IN THE COURT OF APPEAL

EKITI JUDICIAL DIVISION

HOLDEN AT ADO EKITI

ON WEDNESDAY THE 22ND DAY OF MAY, 2013

BEFORE THEIR LORDSHIPS:

JIMI OLUKAYODE BADA - **JUSTICE COURT OF APPEAL**

MASSOUD ABDULRAHMAN OREDOLA - **JUSTICE COURT OF APPEAL**

UCHECHUKWU ONYEMENAM - **JUSTICE COURT OF APPEAL**

APPEAL NO: CA/EK/41/2012

BETWEEN:

1. **SIMEON ADESUGBA OGUNDARE**
2. **HIGH CHIEF MICHEAL ABOBADOYE**
   (The onife of Ufe Quarters, Isinbode-Ekiti)
3. **CHIEF JOSHUA IDOWU ABEGUNDE**
   (Sagbale of Ijuda section,Ufe Quarters, Isinbode –Ekiti) suingfor themselves and on behalf of the entire members of the community

APPELLANTS

AND

JULIUS ALAO
(For himself and other members of Aaye Community of Okeaye Quarters, Isinbode- Ekiti)

RESPONDENT

REPRESENTATION

BABALOLA ABEGUNDE, ESQ. with **OLUWATOYIN ABEGUNDE (MRS)** - FOR THE APPELLANTS

HUSSEIN AFOLABI ESQ, - FOR THE RESPONDENT

JUDGEMENT

(DELIVERED BY MASSOUD ABDULRAHMAN OREDOLA, JCA)

This is an appeal brought by the defendants against judgement of Hon. Justice M.A Agbelusi, J of the high court Ekiti state holden at Omuo-Ekiti, delivered on 13th December, 2011 in Suit No. HOM/8/2007.

At the trial court, the respondent as plaintiff and in a representative capacity initially instituted the action against the 1st defendant/appellant alone, vide his writ of summons dated 18th July, 2007. Three reliefs were claimed therein. The 1st defendant/appellant's statement of defence and counter claim was filed on the 10th September, 2008. Upon an application dated and filed on 17th February, 2009 the 2nd and 3rd defendants/appellants were joined in the suit, also in a representative capacity. On 28th July, 2011 the defendants/appellants filed a joint statement of defence and counterclaim

Again, on 2nd August, 2011 the plaintiff/respondent filed yet another reply to defendants/appellants' further amended statement of defence and defence to counter claim.

Finally, and pursuant to the order made by the trial court on 28th October, 2011 the plaintiff/respondent filed an amended statement of claim on 3rd November, 2011. The reliefs claimed therein are reproduced below:

> *"WHEREOF Plaintiff claims against the*
>
> *Defendants jointly and severally as follows:*
>
> *i. A Declaration that the plaintiff with his Okeaye Community is entitled to the customary Right of occupancy in respect of the farmland situate lying and being at Okeoye farmland Isinbode-Ekiti.*
>
> *ii. One Million Naira (1,000,000.00) damages for trespass committed by the Defendant upon the said piece or parcel of land which has always been in the lawful , peaceful and exclusive possession of the plaintiff.*
>
> *iii. A perpetual injunction restraining the Defendants their Servants privies agent and/or successors from*

Committing any or further acts of trespass on the said land.

PARTICULARS OF DAMAGES

Special Damages

1. *50 Cocoa Trees at N2,000 each* ***= N100,000***
2. *100 timber trees at N5,000 each* ***= N500,000***
3. *10 palm trees at N5,000 each* ***= 50,000***
4. *20 plantain stems at N1,000 each* ***= N20,000***

Total	=	***N670,000***
General Damages	=	***N330,000***
Total	=	***N1,000,000"***

(Pp. 151 – 152 of the record of appeal.)

