

SUPREME COURT OF NIGERIA
FRIDAY 3RD JUNE, 2016. SC. 197/2013
CORAM:- I. T. MUHAMMAD, M. U. PETER-ODILI,
K. B. AKA'AH, J. I. OKORO, A. SANUSI, JJSC

MR. CHRISTIAN SPIESS APPELLANT
AND
MR. JOB ONI RESPONDENT

TRESPASS - Criminal trespass - Was properly found - Respondent being in possession can claim against other interests - Hence the 2nd entry by appellant was criminal - And the resort to self help annoyed respondent (H1)

TRESPASS - Criminal trespass - Proof - Prosecution must prove an offence or annoyance of the occupant - And that any claim of right is a mere cloak to cover real intent (H2)

ACTIONS - Bona fide claim of right - Condition - For a claim to qualify as bona fide claim of right - Such claim must be made in good faith - And without fraud or deceit (H3)

ACTIONS - Bona fide claim of right - Proof - Respondent having been found to be in possession - Is presumed to hold a better title - As appellant failed to establish his claim of right (H4)

CRIMINAL LAW - Mens rea - Distinctive nature - Criminal liability in each offence is separate from any other offence - Hence lack of mens rea in one offence cannot defeat mens rea in another (H6)

JUDICIAL PRECEDENTS - Distinguishing - Criminal trespass - Nwakire & Salvamayagam cases - Facts from the two cases differ from present appeal - In which there were no conflicting claims to the premises (H6)

TRESPASS - Criminal trespass - Use of self help or bona fide claim of right by appellant - Cannot disturb the decision that he committed criminal trespass - By his second entry into respondent's compound

FACTS

Before the Chief Magistrate Court of Kaduna State Holden at Makera, accused/appellant was charged for criminal trespass and theft punishable under sections 348 and 287 of the Penal Code, respectively. Respondent, Mr. Job Oni, was the complainant at the Court. Appellant pleaded not guilty to the two count charge. Appellant is a German citizen resident in Nigeria and the Managing Director COMDEN NIGERIA LIMITED, a Satellite Dish Manufacturing Company while respondent is a carpenter and a former employee of appellant's company. Appellant had earlier gone to respondent's premises to discuss some issues. He went away and returned to the premises with some members of staff of his company. He then removed the Satellite dish from respondent's compound alleging same to belong to his company.

Evidence was taken by the trial Court. At the end of trial, appellant was discharged and acquitted on count 2 of the charge on ground that the offence of theft was not proved against him. However, appellant was found guilty of the 1st count charge of criminal trespass and was convicted and sentenced to three (3) months imprisonment or two thousand Naira (N2,000.00) fine in the alternative. Aggrieved, appellant appealed to the Kaduna State High Court. The case was reviewed and in its appellate jurisdiction, the Court affirmed the conviction and sentence of the trial Court. The appeal was thus dismissed. Aggrieved further, appellant appealed to the Court of Appeal. The Court equally dismissed the appeal. Not yet satisfied, appellant has approached the Supreme Court on appeal.

ISSUE FOR DETERMINATION

Whether there were concurrent findings of fact by the Courts below which would require no interference by this Court.

HELD (Dismissing the appeal per **MUHAMMAD JSC**,

Aka'ahs & Okoro JJSC dissenting)

Criminal trespass - Was properly found

1. "The second entry was criminal because he (DW1) went to remove the said dish without the consent of the complainant

who was then in possession. Possession no matter how slight entitles the complainant to maintain an action for trespass. The second entry of the accused into the complainant's compound therefore was to commit an offence by using self-help to remove the satellite dish and thereby annoyed the complainant who was then in possession. I therefore found the accused guilty of the offence of criminal trespass as charge (sic) and I accordingly convict him for the offence."

Possession in land matters, even ordinarily is the backbone against all other claims to land if not accentuated by the owner of the land who has a better title.

How much more of a criminal trespass? There is a finding also by the learned trial magistrate that the 2nd entry by the appellant was criminal with a view to committing an offence to wit: to remove the satellite dish without the respondent's consent who was then in possession. Further, it was the learned magistrate's finding that the resort to self-help by the appellant annoyed the respondent in possession. This is what was affirmed by both the High Court and the Court below. It is thus, concurrent findings of fact. (p. 3129 D)

Criminal trespass - Prosecution must prove an offence

2. Although intention is not a mere matter of fact, as it is a state of mind, but it can be inferred from facts which have been proved. Both entry into the land in possession of the respondent and the unlawful removal of his satellite dish by the appellant must necessarily attract the inference that the respondent was insulted and annoyed and this certainly is likely to annoy/insult an ordinary man. In order to establish criminal trespass, the prosecution (in this appeal the complainant) must prove an offence, or to insult, intimidate or annoy the occupant, and that any claim of right was a mere cloak to cover the real intent or, at any rate, constituted no more than a subsidiary intent. There was thus, an unlawful or illegal entry into or upon a compound (land) which was in the possession of the respondent. (p. 3130 B)

ACTIONS - Bona fide claim of right - Condition

3. I think I should approach this issue firstly by considering the defence said to have been placed (through evidence) by the appellant - BONA FIDE CLAIM OF RIGHT. The phrase is an amalgam of the Latin and English languages. In Latin anything 'BONA FIDE' connotes 'good faith'. Thus, for a claim of right to qualify a bona fide claim of right, it must be made in good faith, without fraud or deceit. It must be sincere and genuine (Black's Law Dictionary 8th ed). (p. 3134 G)

ACTIONS - Bona fide claim of right - Proof

4. It is clear as found by the Lower Courts that, that claim was not established by the appellant. It was his duty now to establish that claim before the trial Magistrate. The trial Magistrate, however, found that it was the respondent who established that he was in possession of the satellite dish and that by decided authorities his possession had to be protected. The appellant having failed to discharge the onus on him on his claim of right to the satellite dish and the respondent having rightly been found in possession of the disputed satellite dish by the learned trial magistrate, he is presumed in law to hold better title against the appellant. The bona fide claim of right cannot therefore succeed to defeat or negative appellant's intention to annoy the respondent. (p. 3134 H)

CRIMINAL LAW - Mens rea - Distinctive nature

5. I think it needs further clarification that the principle of Criminal Liability (mens rea) in each offence is separate, distinct and independent of any other offence. The mens rea in the offence of theft is different from that of criminal trespass. Where the trial judge or magistrate fails to read mens rea in an offence of theft, that does not mean that he cannot find mens rea in the offence of criminal trespass. This is what happened in the present appeal. The appellant was discharged and acquitted on the offence of theft whereas he was found guilty by the learned trial magistrate of the offence of criminal trespass. Thus, lack of mens rea in one offence cannot with all due respect, defeat mens rea in the other offence. Certainly,

the two offences of theft and criminal trespass are two different offences created by the Penal Code Law. The bona fide claim of right in this case must therefore fail. (p. 3135 C)

JUDICIAL PRECEDENTS - Case laws - Distinction

6. The case of *Nwakire v. COP* (supra) and the case of *Salvamayagam v. The King* (supra) are from the facts and antecedents, quite dissimilar and distinguishable from this appeal.

From the above points, one can clearly see that all the facts in the two cases differ fundamentally from the present appeal in which there were no conflicting claims to the land/compound upon which the complainant was lawfully residing. The appellant, thus, had no authority to trespass upon the said compound. It was the finding of the trial magistrate that the complainant had a better title to the satellite dish and the second entry of the appellant was to annoy, insult or intimidate the respondent. (pp. 3138 H/3140 E)

TRESPASS - Criminal trespass - Use of self help

7. The ingredients set out earlier for the commission of criminal trespass stipulated by Section 342 of the Penal Code Law as found by the trial magistrate and affirmed by the two Lower Courts were sufficient to pin the appellant down to answer for the offence of illegal entry upon land with the motive of illegally dismantling and removing of a satellite dish which belonged to the complainant.

Granted, even for the sake of argument that the element of resort to self-help and the defence of bona fide claim of right succeeded, that would not be enough to disturb the judgment of the learned trial magistrate as he made a concrete finding that the appellant committed criminal trespass by his second entry into and or upon the compound of the respondent. For this alone the appellant must remain liable as convicted and sentenced by the trial magistrate.

My noble lords, Law is meant to provide peace, security, protection concord and purposeful co-existence amongst citizens. No reasonable society will encourage resort to self-

help for whatever reason and not certainly on mere suspicion. (p. 3141 C)

NOTABLE POINTS OF INTEREST

MUHAMMAD JSC

B 1. Criminal trespass – Ingredients of

The ingredients for proving criminal trespass are as follows:

- a) unlawful entry into or upon a property in the possession of another, or unlawfully remaining there.
- C b) an intention to commit an offence, or to intimidate, insult or annoy the person in possession of the property.

The necessary intendment of the two ingredients as above pre-supposes that:

- i. there must be an actual entry by the person interested (the D appellant in this appeal) as constructive entry by a servant, for instance, acting on the orders of his master is not an entry, within the meaning of the Section.

- ii. the use of force is not necessary

- iii. the entry and or, remaining on the property must be un- E lawful

- iv. the existence of a BONA FIDE claim of right ordinarily excludes the presumption of criminal intention. However a person may attempt to enforce his right in a wrong way, e.g. by using unnecessary force of intending to wrongfully restrain the person in possession. F

- v. the Section covers both movable and immovable property. For Instance, there can be a criminal trespass to a motor car as well as to land.

- G vi. the possession is clearly intended to be possession at the time of entry and it does not imply that the person in possession must be present at the actual time of the entry (as was the situation in this appeal when appellant illegally entered respondents compound while the respondent was away to a church service).

- H vii. the Section does not protect a trespasser in possession as against a party lawfully entitled to possession. It is worthy of note that the party lawfully entitled to possession has a right to private defence of his property (Section 60 of the Penal Code Law)

- viii. the word “annoy” as used in the Section should be taken

to mean annoyance which would reasonably affect an ordinary person, not what would specially and exclusively annoy a particular individual. (p. 3128 B)

SANUSI JSC

2. Defence of bona fide claim of right – Not available to appellant who did not act in good faith

I am not undoubtful of the fact, that existence of a bona fide claim of right would ordinarily exclude the presumption of criminal intent or can constitute a defence to criminal trespass. However, the phrase “BONA FIDE”, to my mind, entails “GOOD FAITH”. From the testimony of the appellant himself, I do not think that such a defence will avail him, since in his own testimony, [especially during cross examination] as highlighted above, he did not in good faith believe that the satellite dish actually belongs to him or his company, since he admitted that similar ones are manufactured in Kaduna and that the one in question which he caused to be removed, only has similarity or could be identical to the one manufactured by his company and that there are technicians who could manufacture such satellite dish elsewhere. Considering the surrounding circumstances of the case, especially the antecedents of the case in which the appellant decided to enter the compound of the respondent in his (latter’s) absence to remove the satellite dish, all these go a long way to defeat the bone fide claim of right or to say the least, show any good faith and genuine claim of right.

To my mind, in criminal law, unless a thing is done with due care and attention, it cannot be held to have been done in good faith. The mere fact that it was done with a pure motive or without any impure intention or that the actor had been quite honest and without malice, will not justify his action and make it one done in good faith, unless it is shown that he has taken due care and paid due attention. This is not the case here. (p. 3153 A)

3. Person in possession of property may apply force in defence of same

There is nothing gained saying, that the appellant by trespassing into the compound of the respondent to remove the satellite dish in the respondent’s absence, had applied self-help.

I am not aware that act of self-help has been criminalised by the Penal Code. Rather, it operates largely in civil proceedings. However, under our criminal law, a complainant can always resort to right of private defence vide Section 59 and Section 60 of the Penal Code. My understanding of the right of private defence to property however is that it implies that a person in peaceful possession of property, is entitled to maintain that possession even by use of force if necessary. The law does not require a person whose property is forcefully trespassed into, to run away and seek protection of the authorities. But if a person has a bare title to a property, his remedy in respect of any wrong to the property would be to seek redress in Court of law rather than to enforce it by use of force himself, as done by the appellant in this instant case. In any case, the right of private defence claimed by the appellant would not even apply in this case, because when the appellant made the second entry to remove the satellite dish, the complainant/respondent was not at home I will therefore resolve the sole issue against the appellant herein. (p. 3153 F)

AKA'HS JSC - Dissenting

E 4. Criminal trespass – Bona fide claim of right negatives criminal intent

From the evidence adduced, it is clear that the appellant raised the defence of a claim of right when he entered Job Oni's compound and removed the satellite dish. The claim for trespass which the Supreme Court considered in Akpapuna v. Nzeka II supra was simple trespass which can be maintained at the instance of the person in possession because where someone in possession of land is alleged to be a trespasser, the onus is on the person so alleging to show that his better right to the possession has been disturbed by the trespasser. In the instant case, the issue at stake was not trespass per se. The appellant was accused of criminal trespass and while the appellant admitted the fact of the trespass he set up the defence of a claim of right which negatives the criminal intent.

H When the appellant was cross-examined on his evidence, no suggestion was ever put to him that his intention in going to remove the satellite dish from Job Oni's compound was to intimidate, insult or annoy him. The complainant was not physically present in the premises when the appellant instructed his men to remove the satel-

lite dish. Thus, the mens rea of the appellant's action was not established. There is therefore no basis to advance the argument that the Magistrate who convicted the appellant watched his demeanour in the witness box and this informed his decision in finding him guilty of criminal trespass. (p. 3162 B)

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5. Issue of whether appellant's action constituted criminal trespass is that of law

The finding of the trial Magistrate that the second entry of the appellant into the complainant's compound and removal of the satellite dish without the consent of the complainant constituted criminal trespass cannot amount to findings of facts since the learned trial Magistrate was dealing with Section 342 of the Penal Code. I therefore agree with the submission of learned counsel for the appellant that the issue whether the appellant's action constituted criminal trespass is an issue of law and not facts. (p. 3163 A)

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6. Bona fide claim of right entitles appellant to acquittal for criminal trespass

As the offence of criminal trespass is not a strict liability offence, the mens rea of the appellant could not be inferred either by the trial Magistrate or the High Court sitting on appeal but proved beyond any reasonable doubt and since the trial Magistrate acquitted the appellant of the offence of stealing on the ground that he had an honest belief that the satellite dish belonged to his company, the criminal intention was equally vitiated in the offence of criminal trespass. He was therefore entitled to an acquittal for the offence because of the defence of a claim of right to the satellite dish. (p. 3163 C)

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7. Act not made a crime by statute cannot become criminal because it is odious

Resort to self-help can lead to a breach of the peace and so is condemnable as was done by Obaseki, JSC in *Military Governor of Lagos State v. Ojukwu* (1986) 1 NWLR (Pt. 18) 621 at 636 or what Aniagolu, JSC stated in *Eliochin (Nig.) Ltd. & Ors v. Mbadiwe* (1986) SC 99 at 130 to be that "the laws of civilized nations have always frowned at self-help if for no other reason than that they engender breaches of peace", it must be emphasized that principles of liability

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in civil and criminal cases are basically different and an action which is not made a crime by statute cannot be said to be criminal offence because it is odious.

