

**SUPREME COURT OF NIGERIA**  
FRIDAY 19TH DECEMBER, 2014. SC. 301/2007  
**CORAM:- J. A. FABIYI, S. GALADIMA, B. RHODES-  
VIVOUR, N. S. NGWUTA, J. I. OKORO, JJSC**

1. ALHAJI MOHAMMED BUHARI AWODI	
2. ALFA IDRIS AMAO	..... APPELLANTS
AND	
1. MALLAM SALIU AJAGBE	..... RESPONDENT

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COURTS - Finding - Failure to appeal - Where party has not appealed against a finding - He is deemed to have admitted same - And as such cannot be heard to complain on appeal (H1)

APPEALS - Court - Findings - Interference - Appellate court does not disturb findings made by trial court - Unless such findings occasioned miscarriage of justice - Or are perverse (H2)

LAND LAW - Title - Boundaries - Proof - As the parties were able to prove title via ownership and possession - Trial court rightly held that each party should keep part of the land - Proved as belonging to it (H3)

COURTS - Reliefs - Grant of - Basis - No court is allowed to grant to a party relief not sought for - As the court is not Father Christmas (H4)

***FACTS***

This action was instituted at the Upper Area Court I Ilorin by plaintiff/respondent against defendants/appellants. The claims are inter alia for declaration of title, general damages for trespass and an order of perpetual injunction. At the trial, respondent's contention is that his family is the customary holder/owner and possessor of a large parcel of land stretching from Ara Village to Odogori, having an area of 133.267 hectares. Appellants' on the other hand counter-claimed for a portion of the said land.

After hearing in the matter, the court was of the opinion that the parties were able to prove acts of possession/ownership over the

portion where each is occupying. The court therefore held that both parties have pieces of land in the area in dispute. Dissatisfied with the judgment, appellants appealed to the appellate division of the High Court of Kwara State Ilorin, while respondent cross-appealed. The court upheld the judgment of the trial court and held that each party is entitled to a declaration in respect of the parcel falling within his own established boundary. Still dissatisfied, appellants approached the Court of Appeal on appeal. The court upheld the judgment of the two lower courts. Aggrieved further, appellants have appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether upon failure of the plaintiff who relied on traditional history to establish his title, reliance can be placed on act of possession.
2. Whether the court can grant a relief not claimed by both parties.

**HELD** (Unanimously dismissing the appeal per

**OKORO JSC)**

*COURTS - Finding - Failure to appeal*

**1. As at the time of writing this judgment, there is no appeal against the findings of the court below just quoted above.**

***The effect is that both parties are bound by the said finding of the lower court. That is to say, that both the plaintiffs and defendants in their respective claim and counter-claim relied on both traditional history as well as acts of ownership and possession to establish their respective claim and counter claim.***

***Where a party has not appealed against a finding of the trial court or the Court of Appeal, he is deemed to have admitted same and as such he cannot be heard to question that finding on appeal.*** (p. 3798 A)

*Court - Findings - Interference*

**2. Moreover, it is trite law that an appellate court would be slow to disturb or reverse findings of fact made by the trial**

**court unless such findings are shown to be perverse having been based on inadmissible evidence or relevant and admissible evidence having been rejected which in either case occasioned a miscarriage of justice or that its findings were perverse. (p. 3799 D)**

*LAND LAW - Title - Boundaries - Proof*

**3. Both the appellants and the respondent were able to show by evidence, coupled with a visit to the locus by the trial Upper Area Court, that each owned and possessed the areas of the land which boundaries they showed to the trial court. I think the trial Upper Area Court was right to decide that each party should keep the part of the land they were able to prove as belonging to each of them. As there were no pleadings, it cannot be said that each relied on traditional history only, such that a failure to prove title on traditional history would be fatal to their case.**

**I am of the view that having failed to prove their title via traditional history, and were only able to prove through ownership and possession, it was proper and just to make the order as the trial Upper Area Court made. After all, a party needs only one of the five methods to prove his title to any disputed land. Both the appellate session of the High Court and the Court of Appeal were correct to uphold the well reasoned judgment of the trial Upper Area Court.**

**Accordingly, issue one, does not avail the appellants at all.**

**From the facts and decisions of the three lower courts, this is not the case here.**

**The parties were awarded portions of land they were able to prove. I accept and endorse the position of the lower court which affirmed the judgment of both the appellate High Court and the trial Upper Area Court. This issue, is resolved in favour of the respondent. (pp. 3800 A/3803 C)**

*COURTS - Reliefs - Grant of - Basis*

**4. As a general rule, no court is allowed to grant to a party a relief not sought or asked for. This court has stated in quite a**

***number of decisions that a court ought not to play the role of Father Christmas which can go around granting to parties relief which they have not specifically asked for.***

***I had stated earlier that no court can grant reliefs not sought by parties as the court is not Father Christmas.***

B (pp. 3800 F/3803 B)

## NOTABLE POINTS OF INTEREST

### **OKORO JSC**

#### **C 1. *Five ways of proving title to land***

There are at least five ways of proving title to land in this country. These methods have been well documented in the case of D. O. Idundun & 6 Ors. v. Daniel Okumagba (1976) NSCC 445 at 453 - 454. The five methods are as follows:

D 1. Proof by traditional evidence;

2. Proof by production of documents of title duly authenticated, in the sense that their due execution must be proved, unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract.

E 3. Proof by acts of ownership in and over the land in dispute such as selling, leasing, making grant or farming on it or a portion thereof extending over a sufficient length of time numerous and positive enough to warrant the inference that the persons exercising such proprietary acts are the true owners of the land.

F 4. Proof by acts of long possession and enjoyment of the land which prima facie may be evidence of ownership not only of the particular piece of land with reference to which such acts are done, but also of other land so situate and connected therewith by locality or similarity that the presumption under Section 46 and 146 of the Evidence Act applies and the inference can be drawn that what is true of one piece of land is likely to be true of the other piece of land.