Similarly, the reliefs sought by the defendants/appellants in their counter-claim against the plaintiff /respondent are as follows:

"WHEREOF the defendants counter-claim

against the plaintiff as follows:

a. A DECLARATION that the farm land at Ugbo Ufe otherwise known as Eremeji In ife quarters, Isinbode-Ekiti is the Farm land of the defendants/counterclaimants.

b. A DECLARATION that the plaintiff is not the rightful owner of the farm land at Ugbo Ufe otherwise known as Eremeji in Ife quarters, Isinbode-Ekiti and that plaintiff is not entitled to collect rents and tributes from the tenant therein

c. ***AN ORDER that the defendants are The rightful and legitimate owner of the farm land at Ugbo Ufe otherwise Known as Eremeji in Ife quarters, Isinbode-Ekiti thereby entitling them to customary right of occupancy of the farm land.***

d. ***AN ORDER directing the plaintiff to render an account of all rents and tributes received and or collected from tenants in respect of the farmland at Ugbo Ufe otherwise known as Eremeji in Ife quarters, Isinbode-Ekiti***

e. ***AN ORDER of interlocutory injunction on restraining the plaintiff, his agents and privies from trespassing, transferring, alienating and mortgaging any portions of the farm land at Ugbo Ufe otherwise known as Eremeji in Ife quarters, Isinbode-Ekiti***

f. ***A sum of N5,000,000.00 damages against the plaintiff for trespass committed on the farm land***

(Pp. 1, 29, 36, 40, 240 & 241, 123 – 129, 337, and 148 -152 of the record of appeal.)

At the hearing before the trial court, the plaintiff/respondent testified as PW1 and called four additional witnesses. He also tendered Exhibits "A" – "B, "G", "K" and "L". For the defence, and in support of their counterclaim, the three defendants/appellants gave evidence as DW3, DW4, and DW5 respectively and further called additional witnesses. They also tendered Exhibits "C", "D", "E", "H", "I", "J", "M", "N & N1", and "0 & 01". The said exhibits are listed / itemized below

LISTS OF EXHIBITS

(1) EXHIBIT A -A9 Borne pictures tendered by PW1

(2) EXHIBIT B – A copy of subpoena Ad Testificandum tendered by the plaintiff's counsel

(3) REJECTED – A copy of letter written by Longe and Longe Associates tendered by the plaintiff's counsel

(4) EXHIBIT C – A copy of map of Ekiti Division and Ondo Division tendered by the defendants' counsel

(5) EXHIBIT D -A copy of letter written by Olu Akinyede LLB (Bristol) tendered by the defendants' counsel

(6) EXHIBIT – E- A copy of Notice to produce tendered by the defendants' counsel

(7) EXHIBIT E – Copy of letter written by the Akinyede LLB (Bristol) tendered by the defendants'counsel

(8) IDENTIFICATION A – Copy of letter written by A. A Babatunde tendered by the defendants' counsel

(9) IDENTIFICATION B – Copy of letter written by A.A Babtunde tendered by the Defendants' counsel

(10) Rejected Report of the panel by Egbe Irawo Owuro on 30th June, 2007 on the Dispute of farm land situated and lying at Eremeji Oke Aye in Ugbo Ufe between Mr Julius Jimoh Alao and Mr Samson Ogundare Adesugba in English Language presented by Defendants' counsel.

(11) REJECTED – Abojade Idajo ti Egbe Irawo Owuro se ni 30/6/2007 lori ija oko koko ti o wani Eremeji Oke Aye in Ugbo Ufe laarin Ogbeni Julius Alao ati Ogbeni Simon Ogundare Adesugba in Yoruba Language presented by Defendants' counsel

(12) EXHIBIT G – Copy of the proceding on the case of Mr Julius Alao vs. Mr Simeon Ogundare Adesugba at the palace of Onisin of Isinbode land tendered by plaintiff's counsel

(13) EXHIBIT H – Copy of letter from Adegbite Adedoyin & co. legal practitioners tendered by Defendants' counsel

(14) EXHIBIT I – Copy of letter from A.O Bayegun & Co. legal Practitioners tendered by the Defendants' counsel

(15) EXHIBIT J – Copy of Report / Judgement , Julius Alao vs Mr. Simeon Ogundare Adesugba on 4/12/ 2007/ A report/judgement tendered by Defendants' counsel

(16) EXHIBIT K – Copy of judgement from Chief Magistrate II Omuo Ekiti MOM/ 12c/2005, C.O.P vs. Ojo Olaiya, tendered by Plaintiff's counsel.

