

**SUPREME COURT OF NIGERIA**  
FRIDAY 1ST JULY, 2016. SC. 272/2008  
**CORAM: S. GALADIMA, N. S. NGWUTA, C. B. OGUNBIYI,**  
**K. M. O. KEKERE-EKUN, J. I. OKORO, JJSC**

1. ALHAJI LASISI SALISU  
2. ALHAJI JUBRIL SALISU ..... APPELLANTS  
(For themselves and on behalf  
of the Gbadamosi Family of Ijanikin)

**AND**

1. ALHAJI ABBAS MOBOLAJI ..... RESPONDENTS  
2. ALHAJI YISA OLORUNKEMI  
3. ALHAJI TAIRU AKINOLA  
(For themselves and on behalf  
of the Eleso Family of Ijanikin)

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PLEADINGS - Statement of claim - Writ of summons - Supremacy -  
Supersession applies where there is complete severance - By way of  
distinct relief in the latter - Which is not contained in the former (H1)

LAND LAW - Title - Proof - Traditional history - Party relying on such  
history must plead his root of title by proving - Founder of land -  
How land was founded - And particulars of intervening owners (H2)

LAND LAW - Title - Proof - Means of - Ownership is proved by  
traditional evidence - Title documents - Extended acts of ownership  
- Acts of long possession - And proof of possession of adjacent land  
(H3)

APPEALS - Court - Findings - Failure to appeal - Appellants having  
failed to appeal against CA finding - That the land is communal land  
- Have no basis to deny at Supreme Court (H4)

LAND LAW - Title - Proof - Traditional history - Exception to rule -  
Proof of successive persons on whom land devolved - Can be ex-  
empted where the land remains a communal land (H5)

LAND LAW - Communal land - Concept of - *Tijani v. SGN* - Such

**3794** Salisu v. Mobolaji (2016) 7 KLR (pt. 390) 3793; (2016) 15

land is characterized as belonging to a vast family - Of which many are dead - Few are living - And countless members are unborn (H6)

LAND LAW - Communal land - Proof - Parties claiming title to such land must plead - Founder of the land - That they are descendants of the founder - And how the land became communal land (H7)

LAND LAW - Title - Proof - Onus of - Exception - Although plaintiff is not to rely on weakness of defence to prove title - But he can take advantage of the facts in defendant's case - Which supports his case (H8)

APPEALS - Evidence - Reevaluation of - Appellate Court does not evaluate evidence - But it can reevaluate evidence led at trial Court - Which is contained on the printed record (H9)

EVIDENCE - Admission of - Weight - Admission made by DW4 & DW8 are bound to stand firmly - And Court of Appeal was therefore right in holding as it did (H10)

COURTS - Processes - Consideration of - Court can make use of processes filed before it - To arrive at a just decision in a matter pending before it (H11)

### ***FACTS***

Plaintiffs/respondents initiated this action at the High Court of Lagos State sitting in Badagry, claiming against defendants/appellants the following reliefs: Declaration of title in favour of members of Eleso Chieftaincy family of Ijanikin, Lagos State, perpetual injunction restraining appellants' from interfering with respondents' management of the land in dispute, perpetual injunction against trespass and damages for trespass committed by appellants on the land. On the other hand, appellants counter-claimed inter alia, for declaration that appellants are entitled to the grant of customary right of occupancy in respect of the land in dispute, injunction and damages for trespass. Four witnesses testified for respondents while appellants called eight witnesses in defence of their claims and proof of their counter claim during the hearing.

At the conclusion of the hearing, the learned trial judge dismissed and rejected the traditional evidence adduced by both respondents and appellants. Consequently, the Judge dismissed both of their claims based on their title or ownership of the land in dispute. He however partially allowed or granted to appellants their claims of damages for trespass (N50,000.00) and an injunction based on their being in recent possession of the land in dispute. Dissatisfied, respondents appealed to the Court of Appeal Lagos Division. Appellants cross appealed. The Court heard the appeals, upheld the main appeal and dismissed the cross appeal. Aggrieved, appellants have appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

1) Whether the lower court had jurisdiction to consider the statement of claim of the claimants/respondents and grant the reliefs claimed in the writ of summons when the same had been abandoned by the plaintiffs?

2) Whether the lower court was right in reversing the trial court's findings that the plaintiffs did not properly plead and prove traditional ownership of the land in dispute?

3) Whether it was within the province of the lower court, as an appellate court, to make findings of facts as to traditional history/ownership and possession in the circumstances of this case?

4) Whether the decision of the trial court for damages for trespass and injunction for the appellants ought to stand?

## **HELD** (Unanimously dismissing the appeal per

**OGUNBIYI JSC)**

*PLEADINGS - Statement of claim - Writ of summons - Supremacy*

**1. As rightly submitted by the appellants' counsel, the general rule governing the principle of supersession of the statement of claim over the writ of summons is entrenched in our legal system provided only, that there must be distinct relief in the statement of claim which is not contained in the writ of summons.**

**In applying the principle laid down in the case of *Garon V. Olomu* (supra) to the case under consideration, it is obvious that there is no disconnection between the Amended State-**

**ment of Claim and the Writ of Summons. Supersession comes in where there is complete severance by way of distinct relief in the latter (statement of claim) which is not contained in the former (writ of summons). As rightly submitted by the learned counsel for the respondents, they have in practical terms incorporated the writ of summons into their Amended Statement of Claim by reference.**

**It is pertinent to restate at this point that while the case of Stowe V. Benstowe was decided in 2012, Garan V. Olomu was decided also by this court in 2013. In the case at hand, the appellants were fully aware of the reliefs being claimed by the respondents. They did not object to same as claimed until in 2013 in this court when they sought to further amend their notice of Appeal. The appellants have not also shown any evidence of miscarriage of justice done to them due to the respondents' claiming "as per their writ of summons." In the case of Akpan V. Bob under reference supra, this court held that courts should not be unduly tied down by technicalities, particularly where no miscarriage of justice was done to the other parties. An appellate court has the daunting duty to do substantial justice between parties before it and not be bugged down by technicalities.**

**Contrary to the submission by the appellants therefore, the respondents' relief which was framed "whereof the Plaintiffs claim against the Defendants as per the writ of summons", is competent. The said 1st issue is hereby resolved against the appellants and in favour of the respondents.**  
(pp. 3807 D/3808 B/F)

**LAND LAW - Title - Proof - Traditional history**

**2. The law is well settled that a party in a land dispute who relies on traditional history as in the instant case must plead his root of title. He must also show in his pleadings who his ancestors were and how they came about the land as well as how it eventually devolved on him.**

**It is pertinent to state that what is meant by traditional history is evidence derived from tradition or reputation or the statement formerly made by person since deceased in regard**

**to questions of pedigree, ancient boundaries and the like, where no living witness can be produced having knowledge of the facts.**

**A party or plaintiff who relies on traditional history in proof of his claim for declaration of title to land therefore must generally plead and prove the following:-**

- 1) Who founded the land,**
- 2) How he founded the land,**
- 3) The particulars of the intervening owners through whom the claimant bases his claim.** (p. 3814 A/G)

*LAND LAW - Title - Proof - Means of*

**3. The general principle establishing ownership of land is well propounded that there are five recognized ways or methods as follows:-**

- (a) by traditional evidence;**
- (b) by production of title documents duly authenticated;**
- (c) acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant an inference that the person is the true owner thereof;**

**(d) by acts of long possession and enjoyment of the land which may be *prima facie* evidence of ownership of the particular parcel of land.**

**(e) by proof of possession of a connected or adjacent land in circumstances rendering it possible or probable.**

*Court - Findings - Failure to appeal*

**4. It is significant to mention that the appellants have not appealed against this finding by the lower court that “The Land is a Communal Land.” The law is trite and well settled that issues are raised only from grounds of appeal; and hence the appellants have no basis to deny at this stage that the land is communal.** (p. 3817 C)

*LAND LAW - Title - Proof - Traditional history - Exception to rule*

**5. Therefore and deducing from the foregoing conclusion by the lower court, it is the respondents’ case that the land in**

**dispute devolved on all the children of Eleso who appointed various principal members as trustees. In other words, the land did not devolve on a particular person but that it remained as communal land on the death of Eleso as found by the court below. As rightly submitted by the learned counsel for the respondents herein, his clients are not oblige to plead a narration of the genealogical tree from the original owner down to the Respondents. Consequently, the rule which makes it mandatory on a party to plead successive persons to whom the land devolve before he could prove ownership by traditional history will not apply. This is premised on the fact that the land did not devolve on successive persons but remains as a communal land.** (p. 3817 D)

**D LAND LAW - Communal land - Proof**

**6. The concept of what constitutes a communal land has been described extensively by the dictum in the case of Amodu Tijani V. Secretary to the Government of Nigeria (1921) 2 AC 399. In that case in reference to communal land, land was characterized as belonging to a “vast family of which many are dead, few are living and countless members are unborn.”**

**With all said and done, the foregoing description is clear in stating that communal land belongs to a community, past, present and future. It is of interest further to say that this court in Sanni V. Ademiluyi (2003) 3 NWLR (Pt. 807) 381 at 395 sees communal land as one which” ...belongs to the community and is vested in the leader of the community only as a sort of trustee.”** (p. 3818 D)

**G LAND LAW - Title - Proof - Exception**

**7. The law is settled and as laid in judicial authorities that a party claiming communal ownership of land must necessarily need to plead the following certain requirements:-**

- H (a) who founded the land or originally own the land;**
- (b) that they are descendants of the founder;**
- (c) how the land became communal lands.** (p. 3819 D)

*LAND LAW - Title - Proof - Onus of - Exception*

**8. As rightly submitted by the learned counsel for the respondents and without having to belabor the point, the evidence of the 1st Respondent elicited during cross examination, linking Respondents to Eleso, have shown that the Respondents are the descendants of Eleso. Plethora of authorities avail to show that the respondents are entitled in law to rely on the appellants' pleading and evidence which support their case and hence the court is allowed to act thereon.**

Again in plethora of cases, it was held by this court that the principle that in a claim for declaration of title to land, the onus is on the plaintiff to succeed on the strength of his own case and not the weakness of the defence, is subject to qualifications. Thus in *Okpala V. Ibeme* (1989) 2 NWLR (Pt. 102) 208 at 222 it was held that the principle which was very well enunciated in the ancient case of *Kodilinye V. Odu* (1935) 2 WACA 336 although operational, is however subject to the following two qualifications:-

*“(a) The plaintiff can quite perfectly take advantage of those facts in the defendants' case which support the plaintiffs' case; and*

*(b) Where an issue of title to land arises in litigation, the court is concerned only with the relative strengths of the titles proved by adverse parties in the litigation. If party A can prove a better title than party B, the party A is entitled to succeed.* [Arose V. Arose (1981) 5 S.C. 33 at 35].”

