

**SUPREME COURT OF NIGERIA**  
FRIDAY 11TH DECEMBER, 2015. SC. 295/2005  
**CORAM:- S. GALADIMA, C. B. OGUNBIYI, K. M. O.**  
**KEKERE-EKUN, J. I. OKORO, A. SANUSI, JJSC**

1. ISAAC JITTE ..... APPELLANTS  
2. ISIAH JITTE  
AND  
DICKSON OKPULOR ..... RESPONDENT

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LAND LAW - Trespass - Locus standi - Having established interest in the matter - Respondent has locus to defend a case of trespass into his family land (H1)

COURTS - Customary courts - Parties - To ascertain capacity in which a party initiates action in the court - The whole proceedings must be looked into - And broad interpretation placed on the judgment (H2)

LAND LAW - Appeals - Court - Findings - As the trial court was constituted by men better placed to appreciate the matter - Its findings that respondent rightly proved his claim cannot be faulted (H3)

LAND LAW - Reliefs - Extent of - Respondent did not only require the court to grant him declaration to title - He also claimed for disturbance of his possessory right (H4)

LAND LAW - Appeals - Variation order - CA rightly varied the decision of the trial customary court - Rather than reversing same - For this was done in the general interest of the family (H5)

**FACTS**

At the trial Customary Court, plaintiff/respondent commenced this action seeking for declaration of title to the disputed land, damages for trespass and perpetual injunction restraining defendants/appellants from further entry into the land. The story behind the action is that in 1964, there was boundary dispute over the land pledged to one Peter Nwachukwu by the relatives of appellants. The matter was resolved at that time and each party stuck by their own section of the

land. Respondent, without any let or hindrance remained in possession of their own portion of the Agbarankwu land and harvested his own agric palm plantation until appellants trespassed into the land from their own portion of Agbaraukwu land. Hence, respondent instituted the action to protect the family inheritance now in his possession.

After careful evaluation of the evidence of the witnesses for both parties, the trial customary court found that the claim of respondent revolved around the issue of boundary upon which the parties laid claim to the ownership of some portion of the land in dispute. The Court however considered what the appropriate boundary was and entered judgment for respondent. Aggrieved, appellants appealed to the Customary Court of Appeal, Abia State. They raised issues ranging from the lack of locus standi of appellant, the incompetence of the suit as fundamental defect to the action. The Court allowed the appeal and set aside the judgment of the trial Customary Court. Dissatisfied, respondent approached the Court of Appeal on appeal. The Court heard the appeal and set aside the judgment of the Customary Court of Appeal. In their desire to achieve justice, appellants have appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“1. Whether the Respondent had proved his locus standi and entitlement to the land in accordance with established principles of law to be entitled to Judgment?”*

*2. Whether the Court below was not in grave error when it held that the main contention between the parties was the boundary of the land and consequently held that a case of trespass had been established by the Respondent and on the other hand awarded the Right of Occupancy over Agbaraukwu land to Umuolu family?”*

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

*LAND LAW - Trespass - Locus standi*

**1. One must observe that the learned counsel for the Appellants dwelt so much on the issue of the principle locus standi and stretched it beyond its elasticity. In this case the Respon-**

**dent has shown that he has locus to defend a case of trespass into his family land held by him since 1980. The Appellants, like the Umuolu family, to which the Respondent belongs knew that the Respondent was in court to protect that section of AGBARAUKWU land of the family in his possession.**

**In the instant case, the Respondent had established interest in the matter and therefore had locus standi to institute the action. (p. 3657 D)**

*Customary courts - Parties*

**2. It is the law that in ascertaining in what capacity a party initiates or defends an action in the Customary Court, the whole proceedings must be carefully looked into and considered with greater latitude and broad or wide interpretation being placed in the proceedings and the judgment of that court. (p. 3657 F)**

*Appeals - Court - Findings*

**3. I cannot fault the finding of fact by the trial court that the Respondent rightly proved his claim that the old road was the boundary between the Respondent's Umuolu Family and Appellant's Umuapaku Family. The court accordingly delivered judgment in favour of the Respondent. The finding of fact came from the trial court constituted by a panel of men who were better placed to appreciate the matter before them. They had the opportunity to watch the demeanour of witnesses. They visited the locus to ascertain the claim of the Respondent herein. The Appellate courts frown upon disturbing concurrent findings of fact painstakingly made by lower courts which are not perverse.**

**It is in the light of the foregoing that I resolve this issue in favour of the Respondent but against the Appellants. (p. 3659 A)**

*LAND LAW - Reliefs - Extent of*

**4. For the umpteenth time, with emphasis, I have said that the Respondent did not claim that he is the sole owner of the land in dispute; rather that the land he is claiming includes the land in dispute and that he had brought the suit to protect same.**

***It is preposterous for the learned counsel for the Appellants to contend that the evidence led at the trial was only tailored towards requesting the court to grant him declaration of title and no more. The Respondent did not only require the court to grant him declaration to title he did claim also for disturbance of his possessory right. Evidence led at the trial perspicaciously shows this.*** (p. 3661 B)

*Appeals - Variation order*

***5. Finally, on the issue of variation order made by the court below, learned counsel for the Appellants contended that the decision was perverse and inequitable as there was no evidence of who founded the land in dispute and record of original ownership. It would appear to me that the court below met the justice of the matter in the circumstance.***

***The court below therefore, rather than reverse the decision of the trial customary court, varied it. This is for the general interest of the entire family as against that of the individual. The court pursuant to the provisions of Order, (sic) Rule 19 (3) of the Court of Appeal Rules 2002 accordingly set aside the decision of the Customary Court of Appeal but affirmed that of the trial court and varied same, and reposed in the UMUOLU FAMILY in UMUELECHI OBUZOR ASA, the portion of the land in dispute known and called ((AGBARAUKWU “LAND, I endorse this variation order.*** (p. 3662 A/D)

## NOTABLE POINTS OF INTEREST

### OGUNBIYI JSC

#### ***1. Judgment – Mistake in form – Not to vitiate***

It is in point to restate that the action was fought between the parties at the trial level without counsel. It is trite to say therefore that the appellate court stands in a position to correct certain procedural irregularities manifesting rather than basing its evaluation of facts on form against the warning of the law establishing Customary Court in Abia State. In otherwords, the law is clearly stated that a mistake in form shall never vitiate any judgment by the trial court. (p. 3664 D)

**SANUSI JSC**

***2. Appeals from Customary courts – Flexibility of***

It is trite that appellate courts should not be rigid, strict or dogmatic especially in determining appeals from Area/Native or Customary Courts. (p. 3677 B)

B

***3. Family land – Individual member may sue in defence of***

It is equally trite, that a family member can himself alone or with other family members sue in defence of the family land in his possession. (p. 3677 C)