(17) EXHIBIT L – Copy of letter from Ekiti East Local Government Ejeko / Abilogbo chieftaincy matter in Isinbode -Ekiti tendered by Plaintiff's counsel.

(18) EXHIBIT M – Copy of minutes of the Onisin in council meeting held on 6th September, 2005 tendered by Defendants' counsel

(19) EXHIBIT N – Copy of letter from A. A Babatunde , federal ministry of works and Housing P.W.D HQ. Lagos dated 28/8/67. Written in vernacular.

(20) EXHIBIT N1 – Letter from A.A. Babatunde , Federal Ministry of Works and Housing P.W.D. HQ.Lagos dated 2/5/67. Written in English Language.

(21) EXHIBIT Q – Letter from A. A. Babatunde Federal Ministry of works and Housing P.W.D HQ dated 2/5/68. Written in English Language

(22) EXHIBIT Q – Letter from A.A Babatunde Federal Ministry of Works and Housing P.D.W. HQ. lagos dated 2-5-68 written in English Language

(23) EXHIBIT P – Ledger of Onisin's in council Onisin's palace Isinbode – Ekiti State Volume two from 31st July, 2003 to 14th September, 2005"

Both learned counsel for the parties submitted written addresses. While the learned counsel for the plaintiff/respondent adopted his written address, the written address filed by the learned counsel for the defendants/appellants was deemed adopted by the trial court on the basis of a letter to that effect written by their learned counsel. The defendants/appellants submitted ten issues as having arisen for determination in the suit. The issues are reproduced below:

"(1) How can ownership of land be proved in an action for declaration of title

(2) What must a party relying on traditional evidence prove in a claim of title to land

(3) What is the Yoruba native law and custom in relation to real property when a man dies intestate without issue leaving property or where a man dies leaving children surviving him

(4) Whether the burial of the deceased person on the land in dispute confers ownership of the land upon the deceased heirs

(5) Whether the claimant has satisfied the requirement of proof of the identity of the land in dispute in an action for declaration of title

(6) What a claimant who claims exclusive title to community or family land against the entire family or community must prove.

(7) Whether the claimant has discharged the onus of proof of adoption as a child of Oso Olorinkinrin in order to inherit the property in dispute

(8) Whether the claimant can be said to have proved trespass on the basis of defective title

(9) What is the status of admitted inadmissible evidence and how same should be treated by the honourable court.

(10) What is the effect of reply raising new issues different from what is contained in the statement of claim when such new issue are not raised in the statement of defence or counter claim"

For the plaintiff/respondents, six issues were submitted for the consideration of the trial court. They are:

"1. Which of the two contending parties i.e. the

Okeaye community as represented by the plaintiff

and the Ufe community as represented by the defendants , has a better title to the land in dispute.

The following questions come up for the determination

of the court under this main issue i.e.

(a) Whether Okeaye Community existed in Isinbode – Ekiti in the past and now and whether they owned the land in dispute as against the Defendants' Ufe community?

(b) Whether Abel Babatunde, Chief Oso Olorinkirin and Plaintiff have any proprietary Right/title to the land in dispute?

2. Whether the defendants committed any acts of trespass on the disputed land?

3. Whether the plaintiff proved the special and general damages of one Million Naira claimed by him.

4. Whether the Defendants have any title to the Land in dispute to sustain the reliefs sought by them in their counter claim.

5. Whether the Defendants proved any damage against their interest to sustain the claim for five Million Naira or any amount as damages for trespass.

6. Whether the plaintiff is accountable to the Defendants in respect of the rent / tribute if any, collected from the tenant on the land"

At the end of the day, the learned trial judge in his reserved judgement came to the following decisions:

> ***"In all the plaintiff's claim succeed and is granted the declaration that :***
>
> 1. ***The plaintiff with his Oke -Aye community is entitled to the customary right of occupancy in respect of the farmland situate lying and being at Oke – Aye farmland Isinbode – Ekiti.***
> 2. ***N200, 000.00 damages the Defendant committed and is still being committed on the land in dispute. This is because trespass is at the instance of a party in possession they can properly succeed in this action for trespass. In awarding damages I take into consideration that the 1st Defendant not only entered the land the plaintiff is in possession of but also damaged plaintiff's crops see EZE vs. Atasie (supra) I restrained perpetually the Defendants their servant, privies, agents or successors from committing any further act of trespass on the land. I also dismiss the counter claim as being unmeritorious"***

(Pp. 365- 366 of the record of appeal.)