The clear intention of Section 23 of the Criminal Code (and in this case Sections 59 and 60 (b) of the Penal Code) is to immune an accused person who successfully pleads a bona fide claim of right from criminal liability. In his concurring judgment in *Nwakire v. C.O.P. supra* Kutigi, JSC (as he then was) made the point crystal clear at page 311 that:-

“Appellant’s conduct is clearly blameworthy. It is wrongful even though not criminal.” (underlining for emphasis)

The prosecution of the appellant for criminal trespass was in relation to the satellite dish which the appellant honestly believed the respondent carried without permission from COMDEN and not the entry into the complainant’s premises which is being taken up in the civil suit.

The appeal has merit and I accordingly allow it. (p. 3163 E)

OKORO JSC - Dissenting

8. Criminal trespass – Absence of mental element ought not to warrant a conviction

Although the appellant may have resorted to self help, which is condemnable, the mental element of the offence of criminal trespass was absent. This much, the learned trial Chief Magistrate echoed in his judgment as follows:-

“The accused took the dish with the honest belief that same belong to his company. Based (sic) on the honest belief, the criminal intention has been vitiated. I therefore agree with the submission of the accused counsel that the accused had no criminal intention to deprive the complainant permanently of the ownership of the said dish in question. I therefore discharge and acquit the accused on this ground.”

I am surprised that the learned trial Magistrate, after holding that the appellant had an honest belief that the satellite dish belonged to him and that he had no criminal intention to deprive the respondent of the dish, and after acquitting him of the count of theft, went ahead to convict him of the offence of criminal trespass. Can it be said that the appellant had no criminal intention to steal when he

removed the satellite dish but had criminal intention to commit criminal trespass in respect of the same satellite dish? I do not think so. (p. 3171 D)

REPRESENTATION

E. R. Emukpoeruo, for the Appellant

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S. A. Akanni with him, O. E. Adejo, for the Respondent

CASES REFERRED TO

Ogbechie v. Onochie (1986) 2 NWLR (pt. 23) 484

Gauri Shanker v. Delhi Administrator ILRI (1980) Delhi 1219

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Smt. Mathri v. The State of Punjab (1964) 5 SCR 916

Nwakire v. COP (1992) 5 NWLR (pt. 241) 289

Ugwuanyi v. FRN (2012) 8 NWLR (pt 1302) 384

Olley v. Tunji (2013) All FWLR (pt. 687) 625

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Oguno v. State (2013) All FWLR (pt. 690) 1291

Ogunbiyi v. Adewunmi (1988) 3 NSCC 268

Selvanayagam v. The King (1951) A.C. 83

Adegbite v. Ogunfaolu (1990) 4 NWLR (pt. 146) 578

Akpapuna v. Obi Nzeka II (1983) 7 S.C. 1

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Amakor v. Obiefuna (1974) 3 S.C. 67

Mil. Gov. of Lagos State v. Ojukwu (1986) 1 NWLR (pt. 18) 621

Eliochin (Nig.) Ltd. v. Mbadiwe (1986) SC 99

Labiya v. Anretiola (1992) 8 NWLR (pt. 258) 139

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STATUTES REFERRED TO

Penal Code Law, ss. 59, 60, 287, 342, 348

Criminal Code, s. 23

LEAD JUDGMENT BY MUHAMMAD JSC

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Mr. Job Oni was the complainant before a Kaduna State Chief Magistrates Court, Holden at Makera, Kaduna State (trial Court). In his evidence he stated that he knew Mr. Christian Spiess, the accused/appellant, and that he used to work for CONDEM (the accused's company) from time to time as a carpenter. The business of the company, he said, was that of making of satellite dishes. Sometime in 1999, the appellant was charged before the trial Court as follows:

“Count 1:-

That on or about the 18th day of July, 1999 at No. 8 Block 3, Gafai Street, behind Kaduna Textile Limited, Kaduna, you commit (sic) criminal Trespass by entering into the above named premises, then in possession of Job Oni and dismantled a Satellite Dish then in possession of Job Oni, and thereby committed an offence punishable under Section 348 of the Penal Code.

Count 2

That you, on or about the 18th day of July, 1999 at No. 8 block 3 Gafai Street, behind Kaduna Textile Limited, committed the theft of a Satellite Dish by taking it out of the possession of Job Oni and thereby committed an offence punishable under Section 287 of the Penal Code.”

Appellant pleaded not guilty in each of the two counts. Evidence was taken by the trial Court. At the end of trial, the appellant was discharged and acquitted on count 2 of the charge on ground that the offence of theft was not proved against the appellant. The appellant was however found guilty of the 1st count charge of criminal trespass and was convicted and sentenced to three (3) months imprisonment or two thousand Naira (N2,000.00) fine in the alternative.

Appellant appealed to the Kaduna State High Court on the conviction and sentence handed down to him by the trial Court. After revising the whole case, the High Court exercising its appellate jurisdiction affirmed the conviction and sentence of the trial Court.

Dissatisfied further the appellant appealed to the Court of Appeal (Court below). The Court below dismissed the appeal.

Appellant finally lodged his appeal to this Court. He filed his Notice of Appeal which contained three grounds of appeal.

In this Court learned counsel for the parties filed their respective briefs of argument. Learned counsel for the appellant formulated the following sole issue for the determination of this Court:

WHETHER THE COURT BELOW WAS IN ERROR IN HOLDING THAT THERE WERE CONCURRENT FINDINGS OF FACT AND THAT NO REASON WAS SHOWN BY THE APPELLANT TO DISTURB THE CONCURRENT FINDINGS OF FACTS. GROUND 1 AND 2.

It is to be noted that the appellant decided to abandon ground

three (3) of his grounds of appeal and it is hereby struck out.

Learned counsel for the respondent formulated a similar issue but in different wordings, thus:

“Whether the learned Justices of the Court of Appeal were in error in their findings of fact that will attract the intervention of this Court in setting same aside.” (Grounds 1 and 2) B

In his submissions on the issue under consideration, the learned counsel for the appellant stated, and I think I should quote him verbatim:

“4.2 In this appeal there was no dispute between the appellant and the respondent that the appellant entered the respondent’s compound to remove and removed the satellite dish which he genuinely believed was the property of his company.” C

Learned counsel further submitted that the trust of the evidence of the appellant and his three witnesses was that the satellite dish the appellant removed from the respondent’s compound, from the materials used in making the dish, belonged to the appellants company. The Learned counsel for the appellant stated that the appellant contended that his removal of the satellite, which he believed in good faith was the property of his company, was not criminal trespass but the trial magistrate and the High Court held that the appellant’s resort to self-help to retrieve the satellite dish from the respondent’s compound amounted to criminal trespass. Learned counsel went on to distinguish an issue of law from that of fact, citing the case of *Ogbechie v. Onochie* (1986) 2 NWLR (Pt.23) 484 at 491 - 412. D
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ing any finding on this disputed fact. The Court below, he submitted, was in error in holding that there were concurrent findings of facts by the trial magistrate and the High Court.

Learned counsel for the appellant argued that the grouse of the appellant with the judgments of the learned trial magistrate, the High Court and the Court below was that the ingredients of the offence of criminal trespass under Section 342 of the Penal Code Law were incomplete. That the mental element of the offence of criminal trespass was absent or lacking and that the Lower Courts were more concerned with the appellant's resort to self help to remove his company's property rather than his defence, that is to say, his bona fide claim of ownership of the satellite dish negated the mental element of criminal trespass completely under Section 342 of the Penal Code. The Court's below, he submitted, did not appreciate the nature of the mental element required under Section 342 of the Penal Code Law. The mental element of the offence of criminal trespass is, according to the learned counsel, intent to commit an offence or to intimidate, insult or annoy. He buttressed his submission with foreign (Indian) authorities such as *Gauri Shanker v. Delhi Administrator ILRI* (1980) Delhi 1219; *Smt. Mathri and Ors v. The State of Punjab* (1964) 5 SCR 916. Learned counsel commended such cases to this Court and that a person with a BONA FIDE CLAIM OF RIGHT does not possess the mental element of the offence of criminal trespass since the aim, the dominant purpose of the action, is not annoyance, intimidation or insult but the assertion of that right over the property which in this case, was the retrieval of the satellite dish the property of the appellants company. Learned counsel again cited and relied on another Indian authority. *Kunju Moideen Methram v. Kandan AIR* 1959 Ker 146 (Indian Court of Criminal Appeal). Learned counsel for the appellant cited a decision of the Privy Council in *SINVASAMY SELVANAYAGAM v. THE KING* (1951) AC 83 at 87, 88. He faulted the Courts below in focusing on the appellants resort to self-help to retrieve his company's satellite dish as a basis for convicting him. There is nothing in the provision of Section 342 which prohibits, deprecates or criminalizes resort to self-help. He stated that resort to self-help is only deprecated in civil proceedings where the Court frowns at the use of self-help. He cited the case of *Nwakire v. COP* (1992) 5 NWLR (pt.241) 289 at 309. Learned counsel concluded that the findings of

the that Magistrate Court affirmed by the Lower Courts were not supported by any evidence at all and are patently perverse or proceeded on a most erroneous interpretation of the provisions of Section 342 of the Penal Code and that this Court is entitled to interfere with the concurrent findings of the Court below. He cited the case of *Ugwanyi v. Federal Republic of Nigeria* (2012) 8 NWLR (pt 1302) 384 at 402. Learned counsel for the appellant urged this Court to allow the appeal, set aside or even reverse the Judgment of the Court below and enter a verdict discharging and acquitting the appellant of criminal trespass.

Making his submissions on the lone issue, learned counsel for the respondent stated that the findings of the trial magistrate were based on credible evidence and were not perverse. He cited several cases in support; *Olley v. Tunji* (2013) All FWLR (pt. 687) at p. 625 *Oguno v. State* (2013) All FWLR (Pt. 690) 1291 at 1314 - 1315. He stated that the true action of the appellant by resorting to self-help and trespass were contrary to Section 342 of the Penal Code under which the appellant was convicted. Criminal trespass, he further argued, could cover both movable and immovable property such as motor cars as well as land and annoyance could be taken to mean annoyance which would reasonably affect an ordinary person. He submitted that the appellant's going back to respondent's compound was to annoy and or intimidate the respondent in a bid to exercise his bona fide claim of right in the premises of the respondent. Learned counsel for the respondent urged this Court to dismiss the appeal as lacking in substance and affirm the decision of the Court of Appeal.

My noble lords, the sole issue raised by both parties before this Court is whether there were concurrent findings of fact by the Courts below which would require no interference by this Court. I think for me to answer this question in line with my understanding my lords, I need to breakdown the issue into three fold: (a) was there really a criminal trespass on the property of the respondent? (b) Did the appellant resort to self-help in a bid to recover the said satellite dish? (c) was there any defence to negative appellant's criminal intention?

The spring board upon which I base my discussion is Section 342 of the Penal Code Law, Cap 89, Laws of Northern Nigeria, 1963, (a 1982 re print (applicable to Northern States including Kaduna State) per Rahidson, S. S. (1986) Notes on the Penal Code, ABU

University Press, Zaria first page of the Preface:-

“342. Whoever enters into or upon property in the possession of another with *INTENT* to commit an offence *OR* to *INTIMIDATE INSULT OR ANNOY* any person *IN POSSESSION* of such property or, having lawfully entered into or upon such property, unlawfully
B remains there with *INTENT* thereby to *INTIMIDATE, INSULT OR ANNOY* such person or with *INTENT* to commit an offence, is said to commit *CRIMINAL TRESPASS*.”

The ingredients for proving criminal trespass are as follows:

C a) unlawful entry into or upon a property in the possession of another, or unlawfully remaining there.

b) an intention to commit an offence, or to intimidate, insult or annoy the person in possession of the property.

D The necessary intendment of the two ingredients as above pre-supposes that:

i. there must be an actual entry by the person interested (the appellant in this appeal) as constructive entry by a servant, for instance, acting on the orders of his master is not an entry, within the meaning of the Section.

E ii. the use of force is not necessary

iii. the entry and or, remaining on the property must be unlawful

F iv. the existence of a *BONA FIDE* claim of right ordinarily excludes the presumption of criminal intention. However a person may attempt to enforce his right in a wrong way, e.g. by using unnecessary force of intending to wrongfully restrain the person in possession.

G v. the Section covers both movable and immovable property. For Instance, there can be a criminal trespass to a motor car as well as to land.

vi. the possession is clearly intended to be possession at the time of entry and it does not imply that the person in possession must be present at the actual time of the entry (as was the situation in this
H appeal when appellant illegally entered respondents compound while the respondent was away to a church service).

vii. the Section does not protect a trespasser in possession as against a party lawfully entitled to possession. It is worthy of note that the party lawfully entitled to possession has a right to private defence

of his property (Section 60 of the Penal Code Law)

viii. the word “annoy” as used in the Section should be taken to mean annoyance which would reasonably affect an ordinary person, not what would specially and exclusively annoy a particular individual.

