**CHIMA UME & ORS**

**V.**

**CHRISTIAN UCHECHUKWU IBE**

IN THE COURT OF APPEAL OF NIGERIA

ON MONDAY, THE 22ND DAY OF FEBRUARY, 2016

CA/OW/57/2011

**LEX (2016) - CA/OW/57/2011**

**OTHER CITATIONS**

3PLR/2016/61 (CA)

(2016) LPELR-40080(CA)

**BEFORE THEIR LORDSHIPS**

IGNATUS IGWE AGUBE, J.C.A

ITA GEORGE MBABA, J.C.A

PETER OLABISI IGE, J.C.A

**BETWEEN**

CHIMA UME

IROABUEKE UME

IKECHUKWU UME

ONYEKWERE UME

EKELEME IKWUAGWU

EZECHIE OKPARAEGBU Appellant(s)

AND

CHRISTIAN UCHECHUKWU IBE Respondent(s)

**ORIGINATING COURT(S)**

ABIA STATE HIGH COURT, UMUNNEOCHI JUDICIAL DIVISION HOLDEN AT NKWOAGU ISUOCHI

**REPRESENTATION**

U. K. IKE Esq. - For Appellant

AND

E. N. ICHIE ESQ with him, K. O. AHAMBA ESQ. For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

REAL ESTATE AND PROPERTY LAW – LAND – CLAIM AS TO STATUTORY RIGHT OF OCCUPANCY - IDENTITY OF LAND: Where identity of land is not clear to defendant – Whether duty bound to apply for particulars – Effect of failure thereto

REAL ESTATE AND PROPERTY LAW – LAND – SURVEY PLAN: Where a piece of land in dispute is known to both parties or it is clearly ascertainable, whether from the averments in the pleadings or otherwise and its area, exact location and precise boundaries on the ground are either, unmistakably and appropriately pleaded or are admitted or acknowledged by the Defendant- Effect of non-production of survey plan thereto - survey Plan is not a sine qua non in a claim for declaration of title to land or for statutory Right of Occupancy to enable the claimant or the Plaintiff prove or establish before the trial Court, the identity of the land in dispute

ALTERNATIVE DISPUTE RESOLUTION - ARBITRATION AND CONCILIATION - CUSTOMARY ARBITRATION: Principles governing a valid decision of native arbitration which is binding on parties thereto

**PRACTICE AND PROCEDURE ISSUES**

ACTION - PLEADINGS:- Whether parties are bound by their pleadings

APPEAL - INTERFERENCE WITH EVALUATION OF EVIDENCE: Trial Judge’s dominion over the assessment and or evaluation of the pieces of evidence given before it by witnesses called by the parties - Circumstances under which an appellate Court will interfere with evaluation of evidence by trial Court

EVIDENCE - ADMISSIBILITY OF UNREGISTERED REGISTRABLE INSTRUMENT: Whether an unregistered registrable instrument is admissible

EVIDENCE - ADMISSION/ADMITTED FACT(S): Whether facts admitted need further proof

EVIDENCE - DOCUMENTARY EVIDENCE: Conditions for admissibility of documentary evidence - Effect of document pleaded but not tendered at trial – Whether the pleader of the document is deemed to have abandoned same - Section 149 (d) of the Evidence Act as to withholding of evidence – whether applicable

EVIDENCE - HANDWRITING EVIDENCE: Where sign, mark or signature is denied by alleged maker - Whether a Court can form an opinion as to handwriting and signature by its own observation – Where dissimilarities between disputed signatures are apparent to the naked eye – Duty of court thereto

EVIDENCE - ORAL/DOCUMENTARY EVIDENCE: Whether a Court can draw inference from oral or documentary evidence before it - Section 149 of the Evidence Act 2004 Cap E14 2004 LFN

JUDGMENT AND ORDER - DAMAGES - CLAIM FOR DAMAGES: Position of the law on proof of general damages

**MAIN JUDGMENT**

**PETER OLABISI IGE, J.C.A**.(Delivering the Leading Judgment):

This appeal relates to the judgment of ABIA STATE HIGH COURT, UMUNNEOCHI JUDICIAL DIVISION which sat at NKWOAGU ISUOCHI contained in the judgment of HONOURABLE JUSTICE C.O.C. IZIMA delivered on the 17th day of January, 2011.

The Respondent as claimant had by his writ of summons issued out of the said Court on 27th day of April, 2000 claimed against the Appellants as Defendants jointly and severally for the following reliefs:-

The Plaintiff claims against the defendants jointly and severally as follows:

1. A declaration that the plaintiff is entitled to the statutory right of occupancy of that piece or parcel of land called AGUUOHA LAND situate along Emmanuel Ibe Road in Umukpuaro Mbala Isuochi in Umunneochi Local Government Area of Abia State of Nigeria within the jurisdiction of this Honourable Court.

2. A declaration of Court that the Abosi trees and not Ukpaku tree forms the boundary on the left hand side of the said land between the plaintiff and the 1st defendants land.

3. Perpetual injunction restrain (sic) the defendants, their servants agents privies and successors in-title from further trespassing into the plaintiff??s said portion or parcel of land.

4. Special damages of N431,300 (four hundred and thirty one thousand three hundred naira) for trespass into the plaintiffs said land in that in or about the 23rd day of April 2000 the defendants entered into the said plaintiff??s land and maliciously damaged the plaintiffs fence covering an area of 218 feet and further destroyed and carried away some building materials on the said land.

**PARTICULARS OF SPECIAL DAMAGES**

(a) 130 bags of cement at N650 each = 84,500

(b) 8 trips of sharp sand at N1,900 each = 15,200

(c) Water supply N5,000

(d) Old blocks at the site 600 pieces at N40 each = N24,000

(e) Planks (damaged by Defendants =N12,000

(f) 5/.8 Red (16mm) 150 lengths N90,000

(g) 60 Planks N12,000

(h) 40 length of Red N12,800

(i) General labour N46,000

(j) Transportation N20,000

Total N431,300.00

5. One million naira being General damages for trespass into the said plaintiff’s land

Date this 27th day of April, 2000.

The Claimant now Respondent filed statement of claim in the action on 19-1-2002. The Respondent however relied for his case against the Appellants, the further Amended Statement of claim dated 24th day of January, 2008 wherein on he claimed as follows:-

"1. Against the 1st, 5th and 6th Defendants: A declaration of the Honourable Court that the Plaintiff is entitled to the statutory Right of Occupancy to that piece or parcel of land situate at Aguohoro along Emmanual Ibe Road, Umukaro, Mbala Isuochi, Umunneochi, Local Government Area of Abia State.

2. Against the Defendants jointly and severally the sum of N1,000,000.00 (One Million. Naira) being general damages for trespass into the said land.

3. Against all the Defendants a perpetual injunction restraining the Defendants, by themselves, their servants, agents, privies or workmen from further entry into or any other way whatsoever from interfering with the Plaintiffs possession, enjoyment or user of the said land."

The Appellants filed joint statement of Defence which was Amended on 27th day of February, 2006 dated same date.

The matter proceeded to hearing and at the end of trial the Learned trial Judge in a considered judgment delivered on aforesaid 17th day of January 2011 found as follows:

"In this case the failure of the 2nd, 3rd, 4th and 5th defendants in adducing evidence regarding their alleged trespass into the plaintiff’s land renders them and the other defendants liable to the general damages the plaintiff is seeking See O. Ararambi & Anor v. Advance Beverages Industries Ltd (supra). In the instant case therefore, the 2nd, 3rd and 4th defendants at the conclusion of this trial did not adduce any evidence in denial of the plaintiffs evidence that they trespassed into his land and demolished his fence wall therein. It is trite that evidence adduce in support of undenied averments in pleadings must be believed See Alhaji Muhammadu Magari Dingyadi & Anor v. Aliyu Magatakarda Wamako & 3 Ors (2008) 17 NWLR (Pt. 1116) 395 at 407.

Pleadings are not human beings. They do not have mouth and they do not speak. Findings of fact cannot be made from paragraphs of the statement of claim or defence filed by a party as pleadings of which statements of claim or defence are part cannot take the place of evidence in a contested Case in Court. This is because Courts of law can only decide issues in controversy between parties on the basis of the evidence before them.