Dissatisfied with the above decision which was clearly in favour of the plaintiff/respondent, the defendant/ appellants filed their notice of appeal. It contained one ground of appeal. Thereafter, with leave of this court granted on 6th November, 2012 the appellants added two grounds of appeal thereto.

Also, the plaintiff/respondent's notice to contend that the judgement should be affirmed on grounds other than those relied upon by the trial court in accordance with the rules of this court was deemed filed and properly served on the same 6th day of November, 2012. The plaintiff/respondent contended therein, that the decision of the trial court can be based on the grounds other than those relied upon by the trial court. The grounds are as follows:

> 1. ***The evidence of the plaintiff's witness was not properly evaluated before the trial court came to its conclusion.***
> 2. ***There are substantial materials inconsistencies in***

the evidence of the defence witnesses which the trial court did not consider before the trial court came to its conclusion;

3. ***The appellants do not have any title to the land in dispute upon which they can base their defence and counter- claim***

From the grounds of appeal as amended, the defendants/appellants who shall hereinafter be referred to as the appellants raised three issues for determination as contained in the appellants' brief of argument which was prepared by Babalola Abegunde Esq. and filed on 8th November, 2012. The issues so raised are as follows.

"A. Whether or not the trial court was right by failing to pronounce on the issues raised by the parties (Ground 1)

B. Whether or not the trial court was right by failing to look at the document was tendered and admitted by him while writing judgement (Ground 2)

C. Whether or not the judgement of the trial court is against the weight of evidence (Ground 3)"

The appellants also filed a reply brief on 28th February, 2013.

The brief argument of the plaintiff/respondent who is now to be called the respondent was prepared by Hussein Afolabi Esq. It was deemed duly filed and properly served on 27th February, 2013. Therein, the respondent distilled two issues for determination in this appeal. Both issues are:

"(1) whether the trial court was bound to consider all the issues raised by the appellants when the resolution of only one of the issues could effectively dispose of the entire matter and whether such non consideration of all the issues amounts to a denial of fair hearing of the appellants

(2) whether or not this Honourable court can properly evaluate the evidence on the record and affirm the judgement of the lower court on ground other than those relied on by the lower court.

(Ground 1, 2 and 3 of the Respondent's notice)

When the appeal came up before us for hearing on 5th March, 2013, learned counsel for the appellants, **Babalola Abegunde Esq**. adopted and relied on both the appellant's brief of argument and reply. He then urged us to allow the appeal, set aside the decision of the trial court, re-evaluate the evidence. Counsel for the respondent, **Hussein Afolabi Esq**. referred to the respondent's notice and brief of argument. He adopted and placed reliance on both processes. He also urged us to dismiss the appeal and affirm the trial court's judgement upon grounds canvassed in the respondent's notice and brief of argument in addition to the ones relied upon by the trial court.

It seems to me after a careful examination of the grounds of the notice of appeal as amended that the following three issues should determine this appeal one way or the other. They are:

(1) Whether the trial court is duty bound to consider and pronounce on all the issues raised by the parties before it

(2) Whether it is mandatory for the trial court to make particular reference to and specific finding/ pronouncement on all the documentary evidence tendered and admitted before it

(3) Whether or not in view of the pleading and the totality of evidence adduced by the parties, the trial court's decision is against the weight of evidence.

ISSUE 1

On this issue, learned counsel for the appellant submitted in essence that the learned trial judge failed to resolve and or make pronouncement on all the sixteen issues raised for his determination. According to the learned counsel, this is more so, when the issues were duly argued by the parties. Hence, the contention that the error in this regard "led to miscarriage of justice." On the duty on trial court to pronounce on all issues raised before them by parties, learned appellants' counsel referred to and quoted extensively from the authority of **Xtoudos Services Nig.Ltd vs. Taisei (W.A.) Ltd(2006) 46 WRN1/37- 38** among others. Further reference and reliance was placed by him on the cases of **Uka vs. Iro (1996) 4 NWLR (Pt. 441)**

218 and Ovunwo vs. Woko (2011) 17 (Pt. 1277) 522 on the requirement that where there is sufficient material before the appellate court for the resolution of the matter, such a court must not hesitate to intervene and make requisite pronouncements on the issues, more so when there is sufficient materials in printed record placed before the said appellate court.