As rightly submitted by the learned counsel for the respondents, in the instant case, his clients took advantage of the facts in the appellants' pleadings which the respondents had replied to vide their reply and counter claim to show their nexus to their progenitor, Eleso. In the circumstance, contrary to the contention by the appellants, the court below was right in holding that the Respondents properly pleaded and proved traditional ownership of the land in dispute.

In other words, the court below cannot be faulted when it reversed the trial court's findings that the plaintiffs did not properly plead and prove traditional ownership of the land in dispute. Issue No 2 is therefore resolved against the appel-

**lants and in favour of the respondents.** (p. 3822 A)

*Evidence - Reevaluation*

**9. Issues 3 and 4 relate to the powers and jurisdiction of the Court of Appeal to re-evaluate evidence. It is correct as submitted by both counsel that the position of law is well settled that appellate courts do not try cases, evaluate evidence or make findings; however and as rightly submitted by the learned counsel for the respondents, appellate courts have the power and jurisdiction to re-evaluate evidence led at the trial court which is contained on the printed record.** (p. 3825 D)

*EVIDENCE - Admission - Weight*

**10. The law is well settled in plethora of cases that a plaintiff, in an action in which title to land is in issue, is entitled to rely on that part of the defence which supports the plaintiff's case. Odi V. Iyala (1004) 8 NWLR (Pt.875) 283 at 310 wherein it was held by this court that there is no better evidence against a party than one from witnesses called by him, who give evidence contrary to the case for the party.**

**There is nowhere shown on the record that the appellants did urge the court to declare their witnesses Dw4 and Dw8 as hostile witnesses. The admission made by Dw4 and Dw8 are in law bound to stand firmly and the court below was therefore right in holding thereof as it did.**

**In furtherance of the confirmation that the appellants have admitted the existence of Eleso family and owning land in Ijanikin, reference can also be drawn to the further affidavit of one Haruna Salisu sworn in this court on 4th February, 2010 in support of Appellants' motion for stay of execution filed on 17th August, 2009.** (p. 3828 C)

*COURTS - Processes - Consideration of*

**11. As rightly submitted by the respondents' counsel, the record of appeal before us reveals that there is only one dispute between the appellants and the respondents which is in respect of the land in dispute and the subject matter of this appeal. The clear admissions in the said further affidavit of**



**Haruna Salisu are therefore as follows:- that there is Eleso family in Ijanikin and they own land; there is also the dispute whether Eleso family or Gbadamosi family is the owner of the land in dispute in this appeal. The law is trite and well settled that the court can make use of processes filed before it to arrive at a just decision in a matter pending before it.**

(p. 3828 H)

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## NOTABLE POINT OF INTEREST

### **OGUNBIYI JSC**

#### **1. Land law – Traditional evidence & Traditional history – Definition of**

The term “traditional evidence” and “traditional history” are often used interchangeably or synonymously to mean the same thing. This court has defined the terms in the following pronouncements in *Ewo Vs. Ani* (2004) 3 NWLR (Pt.861)

611 per Uwaifo and Edozie JJSC as follows:-

P637 per Edozie, JSC:

*“evidence as to rights alleged to have existed beyond time of living memory and proved by or other members of the various tribes concerned.”*

P635 per Uwaifo JSC:

*“Traditional history, by concept, deals with an event beyond human memory: or is ancient through recollection beyond record; or is what happened at a time out of mind and therefore qualifies to be immemorial.”* (p. 3814 C)

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### **REPRESENTATION**

B. A. M. Fashanu, SAN with R. L. Wabida Esq for the appellant  
Olaniran Obele Esq for the respondents

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### **CASES REFERRED TO**

*Stowe v. Benstowe* (2012) 9 NWLR (pt. 1306) 450

*Obayagbona v. Obazee* (1972) 7 NSCC 383

*Ekpeyong v. Nyong* (1975) 9 NSCC 28

*Odofoin v. Agu* (1992) 3 NWLR (pt. 229) 350

*Enigbokan v. A.I.I.C.O. (Nig.) Plc.* (1994) 6 NWLR (pt. 348) 1

*Daniel Holdings Ltd v. UBA Plc* (2005) 13 NWLR (pt. 943) 533

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Garon v. Olomu (2013) 11 NWLR (pt. 1365) 227

Anyegwu v. Onuche (2009) 3 NWLR (pt. 1129) 659

Akpan v. Bob (2010) 17 NWLR (pt. 1223) 421

Akibu v. Opaleye (1974) 11 SC 189

Okoko v. Dakolo (2006) 14 NWLR (pt. 1000) 401

B Onu v. Agu (1996) 5 NWLR (pt. 451) 652

Idundun v. Okumagba (1976) 1 NWLR 200

Ayoola v. Odofin (1984) 2 SC 120

Akinola v. Oluwo (1962) 1 SCNLR 332

### C **RULES REFERRED TO**

High Court of the then Bendel State (Civil Procedure) Rules of 1976,  
O. 13 r. 7

High Court of Lagos State (Civil Procedure) Rules of 1994, O. 18 rr.

D 2, 3 and 4

### **LEAD JUDGMENT BY OGUNBIYI JSC**

The Appellants' appeal is against the judgment of the Court of Appeal, Lagos Judicial Division, delivered on the 29<sup>th</sup> March, 2007.

E The Court of Appeal in a considered judgment upheld the main appeal filed by the Respondents; set aside the judgment of the High Court of Lagos State and dismissed the cross appeal filed by the present Appellants. The Respondents were the Plaintiffs while the Appellants were Defendants/Counter Claimants at the trial court. At the Court  
F of Appeal, the Respondents were the Appellants while the present Appellants were the Respondents/Cross Appellants.

#### **BACKGROUND FACTS**

G This appeal is a land matter which was decided initially at the High Court of Lagos State, Badagry Judicial Division. At the trial court, the Respondents herein as the plaintiffs sued the appellants as the defendants and claiming the following reliefs:-

*"i) A DECLARATION that the 1st plaintiff being the family head and other principal members of Eleso Chieftaincy Family of Ijanikin, Lagos State are entitled to manage, superintend or otherwise deal with the landed property of Eleso Chieftaincy family including the disputed land for themselves and on behalf of and in trust for the entire members of Eleso Chieftaincy family of Ijanikin.*

*ii) Perpetual injunction restraining the Defendants, their agents,*

*servants, workmen and privies from disturbing or inhibiting the family head and the Principal members of Eleso family of Ijanikin from the management and control of the family land including the disputed land.*

*iii) Perpetual injunction restraining the defendants, their agents, servants, workmen, and privies from further acts of trespass, that is from excavating sand from the land of the family and from interfering with the right and interest of purchasers and Illosu branch of Eleso family to whom the Eleso family has made various sales and/or grants of parcels of land.*

*iv) An order for N200,000.00 against the defendants for the various acts of trespass already committed by them.”*

On their own part the appellants/counter claimed in their amended statement of defence and counter claim for the following reliefs:-

*“i) A declaration that the defendants are persons entitled to the grant of the customary right of occupancy in respect of the land in dispute situate in Ijanikin, Ojo Local Government Area of Lagos State bounded by Era-Makon Road, the Era swamp and the Federal Government College and Akinola farmland more described in the survey plan No. SOSA/LAA/3771/96.*

*ii) An order revoking any power of attorney or any similar documents made by the plaintiffs or for anyone in respect of the land in dispute.*

*iii) An order setting aside any grant of whatever description made by the plaintiffs in respect of the land in dispute to any person however described.*

*iv) N1,000,000.00 (One Million Naira) as General and special damages for the acts of trespass committed by the plaintiff against the defendants and the land in dispute.*

*v) Perpetual injunction restraining the plaintiffs, their principals, agents and privies from further acts of trespass against the land in dispute.”*

At the trial court, four witnesses testified for the respondents while the appellants called eight witnesses in defence of their claims and proof of their counter claim. At the conclusion of the hearing, the learned trial judge in his considered judgment on 21st June, 2004 dismissed and rejected the traditional evidence adduced by both the

respondents and the appellants. Consequently, the judge dismissed both their claims based on their title or ownership of the land in dispute. He however partially allowed or granted to the appellants their claims of damages for trespass (N50,000.00) and an injunction based on their being in current or recent possession of the land in dispute.

Being aggrieved by the finding and judgment of the trial judge, the respondents filed their notice of appeal against same before the lower court. The appellants were also dissatisfied with the said judgment and filed their notice of cross-appeal. The lower court upheld the main appeal filed by the respondents while dismissing the cross appeal by the appellants.

The appellants have therefore filed this appeal vide their further Amended Notice of Appeal dated and filed on the 9<sup>th</sup> September, 2013 and asking this court to set aside the judgment of the Court of Appeal.

In line with the rules of this court's practice, both parties filed their respective briefs of arguments. Based on the further amended notice of appeal supra, the appellants filed an Amended Appellants' Brief of argument also dated and filed on 9<sup>th</sup> September, 2013 and settled by B. A. M. Fashanu, SAN. Correspondingly, the Amended Respondents' Brief was dated 24<sup>th</sup> and filed on the 27<sup>th</sup> January, 2014. The Brief was settled by one Olaniran Obelle, Esq. The appellants further filed a reply brief on the 27<sup>th</sup> February, 2014.

On the 26<sup>th</sup> April, 2016 when the appeal came up for hearing, both counsel adopted and relied on their respective briefs of arguments. While the appellants' counsel urges this court to allow the appeal and set aside the judgment of the lower court, the respondents' counsel however seeks the court's indulgence in favour of dismissing the appeal as lacking in merit.