In this case, the failure or neglect of the 2nd, 3rd and 4th defendants to adduce evidence of their roles in this case has rendered them vulnerable to the liability in trespass to the plaintiff’s claim. See: Nika Fishing Co. Ltd. V. Lavina Corporation (2008) 16 NWLR (Pt. 1114) 509 at 524; Akinfosile v. Ijose (1960) SCNLR 447; Akanmu v. Adigun (1993) 7 NWLR (Pt. 304) 218.

It is trite that general damages are such as the law itself implies or presumes to have accrued from the wrong complained of, for the reason that they are its immediate, direct and proximate result, or such as necessarily result from the injury or such as did in fact result from the wrong, directly and approximately, and without reference to the special character, condition, or circumstances of the Plaintiff. See: U.T.B (Nig.) Ltd v. Ajagbule (supra). In awarding general damages I am guided by the actions of the defendants against the plaintiff since 1986 which led to the demolition of the plaintiff’s fence on the land in dispute.

In the final analysis, it is my respectful view that the action of the plaintiff succeeds. Accordingly, I hereby make the following orders in favour of the plaintiff.

1. Against the 1st and 6th defendants as well as the survivor(s) of the estate of the 5th defendant on record a Declaration that the plaintiff is entitled to the Statutory Right of Occupancy to that piece or parcel of Land situate at AGUOHORO along Emmanuel Ibe Road. Umukpara, Mbala, Isuochi, Umunneachi Local Government Area of Abia State of Nigeria, within the jurisdiction of this Court;

2. Against all the defendants on record (including the survivor(s) of the estate of the 5th defendant) jointly and severally the sum of N400,000.00 (Four Hundred Thousand Naira) being general damages for trespass into the plaintiff’s aforesaid land; and

3. Against all the defendants, (including the survivor(s) of the estate of the 5th defendant) a perpetual injunction restraining the defendants, by themselves their servants, agents, privies or workmen from further every into or in any other way whatsoever from interfering with the plaintiff’s possession, enjoyment or user of the aforesaid land.

Costs follow event. The Plaintiff is entitled to cost against all the defendants on record assessed and fixed at N20,000.00 (twenty thousand naira) which shall include his out of pocket expenses. The awards are also having regard to the present value and purchasing power of the naira. This is the judgment of this Court in this Case.

The above findings of the lower Court engendered this appeal, Notice of which was given on the 3rd of February 2011. It is dated 2nd day of February 2011. The said Notice of Appeal contains eleven grounds of appeal which without their particulars are as follows-

GROUND ONE

The learned trial Judge erred in law in his conclusion in his Judgment wherein he said:

It is my respectful view that the signature of the 6th Defendant as endorsed on the Land Agreement is the same as the one endorsed on the Sketch Plan. It is my further holding that the 6th Defendants denial of lack of knowledge of the Sketch Plan or of not signing the same is an afterthought. He was being smart by half.

GROUND TWO

The learned trial Judge erred in law when he admitted the Land Agreement as Exhibit B in this Case.

GROUND THREE

The learned trial Judge erred in law when he rejected the case of the 1st Defendant in this case by his reasoning in his judgment wherein he said that:

From the year 2000 when this case was instituted in this high Court to the date of judgment would approximately give one 10 years. On the whole, 24 years have elapsed since when the 1st Defendant has been dissipating energy, claiming that he bought land all these years (since 1986) and yet he did not file any counter claim in this suit nor has it occurred to him all these years to file a civil action against the Plaintiff.

GROUND FOUR

The learned trial Judge erred in law when he held in his judgment that:

It is amazing that for all these 24 years even before the local arbitrations in this Court, the 1st Defendant never pleaded nor adduced evidence as to how much was the value or consideration he paid the 5th Defendant over the alleged piece of land he acquired from him nor did he the 1st Defendant ever tendered any purchase receipt or document of any kind evidencing land transaction of any kind between him and the 5th defendant. All he kept saying was I bought land from the 5th Defendant Ekeleme Ikwuagwu. He did not plead not adduce evidence whether the acquisition was according to customary law of Mbala Isuochi people, in the absence of any documentary evidence.

GROUND SIX

The learned trial Judge erred in law when he reached the conclusion in his judgment wherein he said:

“I agree with the submissions of the learned counsel to the Plaintiff and the evidence of the Plaintiff and his witnesses that the defendants, particularly the 1st, 5th and 6th Defendant, entered into a conspiracy to snatch the land now in dispute from the Plaintiff hence the 6th Defendant has hitherto regretted selling his land to the Plaintiff at an under value in 1978. The evidence of the PW1 in this regard was not controverted. With due respect, I reject the evidence of the DW1.”

GROUND SEVEN

The learned trial Judge erred in law when he held that the defendants failed to challenge the Plaintiff on the contents and features of Exhibit

GROUND EIGHT

The learned trial Judge erred in law when he accepted the evidence of Native Arbitration over the land in dispute and thereby came to the conclusion that the land in dispute belongs the Claimant.

GROUND NINE

The learned trial Judge erred in law when he relied on his findings at the locus in quo in coming to the conclusion that the land in dispute belongs to the claimant.

GROUND TEN

The learned trial Judge erred in law when he awarded general damages of N400,000.00 (Four Hundred Thousand Naira) against the defendants.

GROUND ELEVEN

The learned trial Judge erred in law when he found the deceased 5th Defendant liable to the claims of the claimant.

The Appellants Brief of Argument dated 1st March, 2013 was filed on the same date while the Respondents Amended Brief of Argument dated 29TH August 2013 was filed on 9th September, 2013. It was deemed properly filed on 18th September 2013.

This appeal was heard on 19th day of October, 2015 when the Leaned Counsel to the parties adopted their Briefs of Argument.

I was unable to deliver judgment in this matter before now due to National Assignment for the hearing and determination of interlocutory and final appeals to this Court from Election Petition Tribunals up to 31st December 2015 after which the Court went on 2 weeks recess from 2nd January, 2016 to 18th January, 2016.

The Appellants Learned Senior Counsel Dr. I.N. Ijiomah SAN distilled seven issues for consideration of the appeal herein viz:

1. Whether the Learned Trial Judge was Right in relying on exhibit B (Document Titled Land Agreement admitted in evidence as a receipt by the trial Court in coming to the conclusion that the land in dispute belongs to the claimant (Grounds One & Two)

2. Whether the trial Judge was right in rejecting the 1st Defendants case on the ground that the 1st Defendant did not file a counter claim and did not tender any document evidencing his purchase of the land in dispute (Grounds Three and Four.)

3. Whether the trial Court was Right when he held that the 1st , 5th & 6th Defendants entered into conspiracy to snatch the land in dispute from the Claimant (Ground Six)

4. Whether the trial Judge was right when he relied on Exhibit A (Dispute Survey Plan) in coming to the conclusion that the land in dispute belongs to the claimant, in particular, his conclusion that the Defendants failed to challenge the contents and feature in exhibit A (Ground Seven)

5. Whether the trial Judge was right when he accepted the Claimants version about the decision of the National Arbitration over the land in dispute in coming to the conclusion that the land in dispute belongs to the claimant (Ground Eight)

6. Whether the trial Judge was right in relying on his impressions at the locus in quo in coming to the conclusion that the land in dispute belongs to the claimant (Ground 9)

7. Was the trial Judge right in relying on his impressions at the locus in quo in coming to the conclusion that the land in dispute belongs to the Claimant (Ground 9).

The Learned Silk to the respondent formulated five (5) issues for determination of the appeal namely:

1. Whether the Learned trial Judge was not right in ascribing probative value to Exhibit A (Grounds 1 and 2).

2. Whether the rejection of the case of the appellants and the acceptance of the case of the respondent was not proper in land (Grounds 3, 4 and 6).

3. Whether on the pleading and evidence of the parties and in particular Exhibit A and D the findings of the learned trial judge on the features and boundaries of the land in dispute (including the findings on visit to locus in quo) and conclusion reached based on these findings are not justified (Grounds 7 & 9)

4. Whether the conclusion of the learned trial judge on National arbitration was not proper having regard to the pleadings and evidence before the Court (Ground 8)

5. Whether the decision of the Learned Trial Judge on the liability of the appellants for trespass and the award of 400,000.00 damages therefore are not proper in law (Ground 10).