G 5. Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute. (p. 3796 H)

## ***2. Proof of title by acts of possession***

It was held by this court in *Onwugbufor V. Okoye* (supra) that a party who relies on acts of possession and ownership of the land in dispute as evidence and in proof of his title to land must, to succeed, establish that such acts not only extend over a sufficient length of time but also that they are numerous and positive enough to warrant the inference of exclusive ownership of such land. (p. 3799 H)

## ***FABIYI JSC***

### ***3. Land law – Proof of traditional history***

With respect to issue 1, the law is now settled that where a person relies on traditional history as his root of title to land, the onus is on him to plead the root of title and the names and history of his ancestors. He should lead evidence to show same without leaving any yawning gap.

A court has no jurisdiction to supply any missing link in a genealogical tree from progenitors to a claimant. (p. 3804 B)

## ***REPRESENTATION***

Tunde Olomu Esq., with Tunde Laaro Esq., for the Appellants  
Akin Akintoye II Esq., with Remi S. Olorunfemi Esq., for the Respondent

## ***CASES REFERRED TO***

*Oyadare v. Keji* (2005) 1 SC 19  
*Balogun v. Akanji* (1988) 1 NWLR (pt. 70) 301  
*Fasoro v. Beyioku* (1988) 2 NWLR (pt. 76) 263  
*Yusuf v. Adegoke* (2007) 4 SC (pt. 1) 126  
*Oyeyemi v. Irewole L.G.* (1993) 1 NWLR (pt. 270) 462  
*Nigeria Air force v. Shekete* (2002) 12 SCNJ 35  
*Ekpenyong v. Nyong* (1975) 2 SC 71  
*Makanjuola v. Balogun* (1989) 5 SC 82  
*Idundun v. Okumagba* (1976) NSCC 445  
*Obineche v. Akusobi* (2010) 12 NWLR (pt. 1208) 383  
*Adeosun v. Jibesin* (2001) 11 NWLR (pt. 724) 290  
*Mogaji v. Cadbury Nig. Ltd* (1985) 2 NWLR (pt. 7) 393  
*Ogunleye v. Oni* (1990) 2 NWLR (pt. 135) 745  
*Okonkwo v. Okolo* (1988) NWLR (pt. 79) 632

**LEAD JUDGMENT BY OKORO JSC**

This is an appeal against the judgment of the Court of Appeal Ilorin, delivered on 20th June, 2007 wherein it affirmed the decision of the appellate session of the Kwara State High Court. A brief fact of the case leading to this appeal will suffice.

On 3rd July, 1996, the original plaintiffs, now respondent sued the original defendants, now appellants at the Upper Area Court I, Ilorin claiming the following reliefs:

1. A declaration that the Plaintiffs family in Ara Village, Kwara State Polytechnics Permanent site Area near Ilorin are the customary Holders/Owners and possessors of all the parcel of land stretching from Ara Village to Odogori, having an area of 133.267 hectares - part of which the defendant has trespassed upon particularly around Gaa Area Ile-Oganga River.

2. A declaration that the sale of many parcels of the said land and allocation of some other parts to people - whose names are yet to be known to the plaintiffs without the prior consent and approval of the plaintiffs is null and void.

3. General damages of Five Thousand Naira (N5,000.0) against the defendant for trespass he committed on the aforesaid land by illegally selling parts of the lands and plucking the locust beans of the plaintiffs on parts of the aforesaid land.

4. An order of perpetual injunction against the defendant, restraining him, his servants, agents or privies or his heirs from entering any part of the aforesaid plaintiffs' land.

In reaction to the above claim, the appellants as defendants denied the claim of the plaintiffs and filed their counter claim on behalf of themselves and Ogbanga family as follows:

1. A declaration that defendant's Ogbanga family are the owners of the piece or parcel of land situate and being at Ara Village bounded by Liman, Gaa Abubu, Odo Gori Ogbangan, Ologbojo and Magaji Opoopo respectively.

2. The sum of N10,000.00 only being damages for trespass against the plaintiff in respect of the aforesaid piece or parcel of land.

3. An order of perpetual injunction restraining the plaintiff either by himself, his servants, agents, privies or any person or persons howsoever from trespassing or committing further act(s) of trespass

on the defendants' family land above described.

After hearing evidence from both parties for and against their respective claims and counter-claims, the trial Upper Area Court held as follows on page 167 of the record of appeal:

*"In our view in the faces of acts of ownership exercised by both parties as highlighted above in the evidence of the parties in the open court and during the visit to the locus and especially as pointed to us by the DW III which both parties agreed with him, we believe that each of the party have been exercising acts of ownership which spanned for a long time, we hold that both parties have established before the court act of ownership and user of the land in disputes, even though the story of the plaintiff on the traditional history is more convincing than that of the defendant. And also since the plaintiffs claimed and the defendants counterclaimed, the burden is squarely on both sides to adduce credible evidence in support of that title... since the plaintiffs are claiming the whole Ara and the defendants are claiming part thereof, we hold that from the totality of the evidence before us, both parties have pieces or parcel of land at Ara.*

*We therefore hold that from the totality of the evidence before us, and what was shown to us at the locus, and having regard to the findings in this case reached on the balance of probability, we believe that both parties in this case have land at Ara."*

The trial court then held that both the claim and counter claim succeeded in part.

The appellants herein, being dissatisfied with the decision of the Upper Area Court, filed an appeal to the appellate session of the High Court of Kwara State, Ilorin. The respondents herein, were also dissatisfied with the said judgment and also cross-appealed. In its judgment, the appellate High Court held inter alia as follows:-

*"It was because none of the parties disputed each other's claim as shown by the boundaries that made the court to draw up a sketch map showing each party's claim as limited by the accepted boundaries. We agree therefore that the court was justified in awarding each proved portion of the land to each party ... and since the two parties agreed to the boundaries shown to the court during the visit to the locus in quo, each party was entitled to a declaration in respect of the parcel falling within his own boundary. The respondents/counter claimants could not ask for a declaration in respect of*

*the whole parcel of land. They are only entitled to the portion established by evidence and which falls within their own boundaries ...”*

Again, appellants were dissatisfied with the judgment of the High Court. They further appealed to the Court of Appeal which upheld the judgment of the two previous courts on issue of long possession but set aside their findings on traditional history. The respondents also cross appealed. The lower court also found no merit in the cross appeal. Both the appeal and the cross appeal were dismissed.