C

**REPRESENTATION**

A. A. IBRAHIM ESQ., with Lawrence John Esq. B. Maikasuwa (Mrs.) A. Are Esq., for the Appellants

O. O. IGUENYI ESQ., for the Respondent

D

**CASES REFERRED TO**

Odeneye v. Efunuga (1990) 11-12 SC 185

Owodunni v. Regd. Trustees of Celestial Church of Christ (2000) 6 SC (pt. 3) 60

E

Ojukwu v. Ojukwu (2008) 12 SC (pt. 3) 1

Idundun v. Okumagba (1976) 10 SC 277

Agbagedele v. Layinka (1993) 3 SCNJ 39

Nwanezie v. Idris (1993) 2 SCNJ 139

F

Sapo v. Sumonu (2010) All FWLR (pt. 531) 1408

Garuba v. Yahaya (2007) All FWLR (pt. 357) 862

Ajuwon v. Aina (1990) 2 NWLR (pt. 132) 271

Alagujeun v. Ssobo Osho of Yeru (1972) 5 SC 9

Atolagbe v. Shorun (1985) I.N.S.C.C 472

G

Iwuoha v. NIPOST Ltd. (2003) (pt. 60) FWLR 1535

Oyah v. Ikalile (1995) 7 NWLR (pt. 406) 150

Okukuje v. Akudo (2001) 2 SCM 113

Engbi v. Imade (1959) WNLR 325

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**STATUTE & RULES REFERRED TO**

Customary Court Edict No. 7 of 1984, s. 21

Customary Rules of Imo State 1989, O. 5 r. 2

**LEAD JUDGMENT BY GALADIMA JSC**

This appeal is against the decision of the Court of Appeal, Port Harcourt Division, delivered on the 11th day of November, 2004 wherein the judgment of the Customary Court of Appeal, Abia State delivered on 1st day of November 2000, was set aside and the judgment of trial Customary Court of Appeal Ukwu was upheld. The three Courts below shall be referred to as the court below, “Customary Court” of Appeal” and the court of first instance” respectively in the course of this judgment.

At the Court of first instance, the Respondent herein as plaintiff sought for the following reliefs.

*“(1.)A declaration that the plaintiff is entitled to the Customary right of Occupancy over the piece or parcel of land known as and called “Agbaraukwu land” situate at Umuelechi Obuzor Asa, Ukwu Local Government Area within the jurisdiction of this honourable court”.*

*(2) One Thousand Naira damages for trespass*

*(3) Perpetual injunction restraining the defendant, their children, servants, agents, and privies from further entry into the said land.”*

After careful evaluation of the evidence of the witnesses for both parties, the trial customary court found that the claim of Respondent revolved around the issue of boundary upon which the parties laid claim to the ownership of some portion of the land. The Court however considered what the appropriate boundary was and entered judgment for the Respondent.

The Appellants, who were the Defendants appealed to the Customary Court of Appeal. They raised issues ranging from the lack of locus standi of the Appellant, the incompetence of the suit, as fundamental defect. The court allowed the appeal and set aside the judgment of the Customary Court with N1, 000.00 costs in favour of the Appellants.

Dissatisfied with this judgment, the Respondent herein appealed to the Court of Appeal. The court heard the appeal and set aside the judgment of the Customary Court of Appeal. The appellants have now appealed to this Court.

With leave of this Court, they filed a Notice of Appeal containing Six Grounds of Appeal. With leave of this Court granted on the

31st March, 2014, the Appellants filed their joint Brief of Argument. They submitted the following issues as arising for determination.

In the brief of argument filed on behalf of the Respondent by his counsel, the two issues formulated by Respondent are as follows:

*"1. Whether the Respondent had proved his locus standi and entitlement to the land in accordance with established principles of law to be entitled to Judgment? Distilled from grounds 1, 3, 4, & 5*

*2. Whether the Court below was not in grave error when it held that the main contention between the parties was the boundary of the land and consequently held that a case of trespass had been established by the Respondent and on the other hand awarded the Right of Occupancy over Agbaraukwu land to Umuolu family? Distilled from Ground 2 & 6"*

On the 29th day of October, 2015 when the appeal came up for hearing, learned counsel for the Appellants A. A. Ibrahim Esq. D adopted Appellants' Brief of Argument and without further amplification of the issues raised therein, urged the court to allow the appeal.

Similarly, the learned counsel for the Respondent, Chief Ogbonna O. Igwuanyi identified the Respondent's Brief of Argument and without further amplifications of the argument already contained in the said brief, simply urged the court to dismiss the appeal.

In this judgment I shall adopt the sequence of argument of the respective counsel as made out in their Briefs of Argument. On the first issue it is the submission of the learned counsel for the Appellants that, on the authorities of this court in the cases of PRINCE ODENEYE v. PRINCE EFUNUGA (1990) 11-12 SC 185; (1990) 12 SCNJ 1 at 7; OWODUNNI v. REGISTERED TRUSTEES OF CELESTIAL CHURCH OF CHRIST (2000) 6 SC (pt.3) 60 at 62 and OJUKWU v. OJUKWU AND ANOR (2008) 12 SC (pt.3) p. 1 at p.17, that all the party who has initiated the proceedings in court, needs to prove or show in establishing locus standi is to demonstrate his sufficient interest in the action, and that his civil right and obligations have or are in danger of being infringed. It is submitted that the Respondent lacks the requisite competence, the suit having been commenced without a condition precedent required by Order 5 Rule 2 of the Customary Rules of Imo State, 1989 and applicable to Abia State. Reliance was placed on the very nature and context of the claim filed at the trial

court, which was clear that the Respondent herein was claiming for a declaration that he is entitled to the Customary Right of Occupancy over the piece or parcel of land known and called Agbaraukwu land situated at Umuelechi Obuzor Asa in Ukwu Local Government of Abia State.” Relying on the evidence adduced by the Respondent particularly as captured at page 119 of the record, learned counsel further submitted that, contrary to what the Appellant/Respondent was demanding, it was disclosed in evidence that the land in dispute is a family land, but nowhere was it disclosed that the Respondent, who initiated the suit was the head of the family, a principal member, or indicated that he was suing in a representative capacity. It is the position of the Appellants that for the Respondent to succeed, he must satisfy the court as to the precise nature of the title claimed by him, that is, whether it is vested with the title of the land by virtue of original ownership, customary grant, conveyance, long possession or otherwise. The learned counsel submitted that in the absence of any cogent piece of evidence of title to land, as enunciated in *IDUNDUN v. OKUMAGBA & ORS.* (1976) 10 SC 277, and other authorities, it would be erroneous for the court below to declare that the Respondent is entitled to the Customary Right of Occupancy over the disputed land.

