

SUPREME COURT OF NIGERIA
FRIDAY 19TH DECEMBER, 2014. SC. 309/2001
**CORAM:- M. MOHAMMED CJN, M. S. MUNTAKA-
COOMASSIE, O. RHODES-VIVOUR, N. S. NGWUTA,
J. I. OKORO, JJSC**

1. LAWAN ABDULLAHI BUBA
WASSAH (For himself and as
representative of the people of
Kwana Bassah)

2. GWOZA TRADITIONAL COUNCIL APPELLANTS
3. GWOZA LOCAL GOVERNMENT
COUNCIL

AND

1. TUKSHAHE KARA
2. ALI DANGWA
3. LAWAN MAMMAN (For themselves
and on behalf of Ville clan)

..... RESPONDENTS

APPEALS - Preliminary objection - Filing - Respondent is enjoined
by SC Rules O. 2 r. 9 - To give 3 clear days notice before hearing to
appellant - Setting out in clear terms grounds of objection (H1)

APPEALS - Grounds - Basis - It must relate to the judgment ap-
pealed against - Otherwise the ground should be struck out (H2)

PLEADINGS - Binding nature of - If pleadings are to be of any use -
Parties must be held bound by them (H3)

DOCUMENTS - Admissibility of - Procedure - Trial Judge is to hear
arguments for and against admissibility of the document - And then
either admit or reject same (H4)

DOCUMENTS - Rejection - Effect - Document tendered and marked
rejected cannot be tendered again - It stays rejected for the purpose
of the trial - In which it was marked rejected (H5)

COURTS - Document - Evaluation - Failure of - Not delivering a

3632 Wassah v. Kara (2014) 12 KLR (pt. 354) 3631; (2015) 4

ruling on the admissibility of the letters before relying on same - Is a fatal oversight of trial court - And CA rightly discountenanced them (H6)

COURTS - Justice - Upholding of - The aim of courts is to do substantial justice between parties - And any technicality that tends to defeat the cause of justice - Will be rebuffed by the court (H7)

ORDERS OF COURT - Retrial - When not necessary - Retrial should not be made where plaintiff fails to prove his case - And there is no substantial irregularity apparent on the record (H8)

SUPREME COURT - Power - SC Act s. 22 - Empowers SC to make any order necessary for determination of real question in appeal - As if the matter is prosecuted before it at first instance (H9)

DOCUMENTS - Weight - Exhibits E & F legally placed 1st defendant and his people in their present abode - Hence both exhibits are compelling and decisive - For dismissing plaintiffs' case in the HC (H10)

FACTS

This action was commenced at the High Court of Borno State by plaintiffs/respondents against defendants/appellants, seeking inter alia for a declaration that the deliberate changing of the names of the Ville Primary School and Health Centre to Kurana Bassa Primary School and Health Centre respectively is illegal, null and void and is capable of causing breakdown of law and order and that the name should be reverted. At the hearing, appellants tendered two letters – Exhibits E & F as the pivot of their case. At the end of hearing, the learned trial Judge although considered evidence adduced by the parties, but did not rule on admissibility or otherwise of the two letters. The learned trial Judge found on evidence that respondents have failed to establish the claims and accordingly dismissed their case.

Being dissatisfied, respondents appealed to the Court of Appeal Jos Division. The appeal was allowed resulting in granting of all the reliefs sought by respondents principally on the absence of the ruling on the admission or otherwise of the two letters tendered by

appellants, which appellants considered vital in their defence to respondents' case on appeal. Aggrieved, appellants appealed to Supreme Court, urging the Court to allow the appeal and to either remit the case to the trial court for hearing de novo or to use its powers to admit the two letters tendered at the trial Court and decide the case on the merit with the two relevant documents in evidence.

ISSUE FOR DETERMINATION

Whether the learned justices of the Court of Appeal were right on the law and on the facts in holding that facts relating to documents not in evidence ought to be discountenanced in evaluating evidence proffered of trial.

HELD (Unanimously allowing the appeal per

RHODES-VIVOUR JSC)

APPEALS - Preliminary objection - Filing

1. I shall now consider the Preliminary Objection. Order 2 Rule 9 of the Supreme Court Rules provides for the filing of Preliminary Objections. It enjoins a respondent who intends to rely on a Preliminary Objection to give the appellant three clear days notice before the hearing setting out in clear terms the grounds of objection. The purpose is to give the appellant enough time to address the respondents' objection.

It is also accepted practice for the respondent to argue his Preliminary Objection in his brief in which case the appellant would have to respond in a reply brief. In this appeal the respondents argued their Preliminary Objection in their brief. The procedure adopted by the respondents obviates the need to file a separate notice of preliminary objection. The appellants responded by filing an amended reply brief. The Preliminary Objection and the appellants response are thus properly before this court. (p. 3640 D)

APPEALS - Grounds - Basis

2. It is long settled that a ground of appeal must arise or relate to the judgment against which the appeal is filed. That is to say the ground of appeal should be a direct challenge to

the decision of the lower court. Where this is not the case, the ground of appeal should be struck out.

- During trial the appellants sought to tender two letters. The learned trial judge heard arguments from counsel, then reserved Ruling on the admissibility of both letters. No Ruling was ever rendered by the learned trial Judge. The letters were neither admitted in evidence nor rejected yet the learned trial judge relied on them in his judgment to dismiss the plaintiff's case. It is clear that the Court of Appeal ruled that the letters were not in evidence, and on that finding which is a decision found that the learned trial judge was wrong to rely on letters that were not in evidence. The ground of appeal arose from the judgment of the Court of Appeal. It is a competent ground of appeal.**
- The Court of Appeal came to the decision that there were contradictions in the evidence of the defendant's testimony which the trial court did not avert its mind to. This finding formed the basis of ground 3. It is a ground of appeal that challenges the decision of the Court of Appeal. In view of the fact that grounds 1 and 3 are a direct challenge to the decision of the Court of Appeal, both grounds are competent. The Preliminary Objection is hereby dismissed. (p. 3641 E)**

- PLEADINGS - Binding nature of**
- 3. If pleadings are to be of any use parties must be held bound by them. (p. 3643 C)**

- DOCUMENTS - Admissibility of - Procedure**
- 4. The well laid down procedure for admitting documents in evidence is for the trial judge to hear arguments for and against the admissibility of the document, then render a Ruling. If the ruling is favourable to the document being admitted in evidence the document is admitted in evidence and marked as an exhibit. If on the other hand the Ruling is unfavourable the document is marked rejected. A document marked as an exhibit is good evidence that the judge is expected to rely on when preparing his judgment. (p. 3644 E)**

