

SUPREME COURT OF NIGERIA
FRIDAY 30TH MAY, 2014. SC. 38/2004
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
B. RHODES-VIVOUR, K. B AKA'AH, J. I. OKORO, JJSC

1. MADAM ADUNOLA ADEJUMO
2. MRS. ASONDE OLURUNYOMI APPELLANTS
3. MR. FASOLA AREMU
- (2nd and 3rd appellants for themselves
and on behalf of Awolade Aremu
Ajoriwin (Deceased))
AND
MR. OLUDAYO OLAWAIYE RESPONDENT
(Substituted for Chief E.A. Olawaiye
(Deceased))

APPEALS - Issues - Formulation - Issues are distilled from grounds which challenge judgment appealed - And a brief without issues would be struck out - For being incompetent (H1)

APPEALS - Brief - Drafting - Badly drafted brief should not be struck out - But court should strive to understand the brief - Bearing in mind its duty to do substantial justice to parties (H2)

APPEALS - Grounds - Particulars - Incorporation of - There is compliance with rules of Supreme Court - If particulars of a ground are incorporated in the ground - And not separately set out (H3)

APPEALS - Preliminary objection - Filing - It should only be filed against hearing of appeal - And not against one or more grounds of appeal - Which are not capable of disturbing the hearing of appeal (H4)

OBJECTIONS - Propriety of - Where preliminary objection would not be appropriate process to object - A motion on notice filed complaining about a few grounds or defects would suffice (H5)

ACTIONS - Commencement - Limitation - Party claiming legal right

2870 Adejumo v. Olawaiye (2014) 7 KLR (pt. 352) 2869; (2014)

must act quickly - To avoid a situation where the other party would have acted - In the belief that no one was offended by his act (H6)

LAND LAW - Recovery of land - Limitation - By Limitation Law of Oyo State s. 6(2) - Suits to recover land cannot be brought after twelve years - From the date on which right of action accrued (H7)

PLEADINGS - Binding nature of - Parties are bound by their pleadings - And mere averment without proof of pleaded facts - Is not proof of the said facts - If the facts are not admitted in statement of defence (H8)

ACTIONS - Cause of action - Appeals - Concurrent findings - That respondent's cause of action accrued in 1972 - Is supported by evidence in trial court - Hence it is not perverse but a correct finding (H9)

LAND LAW - Trespass - Alieru's case - Principle - Where an owner is aware of a stranger on his land but remains passive - Court will not allow him to profit from mistake of the stranger that could have been prevented (H10)

LAND LAW - Trespass - Defence of acquiescence - Principle in Aileru's case is not applicable here - Since respondent from facts of the case - Had not acquiesced in appellant's adverse possession (H11)

FACTS

Before the High Court of Oyo State Ibadan, plaintiff/respondent in 1983 commenced this action against defendants/appellants jointly and severally. Respondent's claim is for a declaration of title to the land in dispute, damages for trespass and injunction restraining appellants and their agents from trespassing on the land. Respondent bought the land in dispute situate at Molete, Ibadan from Parakoyi family in 1956. He registered same and was later issued a Certificate of Occupancy. He took possession of the land. In 1972, he noticed appellants on the land. In the same year, he sued them for trespass. That suit lingered till 1983 when it was dismissed for want of diligent prosecution. Respondent then filed the present suit

in 1983 for declaration of title. On the other hand, appellants claim that they bought the same land in 1970 from the same Parakoyi family but under another family head.

At the end of hearing, the learned trial Judge entered judgment for respondent, holding that respondent first bought the land in 1956 whereas appellants bought theirs in 1970. The court further held that since respondent had registered the land in 1956 and acquired a legal interest, the same cannot be defeated by a later buyer. It was also held that respondent having become aware of the interference in 1972, promptly sued appellants and as such Limitation Law cannot operate against respondent's claim. The court finally decided that appellants did not take reasonable diligence to make a search before buying the land. Aggrieved, appellants appealed to the Court of Appeal Ibadan Division. The appeal was dismissed for lacking in merit. Aggrieved further, appellants have appealed to Supreme Court.

ISSUES FOR DETERMINATION

ISSUE 1

Whether the respondents action in this suit on appeal is statute barred?

ISSUE 2

Whether the Court of Appeal was wrong in failing to find that the right of action, to institute the respondent's action accrued to him in April, 1971?

ISSUE 3

Whether the plea of acquiescence, relied upon by the appellants was made out?

ISSUE 4

Whether the learned justices of the Court of Appeal were wrong in failing to correctly apply the principle enunciated in the case of *Aileru & ors v. Ademoye & ors* (1967) 1 ALL N.L.R p.271 to the facts of this case?

HELD (Unanimously dismissing the appeal per

RHODES-VIVOUR JSC)

APPEALS - Issues - Formulation

1. An appeal is filed by the party who lost the case. He signifies his intention to appeal by filing a Notice of Appeal. A Notice of Appeal contains grounds of appeal.

Issues for determination of the appeal are formulated from the grounds of appeal which challenge the judgment from which the appeal emanates. Grounds of Appeal are an attack on the judgment appealed against and arguments in a brief must be confined to the issues formulated for on briefs to be filed by counsel. These are some fundamentals to be complied with for a brief to avoid being struck out. Such as a brief without issues for determination would be struck out for being incompetent.

The rule against proliferation of issues is that not more than one issue can be formulated from a ground of appeal. That is to say an issue may arise from one or more grounds of appeal, but not a multiplicity of issues deriving from the same ground of appeal.

Where no issue is formulated from a ground of appeal, such ground of appeal would be deemed abandoned by the appellant.

The long held position in brief writing is that when no issue is formulated in respect of a ground of appeal, the said ground of appeal would be deemed abandoned.

Similarly when an appellant fails to argue an issue in his brief the issue and the ground from which it was formulated would also be deemed abandoned. As no issue was formulated from ground 7 and 9 both grounds are hereby struck out. Furthermore since no argument was canvassed on issue 3 which was formulated from ground 6, issue 3 and ground 6 are abandoned and hereby struck out. (pp. 2880 F/2886 B)

APPEALS - Brief - Drafting

2. Gone are the days when faulty briefs or failure to comply

with the Rules may result in the brief being struck out. The position of this court now, is that badly drafted brief should not be struck out, the reasoning is simple. Where the court is confronted with a badly drafted brief it should strive to understand the brief bearing in mind that it is the duty of the court to be seen at all times to do substantial justice to the parties. B
(p. 2881 C)

APPEALS - Grounds - Particulars - Incorporation of

3. There is compliance with the Rules of this court if the particulars of a ground of appeal are incorporated in the ground of appeal and not separately set out. C
After reading grounds 8 and 10 the other side is not left in any doubt as to what the complaint of the appellant actually is. That in effect means that the particulars of both grounds are incorporated in them, thereby obviating the need to separately set them out. D
(p. 2886 E)

APPEALS - Preliminary objection - Filing

4. A preliminary objection should only be filed against the hearing of an appeal and not against one or more grounds of appeal which are not capable of disturbing the hearing of the appeal. The purpose of a Preliminary Objection is to convince the court that the appeal is fundamentally defective in which case the hearing of the appeal comes to an end if found to be correct. E

If sustained, a preliminary objection terminates the hearing of an appeal. In this case a Preliminary Objection ought not to have been filed as the appeal is not fundamentally defective. It is not a fatal omission for the appellant to fail to relate issues to grounds of appeal. Issues for determination were properly formulated from the grounds of appeal. They sustain the appeal. The preliminary objection cannot be sustained in view of all that I have been saying. It is hereby overruled. F
(pp. 2886 G/2887 A) H

OBJECTIONS - Propriety of

5. Where a Preliminary Objection would not be the appropri-

ate process to object or show to the court defects in processes before it, a Motion on Notice filed complaining about a few grounds, or defects would suffice. (p. 2886 H)

ACTIONS - Commencement - Limitation

- B 6. Once a legal right is established, there must be a remedy. A party claiming a legal right must act quickly to avoid a situation where the other party would have acted in the belief that no one was offended or hurt by his act. Where a party who claims a right does not act quickly it would be difficult or inequitable to request the adverse party to revert to his previous action limited by statute - A Statute of Limitation.**

Furthermore limitation periods protect a defendant from the injustice of having to face a stale claim. For example if a claim is brought a long time after the events in question there is a strong likelihood that evidence which was available earlier may have been lost, and the memories of witnesses may have faded.