Being dissatisfied with the judgment of the lower court, the appellants have further appealed to this court upon notice of appeal filed on 26th July, 2007. The said notice has three grounds of appeal out of which the appellants have distilled two issues for determination. The two issues are as follows:

1. Whether upon failure of the plaintiff who relied on traditional history to establish his title, reliance can be placed on act of possession.

2. Whether the court can grant a relief not claimed by both parties.

The respondent has also decoded two issues for the determination of this appeal and are couched differently thus:

1. Whether it is just and right for the lower court to interfere with the concurrent findings of fact of the two courts below on the issue of prove of title by traditional history on the one hand and thereafter uphold another concurrent findings of fact of the same court as regards prove of title by acts of ownership and long possession on the other hand.

2. Whether in view of the claim and counter claim of the parties to the land in dispute, the concurrent decision of the three courts below in awarding same to each party to the extent of what was proved can be faulted on grounds of not being solicited for.

As can be seen here, the two issues formulated by the appellants are in tandem with those of the respondent but couched differently. I shall determine this appeal based on these two issues.

In his argument on the first issue, the learned counsel for the appellants, Tunde Olomu Esq., who also settled the brief, submitted that the lower court, having held that the traditional history of both parties failed to meet the required standard in law, reliance can no

longer be placed on act of possession by either party to award their title to the whole land or any part thereof. He opined that where a party fails to establish his title by traditional history, reliance can no longer be placed on act of possession, citing the cases of Oyadare V. Keji (2005) 1 SC 19 at 24 - 25, Balogun V. Akanji (1988) 1 NWLR (pt. 70) 301, Fasoro V. Beyioku (1988) 2 NWLR (Pt. 76) 263 and Yusuf V. Adegoke & Anor (2007) 4 SC (pt. 1) 126 at 144. B

Learned counsel further submitted that having found that the respondent did not establish his root of title and that the finding of the High Court on same was perverse, the lower court ought to have reversed the judgment. He also argued that where a court of law states the correct principle of law but arrives at a wrong conclusion, such judgment should not be allowed to stand, referring to the case of Oyeyemi V. Irewole Local Government (1993) 1 NWLR (Pt. 270) 462 at 482. He then urged this court to resolve this issue in favour of the appellants. C

On issue two, learned counsel submitted that from the claim and counter claim of the parties, none of them asked for partitioning or sharing of the land but a declaration of title to the entire land. He submitted that the court is without power to grant a party what he did not claim, relying on the cases of International Messengers Nigeria Ltd V. Nwachukwu (2004) 6 SCNJ 56 at 71; Nigeria Air force V. Shekete (2002) 12 SCNJ 35 at 52-53, Ekpenyong V. Nyong (1975) 2 SC 71 at 81- 82 and Makanjuola V. Balogun (1989) 5 SC 82 at 93. E

It is a further contention of the appellants' counsel that what the trial Upper Area Court did was partitioning of the land which was never asked for by any of the parties and that it was wrong for both the High Court and the Court of Appeal to affirm the judgment. It is his view that what the lower court did was to "*ripen invalid title to a valid ownership title.*" F

Let me pause here to say that the arguments and submission of appellants' counsel on issue two which relates to uncertainty of the boundaries of the land are not part of this issue. There is no ground of appeal which attacks the boundaries as stated by the trial court or at the court below. I shall therefore discountenance these arguments and apply only those arguments which relate to the issue at hand. H

In response to the first issue, the learned counsel for the respondent, D. Akin Akintoye II Esq., submitted that the finding and

decision of the Court of Appeal that both the appellants and respondent were unable to prove their title based on traditional history has not been appealed against and therefore subsists. It is his contention that the cases of *Oyadare V. Keji* (supra), *Balogun V. Akanji* (supra) etc relied upon by the appellants are distinguishable in that those cases were decided based on the state of pleadings and evidence before the court whereas the present case was not prosecuted on pleadings. Relying on the case of *Onwubufor V. Okoye* (1996) 1 NWLR (Pt. 422), he submitted that the court below was right to hold that although parties failed to prove their root of title by traditional history, and having shown and proved acts of possession, each party should keep that which he has proved. Learned counsel opined that what the lower court did was not a somersault but a decision that accords with reasoning and justice since no specific ways of proof were relied upon by the parties at the trial. He urged the court to resolve this issue in favour of the respondent.

On the second issue, learned counsel submitted that even though both parties had argued before the lower courts that the decision to share the land between them was not sought for by them, the rationale and basis for upholding the concurrent findings of the two courts below have been found to be superior than the arguments put forward. It is his argument that the decision of all the courts below accord with common sense and justice.

Learned counsel further submitted that it is an elementary principle of law that judgment can be given for a lesser sum than what was claimed if the lesser sum is only the amount of what is proved. That if this applies to claims of recovery in contract, that of title to land cannot be different. He urged that the judgment of the lower court on this basis is sound and should not be disturbed, particularly having regard to the fact that it is the third concurrent findings of fact and there is no basis for interference, citing the cases of *Eche V. Nnamani* (2000) FWLR (pt. 13) and *Ali V. Alesinloye* (2000) FWLR (pt.15) 2010. He then urged the court to also resolve this issue in favour of the respondent.