My noble lords, from the beginning of my summation of submissions of the learned counsel for the respective parties. I quoted the learned counsel for the appellant from his brief of argument, Paragraph 4.2, that there was no dispute between the appellant and the respondent that the appellant entered the respondent’s compound to remove and did indeed remove the satellite dish in contention.

It was the finding of the learned trial magistrate as well that:

“The accused as I have said earlier admitted that he went to complainant’s house twice The first entry to my mind was not criminal because (DW1) went to discuss some technical details with the carpenter, i.e. the complainant when he saw the satellite which he believe (sic) was his company’s dish.

The second entry was criminal because he (DW1) went to remove the said dish without the consent of the complainant who was then in possession. Possession no matter how slight entitles the complainant to maintain an action for trespass. The second entry of the accused into the complainant’s compound therefore was to commit an offence by using self-help to remove the satellite dish and thereby annoyed the complainant who was then in possession. I therefore found the accused guilty of the offence of criminal trespass as charge (sic) and I accordingly convict him for the offence.”

Possession in land matters, even ordinarily is the backbone against all other claims to land if not accentuated by the owner of the land who has a better title. In ordinary civil trespass, this Court in the case of Ogunbiyi v. Adewunmi (1988) 3 NSCC 268, had cause to re-iterate that:

“Conceptually, trespass to land consists in any unjustifiable intrusion by one person upon the land in possession of another. Also trespass is actionable at the suit of the person in possession of the land who can claim damages or injunction or both.”

How much more of a criminal trespass? There is a find-

ing also by the learned trial magistrate that the 2nd entry by the appellant was criminal with a view to committing an offence to wit: to remove the satellite dish without the respondent's consent who was then in possession. Further, it was the learned magistrate's finding that the resort to self-help by the
B appellant annoyed the respondent in possession. This is what was affirmed by both the High Court and the Court below. It is thus, concurrent findings of fact. Although intention is not a mere matter of fact, as it is a state of mind, but it can be inferred from facts which have been proved. Both entry into the
C land in possession of the respondent and the unlawful removal of his satellite dish by the appellant must necessarily attract the inference that the respondent was insulted and annoyed and this certainly is likely to annoy/insult an ordinary man. In
D order to establish criminal trespass, the prosecution (in this appeal the complainant) must prove an offence, or to insult, intimidate or annoy the occupant, and that any claim of right was a mere cloak to cover the real intent or, at any rate, constituted no more than a subsidiary intent. See the Privy council's
E case of Sinnasamy Salvanavagam v. The King (supra). There was thus, an unlawful or illegal entry into or upon a compound (land) which was in the possession of the respondent.

Secondly, did the appellant resort to self-help in a bid to recover the said satellite? The submission of the learned counsel for the
F appellant is that the appellant contended that his removal of the satellite dish which he believed in good faith was the property of his company was not criminal trespass. He argued that such issue is an issue of law and not fact. He faulted the decisions of the trial Magistrate and the High Court as they erroneously applied the provisions
G of Section 342 of the Penal Code Law to the undisputed facts that the appellant in the bona fide belief that the satellite dish in the compound of the respondent, was the property of his company, entered the respondent's compound and removed the satellite dish. Permit
H me and bear with me my lords to review the evidence in chief and the cross-examinations of both the appellant and the respondent. The appellant was the defence witness No. 1 (Dw1) before the trial magistrate. He testified among others as follows:-

"My names are Christian Spiess. I am the Managing Director

of COMDEM NIGERIA LIMITED. I am a German Nationale. COMDEM NIGERIA LIMITED is the manufacturer of satellite Antennas at Karfage Street, Kakuri Kaduna. I intended to travel to Germany, I realised that I have to discuss some technical details with the carpenter Job Oni, the complainant. My driver drove (sic) me to his house and I entered the always open compound ... when I entered I saw a satellite Antenna which was a COMDEM SATELLITE i.e. our company from the design and material. I asked the tenant how the satellite came to this compound and they told me that it was brought in with wheel barrow. I went to our workshop which is in the instant neighbourhood from Job Oni compound. In the workshop I was informed that Mr. Job Oni has carried out from the workshop all accessories which are require (sic) for the Satellite Antenna and the Satellite itself was carried on a wheel barrow... I checked our store and discovered that material for the manufacture of three satellite Antenna (sic) has been missing. I went back to Mr. Job Oni's compound together with two staff of our company and on arrival I met Mr. Simon Ogah who is a satellite installer in our employment our staff I went with me (sic) one Joshua and Chidi. I asked Simon Ogah who told me that he was called to install satellite Antenna by Job Oni. Mr. Simon Ogah had with him a Feed and Scalar Ring in which Mr. Job Oni call (sic) the Upper Satellite A.N.B. This Feed and Scalar Ring are manufactured in cast aluminum to our own design and they are no where for sale as they are for our company COMDEM NIGERIA LIMITED... From our list the satellite dish is our own. There is no satellite dish in the world having the same design data. I reported the matter to our foreman Friday Hitler who was absent but I discovered in Friday's Hitler compound two more satellite dishes stolen from our company.

I reported to the DPO Kakuri Police Station that within the last two years materials corresponding to the manufacture of about 30 Satellite Antennas were missing. The Police in their investigation linked Mr. Rasaki to the stealing of all the materials who was our staff. Mr. Rasaki was claimed to have manufactured the Satellite Dish for Mr. Job Oni. Mr. Rasaki pleaded with me that it was not him but it was the devil who made him to steal the material and he was dismissed.

The material on Exhibit 1 did not correspond with the material used in the making of a satellite. The name of the company on Ex-

hibit 1 is not known in penteka. The company on Exhibit 1A is in Kakuri Market and the items are not available in Kakuri Market. ”

While on cross examination, the appellant stated, inter alia:

“There is no contract agreement between my company and the complainant. It is correct that I removed the Satellite dish from the complainant’s home. It is correct that COMDEM is not the only Satellite dish manufacturer in Kaduna State. There are technicians who can manufacture Satellite dish like the one in Court in Kaduna. It is true I met some people in the compound. They did not tell me that the Satellite dish belong to Job Oni. I am not the one who put the Satellite dish at Job Oni’s compound. I instructed two of my staff to take it out after verification. It is correct that I did not report to the Police before removing the satellite dish to my company. It was when I arrived at the complainant’s compound that I was told that the satellite dish was taken there in a wheel barrow. I did not discovered (sic) that the satellite dish is missing until I saw it at the complainant’s premises. Rasaki, Simon Ogah and Friday were not prosecuted in any count. This dish is not fully identical to my dish my dish have (sic) 13 brackets which Exhibit 5 has 14 brackets. It is correct that you cannot get the satellite dish from the entrance unless you get to the compound. My initial intention was to go and meet the complainant and not to carry the satellite dish. COMDEM own the satellite dish. COMDEM print (sic) names on its dishes. No COMDEM on Exhibit 5. I am aware that the police search (sic) the complainant’s house while investigating my report. I am aware that nothing belongs to me was found at the complainant’s house and his decoder was returned to him. The people who told me that the dish was moved with a wheel barrow did not told (sic) me that they saw the complainant moving it. I did not have patent right.”

Earlier on the respondent as complainant at the trial Magistrate Court testified to the effect that inter alia:

“My names are Job Oni. I am a carpenter. I know the accused. Before I used to work for him. On 18/7/99, it was a Sunday, I went to Church and when I came back from the church I was told that Mr. Spiess the accused came to my house and go (sic) away with my dish i.e. satellite dish. I then went to the accused and he said the satellite dish belongs to him. But the said satellite dish belongs to me because I bought a Galvanize Iron and 3 quarter pipes black and somebody

made the satellite dish for me. From the items I bought, when I bought the items I was issued with a receipt. I can recognize the receipt one at Panteka and one is at Kakuri here. My name is on the receipt...The satellite dish is in Court by an Order of this Court. That was in my store before it was removed by the accused.” (underlining for emphasis) B

On cross-examination the respondent stated, inter alia:

“I worked for Condem the accused company from time to time. The accused works for that company. The business of the company is the making of satellite dishes. The accused thought(sic) that the satellite dish belongs to condemn. The name of the company CANDEM is not my complaint...” C

Other witnesses gave evidence and were cross-examined. At the end of evidence, the learned trial magistrate made the following finding: D

“It is clear that the satellite dish the subject matter of this complaint was in possession of the complainant before it was trespassed upon. It is the law that where the plaintiff has established that he is in possession, it is necessary to make an order to protect the possession in him. See. Adegbite v. Ogunfaolu (1990) 4 NWLR (Pt 146) 592 - 593. Even though, title is not in issue before this Court, I want to state by way of reference what the Supreme Court said in this regard in OTUAHA v. OBINSEKA II (1983) SC 1 that the fact that the claim for title fails does not mean that the claim for trespass and injunction must fail.” (Underlining for emphasis) E F

Both the High Court and the Court below affirmed that finding of fact and the position of the law stated by the learned trial magistrate. The High Court in its reasoning process stated, among others: G

“The action of the appellant to re-enter the premises of the complainant 2nd time was ill-motivated. The appellant formed what would be regarded unlawful means to do illegal act. It is apparent that the appellant took his own unilateral decision to resort to self help. He had formed in his mind the mental elements to forcefully enter the premises and removed out the same object i.e. the satellite dish. Indeed, the action of the appellant combined mens rea and actus reus to materialize what he intended to do. We are convinced from the evidence before us that the appellant committed criminal H

trespass and was rightly convicted and sentenced for that same offence.

We are in agreement with the submission made by the learned counsel for the respondent to the effect that there was finding of trial magistrate on to what kind of entry. The 2nd appellant entry was
 B *done without consent of complainant who was then in possession. ”*

The Court below, in affirming the Magistrates Court and the High Court decisions stated, per Ariwoola, JCA (as he then was) as follows:

“In the instant case, I have no reason to disturb the finding of
 C *facts of the trial Court which was affirmed by the High Court in its appellate Jurisdiction. The appellant has failed to show that by the findings of facts by the two Courts below, a miscarriage of Justice was occasioned.*

On the issue of self-help resorted to by the appellant the learned
 D *trial magistrate made the following finding:*

“The 2nd entry of the accused into the complainant’s compound therefore was to commit an offence by using self-help to remove the satellite dish and thereby annoyed the complainant who
 E *was then in possession. ”*

In his brief of argument the learned counsel for the appellant submitted (Paragraph 4.26) the Court’s below were clearly in error in focusing on the appellant’s resort to self-help to retrieve his company’s satellite dish as a basis for convicting him. He argued further
 F that there is nothing in the provision of Section 342 which prohibits, deprecates or criminalizes resort to self-help. This is only deprecated in civil proceedings where the Court frowns at the use of self-help. He cited the case of Nwakire v. COP (1992) 5 NWLR (Pt. 241) 289
 G at 309.

I think I should approach this issue firstly by considering the defence said to have been placed (through evidence) by the appellant - BONA FIDE CLAIM OF RIGHT. The phrase is an amalgam of the Latin and English languages. In Latin
 H ***anything ‘BONA FIDE’ connotes ‘good faith’. Thus, for a claim of right to qualify a bona fide claim of right, it must be made in good faith, without fraud or deceit. It must be sincere and genuine (Black’s Law Dictionary 8th ed). It is clear as found by the Lower Courts that, that claim was not established by the ap-***

pellant. It was his duty now to establish that claim before the trial Magistrate. The trial Magistrate, however, found that it was the respondent who established that he was in possession of the satellite dish and that by decided authorities his possession had to be protected. The appellant having failed to discharge the onus on him on his claim of right to the satellite dish and the respondent having rightly been found in possession of the disputed satellite dish by the learned trial magistrate, he is presumed in law to hold better title against the appellant. The bona fide claim of right cannot therefore succeed to defeat or negative appellant's intention to annoy the respondent. See: Ogunbiyi v. Adewunmi (1988) 5 NWLR (Pt. 93) 315; Da Costa v. Ikomi (1968) 1 All NLR 394.

I think it needs further clarification that the principle of Criminal Liability (mens rea) in each offence is separate, distinct and independent of any other offence. The mens rea in the offence of theft is different from that of criminal trespass. Where the trial judge or magistrate fails to read mens rea in an offence of theft, that does not mean that he cannot find mens rea in the offence of criminal trespass. This is what happened in the present appeal. The appellant was discharged and acquitted on the offence of theft whereas he was found guilty by the learned trial magistrate of the offence of criminal trespass. Thus, lack of mens rea in one offence cannot with all due respect, defeat mens rea in the other offence. Certainly, the two offences of theft and criminal trespass are two different offences created by the Penal Code Law.

The bona fide claim of right in this case must therefore fail.

The other thorny issue is that of resort to self-help. I concede that there is no relevant provision from the Penal Code Law which punishes self-help. But conversely there are provisions which allow complainant to resort to private defence and or defence of property. This is punished by Sections 59 and 60 of the Penal Code. The Sections provide thus:

"59. Nothing is an offence which is done in the lawful exercise of the right of private defence.

60. Every person has a right, subject to the restrictions herein-

after contained, to defend.

a) his own body and the body of any other person against any offence affecting the human body.

b) the property whether movable or immovable of himself or of any other person against any act, mischief, or criminal trespass or which is an attempt to commit theft, robbery, mischief or criminal trespass.”

Such self defence or defence of property would have been resorted to, especially under Section 60(b), by the respondent if he were around in the premises. That would have yielded an ugly result. Thus, although resort to self-help has been left to go unpunished it is an open invitation to resort to conflict, violence and perhaps bloodshedding. That would be animalistic in any civilized society. The case of *Nwakire v. COP* (1992) 5 NWLR (Pt 241) 289, cannot be relied upon even by this Court to say that it encourages resort to self-help which may likely resort in violence. In *Nwakire v. COP* (Supra) facts giving rise to the case were that the appellant and the complainant had conflicting claims to ownership of a piece or parcel of land situate at Nnewi, in Anambra State. To drive home his claim to the land, the appellant in 1979 filed a claim in the High Court for trespass and injunction against the complainant. In 1981, during the pendency of the suit, the complainant went upon the land and installed some electric poles and fluorescent lights for purposes of a funeral ceremony. After the ceremony the complainant refused to remove the poles and the lights despite demands by the appellant. In June, 1982, ten months after their erection, the appellant went upon the land and removed and destroyed the poles. As a result, he was charged at the Magistrate Court on two counts of unlawfully conducting himself in a manner likely to cause a breach of the peace and also willful and unlawful damage of the four electric poles and four fluorescent lights property of the complainant one Albert Anochili. The appellant was tried and convicted. The conviction was affirmed by both the High Court and by a split decision by the Court of Appeal. On further appeal to this Court, the appeal was allowed on the principle of bona fide claim of right pursuant to Section 23 of the Criminal Code of Eastern Nigeria, applicable in Anambra State.

