

SUPREME COURT OF NIGERIA
FRIDAY 29TH JANUARY, 2016. SC. 172/2006
CORAM:- S. GALADIMA, M. D. MUHAMMAD,
K. M. O. KEKERE-EKUN, J. I. OKORO, A. SANUSI, JJSC

RUFUS ISAAC APPELLANT
AND
JOHN ODIGIE IMASUEN RESPONDENT

JUDGMENTS - Basis - Decisions of court proceed not only on the basis of pleaded facts - But also on the basis of facts as established by evidence in that behalf (H1)

PLEADINGS - Binding nature of - Land law - Laches - The facts appellant relies on must be pleaded by way of special defence - As he is not entitled to rely on a defence - Which is based on facts not stated in his statement of defence (H2)

LAND LAW - Title - Pleadings - Respondent claiming declaration of title - Must establish his title by supplying credible evidence - In proof of his pleadings (H3)

LAND LAW - Title - Proof - Respondent having established a better title is the owner of the land - And appellant being unable to plead facts of his equitable defence - Is a trespasser (H4)

LAND LAW - Trespasser - Status of - Trespasser does not by virtue of his act of trespass - Acquire lawful possession of the land (H5)

FACTS

This action was commenced at the High Court of Edo State by plaintiff/respondent against defendant/appellant. The claim is for declaration of title to disputed land, damages for trespass committed on the land and an order of perpetual injunction. Respondent's contention is that he found appellant trespassing on the land sometime in January 1979. Respondent claimed that appellant was promptly notified of his (respondent's) ownership of the land. The matter was thereafter referred to a committee in the community for resolution.

Following the inability to achieve an amicable settlement, respondent was left with no option than to approach the court for redress. Appellant's case is a total denial of respondent's entitlement to the reliefs he seeks. Appellant however failed to raise any counter claim in the matter.

At the end of the trial, the Court found for respondent. Dissatisfied, appellant appealed to the Court of Appeal Benin Division. With the leave of the Court, appellant filed two additional grounds of appeal to wit error of the trial Judge in granting title to respondent and error of the trial Judge for failure to apply the doctrine of laches and acquiescence. Among the contentions of Appellant in the Court is that respondent having stood by was guilty of laches and acquiescence and that judgment ought not to be founded in his (respondent's) favour. In a considered judgment, the Court found no merit in the appeal. It was thus dismissed and judgment of trial Court affirmed. Aggrieved further, appellant appealed to the Supreme Court.

ISSUE FOR DETERMINATION

"Whether the respondent was not guilty of laches and acquiescence in that he stood by and waited for the appellant to complete his residential building and moved in before he instituted his civil action against the appellant."

HELD (Unanimously dismissing the appeal per

MUHAMMAD JSC)

JUDGMENTS - Basis

1. It is an elementary principle that decisions of a law court proceed not only on the basis of pleaded facts but also on the basis of the facts as established by evidence in that behalf. Thus any decision of a court which proceeds in the absence of the party's pleadings and/or evidence in proof of the pleadings, being perverse, would not endure on appeal.

(p. 75 H)

PLEADINGS - Binding nature of

2. A defendant such as the appellant is not entitled to rely upon a defence which is based upon facts not stated in his

statement of defence. The facts a defendant alleges and relies upon must be stated specifically in his pleadings by way of a special defence. Having not pleaded the facts on which he seeks to found his special defence, and the defence not being in respect of such matters pleaded by the respondent, the appellant must not be allowed to make any case outside the matters he pleaded. This Court has, in very many cases, emphasized that parties only safeguard their interest if they strictly adhere to the rules of pleading in the conduct of their cases. Because their main function is to ascertain the various matters in dispute among the parties and those on which some agreement have been attained with such degree of certainty that is humanly possible, pleadings must be sufficient, comprehensive, and accurate. Every pleading, particularly those which raise special defences, must contain statement of all the material facts on which a defendant bases his defence to avoid surprise to the plaintiff.