From the 19 grounds of appeal raised, the appellants distilled four issues for determination and the same reproduced from their amended appellants' brief of argument are as follows:-

1) Whether the lower court had jurisdiction to consider the statement of claim of the claimants/respondents and grant the reliefs claimed in the writ of summons when the same had been abandoned by the plaintiffs? (Grounds 15, 16, 17, 18 & 19)

2) Whether the lower court was right in reversing the trial court's

findings that the plaintiffs did not properly plead and prove traditional ownership of the land in dispute? (Grounds 1, 2, 3, 6, 7, 10 & 12)

3) Whether it was within the province of the lower court, as an appellate court, to make findings of facts as to traditional history/ownership and possession in the circumstances of this case? (Grounds 4, 5, 9 & 11) B

4) Whether the decision of the trial court for damages for trespass and injunction for the appellants ought to stand? (Grounds 8, 12 and 13)

Suffice it to say that ground 14 of the Ground of appeal is an omnibus ground. C

On behalf of the respondents, their learned counsel raised four issues also in their amended respondents' brief of argument for the determination of this appeal. The issues are not different from those formulated on behalf of the appellants. I will, in the circumstance adopt serially the appellants' issues for the determination of the appeal herein. D

#### 1ST ISSUE

Whether the lower court had jurisdiction to consider the statement of claim of the claimants/respondents and grant the reliefs claimed in the writ of summons, when the same had been abandoned by the plaintiffs? E

It is the submission on behalf of the appellants' herein that with the Respondents' reliefs in their Amended Statement of Claim dated 5th May 2003 being, "as per their writ of summons", there was therefore no relief upon which the Court of Appeal could have exercised its jurisdiction in granting. In essence, according to the appellants, the court below lacked jurisdiction to grant the alleged abandoned reliefs of the respondents. In addition, the appellants submit that the respondents' defence to their counterclaim was void and/or defective for the reason that they essentially incorporated facts meant for their statement of claim in their reply and defence to the appellants' counterclaim. The appellants, amongst other authorities relied on the decision of this court in *David Stowe & Anor V/ Godswill Benstowe & Anor* (2012) 9 NWLR (Pt. 1306) 450. In the circumstance appellants contend that the respondents, having abandoned the reliefs which no longer reflected in their statement of claim, there F G H

was nothing to adjudicate upon and that the lower court ought to have struck-out the plaintiffs' suit as was done in the case of *Stowe V Benstowe* (supra). Consequently therefore, counsel submits that all the evidence tendered for the plaintiffs at the trial, both oral and documentary should not hold of any effect; that in the absence of a competent statement of claim vis-a-vis reliefs, the lower court had no jurisdiction to grant the reliefs sought by the plaintiffs as contained in the writ of summons. It is trite that a court cannot grant a relief not asked for by a party. In support of his submission, counsel cited the following cases of *Obayagbona V. Obazee* (1972) 7 NSCC 383 at 386; *Ekpeyong V. Nyong* (1975) 9 NSCC 28 at PP:32-33 and *Odofoin V. Agu* (1992) 3 NWLR (Pt.229) 350 at PP:369- 370. In the circumstance, the court is urged to set aside the decision by the lower court in granting the reliefs claimed in the writ of summons and also strike out the suit of the plaintiffs in toto.

Contrary to the submissions on behalf of the appellants, the respondents' counsel contends that his clients did not abandon their reliefs but have incorporated same by reference into their Amended Statement of Claim. To agree with the appellants, counsel contends, would entail doing gross violence to the well established principle in the following decided cases on the subject matter. *Enigbokan v. A.I.I.C.O. (Nig) Plc* (1994) 6 NWLR (Pt. 348) 1; *Daniel Holdings Ltd V/UBA Plc* (2005) 13 NWLR (943) 533 at 549, 551 and *Garon V/ Olomu* (2013) 11 NWLR (Pt. 1365) 227 at 253. In further submission, counsel re-iterates that a claim is said to be abandoned when such a claim as stated in the writ of summons is left out of the statement of claim and no reference whatsoever is made to the writ of summons by incorporation in the statement of claim. See *Enigbokan V/A.I. I. C.O. (Nig) Plc.* (supra) at 15; Counsel submits further that once a statement of claim is filed, the writ goes into oblivion where the statement of claim makes no reference to the writ of summons.

In further submission the respondents' counsel drew a sharp distinction between this case and the case of *Stowe V/ Benstowe* (supra) and argues that, not only was the basis for the decision in that case different, it was also a decision based on technicality as against substantive justice; that an appellate court has a duty to do substantial justice between parties before it and not be bugged down by technicalities. See *Anyegwu V. Onuche* (2009) 3 NWLR (Pt. 1129)

659 at 670 and Akpan V. Bob (2010) 17 NWLR (Pt. 1223) 421 at 478-479.

The learned counsel in the circumstance and in the interest of substantial justice urges this court to resolve the said issue in favour of the respondents. Counsel further urges the court to discountenance the submissions in paragraphs C7 to C20 of the appellants' brief of argument which *is* a corollary to the 1st issue. B

#### RESOLUTION OF THE 1ST ISSUE

In summary, the appellants' submission on the 1st issue is challenging the jurisdiction of the court below.

The fact grounding the issue is, where the respondents in paragraph 22 of their Amended Statement of Claim claimed "as per their writ of summons." The appellants thereupon contend that the court below lacked the jurisdiction to have entered judgment for the respondents in the absence of any relief, since the statement of claim superseded the writ of summons. D

***As rightly submitted by the appellants' counsel, the general rule governing the principle of supersession of the statement of claim over the writ of summons is entrenched in our legal system provided only, that there must be distinct relief in the statement of claim which is not contained in the writ of summons.*** An example is the case of Enigbokan Vs. A.I.I.C.O. (Nig) Plc (1994) 6 NWLR (Pt. 348) 1 where this court had the occasion to consider the question as to when a statement of claim would supersede the writ of summons and said:- E

*"It is well settled that a statement of claim supersedes the writ of summons and must itself disclose a cause of action - Udechukwu V. Onwuka (1956) 1 FSC 70, 71, (1956) SCNLR 189; Otanioku V. Alii (1977) 11-12 SC 9. To supersede the writ however, the statement of claim must state what is being claimed and not merely claiming 'as per the writ of summons.' Keshiro V. Bakare (1967) 1 ALL NLR 280. It follows that in order to supersede the writ, the statement of claim must contain a claim or claims therein set out - Nta V. Anigbo (1972) 5 SC 156."* F

Also in the case of Garan V. Olomu (supra) at page 250, this court held and said:-

*"A process is said to supersede another if it is subsequent to and completely severed from that other. Once there is interconnectivity*

*between the process that was first in time and the subsequent process, the latter cannot be rightly said to have superseded the former. For supersession of an earlier process to occur, there must be a complete disconnect between the two imposed by the fact of one completely occupying the place or role of the other.”*

**B In applying the principle laid down in the case of Garon V. Olomu (supra) to the case under consideration, it is obvious that there is no disconnection between the Amended Statement of Claim and the Writ of Summons. Supersession comes in where there is complete severance by way of distinct relief in the latter (statement of claim) which is not contained in the former (writ of summons). As rightly submitted by the learned counsel for the respondents, they have in practical terms incorporated the writ of summons into their Amended Statement of Claim by reference.**

The appellants’ counsel relied heavily on the provisions of Order 18 Rule 2 or Order 16 Rule 2 of the 1994 and 2004 Rules respectively. Further reference was made also to the case of David Stowe & Anor V. Godswill Benstowe & Anor (supra) upon which the appellants’ counsel pitched his tent and argues that the plaintiffs herein, having abandoned the reliefs in their writ of summons by their statement of claim, there was therefore nothing to adjudicate further upon; and that the lower court ought to have struck out the plaintiffs’ case on the authority of Stowe V. Benstowe (supra).

**F It is pertinent to restate at this point that while the case of Stowe V. Benstowe was decided in 2012, Garan V. Olomu was decided also by this court in 2013. In the case at hand, the appellants were fully aware of the reliefs being claimed by the respondents. They did not object to same as claimed until in 2013 in this court when they sought to further amend their notice of Appeal. The appellants have not also shown any evidence of miscarriage of justice done to them due to the respondents’ claiming “as per their writ of summons.” In the case of Akpan V. Bob under reference supra, this court held that courts should not be unduly tied down by technicalities, particularly where no miscarriage of justice was done to the other parties. An appellate court has the daunting duty to do substantial justice between parties before it and not be bugged**



**down by technicalities.** See Anyegwu V. Onuche (supra).

**Contrary to the submission by the appellants therefore, the respondents' relief which was framed "whereof the Plaintiffs claim against the Defendants as per the writ of summons", is competent. The said 1st issue is hereby resolved against the appellants and in favour of the respondents.** B

## ISSUE 2

Whether the lower court was right in reversing the trial court's findings that the plaintiffs did not properly plead and prove traditional ownership of the land in dispute? (Grounds 1,2,3,6,7,10 and 12) C

It is the submission by the appellants' counsel that the lower court *misdirected* itself in law in reversing the succinct and impeccable application of the law to the pleadings and admitted facts by the learned trial judge. Counsel endorses as correct the findings by the trial court that, "Plaintiffs did not plead or lead any evidence on what happened to the land said to belong to Eleso by reason of first settlement on the death of Eleso." D

Counsel further submits as clear that throughout the amended statement of claim, the plaintiffs never based their so-called first settlement or ownership on any "traditional ownership" or "Native Law and Custom" of any tribe. Hence, that their pleadings were hanging in the air, and that the finding by the lower court, that the plaintiffs based their claim on the first of the five recognized ways of establishing title or ownership of land (by traditional evidence) is fallacious because the statement of claim of the plaintiff does not plead so; that for a trial court to make a finding in favour of a party on facts, it has to be cogent, clear and positive, see Akibu V. Opaleye (1974) 11 SC 189 at P203. E F G

On the evidence of traditional history, counsel also submits that same was not pleaded properly and that ownership and evidence wrongly given on unpleaded facts went to no issue; that the learned trial judge rightly excluded the inadmissible evidence of the 1st plaintiff as to his link with a child of the ancestor which was not pleaded; also that the plaintiffs' pleadings on the founding of the land *via* traditional ownership was defective and consequent upon which their claim collapsed. See Okoko V. Dakolo (2006) 14 NWLR (Pt. 1000) 401 at P422 SC. H

Counsel in further reference relates copiously to the finding of the lower court which he argues is a mere confirmation of the trial court's decision made in favour of the appellants; that the case of the defendants on the pleadings is that they are related to the Aina Alaso family (see paragraphs 29, 31 and 70 of the Statement of Defence at pp.67 and 73 of the record), while the plaintiffs claim that Aina Alaso is a branch of their family (see paragraph 6 of the record); that the exhibits P8 and P9 (the obituary and the memorial almanac respectively) made by the plaintiffs are of little or no evidential value to either proving the claims of the plaintiffs or disproving the claims of the defendants. This, counsel submits because the exhibits did not help the plaintiffs in resolving the problems the High Court highlighted in holding that they failed in pleading and proving their traditional ownership as to:-

- D (a) What happened to the land said to belong to Eleso by reason of first settlement on the death of Eleso, and
- (b) The successive persons to whom the land thereafter devolved after Eleso's death up to the plaintiffs.