In the *Salvanayagam v. The King* (supra), facts contained in the judgment of the Judicial Committee of the Privy Council, show

that:

“On April 23, 1945 the Government of Ceylon duly gave notice of its intention to take possession of certain private lands, including the Knavesmire estate, for village expansion pursuant to the Land Acquisition Ordinance (Legislative Enactment of Ceylon, 1938, c. 203). On November 26, 1945, the executive committee of the local administration directed the land officer of Knavesmire to take possession of the estate for and on behalf of His Majesty pursuant to S. 12 of the Ordinance, and on December 6, 1945, the land officer certified that he had that day taken possession of the estate on behalf of His Majesty. It was not disputed that thereupon the estate vested absolutely in His Majesty free from all encumbrances. The Government continued for the time being to employ the labour force then on the estate, the appellant being a member of that force. On January 30, 1916. D.R.M Rajapakse was appointed by the Governor to the post of superintendent of the Knavesmire estate, the terms of appointment being stated in a letter dated June 26, 1946, addressed to him by the Chief Secretary (Exh. P.9). According to the evidence of one Hendersan, Assistant government agent of Kegalla, given at the hearing of this matter, the appointment was made on his recommendation.

The object of the Government in acquiring the Knavesmire estate was to place in possession of it selected landless residents from certain villages who would work the estate on co-operative lines. According to the evidence of Henderson, he selected 243 such tenants, and with a view to providing them with work on the estate he instructed Rajapakse, the superintendent, to give notice to all the labourers on the estate as from the end of May, 1946. In accordance with those instructions Rajapakse, on April 29, 1946, gave notice to the appellant (Exh D1) terminating his employment as from May 31, 1946, and directing him to hand over to Rajapakse the house which he occupied and to leave the estate on or before May 31, 1946. On that date the appellant accepted his wages, but refused to accept a discharge ticket tendered to him, and declined to leave the premises in his occupation. According to the evidence of the appellant given at the hearing, when the estate was taken over by the Crown he and his wife and mother occupied two rooms in the lines on the estate. His father and grandfather had occupied the rooms before him. His fa-

ther had planted trees in the garden plots in front and in rear of the rooms and the appellant and his parents had enjoyed the produce of the trees. The appellant claimed that he and his ancestors had been in occupation of the rooms for seventy years and for that reason he declined to quit, since he had no other house to live in. He claimed
 B the right to stay on the estate since for generations he and his family had lived there.

On June 5, Henderson, the assistant government agent, made a report to the Magistrates Court of Kegaliala that the appellant had committed criminal trespass by unlawfully continuing to remain on
 C the Knavesmire estate, property of the Crown in the occupation of D.R.M. Rajapakse, superintendent of the said estate, with intent thereby to annoy Rajapakse, and thereby committed an offence punishable under S. 433 of the Penal Code and on the same day a
 D summons was issued to the appellant to answer to the complaint.

At the trial the magistrate found that Rajapakse was at the material time in actual and physical occupation of the whole of the Knavesmire estate and all the buildings thereon; that the appellant had occupied two lines rooms not as a tenant but as a servant, and that when his
 E employment ended by notice to quit duly served on him his subsequent remaining on the estate was unlawful; and that the facts proved warranted the conclusion that the intention of the accused by remaining on the estate was to cause annoyance to Rajapakse, since
 F that would be the natural consequence of his action the appellant was accordingly, on June 28, 1946, convicted and sentenced to two months rigorous imprisonment.

An appeal against the conviction was lodged in the Supreme Court and was heard on August 30, 1946, by Jayetilleke J., who
 G agreed with the conclusions of the magistrate and dismissed the appeal.

On further appeal, the Judicial Committee of the Privy Council allowed the appeal, set aside the conviction and sentence passed by the magistrate on the accused/appellant. ”

H **The case of Nwakire v. COP (supra) and the case of Salvamayagam v. The King (supra) are from the facts and antecedents, quite dissimilar and distinguishable from this appeal.**

(Distinguishing features

In Nwakire's case:

- i. there were conflicting claims to ownership of a piece or parcel of land situate at Nnewi in Anambra State.
- ii. the appellant had filed a claim in the High Court for trespass and Injunction against the complainant.
- iii. during pendency of the suit complainant went upon the land and installed some electric poles and fluorescent lights for purposes of funeral ceremony.
- iv. After the ceremony complainant refused to remove the poles and the lights despite demands by the appellant
- v. After ten months of erection, appellant went upon the land and removed and destroyed the poles.
- vi. The accused/appellant raised the defence of bona fide claim of right pursuant to Section 23 of the Criminal Code of Eastern Nigeria, applicable in Anambra State.

In Salvanayagam's case

- i. The Government of Ceylon gave notice of its intention to take possession of certain private lands pursuant to the Land Acquisition Ordinance of Ceylon, 1938 and it indeed did take possession of the estate for and on behalf of His Majesty.
- ii. The estate vested, indisputably, thereupon, absolutely in His Majesty free from all encumbrances.
- iii. The Government continued to employ for the time being labour force on the estate, the appellant being a member of that force.
- iv. 243 of such tenants were provided with work on the estate.
- v. Notice was given to all the labourers on the estate effective from end of May, 1946.
- vi. On April 29, 1946 appellant was given notice (Exh. D1) terminating his employment as from May 31, 1946 and directing him to hand over the house which he occupied and to leave the estate on or before May 31, 1946.
- vii. The appellant on that date, accepted his wages but refused to accept a discharge ticket tendered to him and declined to leave the premises in his occupation.
- viii. Appellants evidence at the hearing was that when the estate was taken over by the Crown he and his wife and mother occupied two rooms in the lines of the estate. His father and grandfather

had occupied the rooms before him.

ix. His father had planted trees in the garden plots in front and in rear of the rooms and the appellant and his parents had enjoyed the produce of the trees.

x. The appellant claimed that he and his ancestors had been in occupation of the rooms for seventy years and for that reason he declined to quit, since he had no other house to live in. He claimed the right to stay on the estate since for generations he and his family had lived there.

xi. Mr. Henderson, the Assistant Government Agent, made a report to the Magistrate Court of Kegalla that the appellant had committed criminal trespass by unlawfully continuing to remain on the Knavesmire estate, property of the Crown in the occupation of D.R.M. Rajapakse, superintendent of the said estate with intent thereby to annoy Rajapakse and thereby committed an offence punishable under S.433 of the Ceylon Penal Code.

xii. After trial, the appellant was found guilty and was convicted and sentenced to two months rigorous imprisonment.

xiii. An appeal to Ceylon Supreme Court was dismissed, affirming the magistrate's decision.

xiv. The Privy Counsel on further appeal, set aside the conviction and sentence.)

From the above points, one can clearly see that all the facts in the two cases differ fundamentally from the present appeal in which there were no conflicting claims to the land/compound upon which the complainant was lawfully residing. The appellant, thus, had no authority to trespass upon the said compound. It was the finding of the trial magistrate that the complainant had a better title to the satellite dish and the second entry of the appellant was to annoy, insult or intimidate the respondent.

In interpreting the provision of Section 427 of the Ceylon Penal Code the Judicial Committee of the Privy Council stated:

"Section 427 does not make every trespass a criminal offence. It is confined to cases in which the trespass is committed with a particular intention and the intention specified indicates that the class of trespass to be brought within the criminal law is one calculated to cause a breach of the peace. Their Lordships are satisfied that the

Section was not intended to provide a cheap and expeditious method for enforcing a civil right. It is to be noted that the Section deals with occupation, which is a matter of fact and not with possession which may be actual or constructive and may involve matters of law. The first paragraph of the section comes into operation when a trespasser enters land in the occupation of another with the intent specified and the second paragraph applies when entry is lawful but becomes unlawful, e.g. when the entry is made on the invitation of the occupier and there is a refusal to leave when the invitation is withdrawn. But, in either case, there must be an occupier whose occupation is interfered with and whom it is intended to insult, intimidate or annoy.” ^B ^C

The ingredients set out earlier for the commission of criminal trespass stipulated by Section 342 of the Penal Code Law as found by the trial magistrate and affirmed by the two Lower Courts were sufficient to pin the appellant down to answer for the offence of illegal entry upon land with the motive of illegally dismantling and removing of a satellite dish which belonged to the complainant. ^D

Granted, even for the sake of argument that the element of resort to self-help and the defence of bona fide claim of right succeeded, that would not be enough to disturb the judgment of the learned trial magistrate as he made a concrete finding that the appellant committed criminal trespass by his second entry into and or upon the compound of the respondent. For this alone the appellant must remain liable as convicted and sentenced by the trial magistrate. ^E ^F

My noble lords Law is meant to provide peace, security, protection concord and purposeful co-existence amongst citizens. No reasonable society will encourage resort to self-help for whatever reason and not certainly on mere suspicion. ^G

I agree with the Court below that no reason was shown by the appellant why the decisions of the Lower Courts would be disturbed by this court. I affirm the decisions and dismiss this appeal.

H

PETER-ODILI JSC

I agree in totality with the judgment just delivered by my learned brother, Ibrahim Tanko Muhammad JSC and in support of the rea-

soning I shall make some comments.

This is an appeal against the judgment of the Court of Appeal, Kaduna Division which affirmed the appellant's conviction and sentence for criminal trespass punishable under Section 348 of the Penal Code.

B The facts are well set out in the lead judgment and no useful purpose would be served in repeating them here.

On the 10/3/16 date of hearing, learned counsel for the appellant E. R. Emukpoeruo Esq. adopted the Brief of Argument of the appellant filed on the 25/5/2013 and in which he crafted a single
C issue for determination which is thus:

"Whether the Court below was in error in holding that there were concurrent findings of fact and that no reason was shown by the appellant to disturb the concurrent findings of fact. Grounds 1 and 2."
D

S. A. Akanni, learned counsel for the respondent adopted the Brief of Argument of respondent filed on the 22/9/2014 and he in different words crafted a similar sole question as follows:

"Whether the learned justices of the Court of Appeal were in error in their findings of fact that will attract the intervention of this Court in setting same aside." (Grounds 1 and 2)
E

Clearly either of the questions raised by the appellant or the respondent brings to the fore what the root of the dispute is and so it does not matter which of the crafted issues is utilized in the determination of this appeal.
F

SOLE ISSUE

"Whether the learned justices of the Court of Appeal were in error in their findings of fact that will attract the intervention of this Court in setting same aside".
G

Canvassing the point of view of the appellant, learned counsel contended that the issue before the Courts was whether the use of self-help by the appellant to remove the satellite dish in the possession of the respondent amounted to criminal trespass under the provisions of Section 342 of the Penal Code Law. He stated that appellant's removal of the satellite which he believed in good faith to be the property of his company was not criminal trespass as found by the Magistrate Court and High Court, which issue is one of law. That there seemed to be the dispute of the ownership of the satellite dish
H

which dispute was not resolved by the trial Chief magistrate and so appellant operated under a bona fide claim of right.

The situation thereby created a lacuna in the proof of the ingredients of the offence of criminal trespass under Section 342 of the Penal Code Law. That a bona fide claim of right is inconsistent with an intent “*to commit an offence or to intimidate, insult or annoy...*”^B He cited Ram Balak alias Gauri Shanker v. Delhi Administration reported in ILR11980 Delhi 1219: Legal Crystal.com/693046 in a Criminal Review Appeal delivered on the 16th April, 1979 in an Indian Court interpreting provisions analogous to Section 342 of our Penal Code. Also the case of Kunju Moideen Methararu v. Kandan Legal Crystal.com/719129 - Reported in AIR 1959 ker 146, the Indian Court of Criminal Appeal judgment. He further referred to Sinnasamy Selvanavagam v. The King (1951) AC 83 at 87 - 88.^C

Mr. Emukpoeruo of counsel for the appellant contended that the Court’s below were clearly in error in focusing on the appellant’s resort to self-help to retrieve his company’s satellite dish as a basis for convicting him and there is nothing in Section 342 which prohibits, deprecates or criminalizes resort to self-help, a situation only factored in civil trespass. He referred to Nwakire v. COP (1992) 5 NWLR (pt. E 241) 289 at 309.

That the application of the principles of civil trespass to convict the appellant of criminal trespass is a reason for this Court to interfere with the concurrent findings of the Court below as well as the findings not being supported by the evidence and the interpretation of the provisions of Section 342 of the Penal Code being erroneous and patently perverse. He cited Ugwuanyi v. Federal Republic of Nigeria (2012) 8 NWLR (pt. 1302) 384 at 402.^F

In response, Mr. Akanni for the respondent contended that the concurrent findings were based on credible evidence and nowhere perverse and cannot be said to be based on a wrong principle of law. He cited Olley v. Tunji (2013) ALL FWLR (pt. 687) 687 at 625 and 667; Oguno v. State (2013) ALL FWLR (pt. 690) 1291 at 1314 - 1315.^G

The thrust of the appellant’s case is anchored on the following bullet points:^H

1. That mens rea was not proved at all by the persecution
2. The defence of bona fide claim of right made out by the

appellant and conceded to by the respondent relieved the appellant of any culpability under Section 342 of the Penal Code.

3. Reliance on self-help to convict the appellant is not founded on the provisions of Section 342 of the Penal Code.

4. The principles of civil trespass were wrongly used to convict the appellant of criminal trespass under Section 342 of the Penal Code.

5. That the decision of the Court below was clearly perverse as they lost sight of the absence of the mental element prescribed by Section 342 of the Penal Code Law.