- E A party though would not be allowed to take advantage of the limitation law where there is clear evidence of disability, mistake, fraud and in certain cases involving personal injury, death. Outside the limitation period the plaintiff still has a cause of action but sadly one that can no longer be enforced.**

F (p. 2888 B)

LAND LAW - Recovery of land - Limitation

- G 7. Where, an adverse claimant is in possession of land belonging to the plaintiff for twelve years and the plaintiff did nothing to stop such possession the plaintiff cannot come to court after twelve years to claim the land. He has slept on his rights and the limitation law would operate to deprive him of those rights. He would no longer have audience in court to establish his rights to the land.**

- H Section 6(2) of the Limitation Law of Oyo State Cap.64 states that suits to recover land cannot be brought after twelve years from the date on which the right of action accrued. Any action instituted after twelve years is barred as the right of the plaintiff to commence the action would have been extinguished by**

the Limitation Law supra. (pp. 2889 C/2891 H)

PLEADINGS - Binding nature of

8. I am to find out if this finding is flawed, and the starting point would be the pleadings. If pleadings are to be of any use parties must be held bound by them. Mere averments without proof of the facts pleaded in a statement of claim is not proof of the said fact if the said fact is not admitted in the statement of defence. Averments in pleadings tried and tested by examination in chief cross-examination and re-examination establishes a plaintiff's case. This also applies to the defendant in his bid to defend the case against him. (p. 2889 F)

ACTIONS - Cause of action

9. The plaintiff/respondent had a cause of action when he became aware of the defendants/appellants trespass on his land, and that was in the early months of 1972. The Writ of Summons was filed on the 6th of May 1983. Comparing both dates the plaintiff/respondents action was filed within the period allowed by the Limitation Law of Oyo State Cap 64. Both courts below were correct that the action is/was not caught by the Limitation law and so not statute barred. In answer to the second issue the Court of Appeal was not wrong in failing to find that the right of action instituted by the respondent accrued to him in April, 1971. It accrued in the early months of 1972 as correctly found by the courts below. In one breath learned counsel for the appellants said there were no concurrent findings of fact by the courts below that the respondents cause of action accrued in 1972, and yet in another breath he submits that concurrent findings of fact that respondents action accrued in 1972 should be set aside as being perverse. The above are findings of fact by both courts below that the respondent was aware of the appellants' presence on his land in 1972. In law this amounts to concurrent findings by the courts below that the respondent's cause of action in the case accrued in 1972.

Pleadings and evidence on oath from both sides point to the unmistakable fact that the respondents cause of action ac-

crued in 1972 when he saw the appellants for the first time on his land. This fact was supported by evidence in the trial court. The finding in the circumstances is not perverse, rather it is a correct finding. (pp. 2892 A/H/2893 D)

B *LAND LAW - Trespass - Alieru's case - Principle*

10. The principle in Alieru's case is that where the owner of land becomes aware that a stranger is building on his land but decides to remain passive, the courts would not allow him to profit from this mistake of the stranger which he could have prevented. The owner of the land would have acquiesced in the stranger's adverse possession and improvement of the owners land and the defence of acquiescence would avail the stranger. Both sides would have to reach a settlement so that disputes on the land would end once and for all time.
D (p. 2894 D)

LAND LAW - Trespass - Defence of acquiescence

11. The plaintiff bought the land in dispute in 1956. The defendants bought the same land in 1970. They both bought the land from the Parakoyi family. In 1972 the plaintiff/respondent became aware that the defendants/appellants were on his land. He did not remain passive, rather he promptly informed them and filed a suit in 1972 to assert his title to the land. The suit was subsequently dismissed for want of diligent prosecution. Another suit with similar reliefs was filed in 1983 and it is from that suit that this appeal emanates, it is clear that the plaintiff/respondent had not acquiesced in the defendant's/appellant's adverse possession and improvement of his land. The defence of acquiescence in the circumstances does not avail the defendants/appellants and so there would be no need to apply the principle in Aileru & ors v. Ademuyoye & ors (supra). (p. 2895 D)

H

REPRESENTATION

O. Abimbola Esq., with F. Quadri Esq. and S. Quadri Esq., for Appellants

Adewunmi R. Fatunde Esq. with C.A. Maku Esq. and A. U. Umoso

Esq., for Respondent

CASES REFERRED TO

Aileru v. Ademoye (1967) 1 All N.L.R 271

Obanor & Co. Ltd v. Cooperative Bank Ltd (1995) 4 NWLR (pt. 388) 128 B

Ehuwa v. Ondo State I.E.C. (2007) All FWLR (pt. 351) 1415

Dingyadi v. INEC (2010) 18 NWLR (No. 1) (pt. 1224) 1

Tanerewa Nig. Ltd. v. Plastifarm Ltd. (2003) 14 NWLR (pt. 840) 369

Nfor v. Ashaka Cement Co. Ltd. (1994) 1 NWLR (pt. 319) 228 C

State v. Oladimeji (2003) 14 NWLR (pt. 839) 57

Ndume v. Okocha (1992) 7 NWLR (pt. 252) 131

Obasi v. Onwuka (1987) 3 NWLR (pt. 61) 369

N.B.N.L. Ltd v. P.B. Olatunde & Co. Nig Ltd (1994) 3 NWLR (pt. 334) 512 D

Bamgboye v. Olusoga (1996) 4 NWLR (pt. 444) 520

Tukur v. Govt. of Taraba State (1997) 6 NWLR (pt. 510) 549

Benue Cement Co. Plc. v. Sky Inspection (2002) 17 NWLR (pt. 795)

Ekpemupolo v. Edremoda (2009) 3-4 SC 56

NNPC v. Famfa Oil Ltd (2012) All F.W.L.R (pt. 635) 204 E

STATUTE & RULES REFERRED TO

Limitation Law Cap 64 Laws of Oyo State of Nigeria, s. 6(2)

Supreme Court Rules, O. 6 r. 5(b), O. 8 r. 4 F

LEAD JUDGMENT BY RHODES-VIVOUR JSC

Chief E.A. Olawaiye (now deceased), on the 1st of July, 1983 took out a Writ of Summons accompanied by a Statement of Claim before an Ibadan High Court, against the present 1st defendant/appellant and Awolade Aremu AJoriwin (deceased) jointly and severally for:

(i) Declaration of title to a statutory right of occupancy to that piece or parcel of land situate, lying and being at Parakoyi Layout, Molete Ibadan and which is more particularly described and delineated on plan No. OG5/56 dated 9th January, 1956 and attached to the Deed of Conveyance registered as No.24 at page 24 in volume 130 of lands Registry in the office at Ibadan or described in the schedule attached to the Certificate of statutory Right of Occupancy H

dated 10/2/82 OR in the alternative that the Certificate of Statutory Right of Occupancy dated 10/2/82 and registered as No. 16 at page 16 in Volume 2438 at the land Registry office Ibadan is the only Certificate of Occupancy valid and subsisting in respect of the land described in schedule of the above mentioned certificate as the property of the plaintiff.

(ii) N1000 as damages for trespass committed on the said or parcel of land between April 1971 and May, 1983.

(iii) Injunction restraining the defendants their agents servants and/or assigns from trespassing on the said land.

The parties filed and exchanged pleadings. Adeyemi J, presided at a trial which commenced on the 7th day of November 1984. The plaintiff gave evidence and called ten witnesses. Three witnesses testified for the defence. About thirty two documents were admitted as exhibits. On the 18th day of July, 1985 the learned trial judge delivered judgment.

The reasoning of the learned trial judge runs as follows:

“...the plaintiff bought the land in dispute in 1956 from Parakoyi family and was given a conveyance which was registered at the land registry Ibadan on 3rd April, 1956. On the other hand, the defendants bought their own land around 1970.”