In the case at hand, where the appellant's 2nd amended statement of defence is bereft of concise and sufficient statement of facts on which the defence of laches and acquiescence is being rested, it would be illegitimate to allow the appellant, in the circumstance, press the defence. Notwithstanding the seeming potency of the submission of his counsel, arguments so advanced in departure from the pleadings on record go to no issue as well. (p. 77 B)

LAND LAW - Title - Pleadings

3. It is thus for the respondent herein who claims declaration of title to the land in dispute, trespass and injunction against the appellant to establish his title by supplying credible evidence in proof of his pleadings. The onus thereafter shifts on to the defendant to show that his own possession, on the application of equitable rules by the court ousts the appellant's possession who resultantly is refused the reliefs he seeks. In the case at hand, even where one accepts, paragraph 18 in the appellant's 2nd further amended statement of defence, vague as it is, as reference to the defence of laches, acquiescence and standing by, it cannot indeed be said that

the appellant has either pleaded and/or established facts upon which the defence could be sustained. (p. 78 A)

LAND LAW - Title - Proof

4. In the case at hand, therefore, both courts below are right in their concurrent findings that the respondent, who has established a better title, is the owner of the land in dispute and the appellant who, being unable to plead and prove facts on the basis of which the equitable defence he alleges enures to him hangs, is a trespasser. (p. 78 D)

LAND LAW - Trespasser - Status of

5. A trespasser does not by virtue of his act of trespass acquire lawful possession of the land. The respondent, from his pleadings and evidence thereon remains in exclusive possession of the land in dispute which possessory right the appellant is established to have violated. (p. 78 E)

REPRESENTATION

E N. P. Osifo for the Appellant
C. N. Dike for the Respondent

CASES REFERRED TO

F Taylor v. Kingsway Stores of Nig. Ltd. (1965) NMLR 103
Onuwaje v. Ogbeide (1991) 3 NWLR (pt. 178) 147
Okonkwo v. C.C.B. (Nig) Plc. (2003) 8 NWLR (pt. 822) 347
Thompson v. Arowolo (2003) 7 NWLR (pt. 818) 163
Adake v. Akun (2003) 14 NWLR (pt. 840) 418
G Amodu v. Amode (1990) 9-10 SC 61
Morohunfola v. K.S.C.T. (1990) 7 SC (pt. 1) 40
Uzochukwu v. Eri (1997) 7 SCNJ 238
Nigerian Railway Corp. v. Odemuyiwa (1974) 1 SC 9
Adesanya v. Otuewu (1993) 1 NWLR (pt. 270) 414
H Odife v. Aniemeka (1992) 7 NWLR (pt. 251) 25
Alii v. Alesinloye (2000) 6 NWLR (pt. 660) 177
Adeniran v. Alao (2001) 12 SCNJ 337
Prince of Wales v. Collon (1916) 2 KB 203

LEAD JUDGMENT BY MUHAMMAD JSC

This is an appeal against the judgment of the Court of Appeal, Benin Division, delivered on 25th April 2006 affirming the decision of the trial court, the High Court of Edo State, in Suit No. B/1/84 dated 1st March 1994. The court which judgment is being appealed against will, from now on, be referred to as the lower court. The brief facts of the case which inform the appeal are hereinunder captured. B

The respondent was the plaintiff with the appellant being the defendant at the trial court. By the endorsement in paragraph 21 of his further amended statement of claim dated 29th June 1988, the respondent claimed against the appellant declaration of title to the right of occupancy to the land in dispute delineated and verged pink in plan No. 150/BO/1091/86 of 29 - 7 - 86, damages for trespass and injunction. C D

Pleadings were filed and exchanged. Trial proceeded on the basis of respondent's amended statement of claim at pages 19 - 21 of the record of appeal dated 7th October 1986 and appellant's 2nd further amended statement of defence at pages 42 - 45 dated and filed 5th November 1990. From the pleadings and evidence on record, respondent's case is that in January 1979, the appellant, on being found on the land in dispute and challenged by the respondent, informed the latter that he acquired the land six years earlier. The respondent reported the matter to the Oba of Benin's palace as confirmed by PW8, Chief Ojo Udobor, the Esasonyen of Benin. A committee including Chief Ojo Udobor was constituted and delegated to enquire into the issue and report back to the palace. The Oba's inability to settle the matter explains the respondent's resort to the writ of summons and the suit against the appellant that brought about this appeal. E F G

Appellant's case is a total denial of respondent's entitlement to the reliefs he seeks. Appellant does not, however, counter claim.