Counsel in further submission re-iterates the position of the law, where in a claim for declaration of title to land, the plaintiff succeeds on the strength of his own case and that it is only after establishing such case that he (plaintiff) may use relevant admissions in the defendant's case; that it was not the plaintiffs' case on the pleadings that he (defendants' father) managed or was in possession of the land in dispute on behalf of the plaintiffs; that the exhibits did not relate to the land in dispute and that reliance on the defendants' alleged admission by the lower court in finding for the plaintiffs on traditional ownership is untenable.

It is counsel's further argument that the fact that such an admission could affect the defendants' claim for declaration in their counter-claim does not mean that the plaintiffs would not first be held to discharge their own burden of succeeding in their own claim for declaration on the strength of their own case. In the circumstance, that the lower court massively misdirected itself as the plaintiffs failed in this quest as held by the learned trial judge. See the case of Onu V. Agu (1996) 5 NWLR (Pt. 451) 652 at pp.668 and 670 where this court held that in a claim for declaration of title the *onus* is on the plaintiffs to prove their case and not rely merely on defendants' ad-

missions especially as that was not part of the plaintiffs' claims before the court, hence, the plaintiffs' case failed.

In response to the appellants' counsel, it is submitted on behalf of the respondents that this court should uphold the judgment of the court below for being right in holding that the respondents properly pleaded and proved traditional ownership of the land in dispute in accordance with Yoruba customary law and customs which both courts have judicially noticed as the customs operating in Ijanikin, Lagos State. The learned counsel urges vehemently that the issue be resolved against the appellants and in favour of the respondents. In his submission further, the respondents' counsel outlined copiously the *five* recognized ways or methods of establishing title or ownership to land, as spelt out in the case of *Idundun V. Okumagba* (1976) 1 NWLR 200 and *Ayoola V. Odofin* (1984) 2 SC 120; that the appellants herein are appealing against the re-evaluation of *evidence* by the court below. The counsel submits that the appellants *have misconceived* totally the respondents' case and the judgment of the court below; that it is the respondents' case that title in the land has not *devolved* on any person but on all members of the Eleso family as communal land on the death of Eleso and reference was drawn on page 59 of the record and also p.460; that the respondents' led *evidence* based on their Reply to defendants' Statement of Defence and Counter Claim dated 24th March 2003. Counsel submits therefore that the court below was right in holding as it did at page 461 of the records wherein it found that the land in dispute is a communal land and the appellants, counsel continues, did not appeal this finding. The learned counsel in describing the nature of a communal land also relates to the details which must be pleaded by a party claiming communal ownership of land; that in the instant appeal, the court below was right when it held that the respondents met the requirements in proving communal ownership and therefore they did not need to plead successive people on whom the land devolved. Counsel drew attention to paragraph 5 of the amended statement of claim, that Eleso founded the land by settlement. Reference was made further to paragraphs 6 and 7 of plaintiffs/respondents pleadings that they are the descendants of Eleso. With reference made also to paragraphs 8 and 9 of the Amended Statement of Claim at pages 59 and 60 of the record, it is shown by the respondents' pleadings that the

land became communal land on the death of Eleso.

On whether or not the respondents are entitled to rely on the evidence of appellants that support their case, the respondents' counsel answers in the affirmative and cites the following cases in substantiation:- Akinola V. Oluwo (1962) 1 SCNLR 332; (1962) 1 All NLR B 225 at 228 and Odunran V. Asarah (1972) 1 All NLR (Pt. 2) 137: that the evidence elicited from the 1st respondent, a member of Aino Alaso branch of Eleso family, whom the appellants admitted was a member of Alaso family, is admissible and that the general rule which placed on the plaintiff in a claim for decoration of title to land, the C *onus* to succeed on the strength of his own case and not the weakness of the defence, is subject to qualifications as specified by this court in the case of Okpala V. Ibeme (1989) 2 NWLR (Pt. 102) 208 at 222.

D The learned counsel urges before us that the court below was right in holding as it did and therefore issue 2 should be resolved against the appellants and in favour of the respondents.

For the determination of this issue, it would be necessary to give a background history of the coming into existence of the land, E the subject matter of this appeal. Recourse must therefore be had to the claim laid by the parties as plaintiffs and defendants per their claims and counter claims before the trial court.

On the one hand, the case of the plaintiffs/respondents at the trial court is that their forefather known as Eleso originally settled at F and founded the place called Ijanikin where the land in dispute is situate; that after the founding of the area, Eleso was later joined by other persons or settlers whose names were *given* as *Ojonio*, Osolo, Odofin and Oasa. Thus, that Eleso as the first settler and founder of G the vast land became its owner. The *wife* of Eleso Ajatuwa begat for *him* seven children who succeeded their father on the land *in* dispute. Their names are given as (i) Ilosu (ii) Oduboku (iii) *Aina* Alaso (iv) Akinola (v) Ajouruko (vi) Panti and (vii) Jogbayi. Each of those seven children who remained on the land later established his own H nucleus branch of family and are today known as the seven branches of Eleso family; that the respondents are the descendants of the seven branches and members of the Eleso family to whom the land devolved by succession.

Several and various portions of the large tract a Ijanikin family

land was allotted to the branches for farming purposes but that the radical title to the land still remains with the Eleso Chieftaincy family whose head holds it in trust for other members of the same family. Each branch of the Eleso chieftaincy family also appointed its own head to join the chieftaincy family head for the purpose of administering the land for themselves and for the benefit of other members. B  
A portion of the family land edged red in the survey plan no FF/4/63/1/89 was allotted exclusively to the Ilosu branch of the family on 31/1/2000; that in addition to the allotted parcel of the land, the family also sold large number of plots of the land, over the years, to some purchasers some of whom have developed their plots. The respondents claim that the appellants are also members of the Eleso family of Ijanikin through their mother via Ainu Eleso branch; that while the 1st appellant's father is from Badagry the father of the 2nd respondent hailed from Hogbo Elegba in Lagos State. C D

On the other hand however, the defendants/appellants' case is that they are the descendants of Ogunfunmilere who came from Hamiro to settle at and founded Ijanikin. His wives gave birth to seven female children who married husbands in Ijanikin. He was a great warrior, a hunter and an idol worshipper. The appellants' genealogy is said to transcend through the seven daughters of Ogunfunmilere and their children who succeeded and acquired the land in dispute which eventually devolved to one of the descendants by name Adeokun (a family head) who became the exclusive owner of the said land in dispute; that from Adeokun the property devolved to his only male son by name Gbadamosi whose name later became the identity of the said land known as Gbadamosi family land; that Salisu, one of Gbadamosi's children became the family head and therefore owner of the family land until he died in 1995. He was also the predecessor of the present appellants. E F G

In the instant case, it is pertinent and a common ground that both the parties relied heavily on traditional evidence of their title to the land in dispute. Hence in their pleadings and evidence they gave copious accounts of their respective traditional histories as to how their ancestors founded and settled at a place called Ijanikin where the land in dispute is presently located. They also gave account in some details of those who succeeded the original founders of the land and how it eventually devolved on them. H

***The law is well settled that a party in a land dispute who relies on traditional history as in the instant case must plead his root of title. He must also show in his pleadings who his ancestors were and how they came about the land as well as how it eventually devolved on him.***

B ***It is pertinent to state that what is meant by traditional history is evidence derived from tradition or reputation or the statement formerly made by person since deceased in regard to questions of pedigree, ancient boundaries and the like, where no living witness can be produced having knowledge of the facts.***

C The term “traditional evidence” and “traditional history” are often used interchangeably or synonymously to mean the same thing. This court has defined the terms in the following pronouncements in D *Ewo Vs. Ani* (2004) 3 NWLR (Pt.861) 611 per Uwaifo and Edozie JJSC as follows:-

P637 per Edozie, JSC:

*“evidence as to rights alleged to have existed beyond time of living memory and proved by or other members of the various tribes concerned.”*

P635 per Uwaifo JSC:

*“Traditional history, by concept, deals with an event beyond human memory: or is ancient through recollection beyond record; or is what happened at a time out of mind and therefore qualifies to be immemorial.”*

F See also the stool of *Abinabina V. Eyinmadu* (1953) 12 WACA 171; *Lebile V. Registered Trustees of Cherubim & Seraphim Church* (2003) 2 NWLR (Pt.804) 399; and *Nkado V. Obiano* (1997) 5 NWLR G (Pt. 503) 31 at 60.

***A party or plaintiff who relies on traditional history in proof of his claim for declaration of title to land therefore must generally plead and prove the following:-***

- 1) ***Who founded the land,***
- H 2) ***How he founded the land,***
- 3) ***The particulars of the intervening owners through whom the claimant bases his claim.***

See the cases of *Nkado V. Obiano* (supra) at page 68; *Akinloye V. Eyintola* (1968) NMLR 92; *Piaro V. Tonaló* (1976) 12 SC 31; *Olajinle*

*V. Adeagbo* (1988) 2 NWLR (Pt. 75) 238; *Adejumo V. Ayantegba* (1989) 3 NWLR (Pt. 110) 417 and *Anyanwu V. Mbara* (1992) 5 NWLR (Pt. 242) 386 at 399.

The learned trial judge concluded that the plaintiffs/respondents' pleadings and evidence could not sustain their claim of ownership of the land in dispute. The trial court also held that the respondents did not explain in their pleadings how the land devolved on them from their progenitor, original founder or predecessor by name Eleso: that the plaintiffs failed to adequately plead and prove their genealogy or linkage with their original founder Eleso. In the re-evaluation of the view held by the trial court, the lower court at page 459 of the record related copiously to the plaintiffs' amended statement of claim at page 31 of the record and in particular paragraphs 3, 4 and 5 which state as follows:-

*"3. The plaintiffs state that Eleso who was their forefather was the first settler or founder of what is now known as Ijanikin of Lagos State.*

*4. After Eleso founded Ijanikin, others including Ojomo, Osolo, Odofin and Oosa settled with Eleso.*

*5. By virtue of the position of Eleso, he became the sole owner of the vast tract of land stretching from and bounded by Agbara, Era, Igbesa and Iba town through whom the plaintiffs now derive their title."*

Paragraph 8 of the respondents' amended statement of claim is also of relevance wherein it states:-

*"Eleso family has given its various branches parcels of land to farm upon; nevertheless titles to such parcels of land still remain in Eleso family."*

***The general principle establishing ownership of land is well propounded that there are five recognized ways or methods as follows:-***

- (a) by traditional evidence;***
- (b) by production of title documents duly authenticated;***
- (c) acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant an inference that the person is the true owner thereof;***
- (d) by acts of long possession and enjoyment of the land which may be prima facie evidence of ownership of the par-***

**tticular parcel of land.**

**(e) by proof of possession of a connected or adjacent land in circumstances rendering it possible or probable.** See

Idundun V. Okunmagba (1976) 1 NWLR 200, also Ayoola V. Odofin (1984) 2 SC 120.