On the decision of the court below to vary the order of the Customary Court of Appeal, learned counsel submitted that the court ought to have taken into consideration the nature of the relief sought by the Respondent, which was on declaration for title. That he did not claim for disturbance of his possessory right.

Learned Counsel for the Respondent has posited that the Respondent has shown that the land in dispute is a family land which particular portion he had cultivated since 1980 as a palm plantation. That he brought the action at the trial court to protect incessant trespass into the land through the common boundary between him and the Appellants’ family.

It was the contention of the Respondent’s counsel that the Respondent did not mince words at the earliest stage of the proceeding, when he stated that he had a locus standi to defend a case of trespass into his family land.

Relying on the authorities of *OJUKWU v. OJUKWU* supra *AGBAGEDELE v. LAYINKA & ORS* (1993) 3SCNJ 39, *NWANEZIE*

v. IDRIS & ANOR (1993) 2 SCNJ 139, SAPO v. SUMONU (2010) ALL FWLR (pt.531) 1408 at 142, learned counsel contended that a member of a family can himself alone or with others sue in defence of the family land in his possession.

Learned Counsel in urging this court to look beyond the technicality upon which the customary court of Appeal reversed the trial court, submitted on the authority of GARUBA v. YAHAYA (2007) ALL FWLR (pt.357) 862 at 871, that appellate courts are required not to be unduly strict or rigid with matters of procedure when dealing with appeals from the Native, Customary or Area Courts. This is mainly because pleadings are not filed in those courts and technicalities have no place with their adjudication of cases.

It was contended that the dispute between the parties was purely boundary dispute which had received several arbitrations, and for that reason had necessitated the visit to locus in quo for the trial court to ascertain the truth or otherwise of the various testimonies of witnesses.

***One must observe that the learned counsel for the Appellants dwelt so much on the issue of the principle locus standi and stretched it beyond its elasticity. In this case the Respondent has shown that he has locus to defend a case of trespass into his family land held by him since 1980. The Appellants, like the Umuolu family, to which the Respondent belongs knew that the Respondent was in court to protect that section of AGBARAUKWU land of the family in his possession.***

***In the instant case, the Respondent had established interest in the matter and therefore had locus standi to institute the action. It is the law that in ascertaining in what capacity a party initiates or defends an action in the Customary Court, the whole proceedings must be carefully looked into and considered with greater latitude and broad or wide interpretation being placed in the proceedings and the judgment of that court. See AdJUWON v. AINA (1990) 2 NWLR (pt.132) 271 ALAGUJEUN & ORS v. SOBO OSHO OF YERU & ORS (1972) 5 SC 9.***

The learned counsel for the Respondent has made a point here and I agree with him. Both parties at the trial court presented their case without the representation of counsel. The panel of three men who heard the case was made up of laymen whose only claim

to expertise was their knowledge of their local custom and tradition. Hence the court below stated at page 213 of the record thus:

*“Undue reliance an (Sic) on technicalities is not one of the specialty of the Customary Court, submitted counsel who reminds us that at the trial, the parties were not represented by learned counsel.*

B *They could not therefore reasonably be expected to know the details of the rules of court other than stating their respective cases in the best way they could.”*

C *We agree with the learned counsel that by the Judgment of the trial Court recorded on page 131-139, the issues were very clearly spelt out by the Court. The Customary Court of Appeal however ignored all that part of the judgment preferring rather to act on technicalities which have little relevance in a trial before the Customary Court see Iyaji v. Eyiugbe (187) 2 NWLR (pt. 61) 523 and Udeze v. Chidebe (1990) 1 NWLR pt.125 p.141 at 151.*

E *The general principle has always been that the Customary Court should be guided by the rules of Court. Such Courts are however not bound to apply the rules blindly once the case of the parties makes it clear, what the nature of the claim before the Court is. It is our humble opinion that the trial Court displayed a dispassionate comprehension of and adequately evaluated the evidence before it in arriving at its decision. At page 137-138 of the records, part of the judgment of the trial court display this appropriate appraisal of Issues:*

F *In endorsing absolutely the decision of the trial court, the court below had this to say on page 215 lines 3-13 of the record thus:-*

G *“It is our considered opinion that the issue was judicially, judiciously and competently determined by the trial Court. I am unable to fault the decision of the trial Court, part of which is hereby reproduced for purpose of emphasis:*

H *“After a careful review of the evidence of both parties... Court is of the opinion that the vital issue... to determine is.... the boundary of the land, as both parties admitted in their evidence on oath that the Umuolu, Umuelechi, Obuzor, Asa share a common boundary on the land in dispute...”*

*During the inspection of the land both parties admitted that the beginning of the old road is the same, and they (sic) PW 1 claims is the boundary.”*

***I cannot fault the finding of fact by the trial court that the Respondent rightly proved his claim that the old road was the boundary between the Respondent's Umuolu Family and Appellant's Umuapaku Family. The court accordingly delivered judgment in favour of the Respondent. The finding of fact came from the trial court constituted by a panel of men who were better placed to appreciate the matter before them. They had the opportunity to watch the demeanour of witnesses. They visited the locus to ascertain the claim of the Respondent herein. The Appellate courts frown upon disturbing concurrent findings of fact painstakingly made by lower courts which are not perverse.***

***It is in the light of the foregoing that I resolve this issue in favour of the Respondent but against the Appellants.***

On the second issue, the contention of the appellant is that there is no traditional history, incidental or factual evidence of ownership of land given by the Respondent, herein to necessitate the grant of Customary Right of Occupancy over the portion of land in dispute known and called Agbaraukwu land. That since there was no evidence of boundary given, the court below ought not to decide to repose the Agbaraukwu land on Respondent's Umuolu family kindred. To do this is to speculate, which the court of law does not do. That there was no evidence led to show that the Appellants entered into Agbaraukwu land or that the old road (Uzo Ochie) is the recognized boundary between Umuolu and Umuopaka and therefore the decision of the court below to restore the affirm decision of the trial Customary Court is perverse and cannot stand. Relying on ATOLAGBE v. SHORUN (1985) I.N.S.C.C 472; IWUOHA v. NIPOST LTD (2003) (pt. 60) FWLR p.1535 at p.1562.

The Respondent on the other hand, has contended that both parties agree that their dispute is on boundary between their various portions of Agbaraukwu land. That is why the Respondent said it is the old road, and the Appellants on the contrary said it is not; and that the trial courts resolved the issue after a visit to locus in quo, in favour of the Respondent.

Going through the evidence placed before the trial court, it is crystal clear that the dispute between the parties was boundary conflict and this has led to several police interventions and several local

arbitrations. Hence the court below did not hesitate to conclude that the trial court competently determined the matter “judicially and judiciously”. In other words with regard to the evidence before it, the trial court was competent and correctly pronounced on the issue before it.