DOCUMENTS - Rejection - Effect

5. A document tendered and marked rejected cannot be tendered again. Once a document is marked rejected it stays rejected for the purposes of the trial in which it was marked rejected and the defect cannot be cured during the said trial. (p. 3644 G) B

Document - Evaluation - Failure of

6. The fact that the trial court did not deliver a Ruling on the admissibility of the letters, and did not mark them as exhibits or as rejected is a fatal oversight by the learned trial judge. It means that the letters were not in evidence, and so the trial court was wrong to rely on letters that were not in evidence. The Court of Appeal was right to discountenance documents not in evidence in evaluating evidence proffered at trial. This issue is answered in the affirmative. (p. 3644 H) C
D

Justice - Upholding

7. Law is blind. It has no eyes. It cannot see. That explains why a statue of a woman with her eyes covered can be found in front of some High Courts. On the contrary justice is not blind. It has many eyes, it sees and sees very well. E

The aim of courts is to do substantial justice between the parties and any technicality that rears its ugly head to defeat the cause of justice will be rebuffed by the court. When justice is done it brings joy to the Righteous. (p. 3645 B) F

ORDERS OF COURT - Retrial - When not necessary G

8. It would be wrong to make an order of retrial if such an order would give the party that lost an opportunity a second time to prove what he failed to prove. A retrial should not be made where the plaintiff fails to prove his case and there is no substantial irregularity apparent on the record. H
These are a few cases where a retrial order should not be made. If after examining the evidence, this court finds that it is in a position to do justice; this court should proceed to correct the decision and in such circumstances it would be wrong

to order a retrial.

This case was filed in 1991. Over twenty-two years ago. Three of the original litigants and witnesses are dead. The other witnesses are well advanced in age. Ordering a retrial would not be in the interest of justice. It would be very cumbersome for the parties with the usual stress, expense a trial and appeal entails. Furthermore what is expected of the court in a retrial is for the two letters that are the basis of the appellants' case to be properly admitted in evidence so that the judge can rely on them in his judgment. Ordering a retrial on these facts would be most inappropriate. (p. 3645 E)

SUPREME COURT - Power - SC Act s. 22

9. This court can put itself in the shoes of the trial court and do what the trial court ought to have done. This is done by invoking section 22 of the Supreme Court Act. Under the section supra this court is empowered to make any order necessary for the determination of the real question in controversy in an appeal as if the matter is prosecuted in the Supreme Court as a court of first instance.

This section confers on this court the power to make orders that the court below ought to have made without remitting the case for retrial. It is only if the proceedings justify it can the section supra be invoked. (p. 3646 B)

DOCUMENTS - Weight

10. By letter dated 30/1/86 the Gwoza Local Government Council ordered the 1st defendant and his people to relocate from Ville to Kwatara area. Exhibits E and F directed the Gwoza Local Government Council to withdraw its letter. With the withdrawal of the letter the 1st defendant and his people were not resettled of Kwatara Area, along Gwoza - Mubi Road, rather their continuous presence in their present abode, i.e. within Ville is legal and in accordance with the Gwoza Resettlement Scheme. Both exhibits are compelling and decisive for making an order dismissing the plaintiffs' case in the High Court. In the circumstances the appeal is allowed. (p. 3647 B)

REPRESENTATION

Chief B. Falade with I.A. Falade, for the Appellants

B. Oyebanji, K.N. Noneh, C.S. Mbah, for the Respondents

CASES REFERRED TO

Eya v. Olopade (2001) 5 SC (pt. 2) 1	B
Oyadiran v. Alebiosu (1992) 2 NWLR (pt. 249) 550	
Kolawole v. Alberto (1989) 1 NWLR (pt. 98) 382	
Akande v. Adisa (2012) 5 SC (pt. 1) 1	
Ohochukwu v. A.G. Rivers State (2012) 2 SC (pt. 11) 103	C
Ogbuanyinya v. Okudo (No.2) (1990) 4 NWLR (pt. 146) 551	
Bamgbose v. Jiaza (1991) 3 NWLR (pt. 177) 64	
Agbaje v. Adigun (1993) 1 NWLR (pt. 269) 271	
Bello v. A.G. Oyo State (1986) 12 SC 1	
Bello v. Ringim (1991) 7 NWLR (pt. 206) 675	D
Thompson v. Arowolo (2003) 7 NWLR (pt. 818) 163	
Solomon v. Magaji (1982) 11 SC 1	
Inakoju v. Adeleke (2007) 1 SC (pt. 1) 128	
Imonike v. A.G. Bendel State (1992) 7 SCNJ (pt. 1) 197	
Ucha v. Elechi (2012) ALL FWLR (pt. 625) 237	E

STATUTES & RULES REFERRED TO

Supreme Court Act, s. 22

Supreme Court Rules, O. 8 r. 2(1)

F

LEAD JUDGMENT BY RHODES-VIVOUR JSC

The plaintiffs in the trial High Court were Bulama Buba Dangwa (deceased), Alhaji Adamu Nido (deceased) and Takshehe Kara, while the defendants were Lawan Buba Wasa (deceased) Gwoza Traditional Council and Gwoza Local Government Council. The plaintiff's sued for themselves and on behalf of the Ville Clan while Lawan Buba Wasa defended the action for himself and representing the people of Kurana Bassa. Substitutions were made an appeal to replace deceased litigants.

H

By Writ of Summons, accompanied by a 21 paragraph statement of claim the respondents, as plaintiffs prayed for the following:

(a) A declaration that going by the Gwoza Resettlement Scheme, Kurana Bassa and the 1st Defendant have been resettled of

Kwatara Area, along Gwoza - Mubi Road.

(b) A declaration that by deliberately Changing the name of the Ville Primary School and Health Centre to Kurana Bassa Primary School and Health Centre respectively is illegal null and void and is capable of causing breakdown of law and order and should be changed to their former name bearing Ville.

(c) A declaration that the continuous presence of the 1st Defendant and his subjects in the present abode which is within Ville as illegal and should therefore vacate Ville immediately to Kwatara for peace to reign.

(d) An order on the 2nd and 3rd Defendants to enforce letter dated 30th January, 1986 and 1st January, 1987 respectively.

(e) An injunction restraining the 1st Defendant and his subjects from further interfering directly or indirectly with the activities of the plaintiffs.

(f) An injunction restraining the 2nd and 3rd Defendants from further recognizing dealing with and addressing the primary School and Health Centre of Ville as those situated at Kurana Bassa.