After a full trial, including counsel's addresses, the trial court found for the respondent. Aggrieved by the trial court's decision, the appellant appealed to the lower court on a Notice filed on 8th March 1994 containing a sole ground. In addition to his original ground the appellant, with leave of the lower court, filed two H

additional grounds of appeal which, without their particulars, read as follows:-

“(i) The learned trial judge erred in law when she granted the plaintiff a declaration to the parcel of land in issue.

B *“(ii) The learned trial judge erred in law when she failed to apply the equitable doctrine of laches and acquiescence in the instant case.”*

From the three grounds of appeal, the lower court was urged to determine the appeal on the basis of the lone issue distilled by each of the parties to the appeal.

C Appellant’s issue for the determination of the appeal at the lower court reads:-

“Whether the respondent was entitled to the declaration of title sought at the lower court.”

D Respondent’s issue at the lower court reads:-

“Whether on the evidence led by the plaintiff (Respondent) he had proved his case in balance of probabilities to entitle him to the declaration of title he sought and which was granted by the learned trial judge.”

E At paragraphs 4.06 - 4.07 of the appellant’s brief at the lower court it was argued that the respondent having stood by was guilty of laches and acquiescence and that it is inequitable for the trial court to have found for him.

F Aderemi JCA (as he then was) in a well considered lead judgment at pages 135 - 158 found no merit in the appeal which he dismissed and affirmed the trial court’s judgment.

Still dissatisfied, the appellant has appealed to this Court on a lone ground. The ground without its particulars reads:-

G *“The learned Justices of the Court of Appeal erred in law when they failed to apply the doctrine of laches and acquiescence in the determination of the above named appeal.”*

The issue for the determination of the appeal distilled by the appellant from his lone ground reads:-

H *“Whether the respondent was not guilty of laches and acquiescence in that he stood by and waited for the appellant to complete his residential building and moved in before he instituted his civil action against the appellant.”*

Respondent’s issue on the other hand reads:-

“Whether from the pleadings and evidence in the record of proceedings in this Appeal the equitable defence of laches and acquiescence did arise and/or whether Respondent was guilty of it.”

Arguing appellant’s lone issue, learned appellant counsel contends that the writ of summons taken out by the respondent on 4th January 1984 was served on the appellant at his completed house B situate at the land in dispute. The appellant, it is submitted, started building in 1979 and the respondent stood by for five years before instituting his claim against the appellant. DW2, it is further submitted, had advertised appellant’s application for the grant of certificate of occupancy in the Nigerian Tribune newspaper of 16th May 1980. C Having failed to assert his right to the land in dispute in spite of these facts, it is argued, respondent is foreclosed from doing so by this suit. Learned appellant counsel relies on the decisions in S.A.T. Taylor & D ors V. Kingsway Stores of Nigeria Ltd. & or (1965) NMLR 103 and Akpan Awo V. Cookey Gam 2 NLR 100 and prays the resolution of their lone issue in appellant’s favour and allowing the appeal as well.

Responding, the defence of laches and acquiescence, submits learned respondent counsel, was neither raised nor canvassed at the trial court by the appellant. Defences, it is further submitted, must E specifically be pleaded. Appellant’s failure to specifically plead the defence of laches and acquiescence in his 2nd further amended statement of defence is fatal to his appeal. The leave granted the appellant by the lower court to raise an additional ground of appeal F touching on the defence of laches and acquiescence that had not been pleaded, contends learned counsel, does not cure the defect. Relying on Onuwaje V. Ogbeide (1991) 3 NWLR (Part 178) 147 at 153, learned respondent’s counsel urges that the lone issue in the appeal be resolved against the appellant. He also urges that the appeal G be dismissed.