I shall now proceed to resolve the first issue. It simply states whether upon failure of the plaintiff who relied on traditional history to establish his title, reliance can be placed on act of possession. There are at least five ways of proving title to land in this country. These

methods have been well documented in the case of *D. O. Idundun & 6 Ors. v. Daniel Okumagba* (1976) NSCC 445 at 453 - 454. The five methods are as follows:

1. Proof by traditional evidence;
2. Proof by production of documents of title duly authenticated, in the sense that their due execution must be proved, unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract. B
3. Proof by acts of ownership in and over the land in dispute such as selling, leasing, making grant or farming on it or a portion thereof extending over a sufficient length of time numerous and positive enough to warrant the inference that the persons exercising such proprietary acts are the true owners of the land. C
4. Proof by acts of long possession and enjoyment of the land which prima facie may be evidence of ownership not only of the particular piece of land with reference to which such acts are done, but also of other land so situate and connected therewith by locality or similarity that the presumption under Section 46 and 146 of the Evidence Act applies and the inference can be drawn that what is true of one piece of land is likely to be true of the other piece of land. D
5. Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute. See also *Obineche v. Akusobi* (2010) 12 NWLR (Pt. 1208) 383, *Alii v. Alesinloye* (2000) 6 NWLR (Pt. 660) 177, *Adeosun v. Jibesin* (2001) 11 NWLR (Pt. 724) 290, *Mogaji v. Cadbury Nig. Ltd* (1985) 2 NWLR (Pt. 7) 393, *Ogunleye v. Oni* (1990) 2 NWLR (Pt. 135) 745, *Okonkwo v. Okolo* (1988) NWLR (Pt. 79) 632. E

It must be noted that this matter emanated from an Upper Area Court where pleadings are not usually filed. Therefore, it may not be feasible to say which method of proving title to land the plaintiffs relied on and the defendants in their counter claim. But from the evidence led to prove the claim and the counter claim, the court below found as a fact, agreeing with the appellate High Court in the following words as contained on page 265 of the record of appeal: F

*"It is therefore clearly evident that both the plaintiffs and the defendants relied on traditional history as well as acts of ownership* G

*and possession to establish their divergent claims of title to the disputed land”*

**As at the time of writing this judgment, there is no appeal against the findings of the court below just quoted above.**

**The effect is that both parties are bound by the said finding of the lower court. That is to say, that both the plaintiffs and defendants in their respective claim and counter-claim relied on both traditional history as well as acts of ownership and possession to establish their respective claim and counter claim.**

The said finding was deduced from the evidence adduced by both parties to support their divergent claims. There is nowhere it can be said that the respondents or even the appellants relied on traditional history only to prove their title to the disputed land. This is so because the matter was not fought on pleadings and there is no document to refer to in determining which of the five methods of proving title to land was pleaded by any of the parties. What the appellant is doing in this issue is akin to the proverbial pot calling a kettle black. This is so because the court below held in its judgment that none of the parties was able to prove their title by traditional history. On page 270 of the record, the lower court states:

*“Consequently, based on the above analysis, I am of the humble view that neither the plaintiffs nor the defendants were able to satisfactorily establish their root of title over Ara Village via traditional evidence, and I do so hold.”*

Again, the above finding has not been appealed against, at least there is no ground of appeal to that effect or any issue against it.

**Where a party has not appealed against a finding of the trial court or the Court of Appeal, he is deemed to have admitted same and as such he cannot be heard to question that finding on appeal.** See *Dabup v. Kolo* (1993) 12 SCNJI, Ijale v. *Leventis & Co. Ltd* (1959) SCNL; 255, (1959) 4 FSC 108.

The appellants had argued that having held that the traditional history of both parties failed to meet the required standard in law, reliance can no longer be placed on act of possession by either party to award them title to the whole land or any part thereof. He relied on the cases of *Oyadare v. Keji* (supra), *Balogun v. Akanji* (supra), *Fasoro v. Beyioku* (supra) and *Yusuf v. Adegoke*. As was pointed

out by the learned counsel for the respondent, these cases were decided based on the state of the pleadings and evidence before the court to the effect that a party who has held himself out by his pleadings to rely on traditional history for his root of title, will either float or sink with it and where he sinks, he cannot turn around to rely on acts of possession or ownership. B

The cases relied upon by the appellants are clearly distinguishable from the instant case. First, there were no pleadings upon which the claim and counter claim were fought. Secondly, from the onset at the court of trial, the parties herein held themselves out to rely on both traditional history and acts of ownership and possession as found by both the trial Upper Area Court, the Appellate High Court and the Court of Appeal. C

Thus, the issue, as couched by the appellants is misconceived and does not fit into the facts of and findings in this case. D

***Moreover, it is trite law that an appellate court would be slow to disturb or reverse findings of fact made by the trial court unless such findings are shown to be perverse having been based on inadmissible evidence or relevant and admissible evidence having been rejected which in either case occasioned a miscarriage of justice or that its findings were perverse.*** See Onwugbufor V. Okoye (1996) 1 NWLR (Pt. 422) 252, Adimora V. Ajufo (1988) 3 NWLR (Pt. 80) I, Okafor V. Idigo (1984) 1 SCNLR 481, Ebba V. Ogodo (1984) 1 SCNLR 372. E

In the instant appeal, the appellate session of the High Court had found that the plaintiffs' evidence on traditional history was stronger than that of the defendants. It however agreed with the Upper Area Court that each claimant should keep the area of the land he was able to prove by acts of possession over a long period of time. F However, the Court of Appeal set aside this particular finding of the appellate High Court and held that both parties were unable to prove their respective titles via traditional history. The lower court then agreed that each party should continue to own the areas they were able to prove by long possession. It was held by this court in Onwugbufor V. Okoye (supra) that a party who relies on acts of possession and ownership of the land in dispute as evidence and in proof of his title to land must, to succeed, establish that such acts not only extend over a sufficient length of time but also that they are numerous and positive G H

enough to warrant the inference of exclusive ownership of such land. See *Idundun V. Okumagba* (supra).

***Both the appellants and the respondent were able to show by evidence, coupled with a visit to the locus by the trial Upper Area Court, that each owned and possessed the areas of the land which boundaries they showed to the trial court. I think the trial Upper Area Court was right to decide that each party should keep the part of the land they were able to prove as belonging to each of them. As there were no pleadings, it cannot be said that each relied on traditional history only, such that a failure to prove title on traditional history would be fatal to their case.***

***I am of the view that having failed to prove their title via traditional history, and were only able to prove through ownership and possession, it was proper and just to make the order as the trial Upper Area Court made. After all, a party needs only one of the five methods to prove his title to any disputed land. Both the appellate session of the High Court and the Court of Appeal were correct to uphold the well reasoned judgment of the trial Upper Area Court.***

***Accordingly, issue one, does not avail the appellants at all.***

I shall now consider the second issue. It states whether the court can grant a relief not claimed by both parties.