I am of the view that this appeal can be determined on the issues formulated by the Appellants.

ISSUE 1

Whether the Trial Judge was Right in relying on exhibit B Document titled Land Agreement Admitted in Evidence as a Receipt at the trial Court in coming to the conclusion that the land in Dispute belongs to the Claimant (Grounds one and two).

The Appellants Learned Senior Counsel submitted that Exhibit B was not the document pleaded by the Respondent in paragraph (ii) of his statement of claim as according to the Appellants what the Respondent (Claimant) pleaded was a registered Agreement to which a sketch map of the land in dispute was attached. That the Appellants objected to the admissibility of the unregistered registrable instrument but they were overruled. The appellants stated they are not complaining about the Ruling of the trial Court admitting the said land agreement but the error committed by the trial Court wherein the document admitted as exhibit B is different from document pleaded. That though the said land Agreement which is a registrable instrument was admitted as receipt evidencing land transaction, the Appellants contended the document was inadmissible because the Claimant did not plead is as a receipt. That the document ought to be expunched from the record for lack of pleading. That exhibit B has a space where it talked of the extent of the land but it was not linked with the sketch attached to exhibit B. That the learned trial judge was also wrong when he compared the signature of the 6th Appellant on Exhibit B with signature of the sketch map attached to exhibit B and came to conclusion that 6th Defendant who sold to Respondent signed the sketch map. That the land sold to Respondent by 6th appellant did not extend to land in dispute. That failure of the Respondent to tender registered document pleaded and relied on the case of HASSANA V. JAURO (2002) 25 WRN 18 at 35 that failure to produce document pleaded amounted to withholding evidence by Appellant. That the Respondent failed to prove his case and that his case ought to be dismissed. Their Senior Counsel urged the Court to resolve issue 1 in Appellants favour.

The respondents Learned Silk drew attention to the fact that the appellants admitted that they have no appeal against the Ruling of the trial Court admitting the land Agreement as a Receipt of land transaction on 14-11-2007. That what is remaining is the probative value of the document which according to the Respondent, the Learned Trial Judge evaluated exhaustively before applying it. That the Appellant actually pleaded the document he tendered in paragraph 7(ii) of the Further Amended Statement of Claim. That Respondent did not make any reference to any registered agreement before he tendered exhibit B at the trial. That that aspect of the pleading which talked of registered Agreement is deemed abandoned by the claimant. That Exhibit B was properly admitted as written memorandum of the land transaction and it is admissible without it being registered. He relied on the case of BAMIDELE. V. DAUDA (2001) FWLR (Pt. 36) 908 at 924.

The Respondent justified the comparison of signature of 6th Appellant on exhibits B with 6th appellant’s signature on the sketch map attached to exhibit B as proper under Section 108 of the Evidence Act since 6th Appellant denied he did not sign the sketch. That in any event since 6th Appellant admitted his signature on Exhibit B it is also an admission he has knowledge that the sketch formed part of the said Exhibit B. He urged the Court to resolve issue One against Appellant.

The grouse of the Appellant is that the Respondent pleaded a registered document as evidence of title to the land in dispute but went out of his way to tender registrable instrument that was unregistered contrary to his pleadings. That the trial Judge has no right to receive the said document as receipt of land transaction when that was not the case put forward on the pleading by the Respondent.

The settled position of the law is that for a document to be admissible in evidence it must not only be pleaded but must be positively relevant to facts in issue or the subject matter. It must also fulfill any condition or conditions that may be prescribed in any law for its admissibly otherwise the document is inadmissible.

See: (1) OBA R.A.A. OYEDIRAN OF IGBONLA VS. HIS HIGHNESS OBA ALEBIOSU II & ORS (1992) 6 NWLR (PART 249) 550 at 5590 - G per KUTIGI JSC later CBN (Rtd)

(2) OKONKWO ONKONJI & ORS V. GEORGE NJOKANMA & ORS (1999) 14 INWLR (PART 638) 250 at 266 D - E where Supreme Court per ACHIKE, JSC laid down three main criteria for admissibility of documents in civil proceedings thus:

"The position of the law in relation to the question of admissibility of a document in evidence is that admissibility is one thing while the probative value that may be placed thereon is another. Three main criteria governing the admissibility of a document in evidence, are namely:-

(1) Is the document pleaded?

(2) Is it relevant to the inquiry being tried by the Court? And

(3) Is it admissible in law? See DUNIYA VS. JUMOH (1994) 3 NWLR (PT. 334) 609 AT 617 and OBA R.A.A. OYEDIRAN OF IGBONLA VS H.R.H. OBA ALEGIOSU II & ORS (1992) 6 NWLR (PT. 249) 550 AT 559."

The Respondent had pleaded in paragraph 7 (i) and (ii) of his further amended Statement of Claim as follows:

"7(i) The plaintiff avers that in February 1978, the 6th defendant sold the said land to him for the sum of N1,000.00 (One thousand naira) The said transaction look place in the presence of the following persons, namely:-

(1) Mrs Ahori, 6th defendants mother

(2) John Eduoro, 6th defendants step father

(3) Obiagboso Iwe 6th defendants kinsmen

(4) 5th defendants mother

(5) Dominic Ibe and Kingsley Ibe plaintiffs relations

(6) Ichie Emmanuel Ibe Plaintiffs father and

(7) The boundary neighbor

7(ii) The plaintiff paid the said sum of N1,000.00 to the 6th defendant in the presence of the above named persons. In addition to the said purchase money, the plaintiff gave customary items comprising one goal, eight yams, two gallons of palm wine and four kola nuts to bind the sale. Thereafter the plaintiff and the 6th defendant undertook a measurement of the said land and produced a sketch of the same and both signed the same subsequently, an Agreement was prepared to which the said sketch was annexed and the same was signed by the parties and their witnesses.

In 1990, the plaintiff caused a survey plan of the said land to be produced by Chief Surveyor J.O. Agugua. The plaintiff hereby pleads the said survey plan, No. AS A/IM 2582/90, an shall tender the same at the hearing. The plaintiff subsequently also registered the said Agreement Incorporating the sketch aforesaid. The said Agreement, dated the 14th day of February, 19978, at the trial."

Even though the Appellants objected to the admissibility of the Agreement pleaded on the ground that a registrable land instrument not registered is inadmissible for failure to comply with land instrument Registration Law. The learned trial Judge admitted the unregistered registrable instrument as admissible in evidence as a receipt and evidence of transaction between the parties as exhibit B with its attached sketch Plan of the land in dispute as pleaded by the Respondent.

I am certain in my mind that the learned trial Judge was on a strong wicket in admitting the document as receipt evidencing land transaction between the 6th Defendant and the Plaintiff now Respondent. The course followed by the trial Judge is in accord and consistent with settled principles and position of the law. It is admissible to establish equitable interest in land disputes.

See: IYIOLA OGUNJUMI & ORS VS MURTHALA ADEMOLU & ORS 1995 LPELR 2337 (sc) PAGE 61 PER KUTIGI, JSC LATER CJN

who said:

"To put it simply the law is that registrable instrument which are not registered are if pleaded admissible in evidence to prove not only payment of purchase money or rent but also to prove equitable interest where the purchaser or lessee is in possession"

2. MRS. OLUWASEUN AGBOOLA VS UNITED BANK FOR AFRICA PLC (2011) 11 NWLR (PART 1258) 375 at 406 E-G per MURHTAR, JSC later CJN who said:-

"I am satisfied that even though the document was not registered, and was so not admissible in view of the provision of Section (2) and (15) of the Land Instrument Registration Law, it was admissible for the purpose of establishing the transaction between the vendor and the purchaser.

In this respect, I endorse the finding of the learned Court of Appeal which reads thus:

"It is my considered view that exhibit D2 is admissible evidence to prove the fact that some money exchanged hands between the parties in exhibit D2 in this case N1,000.00 on account of the land transaction testified thereto."