The converse from the respondent is seen in the contention of counsel that the existence of a bona fide claim of right ordinarily excludes the presumption of criminal intent but a person may attempt to enforce his right in a wrong way e.g. by using unnecessary force or intending to wrongfully restrain the person in possession. That the trial magistrate who saw the demeanour of the accused person and listened to all the witnesses was appropriately positioned to know what transpired and came to the reasonable conclusion that the second entry into the respondent's compound was to annoy and or intimidate the respondent in a bid to exercise his bona fide claim of right and so infringed the stipulations of Section 342 of the Penal Code thereby bringing into force the offence of criminal trespass.

Balancing the two opposing views, the learned trial Magistrate as the first port of call stated at pages 105 - 106 of the Record as follows:

"The accused as I have said earlier admitted that he went to complainant's (sic) house twice. The first entry to my mind was not criminal because he (DW1) wants to discuss some technical details with the carpenter i.e. the complainant when he saw the satellite which he believes was his company's dish. The 2nd entry was criminal because he (DW1) went to remove the said dish without the consent of the complainant who was then in possession. Possession no matter how slight entitles the complainant to maintain an action for trespass.

The 2nd entry of the accused into the complainant's compound therefore was to commit an offence by using self help to remove the satellite dish and thereby annoyed the complainant who was then in possession.

The findings of the two Courts below constitute what is called

concurrent findings of facts.”

The appellant aggrieved with the stand of the trial Magistrate headed for the High Court on appeal, which High Court in its appellate jurisdiction had no hesitation in towing the line of reasoning of the Court of first instance and stated thus:

“The actions of the appellant to re-enter the premises of the complainant 2nd time was ill-motivated. The appellant formed what would be regarded unlawful means to do illegal act, it is apparent that the appellant took his own unilateral decision to resort to self help. He had formed in his mind the mental elements to forcefully enter the premises and removed out the satellite dish. Subsequently actualized the entry and removed out same the subject i.e. the satellite dish. Indeed, the action of the appellant combined mens rea and actus reus to materialize what he intended to do. We are convinced from the evidence before us that the appellant committed criminal trespass and was rightly convicted and sentence for that same offence.”

Again dissatisfied with the findings of the appellate High Court, the appellant approached the Court of Appeal or Court below for short which took a journey back into what the two Courts below it had done to see if there was a justification for the disturbance of the concurrent findings of the two Courts below it and the Court of Appeal per Ariwoola JCA (as he then was) stated at pages 108 - 109 stated as follows:

“It is also settled that the onus lies on an appellant to show that there are special circumstances to warrant interference by this Court with concurrent findings of fact of the two Courts below. The burden must be clearly discharged; otherwise this Court will not reopen those facts for re-evaluation. See Animashaun v. Olojo (1990) 6 NWLR (pt. 154) 111 at 121 - 122 per Obaseki, JSC.”

The Court below went at pages 108 and 109 further to state:

“Miscarriage of justice is said to mean, “failure of justice “. See Ojo v. Anibire (supra) per Kalgo JSC at page 12”

“Where an appellant has failed to discharge the burden on him of showing that there has been a miscarriage of justice, or that the concurring facts found by the Courts below were based on erroneous view or misapprehension of the facts before them, this Court is bound by those facts and will not reopen them for reappraisal and

reassessment. The judgment of the Court below properly based on those findings will be affirmed. See Balogun v. Labiran (1988) 1 NSCC 19; (1999) 3 NWLR (Pt. 80) 66.

In the instant case, I have no reason to disturb the findings of facts of the trial Court which was affirmed by the High Court in its appellate jurisdiction. The appellant has failed to show that by the findings of facts by the two Courts below, a miscarriage of justice has occasioned.” See page 109 of the Record.

For clarity I shall cite the relevant Statute and section which is:

“Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, or insult or annoy any person in possession of such property or, having lawfully entered into or upon such property, unlawfully reviews there with intent thereby to intimidate, insult or annoy such person or with intent to commit offence, is said to commit criminal trespass.”

In my humble view, the language of the Statute that is Section 342 of the Penal Code is very simple, clear and easily understood and can be interpreted to be that what is the possession of the property as opposed to title or ownership of the property which aspects are irrelevant to the proof of the charge under Section 342 Penal Code. It is therefore not enough as a defence to push forward a bona fide claim of right on the contention that crime was not intended. Though a thin line exists as to whether bona fide claim of right avails or does not and so it behooves the prosecution to establish criminal trespass that the real or dominant intent of the entry was to commit an offence or to insult, intimidate or annoy the occupant and that the claim of right was a mere cloak to cover the real intent or constituted no more than a subsiding intent.

However where the accused bona fide believed as in this case that the satellite dish belonged to his company but were aware that they were not entitled to enter the house in the possession of the respondent except by due process of law, the action of the appellant in forcing that second entry with the two people cannot be excused under pretext of a bona fide claim as the entry was clearly an insult, an act to intimidate or annoy the occupant possessor of the house and so the prescription in Paragraph 6 of Section 342 of the Penal Code 1860 by Ratanal and Dhirajlal’s Law of Crimes, 26th Edition page 2514 which explained the provisions of the Indian Penal Code

Section 441, with similar provisions with the Nigerian Penal Code Section 342.

Indeed from the facts of this case including even the admission by the appellant on the steps he took, this is certainly one of those instances of concurrent findings where an appellate Court should hold its peace, there being neither a miscarriage of justice nor a violation of some principles of law or procedure and nothing perverse found in the findings warranting either a disturbance or interference. See *Olley v. Tunji* (2013) ALL FWLR (pt. 687) 625 at 667, *Oguno v. State* (2013) ALL FWLR (pt. 690) 1291 at 1314 - 1315.

In the end and in line with the better and fuller reasoning in the lead judgment, I resolve the issue in favour of the respondent and against the appellant. The appeal lacks merit and I dismiss it also, as I abide by the consequential orders made.

D

SANUSI JSC

I was opportune to read before now, the draft judgment of my learned brother Ibrahim Tanko Muhammad JSC. I find myself in entire agreement with the reasoning therein and the conclusion arrived at that this appeal is unmeritorious and deserves to be dismissed. I however would like to make few comments to support the well researched judgment.

The appellant herein was arraigned before a Kaduna Chief Magistrate Court on two count charge of theft and criminal trespass, contrary to Sections 287 and 348 of the Penal Code respectively. The two charges were reproduced in the leading judgment, hence I see no need to set them out here again.

The facts of the case are briefly that, on 18th July 1999 the appellant illegally and without lawful cause, trespassed into the premises of the respondent and dismantled and removed a satellite dish in possession of the respondent and took it away. The respondent became angered with the attitude of the appellant, hence he lodged a direct complaint at the Chief Magistrate Court. The two charges were framed, read and explained to the appellant at the Chief Magistrate's Court (hereinafter to be referred to as "the trial Court"). The trial of the accused person now the appellant, commenced in earnest after he pleaded not guilty to the two charges. During the trial, the com-

plainant now respondent, testified on his own behalf and called one other witness. The appellant as an accused, presented his defence by testifying on his own behalf and he called three witnesses. In the end, the learned Chief Magistrate delivered a considered judgment in which he discharged and acquitted the appellant on the allegation of theft under Section 287 of Panel Code but convicted him on the second offence of criminal trespass, contrary, to Section 348 of the same Penal Code. Following his conviction of the second offence of criminal trespass, the accused/appellant was sentenced to three months imprisonment with an option of N2,000 fine.

Aggrieved by the conviction and sentence meted on him, the appellant appealed to the Kaduna State High Court sitting in its appellate jurisdiction, which said Court found no merit in his appeal and unhesitatingly, dismissed it and affirmed the decision of the trial Court. Further dissatisfied with the judgment of the High Court, the appellant again unsuccessfully appealed to the Court of Appeal, Kaduna Division (“the Court below” for short). In its lead judgment delivered by O. Ariwoola JCA (as he then was), the Lower Court found as below on page 109 of the record.

“In the instant case, I have no reason to disturb the findings on facts of the trial Court which was affirmed by the High Court in its appellate jurisdiction. The appellant has failed to show that by the findings of facts by the two Courts below, miscarriage of justice was occasioned.

In the final analysis, the only issue for determination is hereby resolved against the appellant.

In the circumstance, this appeal lacks merit and is accordingly dismissed. The decision of the Lower Court in the judgment of UMARU ADAMU AND BINTA ISAH J. J. in suit No.KDH/KAD/7C/2002 delivered on 31st October 2002 is accordingly affirmed.”

Again, piqued by the judgment of the Lower Court, the appellant extended his voyage by appealing to this Court. Sequel to that, he filed a notice of appeal on 27/4/2006 containing three grounds of appeal and from the three grounds of appeal contained in the Notice of Appeal, the appellant formulated sole issue for determination which is set out below:-

“Whether the Court below was in error in holding that there were concurrent findings of facts and that no reason was shown by

the appellant to disturb the concurrent findings of facts”(Culled from Grounds 1 and 2, as grounds 3 was abandoned).

On his part, the respondent also raised sole issue for determination of this appeal and the issue reads:-

“Whether the learned justices of the Court of Appeal were in error in their findings of fact that will attract the intervention of this Court in setting same aside.” B

In proffering arguments on his sole issue, the learned appellant’s counsel, after referring to the provisions of Section 342 of the Penal Code dealing with criminal trespass, submitted that offence had not been proved. Learned counsel referred to a similar provision in Indian Penal Code and the Indian case of RAM BALAK GAURI SHANKER v. DELHI ADMINISTRATION Reported in ILR (1980) DELHI 1292, in which a provision similar to Section 342 of the Penal Code was interpreted. C

Learned counsel for the appellant further contended that a person with bona fide claim of right cannot be said to have “intent”, the mental element of the offence of criminal trespass, since the aim was not to annoy, intimidate or insult, but rather, to assert his right over the property in question by retrieving the satellite dish. He said the Courts below erroneously focused their attention simply on the appellant’s resort to self-help to retrieve the satellite dish, rather than to look at the aim of the entry, adding that there is nothing in Section 342 of the Penal Code which forbids resort to self help. He said that this Court may apply the principle of self help in civil matters. He cited the case of NWAKIRE v. COP (1992) 5 NWLR (Pt. 241) 289 at 309. He contended also that the concurrent findings of the Courts were not supported by evidence and therefore this Court should interfere with those concurrent findings of the Lower Courts as they are not(sic) perverse. See UGWUANYI v. FEDERAL REPUBLIC OF NIGERIA (2012) 8 NWLR (Pt. 1302) 384 at 402. Learned counsel urged that this issue be resolved in his favour. D

Responding to the above submissions, the learned counsel for the respondent referred to the passage in the trial Court’s judgment where it held that the second entry of the respondent’s premises by the appellant was to commit an offence by using self-help to remove the satellite dish. Also he submitted that the finding of the trial Court was supported by evidence and there was nothing to suggest that E
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such finding was perverse or based on wrong principle of law. He stated that even the appellant in his testimony on page 26 of the record said that he visited the respondent's compound twice on the day of the incidence. He said the trial Court was therefore right in considering the action of the appellant as resorting to self-help which
 B led to criminal trespass, contrary to Section 342 of the Penal Code, Learned respondent's counsel also referred to Commentary on Indian Penal Code of 1860 by "RATANAL AND DHIRAJWAL Law of Crime", where the learned author commented on Section 441 of
 C Indian Penal Code which is in pari materia with Section 342 of the Penal Code of Northern Nigeria.

The learned respondent's counsel concluded his submissions by arguing that the notion that the existence of a bona fide claim of right excludes the presumption of criminal intent, cannot stand, as
 D any person may attempt to enforce his right in a wrong way e.g. by using unnecessary force or intending to wrongfully restrain the person in possession. He then urged this Court to dismiss this appeal and affirm the decisions of the two Lower Courts.

I deem it apt at this stage to reproduce the provisions of Section 342 of the Penal Code on which the appellant was tried, convicted and sentenced, which led to his appeals to the two Courts below and later to this Court. The said provisions read thus:-

Section 342 of the Penal Code

F *"Whoever enters into or upon property in the possession of another with INTENT to commit an offence OR to INTIMIDATE, INSULT OR ANNOY any person in possession of such property or having lawfully entered into or upon such property, unlawful remains there with INTENT thereby to INTIMIDATE, INSULT OR ANNOY*
 G *such person or with INTENT to commit an offence is said to commit CRIMINAL TRESPASS".*

In a book "Notes on the Penal Code", 4th Edition, in which was annotated by Prof. S. S. Richardson, one time the Director of Institute of Administration, Ahmadu Bello University Zaria, the learned
 H author on page 266 of the book listed the followings as the ingredients of the offence of criminal trespass, under Section 342 of the Penal Code, which must be proved by the prosecution in order to obtain conviction. These ingredients are

That there must be:-

“(a) (i) *Unlawful entry into or upon a property in the possession of another;*

(ii) *Unlawfully remaining there*

(b) *An intention*

(i) *To commit an offence; or*

(ii) *To intimidate, insult or annoy the person in possession of the property”*

The learned author went ahead to opine that the existence of bona fide claim of right ordinarily excludes the presumption of criminal intent but a person may attempt to enforce his right in a wrong way, e.g. by using unnecessary force or intending to wrongfully restrain the person in possession. He went further to define the word “ANNOY” to mean annoyance which would reasonably affect an ordinary person not what would specifically and exclusively annoy a particular individual.

The boggling question now is:-

Had the above elements of the offence been proved by the respondent through credible evidence? What needs to be addressed here, in my view, is the evidence adduced in the case vis-à-vis, the concurrent findings of the three Lower Courts.

Firstly on the issue of “Entry” into the premises of the respondent, the appellant while testifying at the trial Court stated, inter alia:-

“My driver droved (sic) me to his house and entered the always open compound when I entered, I saw a satellite Antenna which was a CONDEM SATELLITE i.e. our company from the design and material.... I went back to Mr. Job Onu’s compound together with two staff of our company and in arrival, I met Mr. Simon Ogah who is a satellite installer in our employment and staff I went with me (sic) one Joshua and Chidi...”