The issue this appeal raises is indeed a narrow one can the respondent who, having pleaded and established by credible evidence facts on which his claim predicates be lawfully refused the reliefs he H seeks against the appellant who neither pleaded nor established his entitlement to the equitable defence of laches, acquiescence and standing by? I think not.

It is an elementary principle that decisions of a law court proceed not only on the basis of pleaded facts but also on the

basis of the facts as established by evidence in that behalf. Thus any decision of a court which proceeds in the absence of the party's pleadings and/or evidence in proof of the pleadings, being perverse, would not endure on appeal. See

Okonkwo V. C.C.B. (Nig) Plc (2003) 8 NWLR (Pt 822) 347,
 B Thompson V. Arowolo (2003) 7 NWLR (Pt 818) 163 and Adake V. Akun (2003) 14 NWLR (Pt 840) 418.

In the case at hand, learned appellant's counsel appears to have underestimated the place of pleadings, particularly in respect
 C of facts a party desires to rely upon as defence to a claim, in the adjudication process. The appellant had had to seek leave of the lower court to file an additional ground of appeal to enable him raise a complaint of the delay the respondent is being alleged to be guilty of before instituting the instant action. In spite of the leave the lower
 D court granted the appellant to raise and argue laches and acquiescence as a fresh issue, Aderemi JCA as he then was never considered the matter in the course of determining the appeal as lacking in merit.

It is Shoremi JCA (as he then was) who, in his concurring judgment, correctly considered the issue and held at page 161 of the
 E record as follows:-

"The learned counsel to the appellant in his ground II which reads, I quote, 'The learned trial Judge erred in law when she failed to apply the equitable doctrine of laches and acquiescence in the instant case.'

F *On a perusal of his second further Amended Statement of Defence, there was nowhere where he pleaded the defence now raised. The nearest he came to is stated in paragraph 22 thus:-*

G *'22. The defendant will at the trial rely on all legal and equitable defence and contend that the plaintiff's claim is frivolous, vexative and speculative and should be dismissed.'*

H *This is not positive on the defence of laches or acquiescence. The defence now raised was neither pleaded nor canvassed at the lower court. The defence of laches and acquiescence must be specifically pleaded. The respondent was at all times vigilant and therefore can not be said to have by his conduct done anything that can be regarded as a waiver of his remedy.*" (Underlining mine for emphasis).

It is correct to say that the lower court is wrong to have omitted, in the lead judgment, a decision one way or the other the issue of laches and acquiescence the appellant was granted leave to raise. The foregoing position of Shoremi JCA however remains unassailable and obviates whatever miscarriage of justice the appellant appeals to have suffered.

A defendant such as the appellant is not entitled to rely upon a defence which is based upon facts not stated in his statement of defence. The facts a defendant alleges and relies upon must be stated specifically in his pleadings by way of a special defence. Having not pleaded the facts on which he seeks to found his special defence, and the defence not being in respect of such matters pleaded by the respondent, the appellant must not be allowed to make any case outside the matters he pleaded. See E.O. Amodu V. Dr. J.O. Amode & anor D (1990) 9-10 SC 61; Morohunfola V. K.S.C.T. (1990) 7 SC (Pt. 1) 40. ***This Court has, in very many cases, emphasized that parties only safeguard their interest if they strictly adhere to the rules of pleading in the conduct of their cases. Because their main function is to ascertain the various matters in dispute among the parties and those on which some agreement have been attained with such degree of certainty that is humanly possible, pleadings must be sufficient, comprehensive, and accurate. Every pleading, particularly those which raise special defences, must contain statement of all the material facts on which a defendant bases his defence to avoid surprise to the plaintiff.***

In the case at hand, where the appellant's 2nd amended statement of defence is bereft of concise and sufficient statement of facts on which the defence of laches and acquiescence is being rested, it would be illegitimate to allow the appellant, in the circumstance, press the defence. Notwithstanding the seeming potency of the submission of his counsel, arguments so advanced in departure from the pleadings on record go to no issue as well. See Moses Uzochukwu & ors V. Madam Amaghalu Eri (1997) 7 SCNJ 238 and Nigerian Railway Corp. v. Dr. B. Odemuyiwa (1974) 1 SC 9.

