

SUMMARY OF JUDGMENT

INTRODUCTION:

This appeal borders on Land Law.

FACTS:

This appeal emanated from the decision of the Court of appeal, Port Harcourt Division. The plaintiffs commenced action on 6 October, 1973 in a representative capacity of Owuroboma Compound against the 1st defendant in his personal capacity in respect of a parcel of land, and claimed two reliefs, namely, (1) N7,000.00 as special and general damages. (2) perpetual injunction. On the application of the 2nd set of defendants, leave was granted them on 17 February, 1975 to join as co-defendants in a representative capacity of Tombia Town. Their ground was that they allotted the land in dispute as part of their land to the 1st defendant. While the plaintiffs call their land Ahele of which they claim that the land in dispute forms part, the 2nd set of defendants call their land Tombia Piri or Kule Kiri. While the plaintiffs claim that the land is situated in Degema Division, the defendants say it is in Kalahari Division. The trial court (per Wai-Ogosu Ag.C.J.) gave judgment for the plaintiffs on 23 April, 1982. He found that the defendants committed trespass and awarded damages of N3,000.00 against them. He also granted the injunction sought. This decision was affirmed by the Court of Appeal. Hence this appeal before the Supreme Court.

ISSUES:

The appellants in their brief of argument set down two issues for determination. So did the respondents. It was stated by the respondents as follows: "Whether on the pleadings and evidence the plaintiffs/respondents made out their case of title and consequently trespass against the defendants as to entitle them to the judgment of the court." The second issue was framed thus: "Whether having regard to the state of pleadings, the subsequent joinder of the second

set of defendants/appellants and the evidence before the trial court, the court below was within its powers in amending the respondents' pleadings as it did."

DECISION/HELD:

In conclusion, the Supreme Court held the appeal to be meritorious and was accordingly allowed.