When being cross examined, the appellant posited as follows:-

“There is no contract agreement between my company and the complainant. It is correct that I removed the Satellite Dish from the complainant’s home. It is correct that CONDEM is not the only satellite Dish manufacturer (sic) in Kaduna State. There are technicians who can manufacture satellite like the one in Court in Kaduna... I instructed two of my staff to take it out after verification. It is correct that I did not report to the police before removing the satellite dish to my company... This dish is not fully identical to my dish....my initial

unknown was to go and meet the complainant and not to carry the satellite dish... I am aware that nothing belongs to me was found at the complainant's house and his decoder was returned to him... I did not have pertent (sic) right."

And on his part, the complainant earlier testified that the appellant went to his compound and removed his satellite dish. He maintained he bought the satellite in Panteka market in Kaduna and was issued with purchase receipt which he tendered in Court. He also said the appellant merely thought that it was his company's dish. Reviewing the evidence adduced in the case, the trial Court found that the appellant unlawfully entered into the respondent's compound and removed the satellite dish. The 'actus reus' is therefore complete. The next question is whether the appellant had entered the respondent's compound with intention to commit an offence, OR to intimidate, insult or annoy the respondent/complainant. The learned trial Chief Magistrate found as below:-

"The 2nd entry of the accused into the complainant's compound therefore was to commit an offence by using self-help to remove the satellite dish and thereby annoyed the complainant who was then in possession"

Now, can the above finding of the trial Chief Magistrate be assailed? I do not think so. My reason of holding this stance is not far-fetched. As I said earlier, one of the ingredients of the offence of criminal trespass is that the unlawful entry was done in Order to "COMMIT OFFENCE", or to "INTIMIDATE" OR to "INSULT" or to "ANNOY". If any of these elements is shown to have been established, then the commission of the offence is complete. Bearing in mind the testimony of the appellant in Court as highlighted above, one cannot rule out that the motive of the appellant by his action was to insult, annoy or intimidate the respondent who is the person in possession of the premises and by extension, of the satellite dish. No doubt the act or series of acts of the appellant would naturally cause annoyance to any reasonable man, especially because the act of employing the use of self-help in order to remove the satellite, which is even clear from his testimony in Court, that he was not sure it was the one owned by his company since he too confirmed during cross examination, that it was not only his company that manufactures such type of satellite dish and also that it was identical to his own, contrary to

what he had earlier stated in his evidence in Chief.

I am not undoubtful of the fact, that existence of a bona fide claim of right would ordinarily exclude the presumption of criminal intent or can constitute a defence to criminal trespass. However, the phrase “BONA FIDE”, to my mind, entails “GOOD FAITH”. From the testimony of the appellant himself, I do not think that such a defence will avail him, since in his own testimony, [especially during cross examination] as highlighted above, he did not in good faith believe that the satellite dish actually belongs to him or his company, since he admitted that similar ones are manufactured in Kaduna and that the one in question which he caused to be removed, only has similarity or could be identical to the one manufactured by his company and that there are technicians who could manufacture such satellite dish elsewhere. Considering the surrounding circumstances of the case, especially the antecedents of the case in which the appellant decided to enter the compound of the respondent in his (latter’s) absence to remove the satellite dish, all these go a long way to defeat the bone fide claim of right or to say the least, show any good faith and genuine claim of right.

To my mind, in criminal law, unless a thing is done with due care and attention, it cannot be held to have been done in good faith. The mere fact that it was done with a pure motive or without any impure intention or that the actor had been quite honest and without malice, will not justify his action and make it one done in good faith, unless it is shown that he has taken due care and paid due attention. This is not the case here.

There is nothing gained saying, that the appellant by trespassing into the compound of the respondent to remove the satellite dish in the respondent’s absence, had applied self-help.

I am not aware that act of self-help has been criminalised by the Penal Code. Rather, it operates largely in civil proceedings. However, under our criminal law, a complainant can always resort to right of private defence vide Section 59 and Section 60 of the Penal Code. My understanding of the right of private defence to property however is that it implies that a person in peaceful possession of property, is entitled to maintain that possession even by use of force if necessary. The law does not require a person whose property is forcefully trespassed into, to run away and seek protection of the authorities.

But if a person has a bare title to a property, his remedy in respect of any wrong to the property would be to seek redress in Court of law rather than to enforce it by use of force himself, as done by the appellant in this instant case. In any case, the right of private defence claimed by the appellant would not even apply in this case, because
 B when the appellant made the second entry to remove the satellite dish, the complainant/respondent was not at home I will therefore resolve the sole issue against the appellant herein.

Thus, for these few comments and the more detailed reasons contained in the leading judgment of my learned brother Ibrahim
 C Tanko Muhammad JSC, which I in entire agreement with, I also see no merit in this appeal.

I hereby dismiss the appeal accordingly. I affirm the judgment of the Court below which also affirmed the judgments of the two
 D Lower Courts. Appeal is hereby dismissed.

AKA'AH'S JSC (DISSENTING)

This appeal stems from a direct complaint initiated by the re-
 E spondent who was a former employee of the appellant's company.

The appellant is a German national resident in Nigeria and the Managing Director of COMDEN NIGERIA LIMITED, a Satellite Dish Manufacturing Company where the respondent worked as carpenter. On 3/11/1999 he was arraigned on direct criminal complaint at
 F the Chief Magistrate's Court Holden at Makera, Kaduna on allegations of criminal trespass and theft contrary to Sections 348 and 297 of the Penal Code Laws of Kaduna State. He was discharged on the offence of theft but was found guilty and convicted of the offence of
 G criminal trespass and sentenced to 3 month's imprisonment or a fine of N2,000.00 (Two thousand Naira) only. The appellant appealed against the decision of the Chief Magistrate to the High Court Kaduna State sitting in its appellate jurisdiction which affirmed the decision of the Chief Magistrate Court and dismissed the appeal. The appellant
 H further appealed against the decision to the Court of Appeal, Kaduna which dismissed the appeal and affirmed the judgment of the High Court sitting on appeal. The appellant felt dissatisfied and has finally appealed to this Court in the Notice of Appeal dated 27/4/2006 containing three grounds of appeal from which the appellant distilled a

lone issue namely:

“Whether the Court below was in error in holding that there were Concurrent findings of fact and that no reason was shown by the appellant to disturb the concurrent findings of fact (Grounds 1 and 2)”

The respondent also formulated a lone issue which reads:- B

“Whether learned Justices of the Court of Appeal were in error in their findings of fact that will attract the intervention of this Court in setting same aside.” (Grounds 1 and 2)

This appeal is against the conviction for criminal trespass which C reads thus:-

“That on or about the 18th day of July, 1999 at No. 8, Block 3 Gafai Street, behind Kaduna Textile Limited Kaduna you commit (sic) Criminal Trespass by entering into the above named premises, then in possession of Job Oni and dismantled a satellite dish then in D possession of Job Oni, and thereby committed an offence punishable under Section 348 of the Penal Code.”

In the brief of argument, learned counsel for the appellant pointed out that the charge as framed was founded entirely on pos- E session and did not allude to any intention to commit an offence or to annoy, insult or intimidate the respondent which are the essential mental elements of criminal trespass under Section 342 of the Penal Code. He argued that no evidence was led or extracted that the appellant went into the respondent's premises for the purpose of F annoying, insulting or intimidating the respondent or anyone at all. It is learned counsel's contention that the appellant was convicted of criminal trespass based on possession of the satellite dish being in the respondent. He submitted that the trial magistrate's holding that:-

“The 2nd entry of the accused into the complaints compound G therefore was to commit an offence by using self help to remove the satellite dish and thereby annoyed the complaint who was then in possession”... which was affirmed by the High Court (on appeal) and the Court of Appeal related to the interpretation of the appel- H lant's action as constituting criminal trespass is an issue of law and not a finding of fact.

Consequently that holding does not tantamount to concur- rent findings of fact over which this Court would be loathe to inter- fere. He said that the grouse of the appellant with the judgments of

the trial magistrate, the High Court and the Court below was that the ingredients of the offence of criminal trespass under Section 342 of the Penal Code law were incomplete since the mental element of the offence of criminal trespass was absent or lacking. He submitted that a bona fide claim of right which the appellant demonstrated on the claim of ownership of the satellite dish is inconsistent with the intent to commit an offence or to intimidate, insult or annoy. He maintained that the resort to self-help is not a crime.

Learned counsel for the respondent referred to the evidence before the trial magistrate which culminated in the finding that the 2nd entry of the accused into the complainant's compound was to commit an offence by using self-help to remove the satellite dish and thereby annoyed the complainant who was then in possession and the conclusion reached by the Lower Court at page 106 of the records was that these were findings of the two Courts below and they constitute concurrent findings of facts and an appellate Court will not disturb such findings unless there is manifest error which has led to some miscarriage of justice or a violation of some principle of law or procedure. Learned counsel agreed with the opinion expressed by Ratanal and Dhurajlal's commentary on the Indian Penal Code of 1860 in respect of Section 441 of the Code where they said at page 2515:

"Where therefore the accused bona fide believed that the title of a house is vested in them but they were aware that they were not entitled to enter the house except by due process of law, the action of the accused in forcing an entry into the house could not be held to be in assertion of a bona fide claim".

He agreed that the existence of a bona fide claim of right ordinarily excludes the presumption of criminal intent but went further to submit that the trial Judge who saw the demeanour of the accused and listened to all the witnesses is the appropriate person to know what transpired and so the trial magistrate came to a reasonable conclusion of what transpired. Since there is evidence that the appellant went back to Mr. Oni's compound together with two of the staff to dismantle the satellite dish, the trial magistrate was right to conclude that the appellant went back to annoy and or intimidate the respondent in a bid to exercise his bona fide claim of right in the premises of the respondent. He therefore urged this Court to dismiss the appeal.

Section 342 of the Penal Code defines criminal trespass. The

Section provides as follows:-

“342 Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate insult or annoy such person or with in- B
tent to commit an offence, is said to commit trespass”.

Section 342 of the Penal Code applicable in Kaduna State is in pari material with Section 427 of the Ceylon Penal Code which came for consideration before the Privy Council in *Sinnasamy Selvanayagam* C
v. The King (1951) A.C. 83.

The facts of this case are as follows:-

On April 23, 1945, the Government of Ceylon duly gave notice of its intention to take possession of certain private lands, including the Knavesmire Estate, for village expansion pursuant to the Land D
Acquisition Ordinance (Legislative Enactments of Ceylon, 1938 C. 203). On November 26th, 1945, the executive committee of the local administration directed the land officer of Knavesmire to take possession of the Estate for and on behalf of His Majesty pursuant to E
Section 12 of the Ordinance and on December 6, 1945, the land officer certified that he had that day taken possession of the estate on behalf of His Majesty. It was not disputed that thereupon the estate vested absolutely in His Majesty free from all encumbrances.

The Government continued for the time being to employ the F
labour force then on the estate, the appellant being a member of that force. On January 30, 1946, D. R. M. Rajapakse was appointed by the Governor to the post of superintendent at the Knavesmire Estate, the terms of appointment being stated in a letter dated June 26, 1946, addressed to him by the Chief Secretary (Exh. P9). G
According to the evidence of one, Hendersen, assistant government agent of Kegalla, given at the hearing of this matter, the appointment was made on his recommendation. In accordance with those instruments, Rajapakse, on April 29, 1946 gave notice to the appellant H
(Exh. D1) terminating his employment as from May 31, 1946, and directing him to hand over to Rajapakse the house which he occupied and to leave the estate on or before May 31, 1946. On that date the appellant accepted his wages, but refused to accept a discharge ticket tendered to him and declined to leave the premises in

his occupation.

In his evidence, the appellant stated that when the estate was taken over by the Crown he and his wife and mother occupied two rooms the in lines on the estate. His father and grandfather had occupied the rooms before him. His father had planted trees in the garden plots in front and in the rear of the rooms and he and his parents had enjoyed the produce of the trees. He also claimed that he and his ancestors had been in occupation of the rooms for seventy years and for that reason, he declined to quit, since he had no other house to live in. He claimed the right to stay on the estate since for generations he and his family had lived there.

Based on these facts the government agent made a report to the Magistrate's Court of Kegalla that the appellant had committed criminal trespass by unlawfully continuing to remain on the Knivesmire Estate, property of the Crown in the occupation of D. R. M. Rajapakse, superintendent of the said estate, with intent thereby to annoy Rajapakse, and thereby committed an offence punishable under Section 433 of the Penal Code.

At the trial, the Magistrate found that the appellant had occupied the two line rooms not as a tenant but as servant and that when his employment ended by notice to quit duly served on him his subsequent remaining on the estate was to cause annoyance to Rajapakse, since that would be the natural consequence of his action. The appellant was accordingly convicted and sentenced to two months rigorous imprisonment. His appeal to the Supreme Court was dismissed and he thereafter appealed to the Privy Council. In allowing the appeal, the Privy Council held that entry upon land, made under a bona fide claim of right however ill-founded in law the claim may be does not become criminal merely because a foreseen consequence of the entry is annoyance to the occupant. To establish criminal trespass, the prosecution must prove that the real or dominant intent of the entry was to commit an offence or to insult, intimidate or annoy the occupant and that any claim of right was a mere cloak to cover the real intent, or at any rate constituted no more than a subsidiary intent. The Court reasoned that when the appellant was in the witness box, he was not asked whether he intended to annoy Rajapakse; nor were any questions put to him to suggest that he was on bad terms with Rajapakse who was merely carrying out the orders of his

superiors. It was wrong for the Lower Courts to think that an intention to annoy Rajapakse must be inferred because such annoyance would be the natural consequence of the appellant's refusal to quit, and that the appellant must have appreciated this.

In *Nwakire v. C.O.P.* 1992 5 NWLR (Pt. 241) 289, the appellant was charged in the Magistrate's Court of the former Anambra State of Nigeria in the Nnewi Magisterial District on two counts of unlawfully conducting himself in a manner likely to cause a breach of the peace and willfully and unlawfully damaging four electric poles and four fluorescent lights property of one Albert Anochili. The evidence led at the trial disclosed that there had been a dispute between Albert Anochili and the appellant over a piece of land on which Albert erected a building resulting in the appellant instituting an action in the High Court at Nnewi over the said land in 1979. Subsequent to the institution of the action in 1981, Albert erected four poles on part of the land in dispute with a view to supplying electricity for the purpose of a funeral ceremony. The appellant went on the land and removed the four electric poles in consequence of which he was charged.