It is thus for the respondent herein who claims declaration of title to the land in dispute, trespass and injunction against the appellant to establish his title by supplying credible evidence in proof of his pleadings. The onus thereafter shifts on to the defendant to show that his own possession, on the application of equitable rules by the court ousts the appellant's possession who resultantly is refused the reliefs he seeks. In the case at hand, even where one accepts, paragraph 18 in the appellant's 2nd further amended statement of defence, vague as it is, as reference to the defence of laches, acquiescence and standing by, it cannot indeed be said that the appellant has either pleaded and/or established facts upon which the defence could be sustained. See Adesanya v. Otuewu (1993) 1 NWLR (Pt 270) 414 and Odife V. Aniemeka (1992) 7 NWLR (Pt 251) 25.

In the case at hand, therefore, both courts below are right in their concurrent findings that the respondent, who has established a better title, is the owner of the land in dispute and the appellant who, being unable to plead and prove facts on the basis of which the equitable defence he alleges enures to him hangs, is a trespasser. A trespasser does not by virtue of his act of trespass acquire lawful possession of the land. The respondent, from his pleadings and evidence thereon remains in exclusive possession of the land in dispute which possessory right the appellant is established to have violated. See Alii V. Alesinloye (2000) 6 NWLR (Pt 660) 177 and Ezekwesili V. Agbapuonwu (2003) 9 NWLR (Pt 825) 337 at 363-364.

In the result, I resolve appellant's lone issue against him and dismiss his appeal for lack of merit. The decision of the trial court as affirmed by the lower court is hereby further affirmed. I put the costs of the appeal at N200,000.00k (Two Hundred Thousand Naira) and award same against the appellant in favour of the respondent.

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GALADIMA JSC

I have the opportunity of reading in draft the leading judgment of my brother Musa Dattijo Muhammad JSC, just delivered. I agree

with his reasoning leading to the conclusion that the appeal is unmeritorious and ought to be dismissed.

The Respondent who was the plaintiff at the trial court claimed against appellant as the defendant, a declaration of title of occupancy to a certain parcel of land being disputed. The trial court found for the respondent. The court below affirmed the trial court's judgment. B

In his appeal to this Court the appellant lone issue distilled from a lone ground of appeal is on question of whether the respondent was not guilty of laches and acquiescence as he stood by waiting for the appellant to complete his residential building and moved in before he took legal steps. It is the contention of the Respondent that from the evidence placed before the trial court the equitable defence of laches and acquiescence did not arise and therefore the Respondent could not be said to be guilty of any. Laches and acquiescence, being equitable defences in essence, they merely state if a land owner stood by while a stranger developed his land in good faith such owner would be estopped from reaping the benefit of such development and a court of equity would not assist him in enforcing his right. See AFOLABI COKER v. MORIAMO OGUNTOLA AND ORS. (1984) NSCL 869, GODWIN NSIEGE AND ANOR v. OBINNA MAGBEMENA AND ANOR. (2007) 4 SCNJ 359. This equitable defence when raised must be specifically pleaded in the defendant's statement of defence. It must contain statement of all material facts in which a defendant has based such defence. This is to avoid springing a surprise on the plaintiff. I cannot see in the Appellant's 2nd Amended Statement of Defence where he set out sufficiently statement of facts from which the defence of laches and acquiescence could be inferred. It is not sufficient to merely argue the point in the Appellant's brief of argument. See NIGERIAN RAILWAY CORPORATION v. DR. B. ODEMUYIWA (1974) 1 SC 9, ADESANYA v. OTUEWU (1993) 1 NWLR (pt. 270) 414. F G