B The Respondent, as plaintiff (PW1) had testified on cross-examination at page 120 - 121 of the record as follows:

Q: Who is your father?

Ans: Okpulor is my father.

C Q: Where is Okpulor from?

Ans: He is from Umuolu.

Q: How many kindreds make up Umuolu?

Ans: There are three kindreds.

Q: Does Agbaraukwu land belong to you alone or

D to the whole of Umuolu?

Ans: It belongs to Onumara Umuolu.

Q: Is it customary for one person alone to sue for land belonging to a kindred?

Ans: One man can sue. I have other people with me.

E Q: Do you know one Waluo Worgu?

Ans: I do not know him in person. He died before I was born.

Q: Do you know one Ogbonna Nwakolo?

Ans: I know him.

F Q: Do you know Nwagwu of Umuapaka?

Ans: Yes, I know him.

Q: Do you know Oforji Ekeke Obeji?

Ans: I know him.

G Q: Who pledged land to Peter Nwachukwu?

Ans: It was Nwankwo from your family.

Q: Was Nwachukwu farming up to the area you sued me or is it I who trespassed on your land.

Ans: You trespassed over the land

H Q: What did we use to make boundary on the land?

Ans: There were no trees. We use Ukpo to make boundaries. But for this, the old Road Marked the boundary.

Q: Does this Agbaraukwu which you have talked about contain an old forest?

Ans: There is a forest there, so also water (pond).

Q: Who farm round the stream?

Ans: Both Umuapaka and Umuolu farm round the stream, each on their own side.

Q: Have you ever had case with us over this land for which you sued me? B

Ans: There was no case. The police case from it was settled at home.

***For the umpteenth time, with emphasis, I have said that the Respondent did not claim that he is the sole owner of the land in dispute; rather that the land he is claiming includes the land in dispute and that he had brought the suit to protect same.*** C

***It is preposterous for the learned counsel for the Appellants to contend that the evidence led at the trial was only tailored towards requesting the court to grant him declaration of title and no more. The Respondent did not only require the court to grant him declaration to title he did claim also for disturbance of his possessory right. Evidence led at the trial perspicaciously shows this.*** D

As to the evidence of his possessory right the Respondent had this to say in his evidence-in-chief at page 119 - 120 thus: E

*"In 1988 when I entered into our portion of the land for farming, defendants summoned me at Igu Ama people. I have my palm trees which I planted in 1980 and has (sic) been harvesting same undisturbed by anybody ever since. Defendants continued entering into my land to farm. That is why I summoned them and claim as per writ. They have no Ukpo on the land to show that whatever they have was given to them."* F

Else where as shown, the Respondent has shown that he is not only protecting his own portion of the land but Umuolu people. G

It is in the light of the above, the court in its judgment rightly held at p.216 of the record thus:

*"The crux of the matter is clearly conveyed in the testimony of PW1. He lays no personal claim to the title of the land. He only desires to protect the portion of the family land which has been entrusted to him and which he cultivated unperturbed for twenty-four years since 1980.* H

*It is instructive to note that it was not the Respondents who*

*challenged the Appellant who had been cultivating the land for 24 years. It was the Appellant, who sought a definition of boundary to curtail the encroachment of the Respondents. Boundary was indeed the main stake of the suit."*

**Finally, on the issue of variation order made by the court below, learned counsel for the Appellants contended that the decision was perverse and inequitable as there was no evidence of who founded the land in dispute and record of original ownership. It would appear to me that the court below met the justice of the matter in the circumstance.** The court rightly decided that:

*"It would in my humble opinion be equitable, in the interest of justice, harmony, peace and end to litigation that the Customary Right of Occupancy be reposed in Appellant's family as a group rather than the Appellant as an individual."*

**The court below therefore, rather than reverse the decision of the trial customary court, varied it. This is for the general interest of the entire family as against that of the individual. The court pursuant to the provisions of Order, (sic) Rule 19 (3) of the Court of Appeal Rules 2002 accordingly set aside the decision of the Customary Court of Appeal but affirmed that of the trial court and varied same, and reposed in the UMUOLU FAMILY in UMUELECHI OBUZOR ASA, the portion of the land in dispute known and called ((AGBARAUKWU "LAND, I endorse this variation order.**

On the whole, having resolved the two issues in favour of the Respondent, the appeal is adjudged unmeritorious and same is accordingly dismissed. I make no order as to costs. This is to encourage harmonious co-existence of the warring family and the community in general. No order as to costs.

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### OGUNBIYI JSC

H The appeal before us came by leave of this court granted on the 31<sup>st</sup> March, 2014. The respondent was the plaintiff at the trial Customary court and prayed for three reliefs a, b and c which are all reproduced in the lead judgment of my learned brother.

The Customary court found in favour of the plaintiff and the

defendants therein appealed to the Customary Court of Appeal, Umuahia, Abia State, and it allowed the appeal basically on the ground that the respondent now herein did not sue in representative capacity as the disputed land is owned by his family the Umuolu.

The judgment of the Customary Court was therefore set aside. The Court of Appeal in turn set aside the judgment of the Customary Court of Appeal and hence the appeal now before us. B

The facts briefly are that the respondent herein as plaintiff is from the Umuolu family in Umuelechi. In 1980, his family gave him the disputed land for planting agricultural palms. The disputed land called Agbaraukwu has common boundary with the land of the appellants' family. That the two lands derive their names from a common source - the Agbaraukwu shrine. C

In 1964 there was boundary dispute over the land pledged to one Peter Nwachukwu by the relatives of the appellants herein. The matter was resolved at that time and each party was stuck by their own section of the land. The respondent, without any let or hindrance remained in possession of their own portion of the Agbaraukwu land and harvested his own agric palm plantation until the appellants trespassed into the land from their own portion of Agbaraukwu land. Hence this action by the respondent for purpose of protecting the family inheritance now in his possession. D

The two issues formulated by the appellants are:-

1. Whether the Respondent has proved his locus standi and entitlement to the land in accordance with established principles of law to be entitled to judgment? F

2. Whether the court below was not in grave error when it held that the main contention between the parties was the boundary of the land and consequently held that a case of trespass had been established by the Respondent and on the other hand awarded the Right of Occupancy over Agbaraukwu land to Umuolu family? G

On the 1st issue raised, the concept of locus standi denotes the legal capacity to institute proceedings in a court of law. See *Owodunni v. Registered Trustees* (2000) 79 LRCN 2406 at 2429. The law is trite and well settled by this court therefore that, what the plaintiff needs to show in order to establish that he has locus standi in a case is sufficient interest in the matter in controversy. See again the case of *Owodunni V. Registered Trustees* (supra). H

It is on record that the Plaintiff/Respondent as Pw1 testified before the trial court in chief that the disputed land belonged to his family, the Umuolu in Umuelechi. That he also planted agric palm plantation in the land and without any let or hindrance had been in possession of his palm estate; page 120 lines 10 - 17 of the record is in reference. It is in evidence also by the said witness that the Agbaraukwu land belongs to Umuolu people who share boundary with Uzuaku and Okolua people. At the earliest opportunity therefore, he (plaintiff) made it clear that the action was initiated in the corporate interest of the Umuolu people.