His lordship concluded:

“I realize that the defendants might not have been aware of the plaintiffs interest in the land before purchase, but once his right on the land was a legal interest, it cannot be defeated by a later buyer. In consequence, the plaintiff is entitled to possessory right in view of my finding that he possesses a better title than that of the defendants.”

And so in the said judgment the claims for declaration of title and injunction were granted. The sum of N100 was awarded as damages for trespass.

An appeal was filed. The Court of Appeal, Ibadan Division heard the appeal and on the 7th day of April, 1995 dismissed it with costs of N1,500 in favour of the plaintiff/respondent. This appeal is against that judgment. In accordance with Rules of this court the appellants brief was filed on the 18th day of October, 2004, while the respondents amended brief was deemed filed on the 15th day of January 2014. A reply brief was deemed filed on the 7th day of October,

2009. Learned counsel for the appellants' formulated four issues for determination. They are:

ISSUE 1

Whether the respondents action in this suit on appeal is statute barred?

ISSUE 2

Whether the Court of Appeal was wrong in failing to find that the right of action, to institute the respondent's action accrued to him in April, 1971?

ISSUE 3

Whether the plea of acquiescence, relied upon by the appellants' was made out?

ISSUE 4

Whether the learned justices of the Court of Appeal were wrong in failing to correctly apply the principle enunciated in the case of Aileru & ors v. Ademoye & ors (1967) 1 ALL N.L.R p.271 to the facts of this case?

Learned counsel for the respondent reproduced the four issues formulated by the appellants in his brief. This is tacit approval of the appellants' issues. The respondent should have simply adopted the appellants' issues.

In resolving this appeal I shall address the issues formulated by the appellants' counsel.

Before I do that I must consider the Preliminary objection argued in the respondents brief to which the appellants' responded in his Reply brief.

At the hearing of the appeal on the 3rd day of March, 2014 learned counsel for the appellants' Mr. O. Abimbolu adopted the appellants' brief filed on the 18th day of October, 2004 and reply G brief deemed duly filed and served on the 7th of October 2009. He urged this court to overrule the Preliminary Objection and allow the appeal, contending that the action is statute barred. Reference was made to Obonor & Co. Ltd v. Cooperative Bank Ltd (1995) 4 NWLR (pt.388) p.128.

Replicando, learned counsel for the respondent, Mr. A. R. Fatunde adopted the respondents brief deemed duly filed and served on the 15th of January 2014. He observed that this appeal is from two concurrent decisions of the courts below. He urged this court to

uphold the Preliminary Objection and dismiss the appeal.

PRELIMINARY OBJECTION

Learned counsel for the respondent observed that the learned counsel for the appellants' was wrong not to have related the issues for determination to the grounds of appeal. Reliance was placed on
 B Order 6 Rule 5(b) of the Supreme Court Rules. *Ehuwa v. Ondo State I.E.C.* (2007) ALL FWLR (pt.351) p.1415.

He submitted that failure to relate issues to the grounds of appeal means that the grounds are deemed abandoned. He urged
 C this court to so hold. He further observed that issue 3 formulated from ground 3 was abandoned. He referred to paragraph 6.0 in the appellants brief and submitted that issue 3 and ground 3 ought to be struck out. He urged us to strike out ground 9, it being abandoned as no issue was formulated from it.

D Finally he observed that ground 7 is vague, general and incompetent, since the court is left in doubt as to what the complaint of the appellant actually is. He submitted that the ground is in breach of Order 8 Rule 4 of the Supreme Court Rules and an abuse of process. Reliance was placed on *Dingyadi v. INEC* (2010) 18 NWLR (NO 1)
 E (pt. 1224) p. 1. He urged this court to dismiss the appeal.

Learned counsel for the appellants observed that the issues for determination were formulated from the grounds of appeal contending that appeals are argued on the issue/s for determination and not on
 F the grounds of appeal. He further observed that the appellants' have not abandoned any of their grounds of appeal. He urged this court to overrule the Preliminary Objection.

***An appeal is filed by the party who lost the case. He signifies his intention to appeal by filing a Notice of Appeal. A
 G Notice of Appeal contains grounds of appeal. Issues for determination of the appeal are formulated from the grounds of appeal which challenge the judgment from which the appeal emanates. Grounds of Appeal are an attack on the judgment appealed against and arguments in a brief must be confined to
 H the issues formulated for on briefs to be filed by counsel. These are some fundamentals to be complied with for a brief to avoid being struck out. Such as a brief without issues for determination would be struck out for being incompetent. The rule against proliferation of issues is that not more than one issue can be***

formulated from a ground of appeal. That is to say an issue may arise from one or more grounds of appeal, but not a multiplicity of issues deriving from the same ground of appeal.

See Tanerewa Nig. Ltd. V. Plastifarm Ltd. (2003) 14 NWLR pt 840 p.369, Nfor v. Ashaka Cement Co. Ltd. (1994) 1 NWLR pt 319 p.228, State v. Oladimeji (2003) 14 NWLR pt.839 p.57. B

Where no issue is formulated from a ground of appeal, such ground of appeal would be deemed abandoned by the appellant. See Ndume v. Okocha (1992) 7 NWLR pt.252 p.l 31, Obasi v. Onwuka (1987) 3 NWLR pt.61 p.369. C

Gone are the days when faulty briefs or failure to comply with the Rules may result in the brief being struck out. See N.B.N.L. Ltd v. P.B. Olatunde & Co. Nig Ltd (1994) 3 NWLR pt. 334 p.512, Bamgboye v. Olusoga (1996) 4 NWLR pt. 444 p. 520. C

The position of this court now, is that badly drafted brief should not be struck out, the reasoning is simple. Where the court is confronted with a badly drafted brief it should strive to understand the brief bearing in mind that it is the duty of the court to be seen at all times to do substantial justice to the parties. See Tukur v. Government of Taraba State (1997) 6 NWLR pt.510 p.549, Benue Cement Co. PLC v. Sky Inspection & anor (2002) 17 NWLR pt.795 p.86, Chief T. Ekpemupolo & ors. v. Godwin Edremoda & ors. (2009) 3-4 SC p.56. D E

Notwithstanding the shift by this court to accommodate inel- F
egantly drafted briefs the fundamentals earlier alluded to must be
complied with otherwise the brief would be struck out. I now turn to
the merits of the Preliminary Objection.

It is desirable practice for counsel for the appellant to state
clearly in his brief the grounds from which each issue is formulated. G
This would be of appellants counsel is not bound, if he chooses not
to. It is one of mere desirability and not essentiality. That is to say it
should be regarded as a procedure to be taken, but failure to comply
would not be fatal. The appellants brief would in the circumstances
be considered in resolving this appeal. H

There are 10 grounds of appeal in the Notice of Appeal filed
on the 4th day of July 1995. The grounds of appeal are:

1. The learned Justices of the Court of Appeal (per G.A. Ogun-
tade JCA) who read the lead judgment erred in law in holding

as follows:-

“Plaintiffs second claim in paragraph 18 which implied that the defendants trespassed on the land in April, 1971 stood on its own completely unsupported by any evidence either from the plaintiff or the defendants. It was therefore not made out that the defendants
 B *went on the land earlier than 1972”* when:

PARTICULARS AND NATURE OF ERROR

(i) The plaintiff unequivocally gave evidence thus:

“I ask for the reliefs stated in my Writ of Summons”

C By which evidence was led by the plaintiff incorporating by reference all facts stated in the writ of summons. And clearly showing that the plaintiff gave evidence, that the 1st and 2nd defendants “trespassed” on the land in dispute in April, 1971.