***As a general rule, no court is allowed to grant to a party a relief not sought or asked for. This court has stated in quite a number of decisions that a court ought not to play the role of Father Christmas which can go around granting to parties relief which they have not specifically asked for.*** See *Nwanya V. Nwanya* (1987) 3 NWLR (Pt. 62) 697, *Umenweluaku V. Ezeana* (1972) 5 SC 343, *Western Steel Works Ltd V. Iron & Steel Workers Union* (1986) 3 NWLR (Pt. 30) 617, *Odofoin V. Ogu* (1992) 3 NWLR (Pt. 229) 350.

The appellants had argued that what the trial Upper Area Court, the High Court and the Court of Appeal did was to make for the parties a case different from what was presented to the court. That even though the case was not tried on pleading but from the claim and counterclaim of the parties, no body claimed for part of

the land in dispute or partitioning but the entire land.

To assist me in resolving this issue, let me bring to the fore, the findings of the trial Upper Area Court in this matter. On page 167 of the record, the trial court said:-

*“In our view, in the faces of acts of ownership exercised by both parties as highlighted above in the evidence of the parties in the open court and during the visit to the locus and especially as pointed to us by DW III which both parties agreed with him, we believe that each party have been exercising act of ownership which spanned for a long time we hold that both parties have established before the court act of ownership and user of the land in dispute, even though the story of the plaintiffs on the traditional history is more convincing than that of the defendants. And also, since the plaintiffs claimed and the defendants counter-claimed, the burden is squarely on both sides to adduce credible evidence in support of that title... and since the plaintiffs are claiming the whole Ara and the defendants are claiming part thereof, we hold that from the totality of the evidence before us, both parties have pieces or parcels of land at Ara.”*

The Court of Appeal, in agreeing with the appellate session of the High Court affirming the above finding of the trial Upper Area Court held on page 274 of the record of appeal as follows:-

*“In the light of the above pieces of evidence showing acts of ownership and possession exercised on the land by both parties, the proceedings at the locus and the observations of the trial court thereon, I am of the view that the consequent findings of the court below at page 197 of the record affirming the decision of the trial court unsailable. While acknowledging that the court cannot award what is not claimed from it, the court stated correctly the principle of law that in a claim of title to land, the court is at liberty to award only what is proved before the court even where the claim is for a larger portion of the land. See Arabe V. Asaulu (1980) 5 - 7 SC 78 at 85. In other words parties are only entitled to the ascertainable portion of land established by evidence.”*

At page 276 of the record, the court below concluded thus:-  
*“Therefore, in answer to the 1st issue, I find that both the appellants, as counter-claimants, and the respondent, as one of the surviving plaintiffs at the trial Upper Area Court, proved their claims to the land only to the extent awarded to each of them by the learned trial*

*upper Area Court.*”

From all I have gathered from the record of proceedings at the various courts below, there is nothing to suggest that they awarded the parties what was not asked for. Rather the trial court awarded the parties what was proved which both the appellate session of the High Court and the Court of Appeal agreed. The conclusion of the trial Upper Area Court as contained on page 168 of the record states:

*“In conclusion, we find that the plaintiffs succeed in part and we award the described portion of the land starting from a point between Solu Magaji Gambari beacons and locust beans tree called Igba Asinpada, forming boundary with Opoopo family, down to a nim tree behind Ara Primary School to river Osun and river Oganga. Also forming boundary with Ologbojo family at a beacon under a locust beans tree down to Gori river forming boundary with Gaa Abubu and back to Tunde Adeoye’s house, forming boundary with Liman family. While the defendant also succeeds in part and we award the described land to them, starting from Ologbojo beacons to Osun and Ogangan river, back to Gori and returning to the locust beans tree where Ologbojo beacons is installed.”*

It is my belief that the parties do understand and know the description of the boundaries of their respective portions as described by the learned trial Upper Area Court judge. Why I say so is that none of the parties has filed any appeal in respect of the identity of their respective portions. That, appears, in my view, settled.

Now, coming to the argument that the Upper Area Court awarded the parties what was not claimed, I do not agree with the appellants on this. It was even suggested that the trial court partitioned the land contrary to their respective claims.

This cannot be the case. The court below made it succinctly clear on page 275-276 of the record of appeal thus:-

*“In this case, the trial court, which had the benefit of listening to the evidence of the witnesses, watching their demeanor, physically visiting the locus in quo and being shown the extent of the land of each party and the boundaries of these pieces of land, made its findings of fact that both claimants were only able to prove ownership of certain areas of land which it went on to award to each party. This, in my considered view, with due respect to both learned counsel, in the circumstances of this case, does not amount to partitioning. It is a*

*wrong description of what transpired and it is totally misleading.”*

I cannot agree more. There is nothing to show that the court awarded the parties anything they did not ask for. Rather the claimant and counter-claimant were awarded the portions of land they were able to prove before the trial Upper Area Court.

Also, during the visit to the locus, the trial court stated emphatically that both parties accepted the boundaries as shown to the court by each side without any objection. There is no appeal against that finding by the trial court.

***I had stated earlier that no court can grant reliefs not sought by parties as the court is not Father Christmas.***

***From the facts and decisions of the three lower courts, this is not the case here.***

***The parties were awarded portions of land they were able to prove. I accept and endorse the position of the lower court which affirmed the judgment of both the appellate High Court and the trial Upper Area Court. This issue, is resolved in favour of the respondent.***

Having resolved the two issues against the appellants, it is only left to be said that there is no merit in this appeal which I hereby dismiss. I affirm the decision of the Court of Appeal which upheld the decision of the appellate High Court and the Upper Area Court, Ilorin. For reason of peaceful co-existence of these two neighbours, I shall allow both parties to bear their respective costs.

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### **FABIYI JSC**

I have had a preview of the judgment just delivered by my learned brother - John Inyang Okoro, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and warrants an order of dismissal without any shred of equivocation.