It is significant to mention that the action in point was not initiated by counsel which would have made the requirement of Order 5 Rule 2 of the Customary Court Rules, Imo State 1989 and applicable to Abia State, inevitable in the circumstance. In his cross examination, Pw1 in answer to the question:

*"Is it customary for one person alone to sue for land belonging to a kindred?" - the witness in response to the question said:*

*"One man can sue. I have other people with me."*

It is in point to restate that the action was fought between the parties at the trial level without counsel. It is trite to say therefore that the appellate court stands in a position to correct certain procedural irregularities manifesting rather than basing its evaluation of facts on form against the warning of the law establishing Customary Court in Abia State. In otherwords, the law is clearly stated that a mistake in form shall never vitiate any judgment by the trial court. Thus, Section 21 of the Customary Court Edict NO.7 of 1984 has this to say

*"No proceedings in Customary Court and no summons warrant process, order or decree issued or made thereby shall be varied or declared void upon appeal solely by reason of any defect in procedure or want of form but every court or authority exercising powers of appeal under this edict shall decide all matters according to substantial justice without undue regard to technicalities."*

Also and in support of the Edict supra, is the decision of this court when it was faced with similar situation in interpreting a document Exhibit A, which was a native court judgment that did not express upon the face of the writ that it was fought in representative capacity but which, in evidence was in fact a representative action and the court had this to say:-

*“Although representation was not expressed on the summons, a study of the proceedings confirms that Exhibit ‘A’ was sought in a representative capacity by the defendants therein.”*

Continuing further the court also said:-

*“The dispute between the parties was clearly an inter-family or intra-family dispute and was fought as such. It was not personal to the parties but was prosecuted and defended in a representative capacity between the two families concerned respectively.”*

See the case of Oyah. & Ors. V. Ikalile & Ors. (1995) 7 NWLR (Pt 406) Page 150 at 163 - 164.

PW4 in person of Mr. Friday Amachi (Ide) whose name was mentioned severally in evidence testified in favour of the plaintiff. The witness is from Umuolu, the family represented in this suit by the plaintiff/respondent. I seek to say therefore that, if the respondent had intended a secret action to appropriate family property to himself, he definitely would not have exposed himself by calling a member of his family (Pw4) to confirm his authority. The said witness’ evidence in chief is at page 126 of the record.

In a further advise by this court in the case of Okukuje V. Akudo (2001) 2 SCM 113 at 119 -120 it was held thus:-

*“In trials in native courts, it is sufficient if he (Plaintiff or Defendant) states that he is defending for himself and the persons he represents some of whom will testify and confirm his authority.”*(Bracket supplied by me)

In the case before us, the plaintiff/respondent has been in possession of the land since 1980, and this was a fact proved at the trial court. As a person in possession therefore, he has the right to sue and defend the estate against intruders. Thus it was held in I. Engbi v. Imade (1959) WNLR 325 that:-

*“A plaintiff as an allottee in possession of family land has a right to institute an action for damage for trespass in respect of such land. This principle was applied in the case of Agbaneje v. Bakaew (1998) 61 LRCN 4741.”*

As rightly held by the lower court, the respondent herein who was the appellant before them, has shown sufficient interest and disclosed unequivocally, that the suit he initiated was on behalf of his family members, being the person directly responsible for the land which was in his immediate possession and which was trespassed into

by the appellants. Issue No.1, I hold is, in the circumstance resolved against the appellants.

The 2nd issue is whether the court below did not err on the issue of boundary of land when it held that a case of trespass had been established and thereby awarded the Right of Occupancy over B Agbaraukwu land to Umuolu family.

It is the submission on behalf of the appellants that, from the evidence led at the trial, the court below endorsed the view held by the trial court and found that boundary is the crux of the case; that C since no evidence of boundary was given, the court below ought not to have decided to repose the Agbaraukwu land in Respondent's Umuoha family kindred; that a court of law does not speculate. Counsel submits further that the decision of the lower court is perverse because there was no material or necessary fact to sustain the case as D proved; that the available evidence is a clear indication that the appellants and respondent shared land in common or jointly: that to repose the land in the respondent's family alone as did by the court below, is tantamount to divesting the appellants of their own portion of the land. The decision, counsel submits is perverse and ought not E to stand.

In summary, the respondent submits the established position of law on decisions of trial customary courts, which are disturbed on appeal only where it is found that the court had departed from pronouncing correctly on Customary Law established before it or is unable to give effect to it in its evaluation of evidence. Counsel argues F that, this is not the situation with the case at hand and which this court is urged to dismiss the appeal in its entirety.

It is clearly stated on the record that both parties agree that G their problem is centered on the boundary between their various portions of Agbaraukwu land. While the respondent claimed that it is the old road, the appellants in turn claim that it is not. The trial court resolved the issue.

The question as to whether the trial customary court misled H itself on following a visit to locus in quo and by its judgment, it made an order that the old road is the boundary between the Respondent's section of Agbaraukwu and that of the Appellants', the issue before it which also occasion the lower court falling into the same trap can best be answered by the view adopted by the lower court itself when

it endorsed the opinion held by the trial customary court at page 215 of the record and said:-

*“It is our considered opinion that the issue was judicially, judiciously and competently determined by the trial court. I am unable to fault the decision of the trial court, part of which is hereby reproduced for purpose of emphasis:- After a careful review of the evidence of both parties... Court is of the opinion that the vital issue... to determine is... the boundary of the land, as both parties admitted in their evidence on oath that the Umuolu, Umuelechi, Obuzor, Asa share a common boundary on the land in dispute... During the inspection of the land both parties admitted that the beginning of the old road is the same, andey (sic) Pwl claims is the boundary.”*

I have no reason to depart from the view held by the lower court but same is also endorsed by me.

The law is trite and well settled that facts admitted are no longer issues between the parties. The declaration by the court that the whole issue for determination being a question of boundary between the parties was therefore borne out of the evidence before it and the result of the visit to locus in quo, the fact which, as rightly submitted by the respondent’s counsel, cannot be impugned easily unless there is contrary evidence that the court failed to take cognizance of facts before it or made wrong evaluation of the same thereof. In the absence of such failure shown on the record, the contrary cannot be in its place. The lower court, in my view was in order and had no other just alternative but to align itself with the trial court in giving judgment to the respondent, inclusive of the variation made.