From the pleadings and evidence on record, the Respondent promptly challenged the Appellant when he was found on the land in dispute, which the Respondent claimed he acquired six years much earlier. PW 8, a palace Chief of Oba of Benin narrated the protracted efforts made by the Oba to settle the matter. Hence the Respondent decision to resort to court to seek redress. I cannot fault the concurrent findings of the two courts below that the Respondent did establish a H

better title to the land. He is the owner of the land in dispute as he has proved his possessory right against the Appellant.

In the light of this foregoing, I too dismiss the appeal and affirm the decision of the court below. I abide by order made as to costs against the Appellant but in favour of the Respondent.

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KEKERE-EKUN JSC

I have had a preview of the judgment of my learned brother, M. D. MUHAMMAD, JSC just delivered. I agree with the reasoning and conclusion that this appeal lacks merit and should be dismissed. The appellant’s sole issue for determination in this appeal is:

Whether the respondent was not guilty of laches and acquiescence in that he stood by and waited for the appellant to complete his residential building and moved in before he instituted his civil action against the appellant.

My first observation is that a careful examination of the record reveals that there was no decision of the court below on the issue of laches and acquiescence to warrant it being an issue for determination before this court. The law is that an issue for determination must be distilled from the grounds of appeal, which must in turn be predicated upon the *ratio decidendi* of the judgment or ruling appealed against. See: DALEK NIG. LTD. VS. OMPADEC (2007) ALL FWLR (364) 204 @ 226 F - H; Adelekan Vs ECU-LINE NV (2006) 12 NWLR (Pt. 993) 33; Yadis Nig. Ltd. Vs Great Nigeria Insurance Co. Ltd. (2007) 14 NWLR (Pt. 1055) 584.

It is true that the appellant, before the lower court, sought and obtained leave to argue two additional grounds of appeal, one of which raised the issue of laches and acquiescence. However, even though the issue was argued in paragraph 4.06 of the appellant’s brief at page 109 of the record, the court below did not make any pronouncement in respect thereof in its judgment. Beyond this fact, it is also apparent from the record that even at the trial court, the appellant neither pleaded nor led evidence on laches and acquiescence. The law is that a defence of laches and acquiescence must be specifically pleaded and proved. Full facts and particulars must be pleaded, See: Adeniran Vs Alao (2001) 12 SCNJ 337. The person relying on the defence must plead that the respondent

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fraudulently, knowingly and deliberately stood by while he changed his position, See: Ezekwesili Vs Agbapuonwu (2003) 9 NWLR (Pt.825) 337 @ 381. The appellant's pleading in paragraph 22 of his 2nd Further Amended Statement of Defence at page 42 of the record that "*the defendant will at the trial rely on all legal and equitable defences and contend that the plaintiffs claim is frivolous/ vexatious and speculative and should be dismissed*", falls far short of the legal requirement. B

As is it was not an issue before the trial court, it could not rightly be the subject of a ground of appeal or an issue for determination in any subsequent appeal. The ratio decidendi of the decision of the court below, per Aderemi, JCA (as he then was) is found at pages 156 - 157 of the record, to wit: C

"...*The law in respect of the land under the Benin Customary Law prior to the promulgation of the Land Use Act in 1978 is that "a registered conveyance of land subject to grant under Benin Customary Law does not confer valid title if the vendor, as in this case, has no right or any valid interest which he could transfer at the material time, he having not obtained the consent of the OBA OF BENIN and there being no system of registration of title under Benin Customary Law. See FINNIH VS IMADE (1972) 1 N.S.C.C. 56. For the umpteenth time, I will like to say that under Bini Communal Land Matter, only the Oba of Benin upon the recommendation by the appropriate Plot Allotment Committee can transfer any legal estate in any Bini Communal land to a purchaser. See AIGBE VS EDOKPOLOR (1977) V.S.C.C. 44 and the case of ARASE referred to supra.*" D E F