3. ALHAJA BARAKAT ALAFIA & ORS VS GOODE VENTURES NIGERIA LIMITED & ORS LPELR 260065 (sc) delivered on 29/1/2016 pages 29-30 per GALADIMA, JSC

who said:

"The issue is really that non registration of Exhibit 2 does not render it admissible. I do not agree with the contention and submissions of the learned Silk for the Appellants on the legal effect and consequences of non registration of this Exhibit. In a number of authorities of this Court it has been held that a registrable instrument which has not been registered is admissible in proof of such equitable interest and proof of payment of purchaser, money or rent etc, SAVAGE V. SANROUGH (1937) 13 NLR 141. See OGUNBAMBI V. AABOWABA (1959) 13 WACA 22, FAKOYA V. ST PAUL??S CHURCH SAGAMU (1966) 1 ALL NLR 74 ONI V. ARIMORO (193) 3SC, OKOYE VS DUMAZE (NIG) LTD (1983) (SIC) 1 NWLR (PT. 4) 783 OGUNJUMO V. ADEMOLU (1995) 4 NWLR (Pt. 389) at 265"

More importantly there are admissions in paragraphs 7(i) and 7(ii) of Appellants Amended Statement of Defence acknowledging the receipt of N1,000.00 from the Respondent for the land sold to him by the 6th Defendant. The 6th Defendant did not at any time deny selling land to the Respondent as borne out in Exhibit B.

In any event where a particular document is pleaded by a party to a proceeding and the document is not tendered at the trial it will be taken that the pleader of the document abandoned same. It will not amount to withholding of evidence under Section 149 (d) of the Evidence Act Cap E14 LFN 2004 applicable when judgment was delivered in this matter. See: The Case of OBA R.A.A. OYEDIRAN OF IBONLAA V. HIS HIGHNESS OBA ALEBIOSU II & ORS (1992) 6 NWLR (PART 249) 550 at 556 H to 557 A per KUTIGI, JSC later CJN who said:

“About the other letter pleaded in paragraph. 10 of 3rd respondent’s Statement of Defence and which was not tendered, the law is simply that that paragraph of the pleading is deemed to have been abandoned I must say in both cases the provision of Section 149 (d) of the Evidence Act would hardly be applicable since there was no issue of withholding evidence and at any rate it was for the plaintiff/Appellant as distinct from the defendants/respondents to prove his case on a balance of probabilities."

In this case the Respondent has chosen to tender one of the two documents pleaded in paragraph 7 of the further Amended Statement of claim. That should not involve any dissipation of energy by the Appellants. They (appellants) have not shown the miscarriage of justice they suffered therefrom. Exhibit B was properly admitted and accorded weight by the learned trial Judge.

The Appellants have also contended that the trial Judge was wrong in comparing the signature on the sketch attached in order to discover whether 6th Defendant who denied his signature on it actually signed the same. The trial Judge compared the signature on Exhibit B which was acknowledged by the 6th Defendant as vendor to Respondent, with signature on the sketch map attached to Exhibit B describing the extent of land sold to Respondent by 6th Defendant (now 6th Appellant) The Learned trial judge did the right thing in comparing the disputed signature on the sketch with 6th Appellants signature on Exhibit B which is not disputed by 6th appellant in order to discover where the truth lies. The trial Judge was right and his finding that 6th Appellant signed both the land Agreement and the sketch to it cannot be faulted. See: CHIEF VICTOR NDOMA-EGBA VS A.C.B PLC (2005) 14, NWLR (Part 944) 79 at - 105 - 106 Per OGUNTADE, JSC, who said:

Section 108 (1) of the Evidence Act, Cap 112 Laws of the Federation, 1990 provides:

“108 (1) In order to ascertain whether a signature, writing seal or Finger impression is that of the person by whom it purports to have been written or made any signature, writing, seal or finger impression admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved although that signature, writing seal or finger impression has not been produced or proved for any other purpose.”

In Wilcox v. Queen (1961) 2 SCNLR 296, De Lestang CJ, Federal Supreme Court of Nigeria observed.

It is not unusual for the Courts in a clear case to form their own opinion as to handwriting and in R v. Smith 3 Cr App. R. 87 as well as in Rex v. Rickard, upon which Mr. David relies, the Court of Criminal Appeal in England formed its own opinion by comparing alledged Signature to be that (of) appellant with a genuine specimen of his handwriting. So also did the West African Court of Appeal in R v. Apena, 13 W.A.C.A. 173. In the present case, the dissimilarities between the signatures on the cheque and the genuine signature of Nwobu are apparent to the naked eye and, in our view, the course pursued by the learned Judge was not improper in the circumstances.

Issue 1 is resolved against the Appellants.

ISSUE 2

Whether the Trial Judge was right in rejecting the 1st Defendant??s case on the ground that the 1st Defendant did not file a counter Claim and did not tender any document evidencing his purchase of the land in dispute (Ground Three and Four).

The Appellants drew attention to the finding of the trial judge against the 1st Appellant to the effect that though the 1st appellant claimed to be the owner of the land in dispute yet he neither filed a Counter claim against Respondent nor did he file an action against the Respondent.

To the appellants, the trial Court had indulged on extraneous facts to find against the appellants and has thereon misplaced the onus of proof in the land dispute on the 1st Defendant. That the finding was wrong and perverse. That the fact that the Defendant did not file an action in respect of the land cannot put 1st appellant at a disadvantage in the case. That there is no dispute between 1st Defendant and the 5th Defendant as to whether the 5th Defendant sold land in dispute to the 1st Defendant. That the parties did not join issue as to whether the 5th Defendant sold land to the 1st Defendant. That both on the pleadings and evidence there is undisputed fact that the 5th Defendant said that he sold the land in dispute to the 1st Defendant. Appellants therefore submitted that the trial Judge was wrong in his judgment when he held against 1st Defendant that he did not give evidence or pleaded how much he paid to 5th Defendant over the alleged sale of the land to him and that 1st Defendant did not tender any document apart from merely stating that he bought from 5th Respondent.

??That the Plaintiff claimed he bought the land from 6th Appellant. That the onus was on him to establish his ownership of the land more so that Appellants had denied selling the land in dispute to Respondent. That the evidence of 6th Defendant was evidence against interest and that the trial Judge was wrong in disbelieving 6th Defendant. He urged this Court to resolve issue 2 against the Respondent.

In reply to the above, the Respondent argued that most of the findings of the trial Judge which appellants are now complaining about were not appealed against. He submitted that an appeal is a challenge to the decision of a Court and not necessarily the reason for the decision and that it is not every error or slip of the trial Court will lead to reversal of the judgment and that it is only an error and decision that has led to miscarriage of justice that would be set aside. He relied on numerous cases including NNADI v. AMADI (2011) 4 NWLR (Part 1238) 553 at 570 F-H and SPRING BANK PLC VS ADEKUNLE (2011) 1 NWLR (Part 1229) 581 AT 599 D-G.

The Respondent submitted that there are facts on record to support the findings of the trial Judge and that unless it is proved that a judgment is perverse this Court will not upturn it. That the finding of the trial Judge that 6th Defendant was aware of the prior equitable interest of Respondent in the land was not challenged or appealed by the appellants. He further relied on pages 223 - 224 of the record to support the rejection of appellant??s case by the trial Judge. He urged this Court to resolve issue 2 against the Appellant.

The complaints of the Appellant under this issue are that

(i) The trial Judge used irrelevant facts in coming to the conclusion that the land in dispute belongs to the claimant and

(ii) The trial Court misplaced the onus of proof in the case by placing it on the 1st Defendant.