I have no hesitation in endorsing that decision and therefore resolve the 2nd issue also in favour of the respondent.

On the totality of this appeal, I am in full agreement with the lead judgment of my learned brother Galadima (JSC) that the appeal lacks merit and is dismissed. I also abide by all orders made in the lead judgment.

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### **KEKERE-EKUN JSC**

I have had the benefit of reading before now the judgment of my learned brother, Suleiman Galadima, JSC, just delivered. I agree with the reasoning and conclusion that the appeal lacks merit and

should be dismissed. I shall make a few comments in support of the judgment.

#### PARTICULARS OF CLAIM

1. The plaintiff is a native of Umuolu compound in Umuelechi Obuzor Asa, Ukwa Local Government Area, within the jurisdiction of this honourable court.

2. The defendants are natives of Umuakapa compound in Umuelechi Obuzor Asa, Ukwa Local Government Area all within the jurisdiction of this honourable court.

3. The land in dispute known as and called “AGBARAUKWULAND” is the bonafide property of the Umuolu family and it is situate, lying and being at Umuelechi Obuzor Asa in Ukwa Local Government Area, within the jurisdiction of this honourable court.

This case originated at the Customary Court of Abia State sitting at Ubehe in Ukwa Local Government Area wherein the plaintiff (respondent herein) sought the following reliefs against the defendants (now appellants):.

1. A declaration that the plaintiff is entitled to the customary right of occupancy over a piece or parcel of land known as and called “AGBARAUKWULAND” situate at Umuelechi Obuzor Asa, Ukwa Local Government Area within the jurisdiction of this honourable court.

2. N1,000 (One Thousand Naira) being general damages for trespass into the said land.

3. A perpetual injunction restraining the defendants, Children, Servants, Agents/Privies from further entry into the said land.

4. Sometimes in February 1991 the defendants trespassed into the said land by clearing same for farming.

5. The plaintiff inherited the land in dispute from his forefathers and had been exercising maximum act of possession and ownership such as farming, harvesting palm fruits and other economic trees on the land without hindrance from anybody until defendants resolved recently seized the land. WHEREFORE the plaintiff has been damnified and claim as per writ.

It is significant to note that the parties conducted the case at the trial court without legal representation. The panel that heard and determined the claim was made up of laymen knowledgeable in the

customary law of the area. After hearing the parties and visiting the locus in quo, the court held that the main issue in controversy between the parties was the boundary of the land in dispute and entered judgment on 10/2/1992 in favour of the plaintiff.

The appeal of the defendants (present appellants) to the Customary Court of Appeal sitting at Umuahia was allowed on the ground that the respondent had no locus standi to sue either on behalf of the Umuolu family or on his own behalf and that he was not entitled to be declared the owner of the land, which he admitted belongs to the Umuolu family jointly. The court also held that the respondent failed to comply with the provisions of Order 5 Rule 2 of the Customary Court Rules by failing to indicate on the summons that he sued in a representative capacity.

On further appeal to the Court of Appeal, Port Harcourt Division by the respondent, that court set aside the judgment of the Customary Court of Appeal and affirmed the decision of the trial court. The court held that the appellant (respondent herein) had locus standi to institute the action to protect family land in his possession, that non-compliance with the rules of the Customary Court was not fatal to the claim and that the trial court was right in holding that the boundary of the land was the main issue in contention between the parties. The court also agreed with the trial court that the plaintiff (respondent in this appeal) had disclosed at the earliest opportunity that he held a portion of family land and had never claimed exclusive title thereto.

However, in affirming the decision, the court below varied the trial court's order by granting a customary right of occupancy in favour of the entire Umuolu family kindred of Umuelechi Obuzor Asa in place of the exclusive grant made in favour of the plaintiff. Clearly dissatisfied with this development, the appellants have further appealed to this court.

With regard to the first issue for determination, it is the appellants' contention that the respondent failed to prove his locus standi to institute the action and also failed to prove his entitlement to the land in dispute. On the issue of locus standi, the appellants' contention is that while in his claim the respondent sought for a declaration that he (alone) is entitled to the customary right of occupancy over the disputed land, it was revealed in evidence at the trial that the land

in dispute is family land. The appellants' grouse is that it was never disclosed, in compliance with Order 5 Rule 2 of the Customary Court Rules, that the respondent instituted the action in a representative capacity or that he was the head of the family or a principal member thereof.

B It is imperative to reiterate the fact that appellate courts have always adopted a liberal approach to customary court proceedings. Attention is focused on substance rather than form.

C The aim is to do justice and reach a decision that is in accord with common sense and reason, devoid of legal technicalities. See: Odofin Vs Oni (2001) 3 NWLR (Pt.701) 488 @ 510 A – B (2001) 1 SCNJ 130. What the court is concerned with is that the proceedings were conducted fairly and in accordance with the rules of that court. It was held in: Nthah VS Bennieh (1931) AC 72; 2 WACA 1 @ 3 D that:

“... decisions of the native tribunal on such matters which are peculiarly within their knowledge arrived at after a fair hearing on relevant evidence, should not be disturbed without very clear proof that they are wrong.”

E In Dadi Vs Garba (1995) 8 NWLR (Pt.411) 12 @ 18 E this Court held per Uthman Mohammed, JSC:

F “What is essential in examining the trials in a customary court is to look into the entire evidence in the proceedings in order to discover the precise nature and subject matter in controversy between the parties. The form of wording of the claim and the parties’ capacity should not be a germane issue for the impeachment of a customary court’s judgment.” (Emphasis mine)

G Applying the above principles to the facts of this case, it is quite clear that notwithstanding the wording of the claim drafted by a layman, the respondent, in his evidence in chief and also under cross-examination, stated categorically that the land belongs to “Umuolu people”. That he was given a portion of the family land upon which he planted palm trees as far back as 1980 without let or hindrance H from anyone until the appellants trespassed thereon. He also stated under cross-examination that he had the support of other members of the family in bringing the action. The lower court was quite right, in my view, when it held that the respondent had not only shown sufficient interest in the land in dispute, he had disclosed unequivocally

cally that he sued on behalf of his family, being the person directly responsible for the portion trespassed upon. The appellants have not advanced any cogent reasons to disturb this finding.

On the second issue, the appellants contend that the lower Court erred in holding that the main contention between the parties was the boundary of the land and consequently finding that a case of trespass had been made out against the appellants and yet proceeded to grant a right of occupancy over Agbaraukwu Land to the Umuolu family.