I only wish to chip in a few words of my own in support of the comprehensive judgment. I rely entirely on the facts of the matter as stated in the lead judgment.

The two issues couched for determination on behalf of the appellants read as follows:-

*“1. Whether upon failure of the plaintiff who relied on tradi-*

*tional history to establish his title reliance can be placed on act of possession.*

*2. Whether the court can grant a relief not claimed by both parties.”*

The two issues formulated on behalf of the respondent are, B in substance and purport, similar to those of the appellants. I do not need to reproduce them to save time.

With respect to issue 1, the law is now settled that where a C person relies on traditional history as his root of title to land, the onus is on him to plead the root of title and the names and history of his ancestors. He should lead evidence to show same without leaving any yawning gap.

A court has no jurisdiction to supply any missing link in a D genealogical tree from progenitors to a claimant. See *Mogaji v. Cadbury* (1986) 2 NWLR (Pt. 47) 393; *Anyanwu v. Mbera* (1992) 5 NWLR (Pt. 242) 386; *Akinloye v. Eyiola* (1968) 2 NMLR 92; *Owoade v. Omitola* (1988) 2 NWLR (Pt. 77) 413 and *Odi v. Iyala* (2004) 4 SCNJ 35 at 54.

Further, the weakness of the defendant’s case in a land matter E touching on declarations, does not assist the plaintiffs case. He sinks or floats with his case. See the case of *Animashaun v. Olojo* (1991) 10 SCNJ 143.

In this matter, the court below rightly found that there was F no attempt to establish any particulars, no matter how slight, of the intervening owners of the land through whom the plaintiffs claimed title to the land in dispute. It felt that the failure should have been considered fatal to their claim for title to the land in dispute based on G traditional history and that the finding of the appellate High Court in this regard was perverse as it is contrary to the evidence adduced. I pitch my tent with the court below. I also agree that the defendant, as well, did not fare better in this respect. In short, none of the parties’ reliance on traditional history as root of title was sustained by the court below. That is the correct position.

H It should be noted here that this matter was first initiated before the Upper Area Court, Ilorin. Thereat, pleadings were not filed.

Let me further mention it that the five ways of proving ownership of land, each of which suffices to establish title, have been clearly set out in the lead judgment. This court has restated same in several

decisions. See *Piaro v. Tenalo* (1976) 12 SC 31; *Balogun & Ors. v. Akanji & Anr.* (1988) Vol. 19 INSCC 180, (1988) 1 NWLR (Pt. 70) 301 and *Onwugbufo & Ors. v. Okoye & Ors.* (1996) 1 NWLR (Pt. 422) 252 wherein this court affirmed that even though the evidence of tradition put forward by the party was inconclusive, evidence of acts of ownership and possession which was also relied upon can be a leverage to find for the plaintiff. B

As extant in the record of appeal, the plaintiffs claimed the land at Ara while the defendant counter-claimed for part of same. Each party had the duty to prove, as required by law, exclusive ownership of the area of land claimed to the exclusion of the other. C

The court below at pages 275-276 of the record found as follows:-

*"In this case, the trial court, which had the benefit of listening to the evidence of witnesses, watching their demeanour, physically D visiting the locus in quo and being shown the extent of the land of each party and the boundaries of these pieces of land, made its finding of fact that both claimants were only able to prove ownership of certain areas of land which it went on to award to each.*

*This does not amount to partitioning."* E

To my mind, what the court below did by affirming the stance of the trial court and the appellate High Court accords with the dictates of justice. There is no basis for interfering with same; more so being the third concurrent finding of fact. I shall not interfere. See *Kale v. Coker* (1982) SC 252; *Eche v. Nnamani & Ors.* (2000) 5 SC F 62 at 70.

For my above remarks and more especially, the well considered reasons ably adumbrated in the lead judgment, I too, feel that the appeal lacks merit and should be dismissed. I order accordingly G and abide by all consequential orders therein made; that relating to costs inclusive.

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### GALADIMA JSC

I have had the privilege of reading the leading judgment of my learned brother OKORO JSC just delivered. I agree with him that there is no merit in this appeal which I too hereby dismiss. The decision of the Court of Appeal which upheld the decision of the appel- H

late State High Court and the Upper Area Court, Ilorin is hereby affirmed. I abide by order made as to costs.

The reason for the above conclusion is straightforward. At the hearing of the claims of the appellants and the counter-claim of the respondent the trial Upper Area Court 1, Ilorin Kwara State of Nigeria, took evidence from both parties and admirably concluded in its judgment at page 167 of the record of appeal thus:

*“In our view in the faces of acts of ownership exercised by both parties as highlighted above in the evidence of the parties in the open court and during the visit to the locus and especially as pointed to us by the DWII which both parties agreed with him, we believe that each of the party have been exercising act of ownership which spanned for a long time we hold that both parties have established before the court act of ownership and user of the land in disputes, even though the story of the plaintiff on the traditional history is more convincing than that of the defendant. And also since the plaintiffs claimed and the defendants counter claimed, the burden is squarely on both sides to adduce credible evidence in support of that title. This has long been laid down and stated in the form of principle that a plaintiff in a claim for title and the defendant in a counter of that claim will succeed or fail on his own evidence and not on the weakness of the defence see Animasaun v. Olojo (1991) 10 SCNJ 43 at 49 and since the plaintiffs are claiming the whole Ara and the defendants are claiming part thereof we hold that from the totality of the evidence before us both parties have pieces or parcel of land at Ara.”*

The said trial Upper Area Court, approaching the matter from a win-win point of view (situation) concluded that both the claim and the counter-claim of the respective parties succeeded in part.