Six witnesses gave evidence for the plaintiffs, while two witnesses gave evidence for the defendants. Five documents were admitted in evidence as exhibits.

Dismissing the plaintiffs' case the learned trial judge said:

"...I am satisfied from the evidence adduced before me and the documents tendered that none of the reliefs has been proved against defendant and his subjects. I also hold that none of the reliefs has been proved against the 2nd and 3rd defendants respectively."

This judgment was upset by the Court of Appeal (Jos Division). The Court of Appeal said:

"...I resolve the supra issues in favour of the appellants, and so all the grounds of appeal to which the issue is married succeed. The end result is that the appeal succeeds in its entirety. I therefore allow the appeal and set aside the decision of the lower court. Judgment is hereby given to the plaintiffs as per their Statement of claim..."

The defendants/appellants were dissatisfied with the judgment of the Court of Appeal and so filed a Notice of Appeal to this court on 25th September 2001 containing seven grounds of appeal. Briefs of argument were subsequently filed and exchanged. The appellants filed an appellants' brief on 14/2/03 and an amended reply brief on

2/4/14.

The respondents filed an amended respondents' brief on 4/3/14.

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

ISSUE 1

B

Whether a document tendered but not marked as exhibit has ceased to be produced before the court.

ISSUE 2

Whether the plaintiff proved their case on preponderance of evidence.

C

ISSUE 3

Whether serious contradiction was an issue before the court below and if the answer is in the negative, whether the court was right in setting aside the judgment of the trial court based on the contradictions.

D

ISSUE 4

Whether the court below was right when it gave judgment as per the statement of claim, when some aspects of the claim were not proved and had been abandoned.

E

On the other side of the fence learned counsel for the respondents formulated two issues for determination. They are:

ISSUE 1

Whether the learned justices of the Court of Appeal were right in law and on the facts in holding that the respondents had proved their entitlement to the reliefs sought as per their statement of claim.

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ISSUE 2

Whether the learned justices of the Court of Appeal were right on the law and on the facts in holding that facts relating to documents not in evidence ought to be discountenanced in evaluating evidence proffered of trial.

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After examining the issues formulated by both sides it becomes clear that the appellants' issue 1 and the respondents' issue 2 question the reliance by the trial court on documents that were not admitted in evidence.

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I am satisfied that the respondents' issue 2 alone would be considered for the determination of this appeal. At the hearing of the

appeal on the 22nd of September 2014, learned counsel for the respondents adopted the respondents amended respondents brief filed on the 4th of March, 2014. Learned counsel informed the court that he argued a Preliminary Objection in his brief, observing that grounds 5 and 6 in the Preliminary Objection are abandoned. He urged this court to uphold the Preliminary Objection, dismiss the appeal and affirm the judgment of the lower court.

Learned counsel for the appellants adopted the appellants' brief filed on the 14th of February 2003 and an amended reply brief filed on the 2nd of April, 2014. He urged this court to dismiss the Preliminary Objection and allow the appeal.

The issue for determination is:

1. Whether the learned Justices of the Court of Appeal were right on the law and on the facts in holding that facts relating to documents not in evidence ought to be discountenanced in evaluating evidence proffered of trial.

I shall now consider the Preliminary Objection. Order 2 Rule 9 of the Supreme Court Rules provides for the filing of Preliminary Objections. It enjoins a respondent who intends to rely on a Preliminary Objection to give the appellant three clear days notice before the hearing setting out in clear terms the grounds of objection. The purpose is to give the appellant enough time to address the respondents' objection.

It is also accepted practice for the respondent to argue his Preliminary Objection in his brief in which case the appellant would have to respond in a reply brief. In this appeal the respondents argued their Preliminary Objection in their brief. The procedure adopted by the respondents obviates the need to file a separate notice of preliminary objection. The appellants responded by filing an amended reply brief. The Preliminary Objection and the appellants response are thus properly before this court.

In the Preliminary Objection learned counsel for the respondents seeks an order of this court striking out grounds 1 and 3 in the Notice of Appeal. He observed that grounds 1 and 3 do not arise from the judgment of the Court of Appeal. Relying on *Eya v. Olopade & anor* (2001) 5 SC Pt.2 P.1, *Oyadiran v. Alebiosu* (1992) 2 NWLR Pt.249 P.550.

He submitted that both grounds of appeal are incompetent and ought to be struck out.

Learned counsel for the appellants argued that the Court of Appeal made a finding when it said: *“The letters were therefore not in evidence”*

Learned counsel contended that the finding is a decision and so ground 1 is a competent ground of appeal. B

On ground 3 he observed that the Court of Appeal held that:

“There were contradictions in the evidence of the defendants on the change of the name of the school and how it came about the name. This to my mind is a rather serious contradiction which should have been viewed and given consideration but the learned trial judge did not avert his mind to the contradiction. The evidence weakened the defendants’ case.” C

Learned counsel observed that the above findings of fact formed the basis of the complaint in ground 3 of the appeal and so the ground of appeal is valid. He urged this court to dismiss the Preliminary Objection and hold that grounds 1 and 3 are competent and therefore valid grounds of appeal. D

It is long settled that a ground of appeal must arise or relate to the judgment against which the appeal is filed. That is to say the ground of appeal should be a direct challenge to the decision of the lower court. Where this is not the case, the ground of appeal should be struck out. See Kolawole v. Alberto F (1989) 1 NWLR Pt.98 p.382, Alubankudi v. A.G. Federation (2002) 17 NWLR pt.796 p.360.

Ground 1 without particulars reads:

“1. The learned Justices of the Court of Appeal erred in law when they held:

“The letter was sought to be tendered but learned counsel for the plaintiffs raised an objection the ruling on which the learned judge adjourned. Somehow he did not get to write a ruling on it because I cannot find the ruling in the printed record of proceedings or what is called the Judges file. The letters were therefore not in evidence.” H

During trial the appellants sought to tender two letters. The learned trial judge heard arguments from counsel,

then reserved Ruling on the admissibility of both letters. No Ruling was ever rendered by the learned trial Judge. The letters were neither admitted in evidence nor rejected yet the learned trial judge relied on them in his judgment to dismiss the plaintiff's case. It is clear that the Court of Appeal ruled that the letters were not in evidence, and on that finding which is a decision found that the learned trial judge was wrong to rely on letters that were not in evidence. The ground of appeal arose from the judgment of the Court of Appeal. It is a competent ground of appeal.