It is here germane to reproduce the observations of the Court being impugned by the Appellants. They are on page 223 of the record where the trial Judge said:

On the contrary, the 1st Defendant for ten years when this case lasted in the High Court kept maintaining both in his pleading and evidence that he acquired this parcel of land also verged RED in his Exhibit D in 1986. A simple arithmetic with show that between 1986 to the year 2000 when, on the advice of the Police, the plaintiff filed this action, would give 14 years. From the year 2000 when this case was instituted in this High Court to the date of judgment would approximately give one 10 years. On the whole, 24 years have elapsed since when the 1st defendant has been dissipating energy, claiming that he bought land from the 5thl defendant. He has alleged that the plaintiff trespassed into his and all these year (since 1985) and yet he did not file any counter - claim in this suit nor has it occurred to him all these years to file a civil action against the plaintiff

I have read through the record and I am of the view that by the pleading of the parties, the oral and documentary evidence adduced and the context in which the trial Judge made the above comments or allusions, I am satisfied that the trial Judge did not go out of his way to make those assertions. They are fully supported by evidence on record. There is nothing perverse in it. Contrary to the misconception of the Appellants and their misgiving on the trial Court’s findings, the Appellants claimed that the cause of action between the claimant and 1st Defendant arose in 1995. The Appellants are wrong. The appellants must have forgotten while in a haste to find fault with every bit of the trial Court’s findings that on their own volition had pleaded in paragraph 12 of their AMENDED STATEMENT OF DEFENCE filed on 27/2/2006 as follows:

“2-5th defendant denies paragraph 12 of the Statement of Claim and aver that Plaintiff had deliberately trespassed into the land which 5th defendant had sold to the 1st defendant in 1986. Plaintiff was not checking any spread of bush fire since there was none then at all, but deliberately trespassing into the land which 5th defendant sold to the 1st Defendant and for which there had never been any dispute between 5th and 6th defendants who sold to the Plaintiff. 5th defendant avers that it was the Plaintiff and his three pugnacious and mercenary brothers who went into the land he sold to the 1st Defendant and destroyed the 1st Defendant’s farm with the cash crops and economic trees thereon. 5th defendant further avers that plaintiff had openly boasted that because the land was not sold to him as he had wished, 1st defendant would never be allowed to build on the land which 5th defendant sold to him. 5th defendant avers that it was the Plaintiff who trespassed into the portion of land which he had sold to the 1st Defendant.”

A trial Judge is entitled to draw any inference or deductions from facts that emerge from the documentary or oral evidence proffered before him as postulated on the pleadings of the parties. The inferences or deductions made from the pleading and evidence of the Appellants and their witnesses are reasonable inferences or observations. See Section 149 of the Evidence Act 2004 Cap E14 2004 LFN which provide

“149 the Court then presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case ----------“

The trial Judge did not shift any onus on the Appellants beyond what Appellant were expected to prove or show to dislodge the case established by the Respondent that the land in dispute belongs to him and as found by the trial Judge before making his comments and drawing inferences exhibited by the defendants in their efforts to claim the land in dispute as theirs. The trial Judge had on pages 44 and 45 of his judgment (Pages 228 - 229 of the record) found as follows:

It is my respectful view that the uncompleted building of the plaintiff had been centrally positioned or constructed on the entire land verged GREEN before the 1st defendant purportedly had any land sold to him in 1986 by the 5th defendant. These identifications and features in the plaintiff’s Exhibit A were never rebutted by any of the defendants. It is my further respectful view that had the plaintiff’s 1984 building construction been placed at the boundary mark where the 1st and 6th defendants are now pushing for, the disputes over this land would have started earlier than 1986 (between the plaintiff and the 5th defendant). It is trite law that evidence that is related to a matter in controversy that is neither successfully debunked, nor controverted at all for that matter, is good credible evidence that ought to be relied upon by a trial Judge. Thus, the Court can properly accept and rely upon any evidence before it which is unchallenged and uncontroverted that it is relevant to the issues before it. See: ARABAMBI & ANOR V. ADVANCE BEVERAGES INDUSTRIES LTD (2005) 19 NWLR (959) 1 AND UNITY LIFE & FIRE INSURANCE CO. LTD. V. INTERNATIONAL BANK West Africa Ltd (2001) 7 NWLR (Pt. 713) 610.

In view of the foregoing, I hereby respectfully resolve issue 1 in favour of the plaintiff as he has proved a better title to the land in dispute, and long possession, than the 1st defendant who has for 24 years had nothing concrete to show evidencing that he in fact bought any piece of land adjoining that of the Plaintiff.

Issue 2 is therefore resolved against the Appellants.

ISSUE 3

Whether the trial Court was Right when he held that 1st, 5th and 6th Defendants entered into conspiracy to snatch the land in dispute from the claimant (Ground 6).

The Appellants’ contention under issue 3 borders on the finding of the trial Court on page 225 of the record particularly the finding that the 1st, 5th and 6th Appellants (Defendants) entered into a conspiracy to snatch the land now in dispute from the Plaintiff now Respondent. They also frown on the finding of the trial Court to the effect that Defendants did not controvert evidence of PW1.

The appellants submitted that the Lower Court was guilty of relying on unpleaded facts to make unsupportable assumption in coming to those findings That there was no evidence of conspiracy between the Defendants against Plaintiff before the Court. The Learned Senior Counsel relied on the case of Ukpah vs Ayaya (2011) 1 NWR (Pt. 1227)n 83B-F. The learned Silk urged this Court to resolve issue 3 in favour of Appellants.

In his reply on the statement of the trial Judge that there was a conspiracy between 1st, 5th and 6th Defendants to snatch the land from Respondent, the Respondent submitted that there was no appeal against the observation of the trial Judge and so the finding remains unchallenged. That the use of the word conspiracy was not out of place merely because the very word ‘conspiracy’ was not used in the pleadings. That facts were pleaded in paragraphs 9, 10, 11, 12 of the further Amended Statement of Claim and they supported the findings of the trial Judge. That by Section 149 of the Evidence Act the Court is empower to draw inferences from facts and evidence before it.

He urged the Court to resolve the issue 3 in favour of Respondent.

The finding or observation of the trial Judge which triggered off the attack of the Appellants on the Judgment of the trial Court can be found on page 225 of the record lines 1-11 where His Lordship said:

“The instant case, the strength of the 1st defendants claim to ownership of a piece of land at AGUOHORO in umukparo has been his agreement with the 5th and 6th defendant to retrieve that part of the plaintiffs land now in dispute. I agree with the submissions of the learned counsel to the plaintiff and the evidence of the plaintiff and his witnesses that the defendants, particularly the 1st , 5th and 6th defendants, entered into a conspiracy to snatch the land now in dispute from the plaintiff hence the 6th defendant had hitherto regretted selling his land to the plaintiff at an under value in 1978. The evidence of the PW1 in his regard was not controverted. With due respect, I reject the evidence of the DW1.”

I agree with the Respondent that the findings of the trial Judge are fully supported by paragraph 9, 10, 11 and 12 of the further Amended Statement of Claim on pages 11 - 112 of the record. The Respondent actually testified on facts pleaded in paragraphs 9, 10, 11 and 12 of his further Amended Statement of claim on pages 115 - 126 of the record. As a matter of fact under cross examination the Respondent was asked questions and he answered thus concerning conspiracy.

Q: Why did you sue 5th defendant?

A: I sued the 5th Defendant because he encroached on my own land.

Q: So it was the 5th defendant that encroached on your land and not 1st defendant?

A: It was the 1st Defendant that encroached on my land with the conspiracy of 5th Defendant.

Q: Are you not shocked that as between the 5th and 6th defendants that the boundary between them has never altered?

A: I am not surprised because it is a conspiracy between the 5th and 6th Defendants.

Q: So you were part of the conspiracy between the 5th and 6th Defendants?

A: My Lord I am not but I knew about the conspiracy through the approach to me by 5th and 6th defendant

(Pages 120 - 121 of the record)

A trial Judge has dominion over the assessment and or evaluation of the pieces of evidence given before it by witnesses called by the parties. This is because he has the opportunity of watching them testified and of observing their demeanour or reaction to question under examination in - chief and cross examination and unless the finding of a Court is shown to be perverse or extraneous to the evidence on the printed record this Court will not interfere with any finding or findings of the trial Court. The Appellants have not shown that the findings or observation occasioned a miscarriage of justice See: ALAJI MUHAMMJED BUHARI AWODI & ANOR V. MALLAM SALIU A AGRE (2015) 3 NWLR (PART 1447) 575 at 599 GH per OKORO JSC who said:

Moreover, it is trite law that an appellate Court would be slow to disturb or reverse findings of fact made by the trial Court unless such findings are shown to be perverse having been based on inadmissible evidence or relevant and admissible evidence having been rejected which in either case occasioned a miscarriage of justice or that, its findings were perverse See ONWUGBUFOR V. OKOYE (1996) 1 NWLR (Pt. 422) 252, ADIMORA V. AJUFO (1988) 3 NWLR (Pt. 89) 1 OKAFOR V. IDIGO (1984) 1 SCNLR 481, EBBA V. OGODO (1984) 1 SCNLR 372.

