonders whether it was the respondent's making what sex the pregnancy that her late husband made with her will come out with. Indeed, such a custom that discriminates against female chil-

dren is a challenge on God Almighty who is the maker and producer of children. He (God) alone determines what pregnancy will produce what type of sex - male or female. It will therefore be inhuman and injustice to discriminate against a female child on her father's property or a widow on the ground that she has only female children
B for her late husband.

There is no doubt, the trial court was right in its findings of fact on the evidence adduced before the Court which findings were rightly concurred with by the Court below. The law is well settled that an
C appellate court will ordinarily not interfere with or disturb the findings of fact made by a trial court except in such circumstances as where the trial court has not made or failed to make proper use of the opportunity of seeing and hearing the witnesses at the trial or where it has drawn conclusion from accepted evidence or has taken
D an erroneous view of the evidence adduced before it or its findings of fact are perverse in the sense that they do not flow from the evidence accepted by it. See; Richard Ezeanya & Ors. V. Gabriel Okeke & Ors. (1995) 4 NWLR (pt 388) 142.

In the same vein, it is trite law that this Court will not ordinarily
E disturb concurrent findings of fact in favour of a party by two lower courts, unless there is miscarriage of justice or violation of some principles of law or procedure. See; Mogo Chinwendu V. Nwanegbo Mbamali (1980) 3 SC 31, Enang V. Adu (1981) 11 - 12 SC 25; Okagbue V. Romaine (1982) 5 SC 133. Olomu v. Ajao (1983) 9 SC
F 53; Ogundipe V. Awe (1988) 1 NWLR (pt 68) 118; (1988) 1 SC 216. The situation in this case is very clear and was properly handled by the courts.

The two courts below having correctly found in favour of the
G respondent on the repugnant and unfair custom they relied on, this court will not disturb that concurrent findings.

For the above reason and the detailed reasoning and conclusion arrived at in the lead judgment of my learned brother Ogunbiyi, JSC with which I am in total agreement, that this appeal is
H unmeritorious and vexatious and should be dismissed with costs.

Accordingly, I dismiss the appeal and abide by the consequential orders in the lead judgment including that on costs.