Ground 3 without the particulars reads:

"3. The learned Justices of the Court of Appeal erred in law when they held:

"There were contradictions in the evidence of the defendants on the change of the name of the School and how it came about the name. This to my mind is a rather serious contradiction which should have been viewed and given consideration but the learned trial judge did not avert his mind to the contradiction. The evidence weakened the defendants' case."

The Court of Appeal came to the decision that there were contradictions in the evidence of the defendant's testimony which the trial court did not avert its mind to. This finding formed the basis of ground 3. It is a ground of appeal that challenges the decision of the Court of Appeal. In view of the fact that grounds 1 and 3 are a direct challenge to the decision of the Court of Appeal, both grounds are competent. The Preliminary Objection is hereby dismissed.

THE MAIN APPEAL

The facts are these. The respondents/plaintiffs are representatives of the Ville Clan in the Gwoza Local Government Area of Borno State. The 1st appellant/defendant represents the Kurana Bassa people, a hill dwelling people. The Government pleaded with the Kurana Bassa people to come down from the hills and be integrated. They agreed. They came down and lived with the Ville Clan. They paid taxes. The Ville Clan and the Kurana Bassa people lived in an area that is under the control of the Gwoza Local Government Council. By a letter dated 30/1/86 the Gwoza Local Government ordered the Kurana Bassa people to relocate to Kwatara area along the Gwoza

Mubi road. They refused to be relocated. By a letter dated 21/5/86 and 22/1/87 the Borno State Government ordered the Gwoza Local Government to withdraw its letter of 30/1/86. The Local Government complied. Both sides have lived happily ever since. The suit was filed because of the change of name of some public utilities in the area. B

ISSUE 1

Whether the learned Justices of the Court of Appeal were right on the law and on the facts in holding that facts relating to documents not in evidence ought to be discountenanced in evaluating evidence proffered of trial. C

If pleadings are to be of any use parties must be held bound by them. See Akande v. Adisa & anor (2012) 5 SC (Pt.1) P.1, Ohochukwu v. A.G. Rivers State & 2 Ors. (2012) 2 SC (Pt.11) P. 103. D

The plaintiff pleaded the following facts. That by letter dated 30/1/86 the Gwoza Local Government Council ordered the 1st defendant and his people to move from Ville to Kwatara area along Gwaza Mubi road.

In response the 1st defendant pleaded as follows: E

“para.10 ...further by the 2nd defendant directing the 1st defendant to move to Kwatara was superceded by letter from the Secretary to the Military Government of Borno State Ref. No. SEC/6/VOL.III/434 dated 21/5/1986, Ministry of Local Government F

RE: No. MLG/LGG/125/VOL.II/285

dated 22/1/1987.

The letter dated 30/1/86 relied on by the plaintiff showed that the 1st defendant and his people were ordered by the Gwoza Local Government to move from Ville to Kwatara. It was admitted in evidence as an exhibit. The two letters relied on by the 1st defendant in paragraph 10 of his pleadings showed that the contents of letter dated 30/1/86 were withdrawn. That is to say the 1st defendant and his people were no longer to relocate to Kwatara, but stay with and around the Ville Clan. Learned counsel for the 1st defendant sought to tender both letters. There was objection from learned counsel for the plaintiff on the admissibility of both letters. The learned trial judge heard arguments from both sides then said: G H

“The court will give o ruling on the objection later after this

witness might have finished his evidence.”

The learned trial judge never delivered a Ruling but relied on both letters in his judgment to dismiss the plaintiffs’ case.

This issue asks the question.

*“Whether documents tendered but not admitted/marked as
B an exhibit amounts to evidence that can be relied on by the court.”*

Learned counsel for the appellant submitted that after the learned trial judge heard arguments for and against the admissibility of the documents, it is the duty of the trial court to mark the documents admitted or rejected. Reliance was placed on *Ogbuanyinya v. Okudo* (No.2) (1990) 4 NWLR Pt.146 P.551.
C

Concluding he submitted that by the powers conferred on the Court of Appeal by section 16 of the Court of Appeal Act 1976 the Court of Appeal ought to have remitted the case back to the trial court for retrial having regard to the crucial nature of the documents on which the trial court failed to deliver ruling on. He finally observed that this court is in a good position to decide the case rather than remit same for re-hearing de novo.
D

Learned counsel for the respondent observed that the Learned Justices of the Court of Appeal were right in law in holding that the learned trial judge erred in law in this regard. Reliance was placed on *Bamgbose v. Jiaza* (1991) 3 NWLR Pt.177 p.64.
E

The well laid down procedure for admitting documents in evidence is for the trial judge to hear arguments for and against the admissibility of the document, then render a Ruling. If the ruling is favourable to the document being admitted in evidence the document is admitted in evidence and marked as an exhibit. If on the other hand the Ruling is unfavourable the document is marked rejected. A document marked as an exhibit is good evidence that the judge is expected to rely on when preparing his judgment. A document tendered and marked rejected cannot be tendered again. Once a document is marked rejected it stays rejected for the purposes of the trial in which it was marked rejected and the defect cannot be cured during the said trial. See *Agbaje v. Adigun & Ors* (1993) 1 NWLR Pt.269 p.271.
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The fact that the trial court did not deliver a Ruling on the admissibility of the letters, and did not mark them as ex-

hibits or as rejected is a fatal oversight by the learned trial judge. It means that the letters were not in evidence, and so the trial court was wrong to rely on letters that were not in evidence. The Court of Appeal was right to discountenance documents not in evidence in evaluating evidence proffered at trial. This issue is answered in the affirmative. B

Law is blind. It has no eyes. It cannot see. That explains why a statue of a woman with her eyes covered can be found in front of some High Courts. On the contrary justice is not blind. It has many eyes, it sees and sees very well. C

The aim of courts is to do substantial justice between the parties and any technicality that rears its ugly head to defeat the cause of justice will be rebuffed by the court. See Bello v. A.G. Oyo State (1986) 12 SC P.1, Bello v. Ringim (1991) 7 NWLR Pt.206 P.675. **When justice is done it brings joy to the Righteous.** See Proverbs 21:15. D

What then would amount to justice in this appeal?

There are two options open to this court.

1. to remit the case to the trial court to be heard de novo by another judge, or E

2. for this court to put itself in the shoes of the trial court and do what that court ought to have done after hearing arguments on the admissibility of both letters.