B It was premised on the foregoing therefore as yardstick that the court below proceeded to re-evaluate and adjudicate on the appeal before it and came to the following conclusions at pages 458 to 459 of the record.

C *“It is my humble view that contrary to the subsequent holding of the learned trial judge, the appellants (i.e. Respondents herein) have established or proved sufficient nexus linking themselves to Eleso (their original ancestor). Again, it was similarly wrong of the learned trial judge to reject the evidence of the 1st Plaintiff (Appellant) for the*  
D *reason he gave that his evidence given under cross examination (on his genealogy or linkage to Eleso) was not pleaded. It is pertinent to note and acknowledge the general law as rightly stated by the 1<sup>st</sup> Appellant to the effect that parties are bound by their pleadings. However, in applying this basic and general rule of pleadings, care must*  
E *be taken to ensure that the point or issue testified to by the witness is not mentioned or implied in the pleadings. Otherwise, it would appear that the pa against whom the rule is invoked is or will be required to plead evidence. The purpose of pleadings is to give a very brief and succinct statements or a material fact about a point and not*  
F *its full details. Thus, giving notice to the other party as to what he is coming or required to answer or defend in the suit. In other words, the averments in pleadings are supposed to be in form of a synopsis or compressed statement of a point in its skeletal form the details or*  
G *flesh of which will be supplemented or provided by oral evidence. It is therefore, wrong for the learned trial judge in the instant case to expect the appellants to plead details of the evidence expected to be given by their witnesses on their traditional history. See Amadi V. Nwosu (1992) 5 NWLR (PT 241) 273 at 287, Anyanwu V. Mbara*  
H *(Supra) at p. 398 at 398 of the report.” (Refer to page 461 of Records).”*

Also at pages 460 and 461 the court below proceeded and said as follows:-

*“It is clear from the above quoted pleadings that the Eleso*



*family land did not devolve to any individual but was communally succeeded by all the seven branches of the family who represent the seven children of Eleso and the land is up till today being administered jointly by the family in trust of or the benefit of other branches and members of “Eleso family. It is my humble view that contrary to the subsequent holding of the learned trial judge, the Appellants have established or proved sufficient nexus linking themselves to Eleso (their original ancestor). Again, it was similarly wrong for the learned trial Judge to reject the evidence of the 1st Plaintiff (appellant) for the reason he gave that his evidence given under cross examination (on his genealogy or linkage to Eleso) was not pleaded.”*

**It is significant to mention that the appellants have not appealed against this finding by the lower court that “The Land is a Communal Land.” The law is trite and well settled that issues are raised only from grounds of appeal; and hence the appellants have no basis to deny at this stage that the land is communal.**

**Therefore and deducing from the foregoing conclusion by the lower court, it is the respondents’ case that the land in dispute devolved on all the children of Eleso who appointed various principal members as trustees. In other words, the land did not devolve on a particular person but that it remained as communal land on the death of Eleso as found by the court below. As rightly submitted by the learned counsel for the respondents herein, his clients are not obliged to plead a narration of the genealogical tree from the original owner down to the Respondents. Consequently, the rule which makes it mandatory on a party to plead successive persons to whom the land devolve before he could prove ownership by traditional history will not apply. This is premised on the fact that the land did not devolve on successive persons but remains as a communal land.**

It is significant to restate the appellants’ contention wherein they argue that the Respondents did not plead or lead evidence on the successive persons to whom the land devolved on the death of Eleso. Paragraph 8 of the respondents’ amended statement of claim at page 59 of the record of appeal, is hereby reproduced and states as follows:-

*“8. Eleso family has given its various branches parcels of land to farm upon; nevertheless, titles to such parcels of land still remain in Eleso family.”*

The said paragraph informs vividly that title in the land has not devolved on any individual person but had remained in all members of the Eleso family. The said paragraph 8 when taken together with paragraphs 7 and 9 of the same record of appeal will give a clearer emphasis of the Eleso family land which is communal in nature. The paragraphs state as follows:-

*“7. The plaintiffs are the descendents of the seven children of Eleso begat by Ajaluwa for Eleso.*

*9. It is the case of the plaintiffs that the property/Estate of Eleso family is held in trust by the family Head and seven principal members of Eleso family. Each principal member is appointed by his branch to join the family Head for the purpose of administering the family property/Estate for themselves and on behalf of the entire Eleso Chieftaincy family of Ijanikin.”*

***The concept of what constitutes a communal land has been described extensively by the dictum in the case of Amodu Tijani V. Secretary to the Government of Nigeria (1921) 2 AC 399. In that case in reference to communal land, land was characterized as belonging to a “vast family of which many are dead, few are living and countless members are unborn.”***

***With all said and done, the foregoing description is clear in stating that communal land belongs to a community, past, present and future. It is of interest further to say that this court in Sanni V. Ademiluyi (2003) 3 NWLR (Pt. 807) 381 at 395 sees communal land as one which” ...belongs to the community and is vested in the leader of the community only as a sort of trustee.”***

It is the submission on behalf of the appellants that the plaintiffs did not adequately plead material facts necessary to ground their claim for declaration based on the traditional ownership and that evidence given on those unpleaded facts were rightly rejected by the trial court but wrongly relied upon by the lower court.

Even at the risk of repeating myself, it is placed on record at pages 460 and 461 (reproduced earlier in the course of this judgment) that:

*“the Eleso family land did not devolve to any individual but was communally succeeded by all the seven branches of the family who represent the seven children of Eleso and the land is up till to-day being administered jointly by the family in trust of or the benefit of other branches and members of Eleso family.”*

Therefore and as rightly submitted by the respondents’ counsel, it is no wonder that the appellants appeared to have misconceived the respondents’ case and hence the judgment of the court below. Again, the clarity of this is a confirmation of paragraph 8 of the amended statement of claim at page 59 (supra) and also by the judgment of the lower court at page 460.

I seek to re-emphasize as stated earlier that the absence of an appeal against the findings by the lower court on the land being a communal property is a strong anchoring position grounding the respondents’ claim.

***The law is settled and as laid in judicial authorities that a party claiming communal ownership of land must necessarily need to plead the following certain requirements:-***

***(a) who founded the land or originally own the land;***

***(b) that they are descendants of the founder;***

***(c) how the land became communal lands.*** See Echi V. Nnamani (2000) 5 SC 62 at 78; Iwuoha V. Nipost Ltd (2003) 8 NWLR (pt. 822) 308 at 345.

In the instant appeal it was held at pages 460 to 461 of the record by the court below (as reproduced earlier in the course of this judgment) that the Respondents met the requirements stated above and need not plead successive people on whom the land devolved.

A critical examination of the respondents’ pleadings on their claim at paragraphs 5, 6 and 7 of their Amended Statement of Claim are all relevant and while paragraph 7 was reproduced earlier, paragraphs 5 and 6 state as follows:-

*“5. By virtue of the position of Eleso, he became the sole owner of a vast track of land stretching from and bounded by Agbara, Era, Igbesa and Iba towns through whom the plaintiffs now derive their H title.*

*6. The plaintiffs aver that Ajaluwa the wife of Eleso begat seven children namely: Ilosu, Oduboku, Aina Alaso, Akinola, Ajoruko, Panti and Jogbayi, who today are known as the seven branches of Eleso*

family.”

Following from the foregoing paragraphs, the Respondents duly pleaded that Eleso founded the land by settlement. They also stated by their paragraphs 6 and 7 that they are the descendants of Eleso. Furthermore and in their respondents reply to appellants’ statement of defence and counter claim, at paragraphs 7 and 8 of the reply, the genealogical link of the current appellants to the Respondents’ Eleso family was pleaded with paragraph 7 being in response to paragraphs 29 and 70 of the defendants’ statement of defence as per sub-paragraphs (i) - (iv); paragraph 8 of the reply also states as follows:

“8. Chief Imam, Alhaji Salisu whose father hailed from Ilogbo-Elegba became the family Head of Eleso Chieftaincy family of Ijanikin because of his exemplary qualities, a position he held until his death on 7<sup>th</sup> November, 1995. The plaintiffs will found on the obituary of Late Chief Imam, Alhaji Salisu and Almanac published in honour of the said Chief Imam, Alhaji Salisu at trial.”

It is also intriguing that in their pleadings by paragraph 29 at page 67 of the record, while the appellants admitted that they are members of the Aina Alaso family (which the Respondents take as a branch of their Eleso family), they nevertheless denied that Aina Alaso was a branch of Eleso family. At paragraphs 8 and 9 of the amended statement of claim (reproduced supra), the respondents equivocally showed in their pleadings and evidence how the land became communal land on the death of Eleso.

It is significant also to say that on the findings by the trial court at page 144 of the record of appeal, the court was satisfied that the plaintiffs led evidence through their three witnesses to prove their case as pleaded. This was what led to the holding of the trial judge wherein he held in favour of the plaintiffs’ traditional history.

However, and despite the above finding, the trial judge as rightly ruled by the lower court surprisingly embarked on criticisms of the appellants pleading and evidence on the ground that they did not plead or lead evidence on the successive persons to whom the land devolved on the death of Eleso: the trial judge contends also that the evidence given by the 1st plaintiff (under cross examination) that he was the son of Sanni Alaso, who was begotten by Igo a son of Aina Alaso thus linking himself to Eleso, was not pleaded. Listen to what the learned trial judge had to say at page 172 of the record and

thereby somersaulted:

*“The plaintiffs led evidence in line with these pleaded facts and the first plaintiff stated that he was from the Aina Alaso family branch of the Eleso family. Looking through the pleadings and the evidence of the plaintiffs on traditional history, the plaintiffs did not plead or lead any evidence on what happened to the land said to belong to Eleso by reason of first settlement on the death of Eleso and neither did they plead or lead any evidence on the successive persons to whom the land thereafter devolved after Eleso’s death up to the plaintiffs.”*

As rightly submitted by the learned counsel for the respondents, his clients in their pleadings had given notice to the appellants that they are descendants of Eleso, It is also pertinent to re-emphasize that during cross-examination, the 1st respondent gave evidence in line with both the Respondents and appellants’ pleadings and therefore linked himself to Eleso.