In response and on this issue, learned counsel for the respondent referred to and reproduced the sixteen issues formulated by the parties for the determination before the trial court. It was then submitted, "that most, if not all of the issues formulated by the appellants as defendants/counter-claimants at the trial court are not issues for determination in the matter *stricto senso* but merely academic questions." He referred to and placed reliance on the cases of **Ezerebo vs Ehindero (2009) 10 NWLR (pt. 148) 166/ 177; Oguejiofor vs Siemens Ltd. (2008) 2 NWLR (Pt. 1071) 283/296; Adebusuyi vs Oduyoye & Ors. (2004) 1 NWLR (Pt. 854) 406/ 431 – 432 and CPC vs INEC & Ors. (2011) 18 NWLR (Pt.1279) 493/559**. According to the learned counsel for the respondent, when the parties have formulated purely academic issues for determination of the trial court, the trial court is at liberty to formulate its own issues and/or resolve any one of the issues which in its opinion could effectively dispose of the entire matter without actually having to go through the rigours and time wasting task of resolving academic and unnecessary issues which are devoid of any benefit to either of the parties. In support of this proposition, reliance was placed on the authorities of **Uzodinma vs Izunaso (2011) 170 NWLR (Pt. 1275) 30/59; Agbareh vs Mimra (2008) 2 NWLR (Pt. 1071) 378/ 410; 7- Up Bottling Co. Ltd. Vs Abiola and Sons Bottling Co. Ltd. (2001) 13 NWLR (Pt. 730) 469/493.**

Learned counsel for the respondent contended that the identity of the disputed land is not in issue as it is well known to the parties even though they gave it different names. Howbeit, that courts do "take cognizance of the fact that different people, particularly opposing litigants call disputed land with different names." He cited and relied **on Ogbu vs Wokoma (2005) 14 NWLR (Pt 944) 118/139; Kyari vs Alkali (2001) II NWLR (Pt. 724) 412 and Nwabuoku vs Onwordi (2002) 3 NWLR (Pt 755) 558/581** for this standpoint.

In another vein, learned counsel for the respondent maintained that both contending parties herein predicated their respective claims to title in respect of the disputed land on traditional evidence and or traditional history. He added that the respondent "also based his title on acts of ownership extending over a sufficient length of time and acts of long possession and enjoyment of the said land

Finally, on this issues, learned respondent's counsel quoted extensively from the judgement of the learned trial judge, wherein it was found as a fact that the appellant failed to adequately prove

by traditional history/evidence their title to the land in dispute and that the respondent had adequately proved his title to the land in dispute by irresistible traditional history/evidence"

In his reaction to the above submissions, learned counsel for the appellant in their reply brief contended in essence that the issues formulated by the appellants before the trial court "are living or live issues formulated by the appellants before the trial court. According to the learned counsel for the appellants, the respondent's counsel "misconstrued the nature of academic issues and confused it with germane issues of law raised in the appellant brief"

The judgement of a court which must demonstrate a thorough and painstaking reflection, coupled with balancing of the case of the parties, cannot be vitiated simply because of the judge's style of writing. **See Okulate vs Awosanya (2000) 2 NWLR (Pt. 646) 530**. Howbeit, where a court fails to give full dispassionate consideration and determination of the case of a party, it is a situation which touches on the violation of the party's right to fair hearing. It is thus trite that where there is a breach of a party's right to fair hearing, then the proceedings are vitiated and thereby require the intervention of an appellate court on the complaint of the affected party. See **Adigun vs Attorney General Oyo State (1987) 1 NWLR (Pt. 53) 678; Nwokoro vs Onuma (1990) 3 NWLR (Pt. 136) 22/32-33.** However, before the intervention of an appellate court becomes desirable, it must be vividly demonstrated that such a lapse on the part of the trial court has occasioned a gross miscarriage of justice.