It would be wrong to make an order of retrial if such an order would give the party that lost an opportunity a second time to prove what he failed to prove. A retrial should not be made where the plaintiff fails to prove his case and there is no substantial irregularity apparent on the record. See Thompson v. Arowolo (2003) 7 NWLR Pt.818 P.163, Solomon v. Magaji (1982) 11 SC p. 1. F

These are a few cases where a retrial order should not be made. If after examining the evidence, this court finds that it is in a position to do justice; this court should proceed to correct the decision and in such circumstances it would be wrong to order a retrial. H

This case was filed in 1991. Over twenty-two years ago. Three of the original litigants and witnesses are dead. The other witnesses are well advanced in age. Ordering a retrial would

not be in the interest of justice. It would be very cumbersome for the parties with the usual stress, expense a trial and appeal entails. Furthermore what is expected of the court in a retrial is for the two letters that are the basis of the appellants' case to be properly admitted in evidence so that the judge can rely on them in his judgment. Ordering a retrial on these facts would be most inappropriate. This court can put itself in the shoes of the trial court and do what the trial court ought to have done. This is done by invoking section 22 of the Supreme Court Act. Under the section supra this court is empowered to make any order necessary for the determination of the real question in controversy in an appeal as if the matter is prosecuted in the Supreme Court as a court of first instance. See Inakoju v. Adeleke (2007) 1 SC (Pt.1) P.128, Imonike v. A.G. Bendel State (1992) 7 SCNJ (Pt.1) p.197, Ucha v. Elechi (2012) ALL FWLR Pt.625 P.237.

This section confers on this court the power to make orders that the court below ought to have made without remitting the case for retrial. It is only if the proceedings justify it can the section supra be invoked.

Relevant extracts from letter dated 21/5/86 from the Governor of Borno State reads:

"We have received a report that the Gwoza Traditional Council has issued a directive to the village head of Kurana Bassa Lawan Uba Wasa to migrate from where he is currently residing to Kwatara.from the content of your letter this office cannot see the justification for the directives given since the area in question is under the jurisdiction of the said village Head. In light of the above facts, I am therefore directed to request the Gwoza Traditional Council to withdraw the letter issued to the village Head of Kurana Bassa."

This letter was signed by the secretary to the Military Government and Head of Service.

Relevant extracts from letter dated 22/1/87 from the Permanent Secretary Ministry of Local Government confirms the contents of letter dated 21/5/86. It reads:

"With reference to Secretary to Military Government and Head of Services letter No. SEC/6/Vol.III/434 of 21/5/86. I am directed to inform you to suspend action of transferring Lawan Buba

Wasa village Head of Kurana Bassa from his present station Kurana Bassa to Kwatara...”

My lords, after examining the letters dated 21/5/86 and 22/1/87 from the Government of Borno State and after reading submissions of counsel for and against admissibility of the letters they are hereby admitted as exhibit E and F. B

By letter dated 30/1/86 the Gwoza Local Government Council ordered the 1st defendant and his people to relocate from Ville to Kwatara area. Exhibits E and F directed the Gwoza Local Government Council to withdraw its letter. With the withdrawal of the letter the 1st defendant and his people were not resettled of Kwatara Area, along Gwoza - Mubi Road, rather their continuous presence in their present abode, i.e. within Ville is legal and in accordance with the Gwoza Resettlement Scheme. Both exhibits are compelling and decisive for making an order dismissing the plaintiffs’ case in the High Court. In the circumstances the appeal is allowed. C D

The facts of this case reveals and rightly too, that it has always been the policy of Northern Nigeria as long ago as the 1950s’ to encourage hill dwellers to come down from the hills and be integrated. The Government provided amenities such as Schools, Health centres for such people. In this case the Government resettled the 1st defendant’s people, and proceeded to build a school and Health centre. The School was originally called Ville Primary School. To my mind the change of the name of the School is not an issue as that is within the exclusive discretion of the Government of the day and in accordance with the resettlement scheme. The change of name was done over thirty years ago. There has been no breakdown of law and order, rather the people have been living in peace and so shall they continue to live in peace. E F G

Once again the judgment of the Court of Appeal is set aside and the appeal allowed. Parties shall bear their costs.

MOHAMMED CJN

The Respondents who were the plaintiffs at the High Court of Justice of Borno State, in the Gwoza Judicial Division, filed their action against the Appellants, who were the Defendants, by a Writ of

H

Summons in a representative capacity on behalf of the Plaintiffs' and members of the Ville Clan. The Plaintiffs' claim as endorsed on the Writ of Summons sought the following declaratory and injunctive reliefs against the Defendants -

B *“(a) A declaration that going by the Gwoza Resettlement Scheme, Kurana Bassa and the 1st Defendant have been resettled at Kwatara Area, along Gwoza - Mubi Road.*

C *(b) A declaration that by deliberately changing the name of the Ville Primary School and Health Centre to Kurana Bassa Primary School and Health Centre respectively is illegal, null and void and is capable of causing breakdown of law and order and should be changed to their former (sic) name bearing Ville.*

D *(c) A declaration that the continuous presence of the 1st Defendant and his subjects in the present abode which is within Ville as illegal and should therefore vacate Ville immediately to Kwatara for peace to reign.*

(d) An order on the 2nd and 3rd Defendants to enforce letter dated 30th January, 1986 and 1st January, 1987 respectively.

E *(e) An injunction restraining the 1st Defendant and his subjects from further interfering directly or indirectly with the activities of the Plaintiffs.*

F *(f) An injunction restraining the 2nd and 3rd Defendants from further recognizing dealing with and addressing the primary School and Health Centre at Ville as those situated at Kurana Bassa.”*

G After hearing the witnesses called by the parties and documents in form of official letters put in evidence by Plaintiffs, the learned trial Judge found on the evidence that the Plaintiffs have failed to establish the claims and accordingly dismissed their case in the following words in his judgment delivered on 28th March 1996 -

H *“The learned Counsel to the Plaintiffs said the Court has powers to grant all the reliefs sought by them. But the Court cannot grant any reliefs which the Claimant has not been able to prove. I am satisfied from the evidence adduced before me and the documents tendered that none of the reliefs has been proved against the Defendant and his subjects. I also hold that none of the reliefs has been proved against the 2nd and 3rd Defendants respectively.”*

Although this judgment indicates that the learned trial Judge considered the evidence adduced by the parties including documents

tendered before him, there is no indication that he also took into consideration the two letters dated 21st May, 1986 and 22nd January, 1987 tendered by the Defendants as the pivot of their defence to the case of the Plaintiffs against them, because the ruling accepting or rejecting these letters in evidence following the objection to the admission of the letters by the Plaintiffs, had not been ruled upon by the learned trial Judge. The Plaintiffs' appeal to the Court of Appeal Jos Division was heard and allowed resulting in granting of all the reliefs sought by the plaintiffs principally on the absence of the ruling on the admission or otherwise of the two letters tendered by the Defendants which the Defendants considered very vital in their defence to the case of the Plaintiffs on appeal. The Defendants who are now the Appellants before this Court in their Appellants' brief of argument and oral submission, are urging this Court to allow the appeal and to either remit the case to the trial court for hearing afresh or to use its powers to admit the two letters tendered at the trial Court and decide the case on the merit with the two relevant documents in evidence.