(ii) The 1st defendant gave evidence, which was accepted by
 D the learned trial judge, that she bought a piece of land, which forms part of the land in dispute in 1970, and she erected a foundation on the land and made blocks. Her evidence inter alia runs thus:-

“I know members of Parakoyi family. About 15 years ago I purchased some land from them. It is part of the one in dispute now.
 E *I know Apatira. He surveyed my land and that of Ajoriwin. I erected a foundation on the land and made blocks.”*

(iii) The learned trial judge made two specific findings of fact, confirming that the 1st and 2nd defendants took immediate physical
 F possession of the land in dispute in 1970. The learned trial judge held thus:

(a) *“She bought her land about 1970 and took possession thereof and surveyed it.”*

(b) *“In this case, the defendants claimed to purchase their land*
 G *about 1970; so, their adverse possession, if any, would at best run from that period even though the plaintiff purchased his land in 1956.”*

There was no cross-appeal by the Respondent, to challenge any of these findings of the learned trial judge, who saw and heard the witnesses.

H (iv) The learned justices of the Court of Appeal would appear to have contradicted themselves, when in another instance they held, that the original 2nd defendant completed his own building in 1971. If the original 2nd defendant (as represented by the 2nd and 3rd defendants) did not go to the land earlier than 1972, how did he complete

his building in 1971?

(v) If the learned Justices of the Court of Appeal, had based their judgment on the accepted evidence on record they would have had no difficulty in holding that the plaintiffs claims are statute barred.

(vi) Since the learned Justices of the Court of Appeal, had rightly rejected the untenable contention of continuing trespass, relied upon by the plaintiff/Respondent, the plaintiff's claims ought to have been dismissed as being statute barred. B

(vii) The learned Justices of the Court of Appeal, held that the plaintiffs claim raised a confusion, which they never resolved. The truth, however, is that there was no confusion, the plaintiff knew that the 1st and 2nd defendants went on the land in dispute in April, 1971, and he so pleaded and led evidence on same. C

(2) The learned justices of the Court of Appeal misdirected themselves in law by holding as follows:- D

"It is clear from the portions of the evidence of the 1st and 2nd defendants that neither gave evidence as to when each first went on the land" when:

(i) The 1st defendant led evidence, under examination -in-chief that she bought her land, which is part of the land in dispute in 1970 and immediately surveyed it, erected a foundation on the land and made blocks. E

(ii) The 1st defendant stated further, that one Apatira surveyed her land and that of Ajoriwin (the 2nd defendant, represented by the 2nd and 3rd defendants) about 1970. F

(iii) The learned trial judge, found as a fact, that the 1st and 2nd defendants, went on the land in dispute in 1970. This finding was not challenged by the respondent in the court below.

(iv) The learned justices of the Court of Appeal, had drawn G wrong conclusions from the accepted evidence on record.

(v) The plaintiff pleaded in paragraph 11 (e) of his statement of claim, that the defendants through their surveyor, surveyed the land in dispute, as evidenced by survey Plan dated 10/10/70.

(vi) The plaintiff averred in paragraph 11 (i) of his statement of claim, that one Amusa Oladejo Parakoyi and others executed a land agreement in favour of the 1st defendant in April, 1971. H

(3) The learned justices of the Court of Appeal, erred in law in disregarding the crucial findings of the learned trial judge, to the ef-

fect that the adverse possession of the defendants on the land in dispute started in 1970. When:

PARTICULARS AND NATURE OF ERROR

(i) It was the learned trial judge who saw and heard the witnesses.

B (ii) The Conclusion of the Court of Appeal is utterly wrong, and has occasioned a serious miscarriage of justice. The Court of Appeal erroneously undertook on the printed record, to make findings of fact, and thus resolving the conflicting claims of the contending parties, and consequently encroached dangerously on the preserve of the court of first instance, which saw the witnesses, heard them testify, watched their demeanour and was thus in a vantage position to believe or disbelieve and then make appropriate findings of fact.

D (4) The learned justices of the Court of Appeal, erred in law in holding that the learned trial judge, did not make a specific finding of fact, that the defendants have been in physical possession of the land since 1970. When:

PARTICULARS AND NATURE OF ERROR

E (i) The learned trial judge was in a more advantageous position, based on the pleadings and evidence of the parties before him, to find that the defendants have been “in adverse possession” of the land in dispute since 1970”

F (ii) There was abundant evidence on record, on which the trial judge based his findings.

(5) The learned justices of the Court of Appeal holding that the plaintiff/Respondent’s claims in Suit No.1/236/83 are not statute barred. When:

PARTICULARS AND NATURE OF ERROR

G (i) The limitation law, Cap 64 Laws of Oyo State of Nigeria, 1978 (section 6(2) thereof) relied upon by the defendants/appellants was not correctly applied to the facts of this case, by the Court of Appeal.

H (ii) The plaintiff based his claim on an alleged trespass which started in April, 1971 and he filed this action in May, 1983, in other words, his right of action accrued to him at best in April, 1971, therefore by May, 1983 when he filed this action his claim was statute-barred.

(iii) The decision of the Court of Appeal was not confined to the issues on the pleadings and evidence led at the trial.

(6) The learned justices of Court of Appeal erred in law in failing to give effect to the equity created on the land in dispute by the acquiescence of the plaintiff.

PARTICULARS AND NATURE OF ERROR

(i) The defendants have been in possession of the land in dispute since 1970, as per the finding of the learned trial judge which finding remains unchallenged, and the plaintiff only filed this action in May, 1983.

(ii) The defendants have completed their houses and have been living in them since about 1972 and 1978 respectively, without any legitimate protest or hindrance from the plaintiff.

(7) The learned Justices of the Court of Appeal erred in law in dismissing the defendants/appellants appeal, when:

PARTICULARS AND NATURE OF ERROR

(i) The plaintiff himself has failed to establish his case on the preponderance of credible evidence.

(ii) The plaintiff did not prove exclusive possession of the land in dispute.

(iii) The plan of the land in dispute, (exhibit9) did not show correctly and accurately the boundaries of the land claimed by the plaintiff, as it was prepared in 1956 and this action was filed in 1983.

(iv) The court did not consider the effect of the dismissal of the plaintiff's claims in Suit No.1/84/72 to the facts of this case.

(8) The learned Justices of the Court of Appeal erred in law in granting the claims of the plaintiff which was clearly statute barred.

(9) The learned Justices of the Court of Appeal erred in law in affirming the judgment of the High Court and dismissing the appellants' appeal when:

PARTICULARS AND NATURE OF ERROR

(i) The learned trial judge erroneously granted the plaintiffs main and alternative claims, instead of granting one and disallowing one, by the nature of the claims.

(ii) It is trite law that where the main claim is granted, the alternative claim will be disallowed, as both cannot be granted together.

The granting of the plaintiffs main and alternative claims has occasioned a serious miscarriage of justice to the defendants/appel-

lants.

(10) The learned Justices of the Court of Appeal erred in law, in failing to correctly apply the principle enunciated in the case of *Aileru ors v. Ademuyoye & ors.* (1967) 1 ALL N.L.R. p.271

B There are 10 grounds of appeal in the Notice of Appeal filed on the 4th day of July 1995. Issue 1 was formulated from grounds 5 and 8. Issue 2 from grounds 1, 2, 3 and 4. Issue 3 is abandoned. See paragraph 6.0 in the appellants' brief, while issue 4 was formulated from ground 10.

C ***The long held position in brief writing is that when no issue is formulated in respect of a ground of appeal, the said ground of appeal would be deemed abandoned.***

D ***Similarly when an appellant fails to argue an issue in his brief the issue and the ground from which it was formulated would also be deemed abandoned. As no issue was formulated from ground 7 and 9 both grounds are hereby struck out. Furthermore since no argument was canvassed on issue 3 which was formulated from ground 6, issue 3 and ground 6 are abandoned and hereby struck out.***

E ***There is compliance with the Rules of this court if the particulars of a ground of appeal are incorporated in the ground of appeal and not separately set out.*** See *Global Transport Oceanico SA v. Free Ent. (Nig) Ltd* (2001) 2 SC p.151

F ***After reading grounds 8 and 10 the other side is not left in any doubt as to what the complaint of the appellant actually is. That in effect means that the particulars of both grounds are incorporated in them, thereby obviating the need to separately set them out.***

G ***A preliminary objection should only be filed against the hearing of an appeal and not against one or more grounds of appeal which are not capable of disturbing the hearing of the appeal. The purpose of a Preliminary Objection is to convince the court that the appeal is fundamentally defective in which***

H ***case the hearing of the appeal comes to an end if found to be correct. Where a Preliminary Objection would not be the appropriate process to object or show to the court defects in processes before it, a Motion on Notice filed complaining about a few grounds, or defects would suffice.*** See *NNPC &*

anor v. Famfa Oil Ltd (2012) ALL F.W.L.R pt.635 p. 204, General Electric Co. v. H. Akande (2011) 4 NSCQR p.611.