As stated earlier, for an appellant to succeed in setting aside the decision of a customary court, he has the onerous task of proving that the proceedings were conducted in breach of the principles of fair hearing or that the decision is wrong. On the nature of the controversy between the parties, the court below held at page 215 of the record:

*“It is our opinion that the issue was judicially, judiciously and competently determined by the trial Court, I am unable to fault the decision of the trial court, part of which is hereby reproduced for purpose of emphasis:*

*“After a careful review of the evidence of both parties... court is of the opinion that the vital issue... to determine is... the boundary of the land, as both parties admitted in their evidence on oath that the Umuolu, Umuelechi, Obuzor Asa share a common boundary on the land in dispute... During the inspection of the land both parties admitted that the beginning of the old road is the same, and they (sic) PW1 claims is the boundary,”*

*It is instructive to note that it was not the Respondents who challenged the appellant who had been cultivating the land for 24 years. It was the appellant who sought a definition of boundary to curtail the encroachment of the respondents. Boundary was indeed the main stake of the suit.*

The finding is unassailable. The trial court was right when it held, after conducting a visit to the locus in quo, that the main issue between the parties was the boundary of the land. The court below was also right in upholding this finding of fact. I also agree that in the circumstances of this case, the lower court was right in its decision to vary the order of the trial court by granting the right of occupancy in respect of the land in dispute called Agbaraukwu Land, to the Umuolu

family/kindred in Umuelechi Obuzor area, in the interest of justice, peace and harmony and in discharge of its duty to ensure that there is an end to litigation.

For these and the more detailed reasons, well advanced in the lead judgment, I also find the appeal to be lacking in merit. I accordingly dismiss it and abide by the consequential orders made in the lead judgment.

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**OKORO JSC**

I read in advance the very illuminating judgment of my learned brother, Suleiman Galadima, JSC just delivered with which I am in total agreement that the appeal lacks merit and deserves an order of dismissal.

My learned brother has efficiently resolved the two issues submitted for the determination of this appeal and I do not have much to say. However, I shall make a few comments in support of the judgment only.

As far back as 1977, this court stated the need to accord special treatment to decisions emanating from native or customary courts. In *Chief Karimu Ajagunjeun V. Sobo Osho of Yeku Village & Ors*, (1977) 5 SC (reprint) 55 also reported in (1977) LPELR SC 225/1974 pp. 16 - 17 paras F - F, Idigbe, JSC held that proceedings in a native court in which members of the legal profession have no audience, great latitude must be given a broad interpretation placed, on the proceedings and judgment so that in such cases it is necessary to look at the whole of the proceedings i.e. evidence of the parties and judgment, in order to arrive at the correct conclusion as to what the case was all about. The reason for this special treatment is not far-fetched. I am aware that in some jurisdictions in this country, legal practitioners preside over matters in customary courts. It is true that in such jurisdiction, counsel are admitted to practice in these courts.

However, not all jurisdictions have this arrangement. The courts are still being manned by non legally qualified persons. Their only qualification is their knowledge of the local customs and traditions of the community they preside. Even where lawyers preside in these courts, I do not think that alone will make such courts lose their character.

The above, in my view appears to be the settled principle regarding judgments from customary courts. In the instant appeal, the claims of the plaintiff at the trial Customary Court of Ukwu Local Government Area of Abia State Holden at Obehie, the respondent herein as the plaintiff prayed for the following reliefs:-

*“(a) A declaration that the plaintiff is entitled to the customary right of occupancy over a piece or parcel of land known as and called “Agbaraukuru” situate at Umuelechi Obuzor Asa in Ukuja Local Government Area within the jurisdiction of this honourable court.*

*(b) One thousand naira for trespass.*

*(c) Perpetual injunction restraining the defendants, their children, servants, agents and privies from further entry into the said land.”*

The record of appeal shows that the plaintiff’s evidence at the trial customary court revealed that he was prosecuting the case on behalf of his family and that the real issue in controversy relates to boundary. This was made clear at the locus which the court visited and took evidence therein. The trial court was satisfied to enter judgment for the plaintiff, now respondent.

The record also shows that the Customary Court of Appeal reversed the judgment of the trial court on the ground that the respondent herein lacked the locus standi to institute the action having revealed in his evidence that the land belonged to his family though it was in his custody. The other reason which the Customary Court of Appeal gave for upturning the judgment was that having shown by evidence that the land belonged to the plaintiff’s family, it was wrong for the court to have awarded title to the plaintiff in his personal capacity.

In its judgment, the court below (Court of Appeal) in setting aside the judgment of the Customary Court of Appeal and restoring the judgment of the trial Customary Court, held that the respondent herein had the locus standi to sue in this matter having shown sufficient interest in the property. It however varied the judgment of the trial court by ordering that title in the property be vested in the family of the appellant. It also held that the main issue before the trial court was issue of boundary and not strictly that of declaration of title.

Two issues were formulated for the determination of this appeal. The first is whether the respondent had locus standi to sue while

the second issue is whether the court below was right to hold that the main contention between the parties was that of boundary and whether the court below was right to award the land to the family of the respondent.

Let me state here that in the customary court, the claim and  
 B reliefs sought by the plaintiff is usually drafted by the clerks and/or  
 registrars of that court who are not lawyers. Thus although the claim  
 on the face of it does not indicate that it is being made in a represen-  
 tative capacity, where the evidence discloses this fact, that court is  
 C bound to act and be guided accordingly. See *Okukuje v. Akwido*  
 (2000) 2 SCNJ 113 at 119 - 120. In this case, the respondent herein  
 as plaintiff made it clear that although he was the person in charge of  
 the land and cultivating same, including a palm plantation he made  
 in 1980, the land belongs to his family. For me, that was enough to  
 D show that he was suing in a representative capacity.

The question is, did he have the locus standi to prosecute this  
 matter? Without much ado, let me state clearly that it is now well  
 settled that locus standi is the legal capacity to institute proceedings in  
 a court of law. See *Thomas & Ors. V. Olufosoye* (1986) 1 NWLR (pt.  
 E 18) 669, *Odeneye V. Efunuga* (1990) 11 - 12 SC 122. For a person  
 to have locus standi to sue, all he needs to do is to show that he has  
 sufficient interest in the subject matter of the action and that his civil  
 rights and obligations have been or are in danger of being infringed.  
 F Of course, it is the statement of claim that will show whether the  
 plaintiff has locus standi to sue or not. However, where by his evi-  
 dence it is clear that the plaintiff is a busybody or an interloper, the  
 court is entitled to hold that he lacks the locus standi to sue and the  
 matter struck out. In other words, if he does not show sufficient inter-  
 G est in the matter, he has no locus to sue. See *Owodumi V. Registered*  
*Trustees of Celestial Church of Christ* (2000) 6 SC (pt. 3) p. 60,  
*Ojukwu v. Ojukwu & anor.* (2008) 12 SC (pt. III) page 1 at 17.