Considering the circumstances of this case which was commenced at the trial Court by a Writ of Summons dated 31st October 1991, remitting the case back to the trial court for hearing afresh may face the problem of witnesses, some whom are already dead. The law is trite that an appellate Court will order a retrial where there has been such an error in law or an irregularity in procedure which neither renders the trial a nullity nor makes it possible for the appellate Court to determine whether there has been no miscarriage of justice. See *Duru v. Nwosu* (1989) 7 S.C.N.J. 154 at 159 (1989) 4 N.W.L.R. (Pt.113) 24 and *Okaduwa v. The State* (1988) 2 N.W.L.R. (Pt.76) 333.

However having regard to the second prayer sought by the Appellants, it is necessary to examine the powers of this Court under the provisions of Order 8 Rule 2(1) of the Rules of this Court which provides among others that all appeals shall be by way of rehearing and the provisions of Section 22 of the Supreme Court Act, 1960, which provide among others that this Court shall have jurisdiction over the whole proceedings before it as if the proceedings had been instituted and prosecuted in the Supreme Court as a Court of first instance, to see if that prayer deserves the indulgence of this Court.

This is because it is the Constitutional duties of this Court that it should only order a retrial of a case on ground of irregularity in the conduct of proceedings when that irregularity or the lapse complained of by an Appellant on the part of the lower Court, cannot be corrected in this Court consistent with a decision in the case on the merits in favour of either of the parties to it. See *Onifade v. Olayiwola* (1990) 7 N.W.L.R. (Pt.161) 130 at 167 where this Court saw the need to exercise its powers under Section 22 of the Supreme Court Act to determine the case on the merits but declined to do so in the absence of appropriate action on the part of the Appellant's Counsel. In the present case therefore where the parties have been given a hearing on the issue, particularly when the merit of the case can easily be determined on the documentary evidence of the two letters of 21st May, 1986 and 22nd January, 1987 and the letter Exhibit 'D' tendered by the Plaintiffs and received in evidence, the prayer of the Appellants is certainly worth looking into.

It is quite clear from the record of appeal and the evidence on record that the case of plaintiffs/Respondents was hinged essentially on the letter Exhibit 'B'; from the Gwoza Traditional Council which is the 2nd Appellant in this appeal ordering the 1st Appellant's father and his Kurana Bassah Community who came down from the hills to move out of Ville area where they had been settled for many years. The case of the Appellants on the other hand is founded on the two letters dated 21st May, 1986 from the Governors office of Borno State and the letter from the Ministry for Local Government of Borno State dated 22nd January, 1987 both addressed to the Secretary Gwoza Traditional Council which were tendered in evidence by the Defendants, now Appellants but which the trial Court failed to rule upon following the objection to the admission of the letters by the Plaintiffs/Respondents. These two letters which are very relevant to the case at the trial Court, the absence of which in evidence resulted in the Court of Appeal allowing the Plaintiffs/Respondents appeal and granting all the reliefs sought by them, shall now be admitted in evidence by this Court under Order 8 Rule 2(1) of the Rules of this Court and Section 22 of the Supreme Court Act 1960 to decide this case on the merits in doing substantial justice in this appeal by looking into contents of the two letters relied upon by the Appellants at the trial Court but which that Court failed to take into

consideration in its judgment which was set aside on appeal by the Court of Appeal. See *Obiyan v. Governor of Mid-West* (1972) 7 N.S.C.C . 209 at 295 - 296.

The crux of the Plaintiffs/Respondents' case was that the Gwoza Traditional Council had asked the Appellants to move out of Ville to Kwatara in its letter Exhibit B. However the 1st letter from the office of the Governor of Borno State dated 21st May, 1986, tendered by the Appellants, gave a counter order to the directive of Gwoza Traditional Council in Exhibit B. That letter stated in clear terms thus -

CHIEFTAINCY DISPUTE BETWEEN THE VILLAGE HEAD OF HAMBAGDA AND KURANA BASA

"We have received a report that the Gwoza Traditional Council has issued a directive to the Village Head of Kurana Basa Lawan Uba Wasa to migrate from where he is currently residing to Kwatara. In the same directives, it was stated that the area to be vacated by the village Head is still within his jurisdiction. From the content of your letter, this office cannot see the justification for the directives given since the area in question is under the jurisdiction of the said village Head.

In light of the above facts, I am therefore directed to request the Gwoza Traditional Council to withdraw the letter issued to the village Head of Kurana Basa. The said letter has only Succeeded in creating confusion between Heads of Kurana Basa and Hambagda. Furthermore, you are required to draw the attention of the village Heads of the area under dispute to desist from fomenting trouble where there is none.

This letter is copied to the Sole Administrator of Gwoza Local Government for this information. "

It is observed that the above counter-order or directive issued from the Office of the Governor of Borno State. have been virtually repeated in the second letter dated 22nd January, 1987 from the Ministry of Local Government of Borno State tendered by the Appellants. Part of this letter also reads -

"In the light of the above facts, I am therefore directed to request the Gwoza Traditional Council to withdraw the letter issued to the Village Head of Kurana Bassa."

There is no doubt therefore having regard to the action of the Government of Borno State through these two letters to the Gwoza

Traditional Council which issued the letter Exhibit ‘B’ directing the Appellants to move out of the disputed area between the parties in this case, the dispute between the parties had been effectively resolved by the Government of Borno state. In this respect, the judgment of the trial court dismissing all the claims of the Plaintiffs/Appellants, was quite in order on the face of the two letters which were tendered but for no reason whatsoever, were not received in evidence in support of the defence of the Appellants in the case against them by the Respondents at the trial Court.

In the result, I am at one with my learned brother Rhodes-Vivour, JSC in his lead judgment that this appeal has merit and ought to be allowed. Consequently, the judgment of the Court below now on appeal is hereby set aside and the judgment of the trial Court dismissing the claims of the Plaintiff/Respondent is restored and affirmed in exercise of the powers of this Court under Section 22 of the Supreme Court Act admitting the two letters tendered by the Appellants at the trial Court in evidence and relying on the evidence therein to affirm the judgment of the trial Court.