In the course of the trial, the appellant set up a defence of bona fide claim of right under Section 23 of the Criminal Code when he stated he removed the poles because the land on which they were erected belonged to him. His defence was rejected by the Chief Magistrate on the ground that the defence cannot avail the accused because Section 23 of the Criminal Code was invoked in bad faith.

The appellant unsuccessfully appealed to the High Court and he further appealed to the Court of Appeal. In a majority decision of 2-1, the appeal was dismissed with Uwaifo, JCA dissenting.

In his dissenting Judgment which the Supreme Court agreed with Uwaifo, JCA (as he then was) expounded the law as follows:-

"Once an accused raises by his evidence, a claim of right in an offence involving property with which he is charged, such as malicious damage to property, the burden is on the prosecution to prove the absence of a claim of right made in good faith because that defence negatives the mens rea for malicious or what is also known as willful and unlawful - damage to property. See Kamara v. Director of Public Prosecutions (1973) 2 All ER 1242 at 1252 where Lord Hailsham said:-

'On general principles in all these cases, the burden would rest on the prosecution to exclude these defences, which I will describe as a claim of right made in good faith. All these cases wee recently considered in this Court in Ibeziako & Ors. v. The State (1989) CLRN 123 where it was pointed out that when the defence under Section 23 is available it negatives mens rea and that the honest belief in the claim, not the reasonableness of it, is the bastion of the defence. This Court said at page 139 of a bona fide claim of right:-

'That defence appears to be very wide in scope... In order to be criminally liable in all offences other than those rare ones of strict liability, mens rea is required. Where a claim of right is available as a defence, it negatives the requisite mens rea. In some cases, the elements constituting the mens rea are not difficult to ascertain. Take the instance of willful and unlawful damage to property: a claim of right presents no difficulty and will avail an accused in the appropriate circumstance. If however ownership is contested, the burden of proving mens rea must be discharged by the prosecution. The issue may turn on the claim to ownership according to the evidence or on the honesty of the belief in the claim according to the circumstances. The relevant factors then simply are the 'claim to ownership' not necessarily the reasonableness of the claim'.....

The defence is not limited to whether the accused honestly believed he was the owner of the property or had a right to it but extends to whether he honestly believed he had a right to do what he is accused of".

The appellant testified as DW1 and he stated thus:-

"When I entered, I saw a satellite antenna which was a COMDEN STATELITE i.e. our Company from the design and material. I ask the tenant how the satellite came to this company and they told me that it was brought in with a wheel barrow. I went to our workshop which is in the instant neighbourhood from Job Oni's compound. In the workshop, I was informed that Mr. Job Oni has carried out from the workshop all assessories which are required (sic) for the satellite antenna and the satellite itself was carried on a wheel barrow. It was my own staff, a labourer and one artisan. I checked our store and discovered that material for the manufacture of three satellite antenna had been missing. I went back to Mr. Job Oni's compound together with two staff of our company and on arrival, I met Mr.

Simon Ogah who is a satellite installer in our employment our staff I went with one Joshua and Chidi. I ask Simon Ogah who told me that he was called to install satellite antenna by Job Oni. Mr. Simon Ogah had with him a feed and sealer Ring in which Mr. Job Oni call the Upper Satellite A.N.B. This feed and sealer ring are manufactured in Cast Aluminum to our own design and they are nowhere for sale as they are for our Company, COMDEN NIGERIA LIMITED. I gave Mr. Simon Ogah a letter of warning for stealing company's property and engaging in unauthorized installation jobs". B

He continued his evidence as follows:-

"My second visit at Job Oni's compound I asked my staff to take the satellite antenna to our workshop (The satellite Dish). In our workshop we laid the satellite dish on our mould and it was fully matching with the shape of it. This mould was imported from Germany from the company M. W. O. There is no satellite dish in the world having the same design data. From our list the satellite dish is our own." C D

Apart from making a direct complaint, the complainant also instituted a civil action before the Kaduna State High Court in Suit No. KDH/KAD/803/99 wherein title to the satellite dish is in issue. He gave evidence as PW2 wherein he stated:- E

"On 18/7/99, it was Sunday, I went to church and when I came back from the Church, I was told that Mr. Spiess, the accused came to my house and go (sic) away with dish. I then went to the accused and he said the satellite dish belongs to him. But the said satellite dish belongs to me because I bought a galvanise iron and 3 quarter pipes black and somebody made the satellite dish for me. From the items I bought, when I bought the items, I was issued a receipt". F

Under cross-examination, the witness said that the he did not see the appellant removing the satellite dish he was told about it. G

Section 59 of the Penal Code states that nothing is an offence which is done in the lawful exercise of the right of private defence and Section 60(b) of the same Code goes on to stipulate that:- H

"60 Every person has a right, subject to the restrictions herein-after contained to defend -

(b) the property whether movable or immovable of himself or of any other person against any act, which is an offence falling under

the definition of theft, robbery, mischief or criminal trespass or which is an attempt to commit theft, robbery, mischief or criminal trespass”.

The two Sections combined enable an accused person to avoid criminal liability just like a claim of right under Section 23 of the Criminal Code which provide, as follows.

B *“A person is not criminally responsible, as for an offence relating to a property, for an act done or omitted to be done by him with respect to any property in the exercise of an honest claim of right and without intention to defraud”.*

C From the evidence adduced, it is clear that the appellant raised the defence of a claim of right when he entered Job Oni’s compound and removed the satellite dish. The trial Magistrate in his judgment considered the issue of possession when he referred to the cases of Adegbite v. Ogunfaolu (1990) 4 NWLR (Pt. 146) 578 and Otuoha D Akpapuna v. Obi Nzeka II (1983) 7 S.C. 1. The claim for trespass which the Supreme Court considered in Akpapuna v. Nzeka II supra was simple trespass which can be maintained at the instance of the person in possession because where someone in possession of land is alleged to be a trespasser, the onus is on the person so alleging to E show that his better right to the possession has been disturbed by the trespasser. See: Amakor v. Obiefuna (1974) 3 S.C. 67. In the instant case, the issue at stake was not trespass per se. The appellant was accused of criminal trespass and while the appellant admitted the fact of the trespass he set up the defence of a claim of right which nega- F tives the criminal intent.

When the appellant was cross-examined on his evidence, no suggestion was ever put to him that his intention in going to remove the satellite dish from Job Oni’s compound was to intimidate, insult G or annoy him. The complainant was not physically present in the premises when the appellant instructed his men to remove the satellite dish. Thus, the mens rea of the appellant’s action was not established. There is therefore no basis to advance the argument that the Magistrate who convicted the appellant watched his demeanour in H the witness box and this informed his decision in finding him guilty of criminal trespass.

The Court of Appeal failed to intervene on the premise that there were concurrent findings made by the trial Magistrate and the High Court (sitting in its appellate jurisdiction) that the second entry

into the respondent's compound amounted to criminal trespass and the appellant failed to show that there are special circumstances to warrant interference by the Court.

The finding of the trial Magistrate that the second entry of the appellant into the complainant's compound and removal of the satellite dish without the consent of the complainant constituted criminal trespass cannot amount to findings of facts since the learned trial Magistrate was dealing with Section 342 of the Penal Code. I therefore agree with the submission of learned counsel for the appellant that the issue whether the appellant's action constituted criminal trespass is an issue of law and not facts. See: *Ogbechie v. Onochie* (1986) 2 NWLR (Pt. 23) 484. B
C

As the offence of criminal trespass is not a strict liability offence, the mens rea of the appellant could not be inferred either by the trial Magistrate or the High Court sitting on appeal but proved beyond any reasonable doubt and since the trial Magistrate acquitted the appellant of the offence of stealing on the ground that he had an honest belief that the satellite dish belonged to his company, the criminal intention was equally vitiated in the offence of criminal trespass. He was therefore entitled to an acquittal for the offence because of the defence of a claim of right to the satellite dish. D
E

Resort to self-help can lead to a breach of the peace and so is condemnable as was done by *Obaseki, JSC in Military Governor of Lagos State v. Ojukwu* (1986) 1 NWLR (Pt. 18) 621 at 636 or what *Aniagolu, JSC* stated in *Eliochin (Nig.) Ltd. & Ors v. Mbadiwe* (1986) SC 99 at 130 to be that "the laws of civilized nations have always frowned at self-help if for no other reason than that they engender breaches of peace", it must be emphasized that principles of liability in civil and criminal cases are basically different and an action which is not made a crime by statute cannot be said to be criminal offence because it is odious. F
G

The clear intention of Section 23 of the Criminal Code (and in this case Sections 59 and 60 (b) of the Penal Code) is to immune an accused person who successfully pleads a bona fide claim of right from criminal liability. In his concurring judgment in *Nwakire v. C.O.P.* supra *Kutigi, JSC* (as he then was) made the point crystal clear at page 311 that:- H

"Appellant's conduct is clearly blameworthy. It is wrongful even

though not criminal.”

The prosecution of the appellant for criminal trespass was in relation to the satellite dish which the appellant honestly believed the respondent carried without permission from COMDEN and not the entry into the complaint’s premises which is being taken up in the
B civil suit.

The appeal has merit and I accordingly allow it. The conviction for criminal trespass and the sentence of 3 months imprisonment or N2,000.00 fine imposed on the appellant by the Chief Magistrate’s
C Court Kaduna which was affirmed by the Kaduna State High Court and Court of Appeal, Kaduna is hereby set aside. In its place, I make an order acquitting and discharging the appellant. If the appellant paid the fine, the amount should be refunded to him. Appeal is allowed.

D _____

OKORO JSC (DISSENTING)

This appeal stems from a direct criminal complaint initiated by the respondent at the Chief Magistrates Court Holden at Makera,
E Kaduna on 3rd November, 1999 on allegations of criminal trespass and theft contrary to Sections 348 and 282 of the Penal Code, Laws of Kaduna State respectively. The appellant is a German citizen resident in Nigeria and the Managing Director COMDEN NIGERIA
F LIMITED, a Satellite Dish Manufacturing Company while the respondent is a carpenter and a former employee of the appellant’s company.

Sometimes in 1999, the appellant was charged at the Magistrate Court Kaduna with the following offences:

G *“1 That on or about the 18th day of July, 1999 at No. 8, Block 3, Gafai Street behind Kaduna Textile Limited, Kaduna, you commit (sic) Criminal Trespass by entering into the above named premises, then in possession of Job Oni and dismantled a Satellite Dish then in possession of Job Oni, and thereby committed an offence punishable under Section 348 of the Penal Code.*

H *2. That you, on or about the 18th day of July, 1999 at No. 8, Block 3 Gafai Street, behind Kaduna Textile Limited, Kaduna, committed the theft of a Satellite Dish by taking it out of the possession of Job Oni and thereby committed an offence punishable under Section*

287 of the Penal Code.”

The appellant had earlier gone to the respondent’s premises to discuss some issues. He went away and returned to the premises with some members of staff of his company. He then removed the Satellite dish from the respondent’s compound alleging same to belong to his company. B

At the end of the trial before the Magistrate’s Court, the appellant was acquitted and discharged in Count 2 of the charge on the ground that the offence of theft was not proved against the appellant. However, the appellant was found guilty of the first count charge of criminal trespass and he was convicted and sentenced to three (3) months imprisonment or two thousand naira (2,000.00) fine in the alternative. C

The appellant was dissatisfied with the stance of the trial Court and he appealed to the High Court. In its appellate jurisdiction, the High Court dismissed the appeal and affirmed the judgment of the trial Magistrate. On a further appeal to the Court below, the Court of Appeal also dismissed the appeal of the appellant and upheld the judgment of the two Courts earlier. The appellant has further appealed to this Court. The Notice of Appeal filed on 27th April, 2006 E has three grounds of appeal out of which one issue has been distilled for the determination of this appeal. The sole issues states:

“Whether the Court below was in error in holding that there were concurrent findings of fact and that no reason was shown by the appellant to disturb the concurrent findings of facts.” F

The learned counsel for the respondent, S. A. Akanni, Esq. in the respondent’s brief has also distilled one issue for consideration and it says:

“Whether the learned justices of the Court of Appeal were in error in their findings of fact that will attract the intervention of this Court in setting same aside.” G

As it stands, the sole issue formulated by the appellant and the respondent is formulated from grounds 1 and 2 of the notice of appeal. In paragraph 4.1 page 7 of the appellant’s brief, the learned counsel for the appellant, E. Robert Emukpoeruo, Esq., has applied that ground three of the notice of appeal be struck out as no issue is distilled from it. This is correct. It is settled law that where no issue is formulated from any ground of appeal, the said ground is deemed H

abandoned. See *Adelekan v. Ecu-Line NV* (2006) 12 NWLR (Pt. 993) 33, *Kraus Thompson Organization Ltd. v. University of Calabar* (2004) 9 NWLR (Pt. 879) 631. *Labiya v. Alhaji Anretiola & 5 Ors* (1992) 8 NWLR (Pt. 258) 139. The abandoned ground three is accordingly struck out. I shall determine this appeal on the sole issue as
 B couched by the appellant.

In his argument, the learned counsel for the appellant submitted that the sole issue is an issue of law. According to him, whether the appellant's action constituted criminal trespass is an issue of law and not fact. Relying on the case of *Ogbechie v. Onochie* (1986) 2
 C NWLR (Pt. 23) 484 at 491-492. Learned counsel submitted further that the decision of the trial magistrate and confirmation of the High Court involved an erroneous application of the provisions of Section 342 of the Penal Code to the undisputed facts that the appellant in
 D the bona fide belief that the satellite dish in the compound of the respondent was the property of his company, entered the respondent's compound and removed the satellite dish.