Issue 3 is resolved against the Appellants.

I will treat issues 4 and 6 together.

ISSUE 4

Whether the trial Judge was right when he relied on exhibit A (Dispute Survey Plan) in coming to the conclusion that the land In dispute belongs to the Claimant, in particular, his conclusion that the Defendants failed to challenge the content and features in Exhibit A (Ground Seven).

ISSUE 6

Whether the trial Judge was Right in Relying on his impressions at the Locus in quo in coming to the conclusion that the land in dispute belongs to the Claimant (Ground Nine).

Appellants stated that Exhibit A is the dispute Survey Plan, AS.A/ABD/10/2000 filed by the Respondent along with his further Amended statement of claim contained on page 111 of the record. Appellants referred to the evidence given on the said survey plan and by PW1 and its admission in evidence by lower Court. The appellants submitted that apart from giving evidence of the features of the land in dispute as stated on, the survey plan (Exhibit A) PW1 did not give an iota of evidence concerning the features of the land in dispute shown on the said Survey Plan.

That the trial Judge failed to appreciate that the only way to challenge the content and features in a Dispute Survey Plan filed by Plaintiff is for the Defendant to file his own Dispute Survey Plan which appellants stated the Defendants did by filing their own Dispute survey Plan No/UDI/AB/D/21/2002 of 10/7/2002 admitted as Exhibit D at the trial. That quite unlike the plaintiff the Defendants pleaded in their Amended Statement of Defence the features on the land in dispute as shown on Exhibit D and that they relied on Exhibit D and the evidence of DW1. The Appellants further submitted that where as in this case the issue is the

boundary between the lands of the Plaintiff and the 1st Defendant there is a duty on the Plaintiff to show and prove the precise boundary relying Cases of OLUSANM1 VS OSHOAMA (1992) 1NACR (Pt. 2) 379 and IRIRI VS ERHURHOBARA (1991) 3 SCNJ 1 AT 12, That no evidence was led by Plaintiff on the features on his land whereas the Appellants led credible evidence of the features on the land in dispute. That the trial Court was therefore wrong in holding that the Appellants fails to challenge the Plaintiff on the content and features of Exhibit A the Respondent??s survey plan. They urged this Court to resolve the issue in their favour.

The Respondent in his own argument stated that the trial judge properly evaluated the Survey Plans of Plaintiff Exh. A and that of the Appellants Exhibit D before making his findings and conclusions and that the Appellants have not challenged the findings thereon. The Respondent drew the attention of the Court to pages 227 to 228 of the record where in its judgment the Respondent contended the trial Court brought out the evidence showing that the Respondent testified concerning the features on Exhibit A and that the learned trial judge properly made correct observation as to the features on the land. That when there was visit to locus in quo the Appellants admitted the features described in Respondents survey and that concerning allegation that features and boundaries of the land were not pleaded, the Respondent strongly contended that they were duly pleaded in paragraph 3 and 4 thereof of the further Amended Statement of Claim and that the trial Judge on page 227 of the record rightly evaluated the evidence of Respondent. That where a dispute plan is pleaded and filed showing features and boundaries of the disputed land, the features and boundaries shown on the Survey Plan automatically form part of the pleadings and that it is not necessary to reproduce them into the pleading. That the Respondent duly pleaded Exh. A and that the Appellants duly cross examined on the features and boundaries on the survey plan Exh. A. He relied on the Case of AKINOLA V. UNILORIN (2004) 11 NWLR (Pt. 885) 616 at 649 -50 H-E. That the case of IRIRI V ERIHURHOBARA (1991) 3 SCNJ cited by appellant rather than support appellant case, supports the case of the Respondent. He also relied on the findings of the trial Judge on page 228 and 229 of the record.

On issue Number 6 as to whether the trial Judge was Right in relying on his impressions at the Locus In quo in coming to the conclusion that the land in dispute belongs to the Claimant, the appellants are of the view that the facts which the trial Court saw at the locus in quo and which he credited to the Plaintiff now Respondent were not pleaded by the Plaintiff. That the Plaintiff failed to plead the precise boundary features which demarcate his land from that of the 1st Defendant. Appellants submitted that the findings of the trial Court on page 228 of the record was not in accord with the pleadings of Respondent. They relied on the evidence of DW1 Eziedule Okpara Egba on page 138 of the record and evidence of DW2 and DW3 on pages 143-155 of the record and paragraph 10 of Appellants Amended Statement of Defence.

Appellants submitted that locus in quo or visit to land in dispute by a trial Judge is intended to confirm or ascertain evidence given at the trial by the parties. That what PW2 stated concerning boundary features of the land in dispute was not pleaded by Plaintiff and what the trial Judge claimed he saw at the locus in quo were not given in evidence by the Plaintiff. That a locus in quo is meant to complement the auditory with the visual. That the trial Judges visit to the locus in quo violated the principle. He relied on Section 76 (d) II) of the Evidence Act as to how locus in quo should be conducted. That the visit to locus in quo was fundamentally defective and irregular. That there was no note, of inspection of what transpired at the locus in quo and that the trial Judge speculated as there is no record showing the visit.

That the trial Judge failed to resolve material disagreement between the parties concerning the boundary features on the land in dispute. That the trial Judge also failed to make use of Exhibit E the Report of the Police about visit to the land in Dispute. He relied on paragraph 15 of Amended statement of Defence and evidence of DW 3 on page 151 of the record. That Exh. E was not evaluated by trial Judge. He urged the Court to resolve issue 6 in favour of Appellants.

Replying on Issue 6, the Respondent disagreed with the assertion of the appellants that the trial Judge violated the rule of visit to locus in quo in accusing the trial Judge of substituting his eye for ear, contrary to the principle land down in the case of OLUSANMI V. OSHOAMA SUPRA. To the Respondent the line of argument adopted by appellants is curious. That looking at the portion of the trial Court Judgment on the locus in quo on page 228 lines 4 - 10 of the record, Respondent contended there is nothing which amounts to personal observation outside the pleadings and evidence of the parties. That the various features and trees mentioned were not only shown on Survey Plans Exhibit A and D but also featured prominently in the evidence of virtually all witnesses as highlighted in Appellants Brief. That the findings of the trial Court which Respondent considers to be damning against Appellants on page 229 of the record lines 15 -2 were not challenged in the appeal. That the trial Judge did a complete evaluation of evidence both visual and audio. That the Appellants have not shown that what took place at the locus in quo occasioned miscarriage of justice. The respondent is of the opinion that what happened at locus in quo are facts which already formed part of the record of Court by virtue of the pleadings and evidence of the parties particularly Exhibit A. The visit according to Respondent, being only an information of what had been seen and heard prior to the visit. He urged the Court to sustain the findings of trial Court on the locus in quo. Respondent urged the Court to resolve the issue against the Appellants.

The Law is trite or settled that survey Plan is not a sine qua non in a claim for declaration of title to land or for statutory Right of Occupancy to enable the claimant or the Plaintiff prove or establish before the trial Court, the identity of the land in dispute, its boundaries or features where it is clear from the pleadings of the parties and evidence that the parties know the exact location or situation of the land in dispute on the ground.

The Respondent in this appeal as claimant in the Lower Court pleaded in paragraphs 3 and 4 of his further Amended statement of claim concerning the description or attributes of the land in disputes as follows:

3. The land, the subject matter in respect of which the above action is founded (hereinafter called the land in dispute) is situate at Aguohoro, along Emmanuel Ibe Road, Umukparo, Mbala, Isuochi, Umunneochi Local Government Area aforesaid,, within jurisdiction. The land in dispute is particularly described and verged RED in survey plan, No. AS.A/ABD 10/20000, made by Surveyor Chief J.O Agugua, Licensed Surveyor and filed with the Statement of Claim. The plaintiff hereby pleads and shall tender and rely on the said plan to establish the identity of the land in dispute and his cause of action.