I am also not making any order on costs.

MUNTAKA-COOMASSIE JSC

I have an opportunity of reading in draft the lead judgment rendered by my learned brother Rhode-Vivour JSC. I agree with the reasoning and conclusion leading to the allowing of this appeal. I adopt the reasons and conclusion they actually tally with my understanding of the law on the subject. I too agree that the appeal is pregnant with a lot of merits. Same is hereby allowed.

NGWUTA JSC

I read in draft the lead judgment just delivered by my learned brother, Rhodes-Vivour, JSC and I agree with the reasoning and conclusion reached.

The respondents, as plaintiffs, relied on a letter dated 30/1/86 by the Gwoza Local Government Council ordering the appellants to relocate from Ville to Kwatara. The letter was received in evidence.

On the other hand, the appellants, as defendants, relied on

two letters pleaded in paragraph 10 of the Statement of Defence. The two letters showed that the letter relied on by the Respondents had been withdrawn and the status quo ante restored. An attempt to have the two letters admitted in evidence was resisted by learned Counsel for the Respondents (as plaintiff).

The learned trial Judge heard arguments of Counsel for the parties and adjourned for a ruling on the admission vel non of the two documents upon which the appellants relied in their defence. Unfortunately for the appellants and fortunately for the respondents as it appeared, the ruling for whatever reason was not delivered. B

Obviously, a document tendered but not admitted as exhibit is not evidence upon which the Court can rely in its judgment. See *Hausa v. State* (1994) 6 NWLR (Pt.350) 281. It is on this ground that the Court below dismissed the appellants' appeal and affirmed the decision of the trial Court in favour of the respondents. This will appear to accord with strict law but in order to do substantial, as opposed to technical justice, it is necessary to consider the reason why the documents were not admitted. C

Learned Counsel for the appellants (the defendants) had tendered the documents and argued his case for their admission. That the trial Court failed or neglected to deliver its ruling cannot be blamed on the appellants who did all the law required of them. See *Famfa Oil Ltd v. A-G of Federation* (2003) 9-10 SC 31. E

The facts of this case justify the invocation of the powers vested in the Court by Section 22 of the Supreme Court Act. This Court is enabled to do what the Court of Appeal ought to have done in respect of the two documents on which the trial Court neglected or failed to deliver a ruling. F

The two letters dated 21/5/86 and 22/1/87 set aside the contents of the letter dated 31/1/86 and without the said letter of 31/1/86, the respondents' cases crumbles. G

Based on the above and the fuller reasons in the lead judgment, I also allow the appeal and set aside the judgment of the lower Court and dismiss the respondents' case. I also order that parties bear their respective costs. H

OKORO JSC

I was obliged in advance a copy of the judgment of my learned brother, Bode Rhodes-Vivour, JSC just delivered. I agree entirely that this appeal is meritorious and ought to be allowed.

The 1st appellants were hill dwellers and were persuaded upon by government to come down in order to be integrated into the larger society. They came down between 1988 and 1989. They were resettled on a piece of land next to that of the respondents. They dwelt there and built a new homeland. The appellants named both their school and health centre after Kurana Bassah, the name they are called. The respondents were angry and urged them to name the institutions after Villa clan. The appellants refused. The Gwoza Traditional Rulers Council wrote to the appellants to relocate to a place called Kwatara. Two letters, one from the Military Governor of Borno State and the other from the Permanent Secretary, Ministry of Local Government were received by the appellants which letters are said to have countered the one written by the Gwoza Traditional Council.

At the High Court, whereas the respondents tendered their own letter, an application to tender the two letters by the appellants was opposed and the learned trial judge adjourned to rule on the admissibility of the two letters. This ruling of the learned trial judge is nowhere to be found in the record. However, the trial court relied on the two letters and dismissed the claim of the respondents as plaintiffs.

The plaintiffs appealed to the Court of Appeal which set aside the judgment of the trial court and entered judgment for the plaintiffs. The Court of Appeal however agreed that the letters alluded to by the learned trial judge but which were not admitted into evidence were the bedrock of the appellants' case. The lower court however held that it was wrong for the learned trial judge to rely on documents not admitted in evidence.

Aggrieved by the decision of the court below, the appellants have appealed to this court. The appeal is predicated on the third notice of appeal filed on 25th September, 2001 with seven grounds of appeal. The earlier two notices of appeal filed on 5/7/2001, and 10/7/2001, having been withdrawn by the appellants, are hereby struck out.

Six issues were originally distilled by the appellants. However, at the hearing of the appeal, issues five and six were abandoned and are accordingly struck out including the grounds of appeal they were distilled from. This is so because any ground of appeal which no issue for determination is distilled from, is liable to be struck out. B

The remaining four issues are as follows:-

1. Whether a document tendered but not marked as exhibit has ceased to be produced before the court.

2. Whether the plaintiffs proved their case on the preponderance of evidence. C

3. Whether serious contradiction was an issue before the court below and if the answer is in the negative, whether the court was right in setting aside the judgment of the trial court based on the contradictions. D

4. Whether the court below was right when it gave judgment as per the statement of claim, when some aspects of the claim were not proved and had been abandoned.

The respondents have however formulated two issues for the determination of this appeal. The two issues are: E

1. Whether the learned Justices of the Court of Appeal were right in law and on the facts in holding that the respondents had proved their entitlement to the reliefs sought as per their statement of claim.

2. Whether the learned Justices of the Court of Appeal were right on the law and on the facts in holding that facts relating to documents not in evidence ought to be discountenanced in evaluating evidence proffered at trial. F

I will like to comment on the second issue as formulated by G the respondents in this appeal. The appellants also have it as issue number one. On page 103 to 104 of the record, part of the judgment of the court below states:

“It is a fact that the 2nd defendant testified that he did not move to Kwatara because his father did not move there, and that a letter was written by the Traditional Council Gwoza directing him not to move to Kwatara by the Governor’s Office. This letter was not tendered in evidence even though it had been pleaded. I cannot fathom why the letter was not produced by the defendants, when H

primarily the success of their case depended on the contents of the letter, which was supposed to demolish the case of the plaintiffs who have already tendered Exhibit “D”, the bedrock of their claim.

Having failed or refused to tender the letter they have themselves to blame, for the onus of proof that has shifted on them after the plaintiffs have proved their case has not been discharged. Although evidence was given on the alleged content of the letter which is a permanent and more reliable evidence, and it is trite that the content of a document ought to be proved by the production of the document as an exhibit, unless there is a satisfactory explanation in the inability of a party to produce it. In this case there was no such explanation.”