The effect of all I have been saying is that while the plaintiff/respondent traced his title to that of the established owner, the defendant/appellant failed to do so. Therefore there are no legally competing interests in the land in dispute between the plaintiff/respondent and the defendant/appellant. So the question whether the interests of the parties will, prima facie rank in order of their creation based on the maxim I have referred to supra does not arise. The law remains static that once a plaintiff traces his title to one whose title to ownership of the land has been established, the onus is upon the defendant to show that his own possession is of such a stature as to oust that of the original owner.... H

That the defendant/appellant can never do in the instant case, having, from his pleadings, admitted the title in Bini Communal land is, by law, vested in the Oba of Benin. Consequently, the only issue raised by the appellant through his brief of argument is answered in the affirmative. While I also answer the only issue identified in the
 B *brief of the respondent for consideration by this court in the affirmative. Let me further say that any relief for declaration of title to statutory right of occupancy to land in Benin must be subject to Benin Customary Law. In the final analysis it is my judgment that this*
 C *appeal is unmeritorious and it is hereby dismissed."*

The appellant did not appeal against any of the profound findings of the court on the application of Bini Customary Law to the facts of the case or the failure of the appellant to establish his title to the land in dispute. It is for these reasons, and the reasons more
 D elaborately stated in the lead judgment that I also find the appeal to be devoid of merit. I hereby dismiss it and affirm the judgment of the court below. I abide by the award of costs made.

E **OKORO JSC**

I was privileged to have read in draft the judgment of my learned brother, Musa Dattijo Muhammad, JSC just delivered with which I am in total agreement with both the reasons advanced and
 F the conclusion that this appeal is devoid of any scintilla of merit and deserves an order of dismissal. The facts of this case have been ably laid out in the lead judgment and I shall resist the temptation of repeating the exercise.

The sole issue which the appellant has formulated for the
 G determination of this appeal states:

"Whether the respondent was not guilty of laches and acquiescence in that he stood by and waited for the appellant to complete his residential building and moved in before he instituted his civil action against the appellant."

H The principle governing the defence of laches and acquiescence has been judicially explained in a long line of cases. In an old case of Ramsden v Dyson, L.R. 1H.L 129, 140,141 which was cited in A.G to the Prince of Wales v Collon (1916) 2 KB 203, Lord Cranworth explained as follows:

“If a stranger begins to build on my land supposing it to be his own and I perceiving his mistake, abstain from setting him right and leave him to persevere in his error, a court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own.” It considers that, when I saw the mistake into which he had fallen, it was my duty to be active and to state my adverse title, and that it would be dishonest in me to remain willfully passive on such an occasion, in order afterwards to profit by the mistake which I might have prevented. But, it will be observed that to raise such equity, two things are required: first, that the person expending the money supposes himself to be building on his own land, and secondly, that the real owner at the time of the expenditure knows that the land belongs to himself and not to the person expending the money in the belief that he is the owner. For if a stranger builds on my land, knowing it to be mine, there is no principle of equity which would prevent my claiming the land with the benefit of all the expenditure made on it. There would be nothing in my conduct, active or passive, making it inequitable in me to assert any legal rights.” See Wilfred Okpaloka & ors v Ben Umeh & anor (1976) 9-10 SC (Report) 167, Moss v Kenrow Nig Ltd (1992) 11/12 SCNJ 71, (1992) NWLR (pt 264) 207, Dadi v Garba 1995) 8 NWLR (pt 411) 12.

The above captures and explains the concept of the defence of laches and acquiescence. Does it apply in this case? The answer is in the negative. Apart from the fact that the appellant failed to plead this defence in his amended statement of defence, the facts of the case shows that the respondent promptly notified the appellant of his interest in the land. The respondent further reported the matter to the Oba of Benin for settlement but the appellant failed to appear. So, even assuming that he pleads the defence in his statement of defence, the respondent would still not be guilty of the defence.