Both parties, being dissatisfied with the decision of the upper Area Court, filed their respective appeal and cross-appeal before the Appeal Session of the High Court of Kwara State sitting at Ilorin. The appeal was heard and the High Court held, inter alia, at page 197 of the record of appeal as follows:

*“It was because none of the parties disputed each other’s claim as shown by the boundaries that made the court to draw up a sketch map showing each party’s claim as limited by the accepted boundaries.*

*We agree therefore that the court was justified in awarding*

*each proved portion of the land to each party. In AHWEDJO EFET TROROJE and others v. HIS HIGHNESS ONOME OKPALEFE II and others (1991) 5 NWLR Pt 193. P. 517 at 530 the Supreme Court said:*

*“In an action for declaration of title to land, the boundaries of the land in dispute must be ascertained with certainty.”* B

Further dissatisfied with judgment of the High Court in respect of the claim and counter-claim of their ancestral parcels of land, particularly at Gaa Area Ile-Oganga River, parties have appealed to the Court of Appeal, Ilorin Division which upheld the judgment of the two courts (Upper Area court and the High Court) on the issue of long possession. It however, set aside their findings on traditional history. Unrelenting, in his pursuit of his counterclaim, the appellant, too, cross-appealed. Both the appeal of the appellants herein and the cross-appeal of the respondent were dismissed. C

Dissatisfied with the judgment of the lower court, the appellants herein have further appealed by their Notice of Appeal filed on 26/10/2007 containing three grounds of appeal. D

Issues distilled by the parties are more or less similar. These are complaints against the finding of the lower court that neither the appellants nor the defendant were able to establish their root of title over the disputed land. E

Contrary to the finding of the court below that both parties were unable to prove their respective titles via traditional history, they were able to show by evidence couple with a visit to the locus by the trial Upper Area Court that each owned and possessed the areas of the land which boundaries they could show to the trial Court. I am of the firm view that the Upper Area Court was right that each party should keep the portion of the land they were able to prove through ownership and possession, but failed to prove their title via traditional history. The justice of this case is to agree with the order made in that regard, by the trial Upper Area Court. Both the appellate session of the High Court and the court below were right to have upheld the sound decision of the trial Upper Area Court. F

On the issue of whether the court can grant a relief not claimed by both the appellants and the respondent herein, I have this contribution to make. G

The appellants have argued that what the trial Upper Area H

Court, the High Court and Court of Appeal did was to make for the parties a case quite different from what was presented to the court.

I have reproduced earlier the relevant findings of the trial Upper Area Court in this matter on page 167 of the record, the summary of which reads:

B *“... and since the plaintiffs are claiming the whole Ara (land in dispute) and the defendants are claiming part thereof, we hold that from the totality of the evidence before us, both parties have pieces or parcels of land at Ara”*

C The Court of Appeal agreed with the above findings of the Upper Area Court on page 274 of the record and held thus:

*“In the light of the above pieces of evidence... I am of the view that the consequent findings of the court below at page 197 of the record affirming the decisions of the trial court is unassailable...”*

D It concluded at page 276 of the record thus:

*“Therefore, in answer to the 1st issue, I find that both the appellants as the counter claimants, and one of the respondent as one of the surviving plaintiffs at the Upper Area Court proved their claims to the land only to the extent awarded to each of them by the learned (sic) trial Upper Area Court.”*

F It is now elementary principle of law, as has long been settled by this court in a plethora of cases that the court of law has no business being a “Father Christmas” (Santa Claus) fancying granting relief or prayer which the parties have not specifically asked for or sought.

In the case of THE NIGERIA AIR FORCE v. SHEKETE (2002) 12 SCNJ 35 at 52-53 this Court held per my brother NIKI TOBI JSC as follows:

G *“It is elementary law that a court of law cannot grant an applicant a prayer not sought. A court can only grant a relief or prayer sought. The moment a court grants a relief or prayer not sought by the party, it expands the boundaries of litigation and unnecessarily instigates more litigation to the detriment of the parties and for no reason at all. The litigation is for the parties and not the court. Therefore the court has no jurisdiction to extend or expand the boundaries of litigation beyond what the parties have indicated to it. In other words, the court has no jurisdiction to set up a different or new case for the parties.”* See further WESTERN STEEL WORKS LTD v. IRON

AND STEEL WORKERS UNION (1986) 3 NWLR (pt. 30) 617, EKPENYONG v. NYONG (1975) 2 SC 71 at 81; MAKANJUOLA v. BALOGUN (1989) 5 SC 82 at 93.

From all that have been gathered together from the record of proceedings at various lower courts, as set out above, I do not agree with the learned counsel for the appellants that both the trial Upper Area Court and the appellate session of the High Court decided to make for the parties a case different from what is claimed by them. The trial court correctly awarded the parties what was proved. B

Both the appellate session of the High Court and the Court of Appeal agreed. I refer to the conclusion of the trial Upper Area Court on page 168 of the record which states thus: C

*“We therefore hold that from the totality of the evidence before us, and what was shown to us at the locus and having record to the findings in this case reached on the balance of probability, we believe that both parties in this case have land at Ara. In conclusion, we find that the plaintiffs succeed in part and we award the described portion of the land starting from a point between Solu Magaji Gambari beacons and the locust beans tree called Igba Asinpada, forming boundary with Opoopo family down to a Nim tree behind Ara Primary School to river Osun and river Oganga. Also forming boundary with Ologbojo family, at a beacons (sic) under a locust beans tree down to Gori river forming boundary with Gaa Abubu and back to Tunde Adeoye’s house forming boundary with Liman family.* E

*While the defendant also succeeds in part and we award the described land to them starting from Ologbojo beacons to Osun and Oganga river, back to Gori and returning to the locus beans tree where Ologbojo beacons is (sic) installed.”* F

The parties seemed to have conceded and are in agreement with the description of the boundaries of their respective portions as found by the trial court. I do not agree that the court partitioned the land regardless of the claims of the parties. The Court of Appeal in its judgment on pp. 275-276 held inter alia. G

*“...The trial court made its findings of fact that both claimants were only able to prove ownership of certain areas of land which it went on to award to each party.* H

*This, in my considered view, with due respect to both learned counsel, in the circumstances of this case, does not amount to parti-*

tioning.”

In view of the foregoing wither the claims of the appellants, particularly, that the three lower courts awarded portions of land they were not able to substantiate in their claims. In the light of this I too resolve this issue in favour of the respondent but against the appellants.