If sustained, a preliminary objection terminates the hearing of an appeal. In this case a Preliminary Objection ought not to have been filed as the appeal is not fundamentally defective. It is not a fatal omission for the appellant to fail to relate issues to grounds of appeal. Issues for determination were properly formulated from the grounds of appeal. They sustain the appeal. The preliminary objection cannot be sustained in view of all that I have been saying. It is hereby overruled.

Issues 1 and 2 would be taken together.

Issue 1

Whether the Respondents action in this Suit on appeal is statute - barred?

Issue 2.

Whether the Court of Appeal was wrong in failing to find that the right of action to institute the Respondent's action accrued to him in April, 1971?

Learned counsel for the appellants' submitted that the courts below were wrong to have held that the respondents action was not statute barred. He observed that the appellants adverse possession of the land started in 1971 when the respondent sued for damages for trespass from April, 1971 and this suit was filed on 6/5/83. He submitted that suit No.1/236/83 from which this appeal emanates is statute barred in view of Section 6(2) of the Limitation Law Cap 64, Laws of Oyo State of Nigeria. Reliance was placed on O. Aina v. M.A. Jinadu & anor (1992) 4 NWLR pt.233 p.91

Learned counsel observed that there are no concurrent findings by both courts below as to when the cause of action accrued to the respondent. He further observed that the cause of action accrued to the respondent in 1970 or at best in April 1971, contending that this court should disturb concurrent findings of fact as both courts below were in error to hold that the respondents cause of action accrued in 1972. Reliance was placed on, Eholor v. Osayande (1992) 6 NWLR pt.249 p.524

Replying learned counsel for the respondent observed that there was no evidence that the respondent was aware of the adverse pos-

session of the appellants' before 1972, contending that it was in 1972 that the respondents cause of action accrued. He further observed that both courts were correct when they held that the respondent's cause of action accrued in 1972. He urged this court not to interfere with concurrent findings of the lower courts. Reliance was placed on

B Eyo v. Onuoha (2011) 11 NWLR pt. 1257 p. 1.

Once a legal right is established, there must be a remedy. A party claiming a legal right must act quickly to avoid a situation where the other party would have acted in the belief that no one was offended or hurt by his act. Where a party who claims a right does not act quickly it would be difficult or inequitable to request the adverse party to revert to his previous action limited by statute - A Statute of Limitation. Furthermore limitation periods protect a defendant from the in-
C ***justice of having to face a stale claim. For example if a claim is brought a long time after the events in question there is a strong likelihood that evidence which was available earlier may have been lost, and the memories of witnesses may have faded.***
D

A party though would not be allowed to take advantage
E ***of the limitation law where there is clear evidence of disability, mistake, fraud and in certain cases involving personal injury, death. Outside the limitation period the plaintiff still has a cause of action but sadly one that can no longer be enforced.***

F This was my explanation of the limitation law in Sanni v. Okene Government Traditional Council (2005) 14 NWLR (pt.944) p.60, and Ejura v. Idris (2006) 4 NWLR (pt.971) p.558

The land in dispute in this appeal is in Oyo State. That state has a statute of limitation. It is the Limitation Law of Oyo State Cap.64
G Laws of Oyo State of Nigeria.

Relevant provisions of that law state that:

"6(2) No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him, or if it first accrued to
H *some person through whom he claims to that person.*

12(1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereinafter in this section referred to as "adverse possession") and where under the foregoing

provisions of this law any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.

(2) Where a right of action to recover has accrued and thereafter, before the right is barred the land ceases to be in adverse possession, the right of action shall no longer be deemed to have accrued and no fresh right of action shall be deemed to accrue unless and until the land is again taken into adverse possession.

(3) For the purposes of this section receipt of rent under a lease by a person wrongfully claiming in accordance with subsection (3) of the last foregoing section, the land in reversion shall be deemed to be adverse possession of the land."

Where, an adverse claimant is in possession of land belonging to the plaintiff for twelve years and the plaintiff did nothing to stop such possession the plaintiff cannot come to court after twelve years to claim the land. He has slept on his rights and the limitation law would operate to deprive him of those rights. He would no longer have audience in court to establish his rights to the land.

The Court of Appeal came to the conclusion that the defendants/appellants entered the land in 1972. The court said:

"...there was no evidence that the defendant, had entered the land in dispute earlier than the early part of 1972..."

I am to find out if this finding is flawed, and the starting point would be the pleadings. If pleadings are to be of any use parties must be held bound by them. Mere averments without proof of the facts pleaded in a statement of claim is not proof of the said fact if the said fact is not admitted in the statement of defence. Averments in pleadings tried and tested by examination in chief cross-examination and re-examination establishes a plaintiff's case. This also applies to the defendant in his bid to defend the case against him. See ACS Ltd v. Gwagwada (1994) 5 NWLR pt.542 p.25, Yusuf v. Co-operative Bank Ltd (1994) 7 NWLR pt.359 p.676, Honika Sawmill (Nig) Ltd. V. Hoff (1994) 2 NWLR pt.326 p.252, Okoya v. Santili (1994) 4 NWLR pt.338 p.256.

What then do the pleadings say as to when the plaintiff/respondent had a cause of action?

Paragraph 11 of the statement of claim reads:-

“11. That with reference to Suit No 1/84/72 the plaintiff avers as follows:-

(a) That the plaintiff was from February 1956 in peaceable possession of the property until in February, 1972 when the defendants were seen on the land by the plaintiff.

(b) In spite of the plaintiffs warning to the defendants and showing them his Deed of conveyance and in addition to the court action in Suit No. 1/84/72 which the plaintiff took against the defendants. They (defendants) began hurriedly and continued building operations on the said land until an interlocutory injunction was given in respect of the second plot that was being hurriedly built up by the defendants. The plaintiff will rely on the proceedings, all processes and documents relating to Suit No. 1/8 4/72 as at 17/12/74.

According to the statement of claim it was in March 1972 or thereabout that the plaintiff had a cause of action. It was then that he became aware of the defendants’ trespass on his land. Has the above allegation been supported by testimony on oath? It has.

The plaintiff said on oath that:

“In 1956, I purchased 2 plots of land from Parakoyi layout at Molete, Ibadan and a Deed of Conveyance of same was prepared for me as shown in exhibit 2. I took possession of the land immediately and remained in possession without let or hindrance until 1972 when I find (sic) the 1st defendant and the person now represented by the 2nd and 3^d defendants on the land”

The plaintiff supported the averments in his pleadings that he became aware of the trespass on his land in 1972 by credible and compelling testimony on oath. How did the appellants react? Paragraph 12 of the amended statement of defence reads:

“12. That sometime in February, 1972 for the first time ever the plaintiff came to late Awolade A. Ajoriwin in his house on the land in dispute and started to claim ownership of the property and that of the 1st defendant.”

The above averment by the defendants supports the plaintiff. On the pleadings the defendants, also agree that it was in February 1972 that the plaintiff complained for the first time that they, the defendants’ were on his land. Did the defendants support paragraph 12 of their pleading with credible evidence? Yes they did. On oath

the 1st defendant said:

"I also know the land in dispute. It is at Molete, Olorunsogo. I know members of Parakoyi family. About 15 years ago I purchased some land from them. It is part of the one in dispute now. I know Apatira. He surveyed my land and that of Ajoriwin. I erected a foundation on the land and made blocks. I started the building and completed it seven years ago. I know Awolade Aremu Ajoriwin. He helped me to purchase the land. Ajoriwin completed his house before I did mine. In 1972, the plaintiff sued us in respect of the land and met him in court."