I agree with the two courts below that the respondent was able to prove a better title to the land than the appellant and so deserves a declaration in his favour. Consequently, the appellant’s appeal is devoid of merit and is hereby dismissed. I affirm the judgment of the court of appeal and abide by the order as to costs in the lead judgment.

SANUSI JSC

The respondent herein, as plaintiff at the Edo State High Court (the trial court) sued the appellant as defendant thereat, claiming declaration of ownership of a parcel of land situate in

B Oriokpa Village area Ward 37B in Benin City. The learned trial judge found in favour of the respondent and gave his judgment accordingly. The appellant, then the defendant, became aggrieved with the trial court's decision hence he appealed to the Court of Appeal Benin Division, which I will hereinafter refer to as "the court below or lower court" which heard the appeal and dismissed same. The appellant C further appealed to this court vide a notice of appeal containing three grounds of appeal.

From the three grounds of appeal, one Issue for determination D was raised as set out hereunder:-

"Whether the Respondent was not guilty of laches and acquiescence in that the appellant stood by and waited for the appellant to complete his residential building and moved in before he instituted his civil action against the appellant."

E In considering this lone issue for determination, it must be stated that it is the case of the appellant herein, that he started constructing the building on the land in dispute for several years without being accosted or disturbed by the respondent even though he (respondent) was aware of the construction going on the land in F dispute which he now claims ownership or title of. He argued that equity does not help the indolent but the vigilant.

On the other hand, the plaintiff/respondent in his defence, denied that. He argued that during the excavation in preparation of G to erect building on the land he accosted the labourers when the appellant refused to stop the construction on the land in dispute. He said sequel to that he reported the appellant to the palace of Oba of Benin as confirmed by PW8, one Chief Ojo Udobor, as a result of which a delegation of Palace Committee was assigned to investigate H the dispute but when the appellant was asked to present his title document, he failed or refused to do so or even to report to the palace at all.

When it became apparent that the Palace Committee could not settle the dispute, the respondent chose the option of instituting

this suit at the trial court for adjudication by suing the appellant as defendant. It seems to me that the appellant hinged his appeal on the doctrine of laches and acquiescence. Can that defence Avail him in the present circumstance of this case? I think not.

I say so because such defence had neither been raised in his pleading nor was that defence canvassed at the trial court as required by law. The fact that the appellant was granted leave to raise such defence is of no moment, since it was not pleaded, initially. See *Onwaye vs Ogbeide* (1991) 3 NWLR (pt 178) 947. B

Now even at that, evidence abound that the appellant was accosted right at the early stage of excavation in the land because complaint was lodged at the palace of Oba of Benin but the appellant refused to subject himself to the jurisdiction of the Palace Committee, delegated by the Oba of Benin and he also refused to produce his title documents when asked to do so by the committee for purpose of inquiry. Again, the appellant was a trespasser, hence he can not raise the defence of laches and acquiescence or that the respondent stood-by. See *Obodo vs Ogba* (1989) 2 NWLR (pt 54) 1 at 15. C D

A calm and careful consideration of the evidence adduced at the trial court, it is clear and well established that the plaintiff/ Respondent in this case, had traced a valid title under Benin Customary Land Law, while the defendant/appellant's title appears to me to be shaky. As the plaintiff, the respondent traced his title to the established original owner, while the defendant/appellant failed to do so. Therefore, in the Land dispute between the plaintiff/respondent on one hand and the defendant/appellant on the other, the defendant/appellant had actually failed to prove better title to the land than plaintiff/respondent. E F

Thus, in view of the detailed reasons marshaled in the lead judgment of my learned brother Musa Dattijo Muhammad JSC, which I entirely agree with and the few comments I chipped in here, I am convinced that this appeal is without merit. I accordingly dismiss it and affirm the judgment of the court below which had also affirmed the decision of the trial court. I endorse the order on costs awarded in the lead judgment to the tune of #200,000.00k (Two Hundred Thousand Naira) only. G H