In the instant case, as was held by the court below, the respon-  
 dent herein, has shown sufficient interest in the property in issue,  
 H after all, he has been in possession and even has a palm plantation  
 which he cultivated since 1980. It is of interest that none of the ap-  
 pellants herein at any time challenged him for planting the palm trees  
 on the land over the years. For me, I think that both for himself and  
 as representing his family, he was clothed with sufficient vires to insti-

tute and prosecute this matter.

On the second issue, having held that the respondent acted in representative capacity and that he had the locus to sue, it was only fair and just for the lower court to adjust or vary the order of the trial court in reposing the customary right of occupancy on the family of the respondent in order to lay the matter to rest and not give room for further litigation in the matter. I agree that this was the most sensible and reasonable decision in the circumstance. B

Based on the reasons I have stated above and the more detailed ones ably adumbrated in the lead judgment, I agree that this appeal lacks merit. I also dismiss it. I affirm the decision of the court below on this matter. I abide by all consequential orders made in the lead judgment, that relating to costs, inclusive. C

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### SANUSI JSC

This appeal emanates from the decision of the Port Harcourt Division of the Court of Appeal (“the lower court”, for short) delivered on 11th November 2004 which sat on appeal against the judgment of Customary Court of Appeal. The Appellants herein were defendants at the trial court (hereinafter referred to as “the intermediate court”). The latter court heard an appeal from the decision of Customary Court Umuahia (hereinafter called “the Trial court” or “Court of First instance”). i.e. Customary Court, Umuahia, while the present respondent was plaintiff thereat. The latter sued the defendants, and now appellants seeking the under listed reliefs: D

*A. A declaration that the plaintiff is entitled to the Customary Relief of Occupancy over a piece of land known and called “Agbarankwu” situate at Umuelechi Obuzor Asa in Ukwu Local Government Area.* E

*B. - One Thousand Naira damages for trespass*

*C. - Perpetual injunction restraining the defendants, their children, servants, agents and privies from further entry into the said land.”* F

At the conclusion of the proceedings, the trial court held that the claims by the plaintiff revolved on the issue of boundary of the land because both parties were ad idem to their respective ownership of same portion of the land in dispute. The trial court indeed H

ascertained the boundaries, before it ultimately entered judgment for the plaintiff/respondent against the defendants/appellants. The defendants now appellants, became aggrieved by the decision of the trial or court of First Instance, hence they appealed to the Customary Court of Appeal, Umuahia (the Intermediate court), and they raised  
B the issue of want of locus standi on the part of the plaintiff, now respondent in that it held that the plaintiff did not sue in representative capacity, hence it held that he had no locus standi to sue, since the land was a family land and also since the said land belonged to  
C three different kindred and it wondered how customary right of occupancy could be granted to the plaintiff/respondent, herein.

Dissatisfied with the judgment of the Customary Court of Appeal (intermediate court), the plaintiff /respondent appealed to the Court of Appeal (the court below/ lower court) and raised four issues  
D for determination. The court below resolved all the four issues in favour of the plaintiff/respondent even though it finally restored title of the portion of the land in dispute in favour of the entire family of the respondent, rather than in his favour alone as an individual because it found that by suing the present appellants then defendants,  
E he did so merely to protect further trespass into the land by the appellants and also because he did so on behalf of and with the consent of the entire members of his family. It also found that he had been cultivating the land in dispute for a long period of time without any  
F hindrance or challenge from any of his family members or even by the appellants.

His lordship had ably and painstakingly dealt with all the salient issues canvassed by the learned counsel for the parties.

I only intend to chip in few comments on some of the points  
G raised or argued by parties learned counsel just for purpose of emphasis or amplification.

It is noted by me, that one of the complaints lodged by the appellants is that the respondent did not comply with the provisions of Order 5 Rule 2 of Customary Court Rules by indicating that he  
H instituted his action in a representative capacity or that he was the head of the family. With due deference to the learned counsel for the appellants, courts are always enjoined to ensure doing justice rather than being swayed by or resorting to technicality which will in the end lead to doing injustice to the parties. In this instant case, evidence

abound that the respondent instituted the action with full consent of his family members some of whom had even testified in the case to support the respondent's claim at the trial court. We should not loose sight to the fact that none of the respondent's family members had protested against the action throughout the duration of the proceedings in the courts below. Similarly, none of the respondent's family members withdrew any consent or denied being represented by him in the suit instituted or pursued by the respondent. B

It is trite that appellate courts should not be rigid, strict or dogmatic especially in determining appeals from Area/Native or Customary Courts. It is equally trite, that a family member can himself alone or with other family members sue in defence of the family land in his possession. See *Sapo v Sumonu* (2010) All FWLR (pt 531) 14091 142; *Agbagefele v Layinka & Ors* (1993) 3 SCNJ 139; *Nwabueze Vs Idris & Anor* (1993) 2 SCNJ 139. C D

Now this brings me to the appellants' grouse on the variation of the decision of the intermediate court by the court below on the latter's grant of the title to the land in dispute to the entire respondent's family members. It would seem to me, that the court below can not be faulted in order of variation if one closely considers the antecedents and circumstances of the entire appeal before it. I do not think it is out of place for the court below to have ordered that variation in the grant of the title to the land in favour of the entire respondent's family, rather than to himself alone. This is so when one considers the testimony of the Respondent when he testified as PW1 at the trial court where during cross examination, the respondent was asked inter alia, (at page 120/121 of the record) as follows:- E F

*"Q. Does Agbarankwu land belong to you alone or to the whole Umuolu?"* G

*Ans. It belongs to Onumara, Umuolu*

*Q. Is it Customary for one person alone to sue for land belonging to a kindred?"*

*Ans. One man can sue. I have other people with me."*

As rightly found by the lower court, the respondent had never laid personal claim of the land in dispute alone. He merely expressed his desire to protect the portion of the family land which was entrusted to him and which he cultivated for a long period of time i.e. since 1980. It is my candid view therefore, that the court below was H

correct when it held on page 217 of the Record as below:-

*“It would in my humble opinion be equitable in the interest of justice harmony, peace and end of litigation that the customary right of occupancy be reposed in Appellants family as a group rather than the Appellant as an individual”*

B I can not agree more with the above finding of the court below. I therefore endorse same.

In the result, for these few comments of mine and the fuller and detailed reasoning of my learned brother Suleiman Galadima, C JSC, I hold that this appeal is devoid of any merit. I accordingly dismiss it and affirm the judgment of the court below. I make no order on costs.

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