And the 2nd defendant.

"I know the land in dispute. I know the plaintiff. My father told me he bought a piece of land at Olorunsogo. My father built on the land. It is the one in dispute. We moved into the house in January, 1972. It was numbered by Ibadan City Council as S7/703 Parakoyi Layout, Molete, Ibadan on 15/2/71."

The issue is not that the defendants'/appellants' have been in adverse possession of the land in dispute since 1970, rather it is when did the plaintiff/respondent know that the defendants/appellants were on the land in dispute. The answer to that question determines when the plaintiff/ respondent had a cause of action. It is clear that on the state of the pleadings and evidence both sides agree that it was in the early part of 1972 that the plaintiff/ respondent became aware of the presence of the defendants/appellants on his land. The plaintiff/respondent had a cause of action the very first time he became aware of the defendants/appellants presence on his land and that was in 1972. Is the action statute barred? In *Egbe v. Adefarasin* (1987) 1 NWLR pt.47 p.l , this court per Oputa JSC explained how to determine the period of Limitation. His lordship said:

"By looking at the Writ of Summons and the statement of claim alleging when the wrong was committed which gave the plaintiff a cause of action and by comparing that date on which the Writ of Summons was filed, if the time on the Writ is beyond the period allowed by the Limitation law then the action is statute barred."

Section 6(2) of the Limitation Law of Oyo State Cap.64 states that suits to recover land cannot be brought after twelve years from the date on which the right of action accrued. Any

action instituted after twelve years is barred as the right of the plaintiff to commence the action would have been extinguished by the Limitation Law *supra*.

The plaintiff/respondent had a cause of action when he became aware of the defendants/appellants trespass on his land, and that was in the early months of 1972. The Writ of Summons was filed on the 6th of May 1983. Comparing both dates the plaintiff/respondents action was filed within the period allowed by the Limitation Law of Oyo State Cap 64. Both courts below were correct that the action is/was not caught by the Limitation law and so not statute barred. In answer to the second issue the Court of Appeal was not wrong in failing to find that the right of action instituted by the respondent accrued to him in April, 1971. It accrued in the early months of 1972 as correctly found by the courts below. In one breath learned counsel for the appellants said there were no concurrent findings of fact by the courts below that the respondents cause of action accrued in 1972, and yet in another breath he submits that concurrent findings of fact that respondents action accrued in 1972 should be set aside as being perverse.

It has always been accepted practice for counsel to urge the semblance of the truth, while the judge, God's representative on earth is to seek the truth.

Paragraph 5.08 of the appellant brief reads in part:
"I submit with profound respect, that there are no concurrent findings by both the High Court and the Court of Appeal, Ibadan as to the time when, the cause of action in the case accrued to the respondent"

At page 101 of the Record of Appeal, the learned trial judge said:

"...on the facts before me, I am satisfied that the plaintiff was only aware of the defendants interest in the land in dispute in 1972"

And the Court of Appeal said:

"...the evidence reveals that he had promptly pressed the ownership rights to the land in dispute in 1972 when he saw the defendants on the land."

The above are findings of fact by both courts below that the respondent was aware of the appellants' presence on his

land in 1972. In law this amounts to concurrent findings by the courts below that the respondent's cause of action in the case accrued in 1972.

When would this court interfere with the concurrent findings of the two courts below that the respondent's action accrued in 1972?

This court would rarely interfere or upset findings of fact by the two courts below. This is so since such findings are arrived at after cross-examination, observation of witnesses by the trial judge, for purposes of a finding on demeanour, and veracity of testimony. It is only a trial judge who has that opportunity, and so his findings should be respected. But this court would readily disturb and upset concurrent findings of fact if found to be perverse, or unsupportable from the evidence before the court or there is a miscarriage of justice or violation of some principle of law or procedure. See *R-Benkay Nig Ltd v. Cadbury Nig PLC* (2012) 3 SC (pt.iii) p.169, *ACN v. Lamido* at 4 ors (2012) 2 SC (Pt.ii) p. 163

Pleadings and evidence on oath from both sides point to the unmistakable fact that the respondents cause of action accrued in 1972 when he saw the appellants for the first time on his land. This fact was supported by evidence in the trial court. The finding in the circumstances is not perverse, rather it is a correct finding.

No arguments were canvassed on issue 3. Issue 3 is thus abandoned by learned counsel for the appellants. See paragraph 6.0 on page 12 of the appellants brief.

ISSUE 4.

Whether the learned Justices of the Court of Appeal are wrong in failing to correctly apply the principle enunciated in the case of *Aileru & ors v. Ademuyoye SC ors.* 1967 1 ALL NLR p.271.

Learned counsel for the appellants' observed that both courts below ought to have applied the principle enunciated in *Aileru & ors v. Ademoye & ors* (1967) ALL NLR p.271, to the facts of this case since the appellants' have created equity on the land in dispute which should be given effect to. Reliance was placed on *Plimmer & anor v. The Mayor, Councillors & Citizens of the City of Wellington* (1884) 9 AC p.699. He urged us to allow the appeal on this issue.

In response, learned counsel for the respondent observed that both courts below were satisfied that the respondent had not acqui-

esced in the adverse possession of the appellants on the land. He submitted that this finding should not be disturbed as it amounts to concurrent findings of fact, contending that the principle in *Aileru & Ors v. Ademoye & Ors* (supra) is not applicable to the facts of this case.

B In *Aileru's* case the trial court granted declaration of title in favour of the plaintiff but dismissed the plaintiffs claim for damages in trespass and injunction. This was so because the learned trial judge found that the plaintiff had acquiesced in the defendant's possession of his land. The defendant had carried out substantial improvement on the land. On appeal this court said that it was unsatisfactory to have a verdict which awarded a declaration of title to the plaintiff but left the adverse possession in the defendant, and proceeded to order the parties to settle. The reasoning being that a settlement would D bring to an end, further disputes on the land.

The principle in Aileru's case is that where the owner of land becomes aware that a stranger is building on his land but decides to remain passive, the courts would not allow him to profit from this mistake of the stranger which he could have prevented. The owner of the land would have acquiesced in the stranger's adverse possession and improvement of the owners land and the defence of acquiescence would avail the stranger. Both sides would have to reach a settlement so that disputes on the land would end once and for all time.

F Is that the situation in this case?

The Court of Appeal had this to say:

G "...the trial judge held that the plaintiff had not acquiesced in the defendants adverse possession and improvement of the plaintiffs land. The necessity to apply the principle of law touched upon in *Aileru & ors v. Ademuoye & ors* (supra) did not arise"

H Can it be said that the plaintiff/respondent acquiesced in the defendants/appellants possession of his land? The doctrine of acquiescence was explained by this court by, *Baframian JSC* in *Owodunni v. George* (1967) Vol.5 NSCC p. 184 when His lordship said:

'The principle of equity is stated in Ramsden v. Dyson 1866 L.R 1 HL. 129 at p. 140 by lord Cranworth, L.C:

"If a stranger begins to build on my land supposing it to be his own, and I, perceiving his mistake, abstain from setting him right,

and leave him to persevere in his error, a court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own. It considers that, when I saw the mistake into which he had fallen, it was my duty to be active and to state my adverse title, and that it would be dishonest in me to remain willfully passive on such an occasion in order afterwards to profit by the mistake which I might have prevented. But it will be observed that to raise such an equity two things are required, first, that the person expending the money supposes himself to be building on his own land; and, secondly, that the real owner at the time of the expenditure knows that the land belongs to him and not to the person expending the money in the belief that he is the owner. For if a stranger builds on my land knowing it to be mine, there is no principle of equity which would prevent my claiming the land with the benefit of all the expenditure made on it. There would be nothing in my conduct, active or passive, making it inequitable in me to assert my legal rights."