4. The boundaries of the land in dispute are as follows:

(i) In the North and East, by the plaintiff’s land bought from Eziechile Okparaegbu 6th defendant

(ii) In the West by the land of Ekeleme Ikwegbu 5th defendant

(iii) In the South, by Emmanuel Ibe Road, named after the plaintiff’s father, Ichie Emmanuel Ibe, who opened the road.

On the other hand the Appellants as Defendants pleaded in reaction to the said paragraphs 3 and 4 of the further Amended statement of claim, in their own Amended statement of Defence thus:

3. Defendants admit paragraph 3 of the statement of Claim only to the extent that the land in dispute is situate at Aguohoro Umukparo Mbala Isuochi in the Umunneochi Local Government Area of Abia State within jurisdiction. Defendant hereby aver that the reference to the said road as Ezi Emmanuel does not convey the fact that Emmanuel Ibe founded the road at all. Defendant shall equally at the hearing of this action prove that such roads as Ezi Ifenebi, Ezi Jesiah and Ezi Emman are roads founded by Umukparo people but named by the names of people who reside close to these roads.

4. The Defendants hereby aver that the land in dispute is bounded as follows: to wit:

(a) On the East by the land of the 5th defendant who is the donor to the 1st Defendant, part of which land the Plaintiff is trespassing into.

(b) On the West by the land of the Esi family.

(c) On the North by the land of the 6th defendant which he donated to the plaintiff.

(d) On the South by the land of the Nwajiagu family respectively. The land in dispute is more properly and particularly described and delineated in Defendants’ Survey Plan No. UDI/AB/D.21/2002 of the 10/7/2002 herein pleaded and Defendants shall at the hearing of this suit found on the features of the aforesaid land in dispute as strategically represented and shown in Defendants said Survey Plan marked and or VERGED RED."

I am of the firm view that the parties are fully conscious and aware of the description, identity and boundaries of the land in dispute. It is also evident from the record that the parties are no stranger to the exact location and boundaries of the land in dispute notwithstanding the little variation in the description of the land by the Appellants and the Defendant now Appellants who have by their pleading admitted the location of the land, its boundaries and features.

See: (1) SUNDAY TEMILE & ORS. VS. J. E. AWAN (2001) 12 NWLR (PART 726) at 757 B - E.

(2) DR. R. OSHODI & ORS. VS. YISA OSENI EYIFUNMU (2000) 13 NWLR (PART 684) 298 at 334 E - D where IGUH JSC said:

“Where a piece of land in dispute is known to both parties or it is clearly ascertainable, whether from the averments in the pleadings or otherwise and its area, exact location and precise boundaries on the ground are either, unmistakably and appropriately pleaded or are admitted or acknowledged by the Defendant, the non production in evidence of Survey Plan of such land cannot be a matter of great moment and does not disentitle the Plaintiff from successfully maintaining an action in respect of title, trespass or injunction over such land.”

The fact that the Plaintiff or the Defendant calls the land by various names would not disentitle the Plaintiff from obtaining declaration of title to the land he claims if he can actually prove his entitlement to it and he shows clearly that the parties know the land in dispute on the ground. See AWOYOOLU VS. ARO (2006) 4 NWLR (PART 971) 481 at 498 H to 499 A where Ogbuagu JSC said:

“As found by learned trial Judge the parties know the land in dispute. It is now firmly established that where the identity of the land in dispute was/is known to the parties and not in dispute, no plan was/is necessary. It needs be stressed that this is also settled that the mere fact that the parties give the land in dispute, different names, is immaterial".

I hold that from the pleadings of the parties reproduced above earlier by me, the evidence of Plaintiffs and their witnesses and even the defendant and his witnesses, the land in dispute is well known to all the parties in this matter.

Production of Survey Plan of Dispute Plan is unnecessary.

Parties are bound by their pleadings and where facts pleaded by a party is affirmed or acknowledged by the adversary they no longer require proof by the parties. See: MR. SUNDAY ADEGBITE TAIWO VS. SERAH ADEGBORO & ANOR. (2011) 11 NWLR (PART 1259) 562 at 583 per BODE RHODES - VIVOUR, JSC.

The evidence (oral and documentary) given by the Respondent amply and positively supported his pleaded case concerning the description and features on the land in disputed.

The trial Judge was right in the step he took to visit the locus inquo in order to ascertain and satisfy himself with regard to the evidence as to the location, boundary and features on the Land bearing in mind the oral and documentary evidence of the parties before the trial Court. The evidence and pleadings of the parties point irresistibly that they all know the location, boundary and features on the land in dispute.

In any event the Appellants owed themselves the duty to ask the Claimant for further particulars as to the identity and description of the Land in dispute if they were in doubt. This they did not do. See the Case of: YUSUFU OGBEDENGBE & ORS. VS. CHIEF J.B. BALOGUN & ORS. (2007) 9 NWLR (PART 1039) 9 NWLR at 304 C where Ogbuagu JSC said:

“Indeed and this is also settled, where the identity of land is not clear to a Defendant, he could or should in fact, apply for particulars.”

The trial Judge did not breach of the principles relating to visit to locus in quo.

Issues 4 and 6 are hereby resolved against the appellants.

ISSUE 5

WHETHER THE TRIAL JUDGE WAS RIGHT WHEN HE ACCEPTED THE CLAIMANTS VERSION ABOUT THE DECISION OF THE NATIVE ARBITRATION OVER THE LAND IN DISPUTE (GROUND 8)

It is the Appellants submission that the Plaintiffs pleading of the Arbitration was devoid of the particulars of the proceedings at the said arbitration. Reference was made to paragraph 13 of the further Amended statement of claim wherein the issue of Native Arbitration between Plaintiff (Respondent) and 1st Defendant was pleaded. The appellants stated that the arbitration was not reduced into writing and no document relating to it was tendered. That Appellants to pleaded facts relating to the Native Arbitration in paragraph 13 in their Amended statement of Defence on page 83 of the record. That there is remarkable disagreement between the Plaintiff and Defendants in the narration concerning the Native arbitration. The Plaintiff claimed the Native Arbitration favoured him while the Defendants said it was in their favour. That the plaintiff filed no reply to the assertions of Defendants concerning what transpired at the said arbitration. The Defendants claimed the Plaintiff accepted their own story about the arbitration because as no reply was filed to join issues with the Defendants on it. They relied on the case of A.G. ABIA STATE VS A.G. FRN (2005) 37 WRN at 67. That evidence given by PW2 and PW3 about the Arbitration were largely unpleaded and they went to no issue. That the evidence given by Defendants through DW2 and DW3 about the Arbitration was so convincing and consistent with Appellants pleading that the resolution of the issue relating to the arbitration and the conclusion reached by the trial Judge was faulty. They relied on page 229 line 2-17 of the record. That the conclusion was perverse. That the Respondent failed to call Dr. Ngozi Onyeagha and Ikem Onyeagha who were alleged to have played some roles at the Native

Arbitration by PW3 One Boniface Obioma Ibe. That evidence of PW3, was similar to that of PW1 and PW2 and that all the evidence given by the trio lack probative value. They urge the Court to resolve the issue in their favour.

In his reaction the Respondent stated that by the state of pleadings the parties agreed that their dispute was subjected or presented to the Native Arbitration and that the Native Arbitration reached a verdict which was accepted by the parties at the time it was made. That the major disagreement is who won before the Native Arbitrators. On what are the ingredients of native arbitration the respondent enumerated the following:-

(a) The submission by the parties to the arbitration.

(b) That the arbitrators looked into the dispute and gave a verdict.

(c) That the verdict was accepted by the parties at the time it was given.

That all of these were adequately pleaded in paragraph 13 of the Respondent??s further amended statement of Claim which he said were not denied. It was submitted that the appellants did not raise any new issues in the Amended defence to warrant any Reply as a reply according to respondent, is not merely to deny or traverse statement of Defence. He relied on the Case of A.G. ABIA STATE VS A.G. FED (2005) 37 WRN page 1. That the witness who said and heard what happened at the arbitration had testified hence no need to call the persons mentioned by Appellants. That the learned trial Judge evaluated and accepted the evidence of the Plaintiff on the arbitration. He urged the Court to resolve the issue in favour of the Respondent.