It is no wonder, I hold that the court below, was right when it held as follows at page 461 of the record:-

*“It is pertinent to note and acknowledge the general law as rightly stated by the learned trial judge in rejecting the evidence given by the 1st appellant (i.e. 1<sup>st</sup> respondent in this court) to the effect that parties are bound by their pleadings ...It is trite that the law does not require a party to plead evidence. The purpose of pleading is to give a very brief and succinct statements or a material fact about a point and not its full details ..... in other words, the averments of a point in its skeletal form the details or flesh of which will be supplemented or provided by oral evidence. It is therefore, wrong for the learned trial judge in the instant case to expect the appellants to plead the details of the evidence expected to be given by their witnesses on their traditional history.”* See the case of Amadi V. Nwosu (1992) 5 NWLR (Pt. 241) 273 at 287; also Anyanwu V. Mbara (1992) 5 NWLR (pt. 242) 386 at 398.

On the question as to whether the respondents are entitled to rely on the evidence of appellants that support their case, it is the appellants’ contention that in a claim for declaration of title to land, the plaintiff must succeed on the strength of his own case; that it is after establishing such case that he may use relevant admissions in the defendants case; that it is not open for the plaintiffs to rely on any

weakness in the defendants' case for purpose of proving declaration and that the lower court erred when it held that the defendants had such a burden to discharge in their counter-claim which they also sought declarations.

***As rightly submitted by the learned counsel for the respondents and without having to belabor the point, the evidence of the 1st Respondent elicited during cross examination, linking Respondents to Eleso, have shown that the Respondents are the descendants of Eleso. Plethora of authorities avail to show that the respondents are entitled in law to rely on the appellants' pleading and evidence which support their case and hence the court is allowed to act thereon.*** See the following cases of Akinola V. Oluwo (1962) 1 SC NLR 332; (1962) 1 All NLR 225 at 228 and Odunran v. Asarah (1972) 1 All NLR (Pt. 2) 137.

It is on record that the appellants in their pleadings traced their ancestry to one Omoluyi, a daughter of Aina Alaso who married Adeokun, a descendant of Ogunfunmilere and that she gave birth to Gbadamosi, their grandfather. (Reference can be made to paragraphs 29 to 31 of the Statement of Defence and Counter claim on page 67 of the record).

The respondents at paragraph 7 of their reply to the defendants' Statement of Defence and counter claim in response to paragraphs 29 and 70 of the Defence and counter claim in response to paragraphs 29 and 30 of Defendants' Statement of Defence took advantage of the facts in the appellants pleading which they (respondents) have replied to vide their reply to counter claim to show their nexus to their progenitor, Eleso.

***Again in plethora of cases, it was held by this court that the principle that in a claim for declaration of title to land, the onus is on the plaintiff to succeed on the strength of his own case and not the weakness of the defence, is subject to qualifications. Thus in Okpala V. Ibeme (1989) 2 NWLR (Pt. 102) 208 at 222 it was held that the principle which was very well enunciated in the ancient case of Kodilinye V. Odu (1935) 2 WACA 336 although operational, is however subject to the following two qualifications:-***

***“(a) The plaintiff can quite perfectly take advantage of***

***those facts in the defendants' case which support the plaintiffs' case; and***

***(b) Where an issue of title to land arises in litigation, the court is concerned only with the relative strengths of the titles proved by adverse parties in the litigation. If party A can prove a better title than party B, the party A is entitled to succeed. [Arose V. Arose (1981) 5 S.C. 33 at 35]."*** B

***As rightly submitted by the learned counsel for the respondents, in the instant case, his clients took advantage of the facts in the appellants' pleadings which the respondents had replied to vide their reply and counter claim to show their nexus to their progenitor, Eleso. In the circumstance, contrary to the contention by the appellants, the court below was right in holding that the Respondents properly pleaded and proved traditional ownership of the land in dispute.*** C D

***In other words, the court below cannot be faulted when it reversed the trial court's findings that the plaintiffs did not properly plead and prove traditional ownership of the land in dispute. Issue No 2 is therefore resolved against the appellants and in favour of the respondents.*** E

Issues 3 and 4 were taken together by the appellants; and they are as follows:-

#### ISSUES NO 3 AND 4

3. Whether it was within the province of the lower court as an appellate court, to make findings of facts as to traditional history/ownership and possession in the circumstances of this case? F

4. Whether the decision of the trial court for damages for trespass and injunction for the appellants ought to stand?

In arguing the issues together the defendants/appellants' counsel adopts his argument under issue No 2 above. The counsel submits further that the learned trial judge, having rejected the evidence of traditional history/ownership of both parties, it was not within the province of the lower court as an appellate court to make those findings in favour of one of the parties in the circumstances of this case; that the correct thing for the lower court to have done in such situation was to affirm the findings of the trial court who saw the witnesses; that although the Court of Appeal could, in appropriate cases, reverse the findings of fact of the trial court, there was no basis H

for such reversal and re-evaluation of the facts herein especially as credibility of the witnesses was involved.

It is the firm contention of the defendants/appellants that there was no proper traverse/defence of counter claim by the plaintiffs. Counsel in the circumstance made a clarion call on this court to hold  
B that the defendants had been in exclusive possession of the land in dispute through their predecessor, Salisu in respect of their claim in trespass which has nothing to do with their claim for declaration. It is submitted further that the finding by the learned trial judge for the  
C defendants, that their acts of possession from 1995 when Salisu died was enough to ground other claim in trespass, should be affirmed; that it is trite law that the slightest possession entitles the party in possession to sue and succeed in trespass. See *Okhwarobo V. Aigbe* (2002) 9 NWLR (Pt. 771) 29 at 51 also *Balogun V. Akanji* (2005) 10  
D NWLR (Pt.933) 394 at p.415.

It is submitted by counsel also that, with the abandonment of the plaintiffs' case and incompetent statement of claim, the plaintiffs could not validly incorporate the averments in the Statement of Claim into their Reply to Defendants Defence and Counter-Claim. Conse-  
E quently, that the averments in the Reply to Defendants' Statement of Defence and Counter-claim was not enough to deny the defendants from succeeding in trespass and injunction granted by the trial court; that the lower court failed to reverse the tendentious and inconclu-  
F sive finding of the High Court that the defendants' predecessors' possession of the land in dispute could have been on behalf of the plaintiffs when that was not pleaded or proved by the plaintiffs; that the appeal should therefore be allowed by striking - out or dismissing the plaintiffs' case in toto and restoring the decision of the trial court  
G in favour of the defendants.

In response to issues 3 and 4, the respondents' counsel related to the powers and jurisdiction of the Court of Appeal to re-evaluate evidence and submits that the court below did not make any finding outside the record of appeal: that the court below did not in other  
H words state that it believed or disbelieved any of the witnesses. Counsel argues as correct in law the position taken by the court below in reevaluating the evidence contained on the printed record in respect of traditional history, ownership and possession. Copious reference was also made by counsel to the record of the



lower court at pages 468 to 470 and submits the re-evaluation as proper: that when regard is had to the evidence by Dw4 and Dw8 (the appellants' witnesses), it is evident that their pleadings and evidence portray admission against interest in the land by contradicting themselves. A further confusion is also where the 1st appellant as Dw8 admitted the contents of Exhibit P8 as being correct. Again, a reference made to the further affidavit of one Haruna Salisu in support of appellants' motion for stay of extension filed on 17th August, 2009 is a clear admission against the appellants' case in this court, at the court below and the trial court.

It is the counsel's submission therefore that having regard to the evidence of the parties on the printed record, the respondents ought to succeed on the balance of probabilities that the land in dispute is Eleso family land; that the court below properly re-evaluated the evidence adduced by the parties; that the issues should therefore be resolved against the appellants.

***Issues 3 and 4 relate to the powers and jurisdiction of the Court of Appeal to re-evaluate evidence. It is correct as submitted by both counsel that the position of law is well settled that appellate courts do not try cases, evaluate evidence or make findings; however and as rightly submitted by the learned counsel for the respondents, appellate courts have the power and jurisdiction to re-evaluate evidence led at the trial court which is contained on the printed record.*** See the cases of Ebba V. Ogodo (2000) 10 NWLR (Pt. 675) 337; C.D.C. (Nig) Ltd V. SCOA (Nig) Ltd (2007) 6 NWLR (Pt. 630) 300. Therefore, and as rightly held by this court per Karibi-Whyte JSC in Sagay V. Sajere (2000) 6 NWLR (Pt 661) 360 at 375, appeals are based on rehearing.

The court below for instance, merely stated that the Respondents duly pleaded and proved the elements of their traditional history and consequent upon which they were entitled to judgment. As rightly submitted by the counsel for the respondents, herein, the decision by that court was arrived at only after it had stated the correct position of law on pleadings and admitted the evidence of the 1st respondent which was inappropriately expunged by the trial court. The court below also considered meticulously the admissions against interests made by the appellants.

In re-evaluating the evidence before the trial court at pages

468 to 470 of the record for instance, the court below held as follows:-

“...at the time he (the trial judge) embarked on the findings as to who amongst the parties were in actual possession of the land, the learned trial judge then believed that both parties who plead or called traditional evidence or their roots of title (by settlement) failed to establish or prove their alleged root of title. In such a situation, the court trying the case is recommended to adopt the approach laid down in the case of *Kojo II V. Bonsie* (1957) 1 WLR 1223 where the traditional evidence adduced by both parties to a land has been found to be inconclusive to have recourse to the facts or events in recent years in order to resolve which of the two versions of the traditional history in (sic) is more probable than the other or which of the two is more correct – see also *Ekpo V. Ita* 1 NWLR 6. The rule in *Kojo V. Bonsie* (Supra) is however of persuasive authority to Nigerian courts who may depart from it if there are other ways or means of measuring the veracity or credibility of one of the conflicting versions of the traditional history relied upon by the parties in a land dispute - see *Okoko V. Dakolo* (Supra). In the instant case, there is no doubt that the traditional history adduced by both parties were competing one against the other and as I have found the version of the appellants is more probable to believe.

Consequently the consideration of acts of possession by the learned trial judge was or would be unnecessary. Moreso, when in his exercise, he made conflicting findings rendering his decision on the point as perverse. I am also of the humble view that the contradiction in the evidence of the Respondents’ witnesses and their admission of some vital or material facts of the Appellants’ case particularly as relate to the leadership of Eleso family (as per exhibits P8 and P9) is fatal to the case of the said Respondents. It is trite that where the evidence of one of the parties is contradictory on the traditional history as to the ownership or title to the land in dispute, his case should fail. Moreover, an admission by Counsel in a civil case made at the trial or during the progress of the case as in the instant case is treated or regarded as evidence against his client or the party he represents in the proceedings. See *Mogaji V. Cadbury* (1985) 2 NWLR (Pt.7) 393 at 430.”