I agree with the court below that the two letters the appellants pleaded were the bedrock of their case which, according to the lower court, could have been able to demolish the respondents’ case. I also agree that a court is not allowed to act on any document not tendered and admitted in evidence before the court. In fact, no court is allowed to go outside the gamut of evidence before it to shop for materials upon which to use to decide a case before it. See *Skye Bank Plc V. Chief Moses B. Akinpelu* (2010) 9 NWLR (Pt. 1198)) 179, *Oparaji V. Ohanu* (1999) 9 NWLR (Pt.618) 290, *Olagbemiro V. Ajugungbade II* (1990) 3 NWLR (Pt.136) 37 at 63, *Sommer & Ors V. Federal Housing Authority* (1992) 1 NWLR (Pt. 219) 548 at 557 - 558.

Although the lower court held that the appellants failed to tender the two letters they pleaded, the court went further on page 108 lines 24 - 30 of the record to say that:

“The letter was sought to be tendered but learned counsel for the plaintiffs raised an objection, the ruling on which the learned judge adjourned. Somehow, he did not get to write a ruling on it, because I cannot find the ruling on the printed record of proceedings or what is called the judge’s file. The letter was therefore not in evidence.”

From the above extract from the judgment of the lower court, it is crystal clear that the appellants did not fail to tender the letters. On the contrary, they applied to the court to tender the letters but counsel for the plaintiffs (now respondents) objected to their admissibility which the learned trial judge adjourned for ruling. As was

pointed out by the court below, the learned trial judge failed and/or neglected to write the ruling as none could be found in the record. But quite amazingly, the trial court relied on the content of those letters to dismiss the plaintiffs' claim. Although I agree that the trial court was wrong to rely on those letters having not been properly admitted in evidence, I do not agree that the appellants should suffer for the mistake or ineptitude of the court. Or was it negligence? Definitely, it was not the duty of the appellants to write that ruling and they had no way of forcing the court to do so. It is my view that there would be a desecration of justice if we allow the appellants to suffer from the failure of the trial court to do its work properly. Where there is an obvious mistake by the court which has led to a miscarriage of justice, I think the court should be humble enough to accept its mistake and make amends appropriately. This court has held severally that the mistake of counsel or the court should not be visited on the party. See *Ikenta Best Nig. Ltd. V. A-G. Rivers State* (2008) 6 NWLR (Pt.1084) 612; *Iroegbu V. Okwordu* (1990) 6 NWLR (Pt.159) 643, *Ibrahim V. JSC* (1998) 14 NWLR (Pt.584) 1, *Onajobi V. Olanipekun* (1985) 4 SC (Pt. 2) 156, *Anyanwu V. Mbara* (1992) 5 NWLR (Pt.242) 386 at 400.

It is my view that since the two letters inadvertently excluded from evidence by the trial court were the "bedrock" of the appellants' case, it would work injustice on the appellants to allow any judgment generated from such act of negligence to stand. That would amount to standing justice on its head and I need to quickly remind us that the days of technical justice are over. The attitude of this court has always been that cases should not be decided on the basis of technicalities. See *Henry Odeh V. Federal Republic of Nigeria* (2008) 3 - 4 SC 1147, *Chief of Air Staff V. Iyen* (2005) 1 NSCQR 645 at 653, *Lagga V. Sarhuna* (2008) 16 NWLR (Pt.1114) 427, *Adereonmu V. Olowo* (2000) 4 NWLR (Pt.652) 253.

In the circumstance of this case, it is my well considered opinion that the court below did not consider the fact that it was the trial court that failed to do its work and that failure was the basis which the court below used to set aside the judgment of the trial court. This, in my opinion has to be corrected in order to serve palatable justice on both parties. It is on this note that I agree that the judgment of the lower court be set aside. I so order.

Having set aside the judgment of the Court of Appeal, something has to be done to put paid to the litigation over this portion of land. It is in the interest of justice that this court step into the shoes of the learned trial judge and consider the two letters which were tendered by the appellants but which no ruling on their admissibility was made before being used to decide the case. This court has power to do so in view of the provision in Section 22 of the Supreme Court Act. The said section endows this court with power to make necessary orders for the determination of the real question in controversy in an appeal as if it was prosecuted in the Supreme Court in the first instance. I know that this court can also remit this matter back to the trial court to be tried de novo, but that will not serve the justice of this case. This matter was filed in the registry of the High Court of Borno State on 31st October, 1991, about 23 years ago. Should this matter be sent back I am not sure all the witnesses would still be alive. Also, the expenses which the parties would incur to prosecute this case again would be enormous. Thus, the invocation of section 22 of the Supreme Court Act is most appropriate. See *Inakoju v. Adeleke* (2007) 1 SC (Pt.1) 128.

The two letters, admitted by this court as exhibits E and F in the lead judgment of my learned brother, Rhodes-Vivour, JSC are key to the determination of this case. Exhibit E which was written on 21/5/86 clearly cancels the letter for relocation written by the Gwoza Traditional Council and a directive that the said letter be withdrawn. It was written by the secretary to the Military Government of Borno State. Exhibit F was written by the Permanent Secretary, Ministry of Local Government, giving effect to Exhibit E.

For ease of reference, I shall reproduce the two letters as follows:-

EXHIBIT E

"We have received a report that the Gwoza Traditional Council has issued a directive to the village head of Kurana Bassa Lawan Uba Wasa to migrate from where he is currently residing to Kwatara ... from the content of your letter this office cannot see the justification for the directives given since the area in question is under the jurisdiction of the said village head. In light of the above facts, I am therefore directed to request the Gwoza Traditional Council to withdraw the letter issued to the village head of Kurana Bassa."

EXHIBIT F

“With reference to Secretary to Military Government and Head of Services letter No. SEC/6/Vol.III/434 of 21/5/86... I am directed to inform you to suspend action of transferring Lawan Buba Wasa village head of Kurana Bassa from his present station Kurana Bassa to Kwatara...” B

The combined effect of Exhibits E and F is that the letter ordering the appellants to relocate was effectively cancelled and rendered ineffective. Had the learned trial judge admitted the documents into evidence before relying on them, his judgment would have been unassailable. The two letters, have, in my opinion decided the case. By these two letters, the appellants cannot be driven away from this portion of land which was given to them by the state government after they came down from the hilts. I hold that it is too late in the day for anybody to try to pursue them from this land. C D

I agree, once again, that there is merit in this appeal and is hereby allowed. I shall make no order as to costs.

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