In conclusion I agree with my learned brother OKORO JSC that, this appeal lacks merit. I hereby dismiss it. I affirm the decision of the Court of Appeal which upheld the decision of the appellate session of the High Court and the trial Upper Area Court. Parties to bear their respective costs.

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### **RHODES-VIVOUR JSC**

I have had an opportunity of reading in draft the leading judgment prepared by my learned brother, Okoro, JSC. I agree with his lordship reasoning and conclusions that there is no merit in this appeal, and the proper order is to dismiss the appeal. I intend merely to add a few words on two issues which arose in this appeal.

1. How should the court resolve an issue where a plaintiff sues for title over a large area of land and the defendant counter-claims for a smaller area of the same land.

2. What is the attitude of this court to concurrent findings of three courts below.

This is a land case that was heard by the Upper Area Court, Ilorin. It passed on appeal through the High Court, Court of Appeal, till it has finally reached the Supreme Court. The land in dispute is the land from Ara Village to Odogori having an area of 133.289 hectares.

The plaintiffs claimed all of the land while the defendant counterclaimed for part of the land.

Both sides relied on evidence of tradition which turned out to be conflicting. They further supported their case by claiming to be in possession of the land and also to be the owners of the land. In an action for declaration of title to land, the land to which the declaration relates must be ascertained with certainty before the court would make a declaration. See *Elias v. Omo-Bare* 1982 5 SC p.25.

A plan prepared by a Surveyor and Evidence of a Surveyor

is the best way to resolve the identity of the land. In this case the identity of the land is not in issue, since both sides were able to prove to the satisfaction of the court the portion/s of the land that belong to them.

The Upper Area Court held inter alia that:

*“...since the plaintiffs claimed and the defendant counter-claimed, the burden is squarely on both sides to adduce credible evidence in support of title ... since the plaintiffs are claiming the whole Ara and the defendants are claiming part thereof, we hold from the totality of the evidence before us, both parties have pieces or parcel of land at Ara...”*

This finding was affirmed by the High Court and Court of Appeal. The finding is that both parties have land at Ara.

A declaration of title can only be made in respect of land as claimed and not more. The court may grant a declaration over a small portion of land than that claimed, once title to the smaller portion is established by credible evidence. That is to say if the court dismisses a claim to a large area of land for lack of authentic identification the court can still go ahead and grant title to a smaller area if satisfied with the evidence led.

Where the plaintiff fails to prove title, the proper order to make is one of dismissal, but where the plaintiff has manifestly established his case with respect to portions of the land in dispute he is entitled to declaration. This also applies to the defendant where there is a counterclaim as in this appeal. The position of the law is that when both sides rely on evidence of tradition which turned out to be unreliable and further supported their case with acts of ownership and possession something more is required before a party would be entitled to a declaration.

The trial court paid a visit to the locus in quo and was satisfied after being shown with certainty the land claimed by each side. In applying the rules of equity the trial court was right not to disturb the parties respective possessions and readily gave declarations of title in favour of both parties over the portions of the vast land that they satisfied the court belonged to them. The evidence established on the visit to the locus in quo was indeed evidence of long possession by both sides of their respective portions of the vast land. Both parties are quite rightly in my view entitled to a declaration after the

trial court saw with its own eyes the portions of the land belonging to each side. The finding of the trial court affirmed by the High Court and Court of Appeal is further and finally and affirmed by this court.

The finding of the Upper Area Court, now before this court are concurrent findings of three courts below. This court has said in a  
 B plethora of cases that it would only upset concurrent findings of the courts below if found to be perverse, not supported by evidence or had occasioned a miscarriage of justice. When an Appeal Court addresses questions of fact it should accord high regard to the findings  
 C of the trial court, since that court saw the witnesses, was able to assess them and made findings on demeanour, which an Appeal Court cannot easily dislodge. So this court should not substitute its own opinion of the evidence for that of the lower court. See *R. Benkay Nig Ltd v. Cadbury Nig. Plc* 3 SC (pt. iii) p.169.

D Learned counsel for the appellant has not been able to show that the findings of the three courts below are perverse. To my mind the findings cannot be faulted.

For this, and the more detailed reasoning in the leading judgment the appeal is dismissed.

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### **NGWUTA JSC**

I read in draft the lead judgment just delivered by my learned  
 F brother, Okoro, JSC. I entirely agree with the reasons for resolving the two issues in the appeal against the appellant and, ipso facto, dismissing the appeal for want of merit.

I wish to add a few words by way of support.

In a claim for title to land based on traditional history, the  
 G plaintiff has to plead and prove each of the following:

(1) The person who founded the land and exercised acts of possession.

(2) How the land was found, and

(3) The persons on whom the title to the land devolved from  
 H its founder to the plaintiff. See *Obioha v. Duru* (1994) 10 SCNJ 48 at 61 ratios 6 and 7, *Piaro v. Tenalo & Ors* (1976) 12 SC 31.

The pleading of the devolution as well as the evidence in support must be reliable and credible or plausible otherwise the claim for title will fail. See *Eze v. Atasie* (2000) 6 SCNJ 209 at 218, *Ehis v.*

Omo-Bare (1982) 5 SC 25. The plaintiff must rely on his pleading, he cannot plead traditional history and abandon his pleading to rely on acts of ownership over a long period of time. See Udeze v. Chidelo (1990) 1 NWLR (Pt. 125) 141 at 160.

This matter originated from the Upper Area Court, Ilorin. The High Court affirmed the judgment of the Upper Area Court and the Court of Appeal endorsed the decision of the High Court. B

There are therefore three concurrent judgments which the appellants want this Court to interfere with. The appellant has not shown that there is no sufficient evidence to support the findings. He C has not demonstrated any perversity in the concurrent findings. The appellant has no basis in asking this Court to set aside the judgments. See Njoku & Ors v. Eme & Ors (1973) 5 SC 293 at 301, Kale v. Coker (1982) 12 SC 252 at 271.

For the above and the fuller reasons in the lead judgment, I D also dismiss the appeal for want of merit. I also adopt the order that the parties bear their respective costs.

Appeal dismissed.

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