The plaintiff bought the land in dispute in 1956. The defendants bought the same land in 1970. They both bought the land from the Parakoyi family. In 1972 the plaintiff/respondent became aware that the defendants/appellants were on his land. He did not remain passive, rather he promptly informed them and filed a suit in 1972 to assert his title to the land. The suit was subsequently dismissed for want of diligent prosecution. Another suit with similar reliefs was filed in 1983 and it is from that suit that this appeal emanates, it is clear that the plaintiff/respondent had not acquiesced in the defendant's/appellant's adverse possession and improvement of his land. The defence of acquiescence in the circumstances does not avail the defendants/appellants and so there would be no need to apply the principle in *Aileru & ors v. Ademuyoye & ors* (supra).

When the plaintiff sued the defendant for this same land in Suit No. 1/84/72, rather than settle with the plaintiff who bought the land in 1956 twelve years before the appellants' bought the same land, they hurriedly continued building until an interlocutory injunction was granted to stop construction on the land. While the injunction was in force construction work continued in clear defiance of

lawful order. The long arm of the law usually catches up with such people who would rather buy and build quickly instead of making a thorough search before purchasing the land, it usually ends with pain, sorrow, and tears, the end of an error, with the defaulting party purchasing a law suit.

B This appeal in my view has no merit. Both courts below were correct. Appeal dismissed with costs of N100,000 in favour of the respondent.

C

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my (earned brother RHODES-VIVOUR, JSC just delivered. I agree with his reasoning and conclusion that the preliminary objection raised D by the respondent has no merit and should be overruled. I accordingly overrule same.

On the merit of the appeal, it is very clear that the four issues formulated by learned counsel for appellants for the determination of the appeal are very similar to those earlier submitted to the lower E court for determination and which the court resolved against appellants,

I have carefully gone through the issues formulated, the arguments of counsel thereon and the record of proceedings. I have also F examined

As stated earlier in this judgment the issues for determination before the Court of Appeal are similar to those before this court. These are reproduced hereunder as follows:-

COURT OF APPEAL:-

- G
1. *Whether the action was not statute-barred.*
 2. *Whether defence of laches, acquiescence, standing-by were not available to the Appellants.*
 3. *Whether the dismissal of suit No. 7/84/72 did not have the effect of annulling any interlocutory orders made in the said suit and H whether it did not create estoppels per rem judicatam....*

4. *Whether the principles in Aileru & ors vs Ademuoye & ors 7967 1 AH NLR 271/276 were correctly applied in this case."*

SUPREME COURT

1. *Whether the Respondent's action in this suit on appeal is*

statute-barred?

2. *Whether the Court of Appeal was wrong in failing to find that the right of action to institute the Respondent's action accrued to him in April, 1971?*

3. *Whether the plea of acquiescence relied upon by the Appellants was made out?* B

4. *Whether the learned justices of the Court of Appeal are wrong in failing to correctly apply the principle enunciated in the case of Aileru & ors vs Ademuyo & Ors. 1967 1 All NLR 271, 273-275 to the facts of this case?"* C

Upon examination of the arguments in support of the above issues and the response by the respondent, it is very clear that the appeal is grounded basically on facts concurrently found by the lower courts. It is not in doubt that the respondent was a prior purchaser of the land in dispute vis-à-vis the appellants and that it was the trespass D of appellants that resulted in the suits instituted by respondent.

To demonstrate what I have been saying about the appeal being basically on the facts, it is necessary to look at the findings of the lower courts.

The trial court found the following facts as undisputed;- E

(a) that the plaintiff was a prior purchaser of the land in dispute having bought it in 1956, and that the purchase was confirmed in suit 1/102/72 CAN/58/76;

(b) that the defendants purchased the land about 1970 from the same family as the plaintiff, but represented by a different Mogaji; F

(c) that the defendants were aware of the plaintiff's interest in the disputed land as far back as 17th July 1972 when Agbaje J (as he then was) delivered a ruling in an application for an interim injunction filed by the plaintiff; G

(d) that the claim's claim was on 6th May, 1983 dismissed for lack of diligent prosecution;

(e) that before the original 2nd defendant completed his building, an application for injunction was filed;

(f) that before the 1st defendant began her house, she had H been restrained by court in 1972;

(g) that the 1st defendant, without the injunction being lifted built and completed her house by 1978; and

(h) that the original 2nd defendant completed his house after

1972 injunction which was dismissed in his favour.

The trial court then proceeded to make the following findings of facts on the disputed facts:-

(a) that though the plaintiff was caught by the maxim “*vigilantibus non at dormientibus jura subveniunt*”, he slept over his rights or interests but this he did made the court;

(b) that on the facts on record the plaintiff was only aware of the defendants’ interest in the land in 1972, and he promptly sued them and although he did not pursue his claim diligently, he was already in court between 1972 and 1983;

(c) that the limitation law did not operate against the plaintiff’s claim;

(d) that laches acquiescence did not apply as plaintiff was already in court in 1972 and standing-by did not arise as there was no contest in court in which the plaintiff failed to intervene;

(e) that the plaintiff, had a better title to the land in dispute not only because he was already a legal owner before the defendants purchased the same land but because he had taken possession of the said land before the sale of the defendants;

(f) that the defendants knew of the plaintiffs interest in the land in dispute as far back as 1972 yet persevered in their resistance of his legal right to it;

(g) that the defendants are not entitled to any equity; and

(h) that the defendants did not take any reasonable diligence to make a search before purchasing the land in dispute.

It is on the above findings that the trial court entered judgment for the plaintiff resulting in an appeal to the lower court, the issues for the determination of which I had earlier reproduced in this judgment.

In resolving the four issues for determination, the Court of Appeal held, inter alia, as follows:-

(a) that it was the defendants who raised the defence that the action was statute barred thereby having the onus to prove same by adducing evidence;

(b) that neither 1st nor 2nd defendant gave evidence as to when each went on the land in dispute and made the following observations at page 184 of the record:-

From plaintiff’s evidence, he found the Defendant’s on his land

in 1972. Apart from the claim for trespass committed by the Defendants from April, 1971 to 1983, there was no evidence that the Defendants had entered the land in dispute earlier than the early part of 1972.

Plaintiff's second claim in paragraph 18 which implied that the Defendants trespassed on the land in April, 1971 stood on its own completely unsupported by any evidence either from the plaintiff or the Defendants. It was therefore not made out that the Defendants went on the land earlier than 1972."

(c) that the plaintiff had not improperly delayed in the prosecution of his rights to the land in dispute in anyway so as to say that he was guilty of laches;

(d) that

"assuming the Defendants were in error in starting the erection of a building on the land in dispute, the plaintiff had timeously made the requisite attempt to set the Defendants free from their error by bringing his suit In 1972 shortly after he became aware of the Defendants' incursion on the land in dispute". See page 189.

(e) that the order of Agbaje J (as he then was) restraining the Defendants from building on the land *was efficacious and remained in force until the case was dismissed on 6/5/83, following the dismissal of the suit, the order dissolved and became extinct. The order was not at any time null or void."*

(f) that the dismissal of suit 1/84/72 could not operate as estoppel per rem judicatam against the plaintiff; and,

(g) that the learned trial judge was right in holding that there was no necessity to apply the principle of law enunciated in *Aileru & ors vs Ademuyoye & ors* and consequently dismissed the appeal.

It is settled law that this court does not make a practice of interfering with concurrent findings of facts by the lower courts except in special circumstances - see *Umoru vs Zibiri* (2003) FWLR (pt. 172) 1920 at 1930; *Eya vs Olopade* (2011) 11 NWLR (pt. 1259) 505 at 532; *Eyo vs Onuoha* (2011) 11 NWLR (pt 1257) 1 at 28, 29 and 47.

The special circumstances that would necessitate interference by the Supreme Court with concurrent findings of fact by the lower courts include a situation where the finding is perverse or not supported by evidence on record; erroneous in substantive or procedural law; there was a serious violation of some principles of law or

procedure or that there was a miscarriage of justice occasioned by the said findings of fact etc, etc.

As stated earlier in this judgment, the findings of facts relevant for the determination of the dispute between the parties are fully supported by evidence on record, as such they are not perverse.

B Learned counsel for the appellants has also not demonstrated, to the satisfaction of this court having regards to the evidence on record, that any of the special circumstances listed earlier exists in this case making it necessary for the court to treat this case as an exception to its general practice of non interference with concurrent findings of
C facts by the lower courts.