On a community reading of paragraphs 2, 3 and 5 of the

Amended Statement of Defence and Counter Claim by the appellants at pages 62 and 63 of the record of appeal also lines 14 and 15 on page 138 of the *said* record, it is clear on the pleadings and evidence that the appellants initially denied that there was any Eleso family in Ijanikin and that the family did not own any land.

However and when regard is had to the evidence of Dw4 and B also Dw8, (appellants' witnesses) put together, the totality of same is grossly unfavourable *against* the appellants because it amounts to an admission against their interest *in* the land.

For instance, the appellants' witness (Dw4), a legal practitioner, knew the defendants who were once his clients. C At page 148 of the record, in his evidence-in-chief he told the court that

*"...the plaintiff sold the Gbadamosi Alaso family (land) using the name of Eleso family and all they wanted was the proceeds from the 52 acres of land sold as the property belonging to them."* D

Also under cross examination at page 149, the witness admitted as follows:-

*"It is correct that my clients told me of the existence of Gbadamosi Alasso (sic) and Elesho families."* E

Furthermore, the 1st appellant as Dw8 in his evidence at page 154 of the record also admitted and said:-

*"I know the 1st plaintiff very well and we are related in Aina Alaso family."*

During cross examination, the 1st appellant further admitted F at page 155 of the record and said:-

*"It is correct as stated in Exhibit 8 that our uncle was the Chief Imam of Ijanikin Central Mosque and it is not correct that he died in 1995. He died in 1995 and I agree that Exhibit P8 is correct. It is not correct as stated on Exhibit P9 that he came from Ilogbo Elegba. It was his great grandfather that came from Ilogbo Elegba."* (Emphasis G is supplied).

Deducing from the evidence of Dw4 (supra) the import is a revelation that there is Eleso family in Ijanikin and that the family sold H land to some people. The appellants cannot therefore deny the fact of Eleso family in Ijanikin as rightly found by the court below. Appellants, as rightly submitted by the learned counsel for the respondents, cannot approbate and reprobate at the same time. Also by the *evi-*

dence of Dw8, the *following* deductions become *obvious* that:- the appellants *have* admitted against their own interest that:-

a) There *is* Eleso family in Ijanikin;

b) The late Chief Imam was the head of Eleso family until his death in 1995;

B c) Exhibits P8 and P9 correctly describe the Late Chief Imam as the head of Eleso family and his relationship with Eleso family maternally;

d) The late Chief Imam exercised acts of ownership on the land in dispute on behalf of Eleso family;

C e) 1st Appellant and 1st Respondent are from Aina Alaso branch of the Eleso family (which is a *very* logical inference from all the previous admission).

***The law is well settled in plethora of cases that a plaintiff, in an action in which title to land is in issue, is entitled to rely on that part of the defence which supports the plaintiff's case.*** See the cases of:- Akinola V. Oluwo (1962) 1 All NLR 224; Kupoluyi V. Phillips (2001) 13 NWLR (Pt.731) 736 at 760 and 768; also ***Odi V. Iyala (1004) 8 NWLR (Pt.875) 283 at 310 wherein it was held by this court that there is no better evidence against a party than one from witnesses called by him, who give evidence contrary to the case for the party.***

***There is nowhere shown on the record that the appellants did urge the court to declare their witnesses Dw4 and Dw8 as hostile witnesses. The admission made by Dw4 and Dw8 are in law bound to stand firmly and the court below was therefore right in holding thereof as it did.*** The following cases are also in support of the foregoing principle:- Ilono V. Chiekwe (1991) 2 NWLR (Pt. 173) 316; Udoh V. The State (1994) 2 NWLR (Pt. 329) 628; and Federal Housing Authority V. Sommer (1986) 1 NWLR (Pt. 17) 533.

***In furtherance of the confirmation that the appellants have admitted the existence of Eleso family and owning land in Ijanikin, reference can also be drawn to the further affidavit of one Haruna Salisu sworn in this court on 4th February, 2010 in support of Appellants' motion for stay of execution filed on 17th August, 2009.***

***As rightly submitted by the respondents' counsel, the***

**record of appeal before us reveals that there is only one dispute between the appellants and the respondents which is in respect of the land in dispute and the subject matter of this appeal. The clear admissions in the said further affidavit of Haruna Salisu are therefore as follows:- that there is Eleso family in Ijanikin and they own land; there is also the dispute whether Eleso family or Gbadamosi family is the owner of the land in dispute in this appeal. The law is trite and well settled that the court can make use of processes filed before it to arrive at a just decision in a matter pending before it.** See section 74(1) m of the Evidence Act LFN 2004 Cap E.14. See also the following cases of Oyewole *V*. Akande (2009) 15 NWLR (Pt.1163) 119; and *Us; Enterprises Ltd V Kogi State Government* (2005) 1 NWLR (Pt.90B) 494 at 517 - 518.

On the totality of the case before us, while the admissions are against the appellants; the following salient conclusions can easily be drawn as follows:- that

- a) Eleso Chieftaincy family owns land in Ijanikin;
- b) the land has been communally owned since the death of Eleso;
- c) the respondents are the descendants of Eleso;
- d) the appellants are members of Eleso Chieftaincy family maternally through Aina Alosa;
- e) the late Chief Imam, Salisu Gbadamosi, who was from the appellants' lineage was the head of Eleso Chieftaincy family up till his death; and
- f) the late Chief Imam, Salisu Gbadamosi, administered the land up till the time of his death, on behalf of Eleso Chieftaincy family.

Therefore, the court below was right in re-evaluating the findings of the trial court in respect of Exhibits P8 and P9 and the evidence of Dw4 and Dw8 together with the parties' pleadings in arriving at the conclusion that the Respondent claims are more probable.

In the result, issues 3 and 4 are also resolved against the appellants and *in* favour of the respondents. In other words the land in dispute belongs to *Eleso* family who has been in possession *since* time immemorial. The appellants have admitted against their own interest in this appeal that Eleso Chieftaincy family exists and that it owns land in Ijanikin including the land *in* dispute.

While this appeal is dismissed as lacking in merit, the judgment of the lower court which set aside the judgment of the trial High Court Lagos State delivered on 21st June, 2004 is also affirmed by me.

I have observed that parties are from the same family and I will not therefore make any order as to costs. Each party should bear *its* own costs.

Appeal *is dismissed* with no order made as to costs.

C

### **GALADIMA JSC**

I have had the benefit of reading in draft the leading judgment of my learned brother OGUNBIYI, JSC just delivered. Issues relevant for the determination of the appeal have been exhaustively dealt with. I do not have much to add except to agree with the reasoning and conclusion leading to the decision that the appeal is lacking in merit and should be dismissed.

In this case the Amended Statement claim incorporated the Writ of Summons by reference. Therefore, it was a valid claim and the trial court was right to have entertained same. In OKOMU OIL PALM CO. LTD v ISERHIENRHIEN (2001) 5 NWLR (Pt. 710), 660 at P. 681, this court considered the provision of Order 13 Rule 7 of the High Court of the then Bendel State, (Civil Procedure) Rules of 1976, which are similar to Order 18 Rules 2,3, and 4 of the High Court of Lagos State Civil Procedure Rule, 1994. The provisions required that the Statement of Claim shall state specifically the relief which the plaintiff claims either simply or in the alternative. This court per UWAIFO, JSC at page 681 (*supra*) held thus:

“Once there is such incorporation the Statement of Claim is taken to contain the relief stated in the writ, which statement of claim would otherwise be defective and contrary to the requirement of Order 13 Rule 7 reproduced above”.

The position of this court in the issue was further made clearer in GARAN v OLOMU (2013) 11 NWLR (PT. 1365) 227 at 250, after considering and distinguishing the authority of ENIGBOKAN v AJICO. NIG PLC (1994) 6 NWLR (Pt. 348) which relied on the decision in UDECHUKWU v ONWUKA (1956) IPSC 70, held as follows:

“Once there is connectivity between the process that was first

*in time and subsequently process the latter cannot be rightly said to have superseded the former for supersession of an earlier process by a subsequent process to occur; there must be a complete disconnect between the two imposed by the fact of the one completely occupying the place or role of the other”.*

In view of the foregoing, to accede to the Appellants’ propos-  
ing would be to succumb to the era of perpetuating technical justice,  
and to say that the Respondent had abounded their reliefs claimed in  
the Amended Writ of Summons on the principle that the Statement  
of Claim supersedes the Writ of Summons.

It is for the above reasons and the more detailed reason con-  
tained in the leading judgment that I too find no merit in the appeal  
and dismiss it accordingly. I abide by the orders made including that  
on costs.

Appeal dismissed.

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### NGWUTA JSC

I had the privilege of reading in draft the lead judgment just  
delivered by my learned brother, Ogunbiyi, JSC. I agree with the  
reasoning and conclusion leading to the dismissal of the appeal. I will  
add to what His Lordship has said on the statement of law that “the  
statement of claim supersedes the Writ.” The writ controls the state-  
ment of claim in the sense that the latter must confine itself to the  
cause of action endorsed in the former (the Writ). Subject to the  
above control, the statement of claim, once filed supersedes the Writ  
of Summons. This means that where there are two different aver-  
ments, one in the Writ of Summons and the other in the Statement  
of claim, the averment in the Statement of Claim will override the  
one in the writ of Summons.

Any matter mentioned in the claim endorsed in the Writ which  
is omitted in the Statement is deemed abandoned. See *Udechukwu*  
*v. Onwuka* (1956) 1 FJC 70.

Appellants’ case is that the respondents, by claiming “as per  
their Writ of Summons” have abandoned the claim endorsed on the  
Writ. In my view, by so pleading the Respondents cannot be said to  
have abandoned the claim in the Writ. They did not make two differ-

ent averments, one in the Writ and one in the Statement of Claim. Rather, by claiming “asper the Writ of Summons” they adopted their claim in the Writ of Summons in their Statement of Claim.

For the above and the fuller reasons in the lead judgment I also dismiss the appeal for want of merit. I abide by the order for costs.

### **KEKERE-EKUN JSC**

This appeal is against the judgment of the Court of Appeal, Lagos Division, delivered on 29/3/2007 setting aside the judgment of the High Court of Lagos State sitting at the Badagry Judicial Division delivered on 21/6/2004 dismissing the plaintiffs/respondents claims in their entirety and allowing the counter claim of the defendants/appellants in part.