The bone of contention here is who won at the Native Arbitration? Is it the Respondent or the appellants? Both sides are claiming victory before the Native Arbitration.

This I believe can be resolved by first of all stating the ingredients or principles governing valid and reliable decision of Native Arbitration that would have a binding effect on the parties. The principles have been stated in numerous cases. Suffice to refer to the case of DR DAVID C. OKOYE AND ANOR V. CHRISTOPHER N. OBIASO AND ORS . 2010 143 at 163 PER ADEKEYE JSC who stated the ingredients as follows:

A party can prove the existence of a customary arbitration by pleading and establishing the following:-

(a) That there has been a voluntary submission of the matter in dispute to an arbitration of one or more persons.

(b) That it was agreed by the parties either expressly or by implication that the decision of the arbitration will be accepted as final and binding.

(c) That the said arbitration was in accordance with the custom of the parties or of their trade or business.

(d) That the arbitrators reached a decision and published their award: and

(e) That the decision or award was accepted at the time it was made. Igwe v Ezeugo (1992) 6 NWLR (Pt. 249 pg. 56 Anyabunsi v. Ugwunze (1995) 6 NWLR (Pt. 401) pg. 255 Egesimba v. Onuzuruke (2003) 5NWLR (Pt. 79) pg. 466.?

All the pieces of evidence on record did and do not establish or complied with the above conditions for a valid arbitration. The purported decision of the Native Arbitrators falls short of a Native Arbitration properly so called. The Appellants are right concerning the purported decision of Native Arbitration. There is no evidence of a valid and binding decision of Native Arbitration between the parties.

Issue 5 is resolved in favour of the appellants.

ISSUE 7

WAS THE TRIAL JUDGE RIGHT WHEN HE FOUND THE DEFENDANTS LIABLE IN TRESPASS AND AWARDED THE SUM OF N400,000 DAMAGES FOR TRESPASS AGAINST THE APPELLANTS INCLUSIVE OF THE 5TH DEFENDANT WHO DIED ON 2/2/2009 BEFORE JUDGMENT IN THIS CASE AND WHICH THE TRIAL JUDGE WAS MADE AWARE OF.

The first submission of the appellants under Issue 7 is that the trial Judge was wrong in finding 5th Defendants liable in trespass despite notification that he died on 2/2/2009.

That 5th Defendant ceased to be a party to the suit since the date of his death. The appellants also submitted that Plaintiff failed to prove his claim in trespass against the Defendants. This Court was referred to paragraph 19(ii) of the further Amended Statement of Claim wherein the Respondent claimed N1,000,000 (One Million) as general damages jointly and severally against the Defendants. That facts were pleaded in that behalf in paragraph 16 of Amended Statement of Claim which were denied by Appellants. He made reference to the evidence of DW1, 1st Defendant who said he personally demolished Respondent??s fence. That the Plaintiff did not call his brother Ibe whom Respondent pleaded was working on the land and was asked to move out when he was threatened he would be shot if he did not move out of the land. That Section 149(d) of the Evidence Act should be invoked against the Plaintiff for failure to call his brother Ibe.

That the Plaintiff was unable to prove that the Defendants carted away his Building materials on the land in dispute. That he did not make out any case for award of damages.

On whether it was necessary for and, 2nd, 3rd and 4th Defendants to testify at the trial, Appellants contended that the trial Judge was wrong in his findings that he awarded the damages against them for their failure to testify. The Appellants submitted that the fact that those defendants did not testify is irrelevant since they filed a joint Statement of Defence and denied the trespass. That 1st Defendant said he personally demolished the fence and no one including the other Defendants removed any building materials. That evidence of DW1 was not contradicted. That the trial Judge was wrong and has no basis relying on unproved facts to make order for damages. These Appellants urged this Court to hold that the finding is perversed and ought to be set aside. They urged the Court to resolved issue seven against the Respondent.

On this issue of damages awarded against the appellants, the Respondent stated the trial Judge was justified in awarding the N400,000.00 damages. That the 1st Defendant/Appellant specifically admitted demolishing the fence of the Respondent. That 1st Appellant testified as DW3 at page 151 lines 31??40 and owned up personally demolishing the wall fence of Respondent. That facts admitted need no further proof relying on Section 75 of the Evidence Act. That evidential onus may be discharge through pleadings. That evidence led by PW1 on page 119 of the record, was mere surplusage. That proof of trespass by admission is settled in law. He relied on the Cases of BALOGUN VS LABIRAN (1988) 3 NWLR (Part 80) 3 NWLR (Pt. 111) 623 at 631 F-G. That where a party pleads some facts he has the onus and duty to come forward and proof them. That 2nd - 5th Appellants did not testify and that the trial Judge rightly found against them. That the observation of the Court against them was in order. He urged the Court to resolve the issue against the Appellants.

It is not necessary to dissipate energy on the issue of award of general damages of N400,000 in favour of the Respondent as the Appellants have done in their Brief of Argument. It is on record that the 1st Appellant who testified as D.W. 3 admitted demolishing the fence of the Respondent personally. This is in addition to the finding of the trial Judge that Respondent established his Case against the Appellants all and singular. Having adjudged them to be trespassers and that they have no right to disturb the possession of Respondent the trial Judge was right in award the general damages of N400,000 in favour of the Respondent as Claimant.

The Law does not attach any special prove to Claim for general damages which is always at the discretion of the trial Judge to award as damages flowing directly from the trespass committed by the defendants on Claimants Land. See: XTUODOS SERVICE NIG. LTD. VS. TAISIL (WA) LTD. & ANOR. (2006) 10 - 11 SCM 409 at 421 - 422 where MAHMOUD MOHAMMED, JSC now CJN said:

"The Learned Counsel to the appellants by lumping the relief for special damages together with that for general damages, appeared to have created problem for the appellants, right from the onset. This is because there is a distinction between special and general damages. This distinction was explained by several decisions of this Court particularly in IJEBU LOCAL GOVERNMENT VS. ADEDEJI BALOGUN & CO. (1991) 1 NWLR (PART 166) 136 at 158, ESEIGBE VS. AGBOLOR (1993) 9 NWLR (PART 316) 218 at 145. It is usually a question of pleading and proof and the mode of assessment. One is specifically pleaded and strictly proved because it is exceptional in its nature such that the law will not infer from the nature of the act which gave rise to the Claim. Hence the Claim is known as special damages. The other is general damages which when averred as having been suffered the law will presume to be the direct natural or probable consequences of the act complained of but the quantification thereof is at the discretion of the Court. Therefore in no circumstances can general damages be properly substituted for special damages which a Plaintiff has failed to specifically pleaded and proved.”

On the award against 5th Defendant, I am of the view that no relief can be claimed or awarded against a dead person. The damages was against the 1st, 2nd, 3rd, 4th and 6th Appellants. And just as the Court cannot award damages against 5th Defendant, the said 5th Defendant could also NOT have exercised any right of appeal to this Court or any Court in the Land.

Issue 7 is resolved against the Appellants.

Notwithstanding that Issue five is resolved in favour of the Appellants, their appeal cannot be sustained. It is lacking in merit.

The Appellants appeal is hereby dismissed. The Judgment of the Lower Court is affirmed.

The Appellants (1st, 2nd, 3rd, 4th and 6th Appellants) shall pay N50,000 (Fifty Thousand Naira) costs to the Respondent.

**IGNATIUS IGWE AGUBE, J.C.A**.:

I had a privilege of reading in advance the judgment delivered by Learned Brother Peter O. Ige, JCA.

The issues that came up for determination in this appeal were adequately considered and resolved in the lead judgment. I have nothing else useful to add. In that respect, I also dismiss the appeal as lacking in merit. The Judgment of the Lower Court is hereby affirmed. I abide by the consequential orders made therein.

**ITA GEORGE MBABA, J.C.A.:**

I agree with the reasoning and conclusions of my learned brother, PETER OLABISI IGE, JCA, in this appeal, having had the privilege of reading his views, in draft, I too dismiss the appeal and abide by the consequential orders in the lead judgment.