It is for the above reasons and the more detailed reasons contained in the lead judgment of my learned brother, RHODES-VIVOUR, JSC that I too find no merit at all in this appeal and consequently
D dismiss same.

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

E ***GALADIMA JSC***

I have had the preview of the judgment of my Learned Brother, RHODES-VIVOUR, JSC, just delivered. Having carefully gone through the Lead Judgment, I cannot but concur with the reasoning and conclusion leading to the dismissal of the appeal. I too find no
F merit in this appeal and consequently, I hereby dismiss same. I abide by the consequential orders made, including order as to costs.

G ***AKA'AH'S JSC***

I read before now the judgment of my learned brother Rhodes-Vivour, JSC, with which I entirely agree. The issues which the appellant formulated for determination were the same issues which he submitted to the lower court and which were adequately considered
H before that court dismissed the appeal. There are concurrent findings of facts made by the courts below. The trial court found from “the evidence adduced at the trial that it was the respondent’s father, Chief E. A. Olawaiye (now deceased) who first purchased the land in dispute from the Parakoyi family in 1956, registered same and was is-

sued a certificate of occupancy. He took possession of the land. In 1972 he noticed the appellants' presence on the land and immediately instituted an action for trespass and sought for an injunction. On 17/7/1972, Agbaje J. (as he then was) granted an interim injunction in favour of the plaintiff. The substantive suit was however dismissed in 1983 for want of diligent prosecution. Thereafter, the plaintiff sued for declaration of title and the defendants (now appellants) purchased the said land in 1970 from the same family as the Plaintiff but under a different family head. Despite the injunction the 2nd defendant went ahead with the construction of the house he had been building while the 1st defendant started her own house after the injunction was granted and completed it in 1978 while the injunction was still in force. Based on these facts the learned trial Judge found which was affirmed on appeal that the limitation law did not operate against the plaintiffs claim and that laches and acquiescence did not apply as the plaintiff since the plaintiff promptly sued the defendants when he became aware of the defendants' interest in 1972; The court also found that the doctrine of standing - by did not arise as there was no contest in court in which the plaintiff failed to intervene. Also that the plaintiff had a better title to the land in dispute not only because he was the legal owner before the defendants purchased same but because he had taken possession of the land before the sale to the defendants. With these concurrent findings of facts by the two lower courts it will be very difficult if not near impossible for this court to interfere unless the appellants can show that the findings are perverse and this has led to a miscarriage of justice. See: 532: Eyo v. Onuoha (2011) 11 NWLR (Pt. 1257) 1 at 28; Eya v. Olopade (2011) 11 NWLR (Pt. 1259) 505 at 532. The appellants have not evinced any arguments showing that special circumstances exist to warrant any interference by this court. It is for this reason and the more detailed reasons contained in the judgment of my learned brother Rhodes-Vivour JSC, that I too dismiss the appeal as lacking in merit. I abide by the consequential orders contained in the leading judgment including the order as to costs. The appeal is accordingly dismissed.

OKORO JSC

My learned brother, Bode Rhodes-Vivour, JSC obliged me in advance a copy of the judgment he has just delivered with which I agree completely on the reasons advanced and the conclusion that this appeal is devoid of merit and ought to be dismissed.

B The plaintiff (now respondent) bought this land from the Parakoyi family in 1956, registered same and was later issued certificate of occupancy. He took possession of the said land which situates in Ibadan. In 1972, he noticed the appellants on the land. In the same year, he sued them for trespass. That suit lingered till 1983 when it was dismissed for want of diligent prosecution. The respondent then filed the present suit in 1983 for declaration of title. The Appellants' ancestors said they bought this same land in 1970 from the same Parakoyi family but under another family head.

D At the close of evidence, the learned trial judge entered judgment for the plaintiff, holding that the plaintiff first bought the land in 1956 whereas the defendants (now appellants) bought theirs in 1970. That since the respondent had registered the land in 1956 and acquired a legal interest; it cannot be defeated by a later buyer. He also held that the plaintiff having become aware of the interference in 1972, promptly sued the defendants and as such limitation Law did not operate against the plaintiffs claim. It was his decision that the defendants did not take reasonable diligence to make a search before buying the land.

F Dissatisfied with the stance of the learned trial judge, the appellants appealed to the Court of Appeal which dismissed the appeal for lacking in merit.

G Again, the appellants are not satisfied with the decision of the lower court and have appealed to this Court. Four issues are distilled by the appellants for the determination of this appeal. They are:-

1. *Whether the respondent's action in this suit on appeal is statute loaned?*
2. *Whether the Court of Appeal was wrong in failing to find that the right of action, to institute the Respondent's action accrued to him in April, 1971.*
3. *Whether the plea of acquiescence relied upon by the appellants was made out.*
4. *Whether the learned justices of Court of Appeal are wrong*

in failing to correctly apply the principle enunciated in the case of Aileru V. Ademoye (1967) 1 All NLR 271, 273 -275 to the facts of this case.

The learned counsel for the respondent has also reproduced the four issues distilled by the appellants' counsel.

There is a preliminary objection to the hearing of this appeal. I agree with my learned brother that the objection has no merit and I hereby overrule same.

It is quite clear, and there is no doubt that the respondent bought this land in 1956 and also registered same in the same year. The appellants bought theirs in 1970. Had the appellants conducted a search in the lands registry, they would have realized that the land was no more available for purchase. This singular neglect by the appellants has cost them both time and resources which, sadly, cannot give them any benefit.

The appellants have contended that the claim of the respondent is statute - barred. The learned trial judge held that the action was not statute barred. On page 102 of the record of proceedings, the learned trial judge held thus:

'In view of my finding that the plaintiff's present claim is not barred by limitation Law, his present claim before me is competent notwithstanding the fact that there was no appeal filed against the order mentioned in Exhibit 6 Ridding that dismissed the plaintiffs claim for lack of diligent prosecution. ...while the bar operates where a plaintiff failed to seek law's intervention, his failure to pursue his claim which is already in court with diligence cannot, I submit with respect, give rise to the defence of time bar'.

By the above decision, the learned trial judge held that the respondent's cause of action arose in 1972 when he first noticed the appellants on the land and he promptly sued for trespass.

From the judgment of the Court of Appeal, it also found as a fact that the cause of action arose in 1972 as the appellants who raised the defence of statute bar did not prove that they were on that land earlier than the early part of 1972. This is a crucial issue and is a concurrent finding of the two lower courts. It is now well settled that this court will not disturb the findings of facts by the two courts below unless there is manifest error which leads to some miscarriage of justice, or a violation of some principle of law or procedure. The appel-

lants herein have failed to show why this court should interfere with the findings of the two lower courts as to when the appellants trespassed into the land in dispute. See Adaku Amadi V. Edward N. Nwosu (1992) 6 SCNJ 59, Onwujuba V. Obieniu (1991) 4 NWLR (pt. 188) 16, Odofin V. Ayoola (1984) 11 SC 72, Igwego V. Ezeugo (1992) 6
 B NWLR (pt. 249) 561,

It follows that having filed this suit which has given birth to this appeal on 6th May, 1983 at the High Court, the Respondent did not offend against section 6 (2) of the Limitation Law of Oyo State, cap
 C 64 which states:

“No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or if it first accrued to some person through whom he claims, to that person.”

D My position is much more strengthened not just by the decisions of the two lower courts but by the fact that the respondent had earlier in 1972 filed a suit against the appellants immediately he found them on the land that same year. The tardiness in prosecuting that
 E suit which was dismissed for want of diligent prosecution is of no moment here. The right of the respondent and ownership of the land by the respondent, from the evidence before the court is unshaken and I so hold. I thus agree with the judgment of the lower court which also affirmed the decision of the trial court in this matter.
 F Based on the above and the more elaborate reasons enunciated in the lead judgment of my learned brother, Bode Rhodes-Vivour, JSC, I agree that this appeal is devoid of any merit and I accordingly dismiss same. I abide by all consequential orders made in the lead judgment, that relating to costs, inclusive.

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