By their writ of summons filed on 26/9/2001, which was subsequently amended vide their amended writ of summons dated 5th May 2003, the respondents in this appeal, as plaintiffs sought the following reliefs:

“(i). *A DECLARATION that the 1st plaintiff being the family head and other principal members of Eleso Chieftaincy Family of Ijanikin Lagos State are entitled to manage, superintend or otherwise deal with the landed property of Eleso Chieftaincy Family including the disputed land for themselves and on behalf of and in trust for the entire member of Eleso Chieftaincy Family of Ijanikin.*

(ii) *PERPETUAL INJUNCTION* restraining the defendants, their agents, servants, workmen and privies from disturbing or inhibiting the Family Head and the principal members of Eleso family of Ijanikin from the management and control of the family land including the dispute land.

(iii) *PERPETUAL INJUNCTION* restraining the defendants, their agents, servants, workmen and privies from further acts of trespass, that is, from excavating sand from the land of the family and from interfering with the rights and interests of purchasers of Ilosu branch of Eleso family to whom Eleso family has made various sales and/or grants of parcels of land.

(iv) *AN ORDER* for N200,000.00 against the defendants for



*the various acts of trespass already committed by them.”*

In their Amended statement of claim at page 61 of the record, they claimed as follows:

*“WHEREOF the plaintiffs claim against the defendants as per the Writ of Summons.”*

The appellants herein, as defendants joined issues with the respondents in their pleading and filed an Amended Statement of Defence and counter-claim. The suit proceeded to trial with oral and documentary evidence led on either side. In a considered judgment, the trial court granted the plaintiffs’/respondents’ claims in their entirety and granted the defendants’/appellants’ counter claim in part.

Dissatisfied with the judgment, the plaintiffs/respondents appealed to the court below. The judgment of the trial court was set aside. The court entered judgment in favour of the respondents “as per their claims in the endorsed amended writ of summons” and proceeded to enumerate the claims as endorsed therein.

Not surprisingly, the appellants were dissatisfied with the judgment and have further appealed to this court. The issues in contention have been reproduced in the lead judgment, I must, at this stage, state that I have had the opportunity of reading in draft the judgment of my learned brother, CLARA BATA OGUNBIYI, JSC just delivered. I agree entirely that this appeal lacks merit and should be dismissed.

In support of the lead judgment, I wish to say a few words on the first issue for determination, which is:

Whether the lower court had jurisdiction to consider the statement of claim of the claimants/respondents and grant the reliefs claimed in the writ of summons when the same had been abandoned by the plaintiffs?

In a nutshell, it is the contention of learned counsel for the appellants that by virtue of the provisions of Order 18 Rule 2 of the High Court of Lagos State (Civil Procedure) Rules 1994 (or Order 16 Rule 2 of the 2004 Rules) and numerous decisions of this court, where the respondents pleaded that they claimed “as per the Amended writ of Summons”, they had in effect abandoned the reliefs claimed in their Amended Writ of Summons on the principle that the statement of claim supersedes the writ of summons. Heavy reliance was placed on the recent decision of this court in David Stowe & Anor. Vs Godswill Benstowe & Anor. (2012) 9 NWLR (Pt.1306)

On the other hand, it is contended on behalf of the respondents that a statement of claim would only supersede the writ of summons where there is a distinct relief in the statement of claim which is not contained in the writ of summons. Learned counsel referred to Enigbokan Vs A.I.I.C.O. (Nig.) Plc (1994) 6 NWLR (Pt.348) 1; Garan Vs Olomu (2013) 11 NWLR (Pt.1365) 227 @ 253. He contends that to accede to the appellants' proposition would be to do gross violation to the decided authorities on the issue. He submitted further that the era of technical justice is no more and maintained that the respondents did not in any way abandon their reliefs.

The writ of summons being the originating process in a suit represents the foundation of the action. That foundation is built upon by the statement of claim. The writ of summons being the original building plan can be modified in the final execution. Thus, as Belgore, JSC (as he then was) observed in his concurring judgment in Daniel Holdings Ltd. Vs U.B.A. Plc (2005)13 NWLR (Pt.943) 533 @ 551 C - F, once a statement of claim is filed, what was not in the writ of summons may be inserted therein. In the same vein, what appeared in the writ of summons but was omitted in the statement of claim is deemed to have been abandoned. For a statement of claim to supersede the writ of summons however, it must be completely severed from the writ of summons. In Okomu Oil Palm Co. Ltd. Vs Iserhienrhien (2001) 6 NWLR (Pt.710) 660 @ 681 C - F this court considered the provisions of Order 13 Rule 7 of the High Court of Bendel State (Civil Procedure) Rules 1976 which are similar to Order 18 Rules 2, 3 & 4 of the High Court of Lagos State (Civil Procedure) Rules 1994, which require inter alia, that every statement of claim shall state specifically the relief which the plaintiff claims either simply or in the alternative.

It was held in that case that where the statement of claim does not contain a specific relief but "claims as per writ of summons" the reference therein to the writ of summons makes the statement of claim complete by incorporating the writ, thereby making the writ a part of it. It was held per Uwaifo, JSC at page 681 E - F (supra):

*"Once there is such incorporation the statement of claim is taken to contain the relief stated in the writ, which statement of claim would otherwise be defective and contrary to the requirement of*

*Order 13 Rule 7 reproduced above.”*

In Garan Vs Olomu (2013) 11 NWLR (Pt.1365) 227 @ 250 F - H, this court after considering and distinguishing the authority of Enigbokan Vs A.I.I.C.O. Nig. Ltd (supra) which relied on the decision in Udechukwu Vs Okwuka (1956) 1 FSC 70; (1956) SCNLR 189, held thus: B

*“Once there is connectivity between the process that was first in time and the subsequent process, the latter cannot be rightly said to have superseded the former for supersession of an earlier process by a subsequent process to occur, there must be a complete disconnect between the two imposed by the fact of the one completely occupying the place or role of the other.”* C

That is not the case here. I hold that the amended statement of claim in the instant case, having incorporated the writ of summons by reference, is a valid claim and the trial court was right to have entertained it. I am of the view that the authorities of Okomu Oil Palm Co. Ltd. Vs Iserhienrhien (supra) and Garan Vs Olomu (supra) best reflect the position of this court in doing substantial justice. D

My learned brother has very ably considered and resolved all the issues in contention in this appeal. I agree with and adopt the reasoning and conclusions as mine. I also find no merit in the appeal and dismiss it accordingly. I abide by the consequential orders made in the lead judgment including the order as to costs. E

Appeal dismissed.

F

### **OKORO JSC**

My learned brother, CLARA BATA OGUNBIYI, JSC obliged me a copy of the judgment he has just delivered which I read before now. He has meticulously and quite efficiently resolved all the salient issues nominated for the determination of this appeal. I agree with the reasons marshalled and the conclusion that this appeal lacks merit and deserves an order of dismissal. The facts of this case are well encapsulated in the lead judgment and I need not repeat the exercise here. I shall chip in a few words of mine in support of the judgment only. G

The learned counsel for the appellants in the first issue had argued that the lower court had no jurisdiction to consider the state- H

ment of claim of the claimants/respondents and grant the reliefs claimed in the writ of summons when the same had been abandoned by the plaintiffs. Contrary to the submissions of the appellants, the respondents submitted that they did not abandon their reliefs but incorporated same by reference into their amended statement of claim.

On page 61 of the record of appeal, the respondents in paragraph 22 of their amended statement of claim stated as follows:

*“22 WHEREOF the plaintiffs claim against the Defendants as per the writ of summons.”*

The said claims on the writ of summons can be found on page 30 of the record. The ground for the appellants’ contention is that the court below lacked the jurisdiction to have entered judgment for the Respondents because there was no relief which the court below could grant the statement of claim having superseded the writ. The respondents submitted that while it is correct that a statement of claim supersedes the writ of summons, for a statement of claim to supersede the writ, there must be distinct relief in the statement of claim which is not contained in the writ of summons. Where this is lacking, the principle that a statement of claim supersedes the writ of summons would not apply, relying on *Enigbokan V AIICO (Nig) Plc.* (1994) 6 NWLR (Pt 348) I, *Daniel Holdings Ltd V UBA Plc* (2005) 13 NWLR (Pt 943) 533, *Garan V Olomu* (2013) 11 NWLR (Pt 1365) 227.

Without much ado, I am in agreement with the respondents in this matter. There is no doubt regarding the statement of law that a statement of claim supersedes the writ of summons. But this is not absolute. For a statement of claim to supersede the writ of summons, it must not only disclose a cause of action, it must also state what is being claimed and not merely claiming “*asper the writ of summons*”. See *Chief J. O. Lahan & ors V R. Lajoyetan & ors* (1972) 6 SC 106, *Enigbokan V A. 11 Co Nig Ltd* (1994) 6 NWLR (Pt 348) I, *Keshinro V Bakare* (1967) 1 All NLR 280 at 284. *Nta V Anigbo* (1972) 5 SC H 156.

In the recent case of *Garan V Olomu (supra)* at page 250, this court held that:-

*“A process is said to supersede another if it is subsequent to and completely severed from that other. Once there is interconnectivity*

*between the process that was first in time and the subsequent process, the later cannot be rightly said to have superseded the former. For supersession of an earlier process to occur, there must be a complete disconnect between the two imposed by the fact of one completely occupying the place or role of the other.”*

Now, comparing the writ of summons on page 30 of the record with the statement of claim, particularly paragraph 22 thereof, it clearly shows that what the statement of claim did was to incorporate the writ of summons into the amended statement of claim by reference. In the circumstance, both the writ of summons and the statement of claim are together for the purpose of the reliefs sought by the plaintiffs (now respondents).

From what I have said above, it is clear that the respondents never abandoned the reliefs sought before the court. I agree with the learned counsel for the respondents when he argued that once a statement of claim is filed, the writ of summons goes into oblivion where the statement of claim makes no reference to the writ of summons. However, where the statement of claim makes reference to the writ, it incorporates the reliefs by reference into the statement of claim. This is what happened in this case. See *Okomu Oil Palm Company Plc V Iserhienrhien* (2001) 6 *NWLR* (Pt 710) 660 at 681 and *Daniel Holdings Ltd V UBA Plc.* (supra)

For the avoidance of doubt, the respondents never abandoned their reliefs and as such the court below was right when it entered judgment for them on those reliefs on the writ of summons incorporated into the amended statement of claim by reference.

For the above reasons, and the fuller ones well adumbrated in the lead judgment, I agree that this appeal lacks merit. It is hereby dismissed by me. I abide by the consequential orders made in the lead judgment, that relating to costs, inclusive.