The general rule which is now settled, is that a court be it first instance or appellate, has a duty to consider all the issues placed before it. Howbeit, where it is of the view and this can be seen to be so, that a consideration of one issue is enough to dispose of the matter, the said court is not under any obligation to consider all the other issues posed by the parties. See ***7-Up Bottling Co. Ltd. (supra)***. Consequently, when a party submits an issue to a court for determination, that court must make pronouncement on the issue except where the issue is subsumed in another and where that happens, there shall no longer be necessity of making a separate pronouncement on the issue or issues so subsumed. **See Okonji vs Njokonma (1991) 7 NWLR (Pt. 202) 131/ 146.** Thus, it is instructively significant to note, that only valid or vital issues are worthy of consideration by a court. Indeed, irrelevant or non-essential issues are to be discountenanced.

Again, it is instructive to note that at the trial court cases, cases are decided not solely on the basis of the issues raised by the parties for determination there at, but only on the template of the case as formulated in the pleadings and evidence adduced thereon by the parties. It is the pleading of the facts in issues. It is akin to the situation at the appellate courts where the grounds of appeal serve as the substratum for issues identified therefrom. The latter will lack basis without solid structure already laid by the former. In the instant case, the learned trial judge did the needful

and his decision thereon has not been successfully impugned by the appellants. From the pleadings of the parties and the totality of evidence adduced thereon, the land in dispute is well known to the parties and as such its identity cannot be regarded as a serious issue, irrespective of the fact that the parties gave it different names. The law is settled that even where the court below failed to consider an issue or issues for determination, the decision arrived at by that court cannot be set aside unless there is a miscarriage of justice. Live issues are the props or fundamental of the matter. Hence, the court must deal with relevant or issues validly raised by the parties before it.

It is significant to note that the most crucial aspect of the duty of a court of first instance in the evaluation of evidence is to determine where the imaginary scale preponderates by the place of qualitative evidence therein. Thus, the court must ensure and maintain proper balance in respect thereof. All the basics have been done in the instant case. Issue No 1 is thereby resolved in favour of the respondent.

ISSUE 2

On this issue, learned counsel for the appellants submitted that the learned trial judge in his judgement, failed to look at or examine documents duly pleaded by the parties and admitted in the course of hearing of this matter. On the essence, import and purport of documentary evidence, learned appellants' counsel cited and relied on **Agbareh vs Mimra (2008) 2 NWLR (Pt. 1071) 378** among other authorities which were wrongly and incompletely cited. Howbeit, he maintained that the failure on the part of the learned trial judge to carry out his duty, "is an unforgivable and totally unpardonable error of law." According to the learned counsel for the appellants, the error has led to serious miscarriage and perversion of justice. Hence, the invitation extended to this court to intervene and set aside the said decision which is perverse. He urged us to uphold his submission on this issue.

On his part and with regard to this issue, learned counsel for the respondent countered and submitted, "that the mere fact that the documents tendered as exhibits in a case were not referred to by the court while writing its judgement will not vitiate such judgement," more so, when it has not been shown that miscarriage of justice has been occasioned thereby. For this, submission, he placed reliance on the authority of **Ayorinde vs Sogunro (2012) 11 NWLR (Pt.1312) 460/478.** Additionally, it was submitted "that there was ample fact (as highlighted above) upon which the trial judge based his judgement"

The live point in this issue is with regard to the complaint that the learned trial judge failed to deliberate and determine the net worth of documentary evidence placed before him for his consideration by the parties herein. I have duly perused the pleading and examined the evidence

adduced by the parties, both oral and documentary evidence *per se* by the learned trial judge cannot be described as a failure to look at or examine documentary evidence placed before him in this matter. To my mind, the judgement of the trial cannot be faulted on this score, notwithstanding the strong contention by the appellants, that specific reference was not made by the learned trial judge to documents tendered and admitted in this case. Indeed, the appellants also failed to show or identify the particular documentary evidence which he described as having been admitted even though it is inadmissible.

