

SUMMARY OF JUDGMENT

INTRODUCTION:

This appeal borders on Civil Procedure.

FACTS:

This matter began at the High Court of Justice of Osun State holden in Osogbo, presided over by Popoola, J. The appellants as defendants were sued by the respondents who were plaintiffs claiming the following reliefs: (i) Declaration that the plaintiffs are entitled by customary derivation to statutory certificate of occupancy in respect of all the piece or parcel of land situate, lying and being at Ororuwo, Ifelodun Local Government Area and which land will be more particularly described and delineated on survey plan to be filed later. (ii) N5,000,00 being general damages for trespass committed by the defendants on the said plaintiff's land. (iii) Injunction restraining the defendants, their servants, agents or privies from committing further acts of trespass on the said land. After taking evidence adduced by both sides, the learned trial Judge in a reserved and well considered judgment proceeded to grant the plaintiffs the first leg of their claim and founded on their plan No. AAY715 of 19/8/69 while dismissing the remaining two. The defendants as appellants were dissatisfied with the said decision appealed to the Court of Appeal, where the Court in a unanimous decision, dismissed the appellants appeal. Being further aggrieved by the said decision, the appellants appealed to the Supreme Court. Respondents raised an objection on the lone ground of the appeal of the appellant; in that, the ground was of mixed law and fact, yet no leave of the Court of Appeal or the Supreme Court was sought before filing same.

ISSUES:

The appellants' formulated a sole issue for determination in this appeal as follows: Whether the Court of Appeal fully discharged its legal responsibility of evaluating the whole evidence tendered in the lower Court following the complaint of the appellants that proper evaluation was not done in the judgment of the High Court. The respondents however, filed a notice of preliminary Objection to the only ground of appeal challenging the decision of the Court below. The ground without its particulars complains thus:

"The Court of Appeal erred in law when it failed in its duty to adequately and properly evaluate the evidence before the lower Court notwithstanding the complaint of the

appellants that the findings of the lower Court was perverse and not supported by the whole evidence but in fact opposed to the evidence."

In determining the appeal, the Court considered the Respondents' objection as well as the issue for determination formulated by the appellant.

DECISION/HELD:

Upholding the objection, the apex Court adjudged the lone ground of appeal incompetent and struck out the appeal.