It is the contention of the learned counsel for the appellant that the grouse of the appellant with the judgments of the learned
 E trial magistrate, the High Court and the Court below is that the ingredients of the offence of criminal trespass under Section 342 of the Penal Code were incomplete. That the mental element of the offence of criminal trespass was absent. He argued further that the Lower
 F Courts were more concerned with the appellant's resort to self help to retrieve his company's property rather than his defence that his bona fide claim of ownership of the satellite dish negated the mental element of criminal trespass completely under Section 342 of the Penal Code. It is his view that the Courts below did not appreciate
 G the nature of the mental element required under Section 342 of the Code.

Learned counsel submitted that the mental element of the offence of criminal trespass is the intent to commit an offence or to intimidate, insult or annoy a person in possession of property. It is his
 H contention that a person with a bona fide claim of right does not possess the mental element of the offence of criminal trespass since the aim, the dominant purpose of the action, is not annoyance, intimidation or insult but the assertion of that right over the property and in the instant case, the retrieval of the satellite dish of his com-

pany. Learned counsel cited the following cases in support of his argument to wit: *Ram Balak alias Gawi Shanker v. Delhi Administration* an Indian case reported in ILR1980 DELHI219; legalcrystal.com/683046, *Kunju Moideen Methararu v. Kandan Air* 1959 Ker/46, legalcrystal.com/719129 (Indian Court of Criminal Appeal), *Sinnansamy Selvanayagam v. The King* (1951) AC 83 at 87-88. B

It is his further submission that the Courts below were clearly in error in focusing on the appellant's resort to self help to retrieve his company's satellite dish as the basis for convicting him. That there is nothing in Section 342 of the Panel Code which prohibits, deprecates or criminalizes resort to self-help. He opined that it is only in civil proceedings where the Court frowns at the use of self-help, relying on the case of *Nwakire v. COP* (1992) 5 NWLR (Pt. 241.) 289 at 309. C

In conclusion, learned counsel for the appellant submitted that the concurrent findings of the Courts below was perverse as they lost sight of the absence of mens rea prescribed by Section 342 of the Penal Code. It is his view that this Court has the power to interfere, relying on the case of *Ugwuanyi v. F.R.N.* (2012) 8 NWLR (Pt. 1302) 384 at 402. He urged this Court to resolve this issue in favour of the appellant. D E

In his response, the learned counsel for the respondent started by asking some questions to wit: Was the finding of the trial magistrate perverse or based on a wrong principle of law? Was the High Court in its appellate jurisdiction in error as well as the Court of Appeal in sustaining the findings as quoted ante? In finding answers to the above questions, learned counsel submitted that the findings of the trial Magistrate was based on credible evidence and the two appellate Court below were right to affirm that judgment. F G

Referring to the evidence of both the appellant and the respondent, learned counsel argued that they both agree that the appellant went to the respondent's compound twice and on the second occasion he went there with two others to remove the satellite dish without the consent or permission of the respondent. According to learned counsel for the respondent, the Court below and the other two Courts aptly considered while stating the true action of the appellant as resorting to self-help and trespass contrary to Section 342 of the Penal Code. H

Referring to a commentary on the Indian Panel Code 1860 by Ratenal and Dhirajlal's Law of Crimes, 26th Edition, learned counsel submitted that to establish criminal trespass, the prosecution must prove that the real or dominant intent of the entry was to commit an offence or to insult, intimidate or annoy the occupant, and that any claim of right was a mere cloak to cover the real intent or at any rate, constituted no more than subsisting intent.

According to learned counsel, the trial magistrate who at all times saw the demeanour of the appellant and listened to all the witnesses was in a proper position to know what transpired and came to a reasonable conclusion. He opined that when the appellant went a second time to the respondent's premises with reinforcement of two persons, he went there to annoy and/or intimidate the respondent in a bid to exercise his bona fide claim of right in the premises of the respondent. He urged the Court to resolve this issue against the appellant.

The appellant herein was charged under Section 342 of the Panel Code. I deem it expedient therefore to bring to the fore the letter of the law under which he was charged at least for ease of reference. Section 342 of the Panel Code provides:

"Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy such person or with intent to commit an offence is said to commit criminal trespass."

Commenting on the above provision, S. S. Richardson, in Notes on the Penal Code (4th Edition) at page 266, states as follows:-

"Simple trespass is not a criminal offence. Trespass becomes criminal only when it is committed in order to commit some offence injurious to a person in possession of the property on which the trespass is committed, or in order to cause annoyance to such a person."

The question may be asked: What really constitutes the offence of criminal trespass? For a person to be said to have committed criminal trespass under this Section, the following ingredients must be shown to be present:

"(a) (i) unlawful entry into or upon a property in the possession of another;

(ii) unlawfully remaining there.

(b) an intention-

(i) to commit an offence; or

(ii) to intimidate, insult or annoy the person in possession of the property.”

On the defence of bona fide claim of right, Richardson states B that “the existence of a bona fide claim of right ordinarily excludes the presumption of criminal intent but a person may attempt to enforce his right in a wrong way, e.g. by using unnecessary force or intending to wrongfully restrain the person in possession.” He went C on to say that the word “annoy” should be taken to mean annoyance which would reasonably affect an ordinary person, not what would specially and exclusively annoy a particular individual.

In the instant case, all the Courts below, starting from the Magistrate’s Court, to the appellate High Court and the Court of Appeal, D agree that the appellant made two visits to the respondent’s premises. The first visit was, according to the record, to discuss some technical issues with him, a carpenter who was working for his company, COMDEN Nigeria Limited. On this first visit, nothing happened except that the appellant discovered a satellite dish which he believed E was the property of his company. There was yet a second entry. The appellant, on this second visit came with two of his staff ostensibly to forcefully remove the satellite dish which he did.

The learned counsel for the appellant had submitted that the F grouse of the appellant with the judgments of the learned trial Magistrate, the High Court and the Court below is that the ingredients of the offence of criminal trespass under Section 342 of the Penal Code Law were incomplete. He contended further that the mental element of the offence of criminal trespass was absent or lacking. Learned G counsel had relied on some foreign authorities and also the case of *Nwakire v. C.O.P.* (supra).

In the said *Nwakire’s* case (supra), the appellant was charged H in the Magistrate’s Court of the former Anambra State of Nigeria in the Nnewi Magistrate District on two counts of unlawfully conducting himself in a manner likely to cause a breach of the peace and willfully and unlawfully damaging four electric poles and four fluorescent lights property of one Albert Anochili. The evidence led at the trial disclosed that there had been a dispute between Albert Anochili and the

appellant over a piece of land on which Albert erected a building resulting in the appellant instituting an action in the High Court over the said land in 1979. Subsequent to the institution of the action, in 1981, Albert erected four poles on part of the land in dispute with a view to supplying electricity for the purpose of a funeral ceremony.

B The appellant went on the land and removed the four electric poles in consequence of which he was charged. The appellant was acquitted of the first count but convicted of offence of willfully and unlawfully damaging electric poles. His defence was that as the land on which the poles were erected belonged to him, that was why he removed the poles. In effect, he set a defence of bona fide claim of right under Section 23 of the Criminal Code. All the three Courts i.e. Magistrate Court, High Court and Court of Appeal held that the resort to self help by the appellant deprived him of the defence under D Section 23 of the Criminal Code.

However, this Court thought otherwise. It held unequivocally, upholding the minority decision of the Court of Appeal, that once an accused raises, by his defence, a claim of right in an offence involving property with which he is charged, such as malicious damage to property, the burden is on the prosecution to prove the absence of a claim of right made in good faith because that defence negatives the requisite mens rea for malicious or willful and unlawful damage to property. Put differently, that an accused will not be held criminally liable so long as he asserted that he honestly believed he had a lawful claim of right even though it might be unfounded in law or in fact. As F it was in Nwakire's case (supra), so it is in this case.

In the instant case, the facts are not disputed at all. The appellant used to engage the respondent, a carpenter to work for him in G his company, COMDEN Nigeria Ltd. Appellant has not denied removing the satellite dish. Listen to him as he testified on page 25 of the record of appeal.

H *"I know the complainant Job Oni. The complainant use to work in our company for about 10 years. He was employed in our workshop on 2nd May, 1999. The PW1 who testified was not in the compound when I visited. When I entered I saw a satellite Antena which was a COMDEM SATELLITE i.e. our company from the design and material. I ask the tenant how the satellite came to this compound and they told me that it was brought in with wheel barrow. I*

went to our workshop which is in the instant neighbourhood from Job Oni's compound. ... In the workshop I was informed that Mr. Job Oni has carried out from the workshop all accessories which are required for the satellite Antenna and the satellite itself was carried on a wheel barrow. ... I checked our store and discovered that material for the manufacture of three satellite antenna has been missing. I went back to Mr. Job Oni's compound with two staff of our company and on arrival, I met Mr. Simon Ogah who is a satellite installer in our employment. Our staff went with me one Joshua and Chidi..."

Clearly, the evidence of the appellant quoted above raised a defence of bona fide claim of right made in good faith. The appellant's quarrel with the judgments of the learned trial Magistrate's Court, the High Court and the Court of Appeal was that they were more concerned with the appellant's resort to self help to retrieve the company's property rather than his defence that his bona fide claim of ownership of the satellite dish negated the mental element of criminal trespass completely. Although the appellant may have resorted to self help, which is condemnable, the mental element of the offence of criminal trespass was absent. This much, the learned trial Chief Magistrate echoed in his judgment as follows:-

"The accused took the dish with the honest belief that same belong to his company. Based (sic) on the honest belief, the criminal intention has been vitiated. I therefore agree with the submission of the accused counsel that the accused had no criminal intention to deprive the complainant permanently of the ownership of the said dish in question. I therefore discharge and acquit the accused on this ground."

I am surprised that the learned trial Magistrate, after holding that the appellant had an honest belief that the satellite dish belonged to him and that he had no criminal intention to deprive the respondent of the dish, and after acquitting him of the count of theft, went ahead to convict him of the offence of criminal trespass. Can it be said that the appellant had no criminal intention to steal when he removed the satellite dish but had criminal intention to commit criminal trespass in respect of the same satellite dish? I do not think so.

In *Nwakire v. COP* (supra) this Court adopted with approval the dissenting judgment of Uwaifo, JCA (as he then was) when he said:

B “Since the decision of the Supreme Court in *Inspector General of Police v. Emeozo & Ors* (1957) WRNLR 213 where *R. v. Bernard* (1938) 2 KB 264 was approved and *Dabierin & Anor v. The State* (1968) 1 ALL NLR 138 where *R v. Skivington* (1967) 1 ALL ER 483 was approved, there is no doubt that a claim of right made in good faith is a defence to all offences relating to property. An accused will not be held criminally liable so long as he asserted that he honestly believed(sic) to be a lawful claim of right even though it might be unfounded in law or in fact.”

C For me, the opinion expressed by Uwaifo, JCA (supra) which was adopted by this Court, is very much applicable to this case even though it was decided based on Section 23 of the Criminal Code, I say so because under the Penal Code which the appellant was charged, similar provisions like Section 23 of the Criminal Code are present.
D For instance, Section 59 of the Penal Code states:

“59. Nothing is an offence which is done in the lawful exercise of the right of private defence.”

Also, Section 60(b) of the Penal Code strengthens my view that the appellant was wrongly convicted. It states:

E “60. Every person has a right, subject to the restrictions hereinafter contained to defend:

(b) the property whether moveable or immovable of himself or of any other person against any act, which is an offence falling under the definition of theft, robbery, mischief or criminal trespass or which is an attempt to commit theft, robbery, mischief or criminal trespass.”

F There is no doubt that both the Criminal Code and the Penal Code agree that once it is shown that an accused has a bona fide claim of right, the required *mense rea* is negative. The extent of damage done by him, while it may be a factor to be taken into consideration in determining as a fact whether his claim of right is honest or bona fide, cannot restore the *mense rea* that is already negated by the finding that he had the honest belief, the right to do what he did.
H See *Ohonbamu v. COP* (1990) 6 NWLR (Pt.155) 204.

The appellant herein not only gave evidence of bona fide claim of right made in good faith, but also gave evidence to demonstrate that he actually and honestly believed the satellite dish belonged to his company. There was therefore no criminal intention in the appel-

lant. The three Courts below, just like in Nwakire's case (supra), were wrong.

On the issue of resort to self help, I need to state clearly that I do not subscribe to any person taking the law into his hands for whatever reason. However, where the law has absolved a person who takes the law into his hands in the defence of property, this Court cannot criminalize it beyond mere condemnation. Kutigi, JSC (as he then was) in his contributory judgment in Nwakire's case made the following comments in respect of resort to self help at pp.310 - 311 of the report. Thus:

"There must be no recourse to self-help in circumstances such as this. Self-help is not something to be encouraged but rather it should be actively discouraged. It is pertinent to refer to the case of Military Governor of Lagos State v. Ojukwu (1986) 2 SC 277 at 281 where Obaseki, JSC observed:-

"In the area where rule of law operates, the rule of self help by force is abandoned. Nigeria being one of the countries in the world, even in the third world which profess loudly to follow the rule of law, gives no room for the rule of self-help by force to operate. Once a dispute has arisen between a person and the Government or authority and the dispute has been brought before the Court, thereby invoking the judicial powers of the State, it is the duty of the Government to allow the law to take its course or to allow the legal and judicial process to run its full course."

I agree."

In spite of the above agreement, his Lordship went on to state the extent of his agreement on page 311 of the report as follows:-

"Appellant's conduct is clearly blameworthy. It is wrongful even though not criminal."

I also agree. The conduct of the appellant in the instant case is highly reprehensible, though not criminal. If it was civil matter, then the law would have taken its course. Since the law did not criminalize the appellant's conduct, the Court cannot extend the frontier of the law to criminalize it. This is so because a defence of bona fide claim of right made in good faith in respect of property is absolute and negatives any element of mense rea.

It is on the above reasons of mine that I am unable to agree with the majority decision of this Court in this appeal. It is my view

that this appeal is meritorious and is hereby allowed. The conviction of the appellant for criminal trespass which was affirmed by the Court of Appeal is hereby quashed and set aside, including the sentence passed on the appellant. The appellant is accordingly acquitted and discharged. If the appellant had paid the fine of N2,000.00 imposed,
B the amount should be refunded to him forthwith.

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