It is settled and undisputed that a court is expected in all proceedings before it, to admit and act only on evidence which is admissible in law, that is under the Evidence Act or any other law or enactment which is relevant in any particular case. See **Abolade Agboola Alade vs Salawu Jagun Olukale (1976)2 SC 183/187**. The complaint against the alleged conduct of the trial court not to pronounce on document tendered and admitted before it and in favour of the appellants will become weighty and invidious if it can be adjudged as having made the decision of the trial court to be perverse, thereby justifying the setting aside of the said judgement.

The duty of an appellate court is to decide whether the decision of the learned trial judge was right and not whether the reasons or modalities regarding how the decision was reached was right. An appellate court is more concerned with the correctness of the decision in question and not otherwise. Hence, an appellate court will not interfere if the judgement is right. Issue No. 2 is also resolved in favour of the respondent.

ISSUE 3

Learned counsel for the appellant submitted on this issue, that the appellants pleaded in paragraphs 12-15 of their further amended statement of defence and counter-claim and by unchallenged evidence that their ancestors first settled and acquired the land in dispute over 1100 years ago. He cited and relied on **Alli vs Alesinloye (2000) 6 NWLR (Pt. 660) 177 and Ogunleye vs Jaiyeoba (2011) 9 NWLR (Pt. 1252) 339/350-351** to buttress the standpoint "that first settlement upon the land is now a recognised judicial position of law as oldest method of acquiring title to land." Additionally, that acquisition of title by settlement" does not recognise a previous title holder."

In yet another submission, learned counsel for the appellants contended that "assuming without conceding that the respondents are in possession, that no matter how long, such possession can never ripen into ownership." He referred to **Obawole vs Coker (1994) 5 NWLR (Pt. 345) 416.** Again, that the learned trial judge did not evaluate or asses the evidence adduced to him and the mere review or summary of the said evidence cannot be equated with the required evaluation and assessment of evidence before ascription of value and probative weight can be attached to it.

Finally, on this issue, learned appellant's counsel submitted "that the trial court failed to evaluate or to adequately evaluate the oral documentary evidence before him and this led to a miscarriage and perversion of justice."

In his response on the issue, learned counsel for the respondent anchored his argument on the five ways in which ownership of land may be proved and submitted that the trial court's judgement is not against the weight of evidence. He cited and placed reliance on **Idundun vs Okumagba (1976) 9-10 SC 227**; **Piaro vs Tenalo (1976) 12 SC 31; Omoregie vs Idugiemwanye 1985) NWLR (Pt. 5) 41/43.** He also maintained that the learned trial judge "showed a deep consideration of the traditional history of both parties and rightly considered the evidence adduced on both sides before concluding that the plaintiff's/respondent's traditional history was more probable." Hence, the trial court granted the reliefs claimed by the respondent.

Learned counsel for the respondent reiterated and submitted "that a court of law is not duty bound to pronounce on all issues raised by the parties but to pronounce only on the material issue(s)." nevertheless, it was contended that "a judgement is only flawed if a vital or crucial issues in the case is left unresolved." Furthermore, "whether a vital issue has been left unresolved… depends on what the essential issues in the cases are and how the trial court dealt with them." Finally, reference was made to **Agu vs Nnadi (2002) 18 NWLR (Pt. 798) 103/119** on the submissions, that "where a trial court fails to advert its mind to and treat all the issues in controversy fully and there is sufficient materials before the appellate court for resolution of the matter, and order of retrial will not be made. An appellate, is in as good a position as the lower court was, to make pronouncement on the issues"

It is trite law that there are five ways by which ownership of land may be proved. In the case **of Egwa vs Egwa (2007) 1 NWLR (Pt. 1014) at 87- 88**, this court per Rhodes – Vivour, JCA (as then was) enunciated as follows:

> *There are five ways in which ownership of land may be proved. They are:*
>
> 1. *By traditional evidence*
> 2. *Proof of act of ownership, act of persons claiming the land such as selling, leasing , renting out all or part of the land or farming on it otherwisw utilizing the land beneficially, such act act of ownership extending over a sufficient length of time and numerous and positive enough to warrant the inference that he is the true owner;*
> 3. *Proof by production of document of title which must be authenticated;*
> 4. *Proof of ownership by acts of long possession and enjoyment in respect of the land to which the acts are done ;*

5. *Proof of possession of connected or adjacent land in circumstances rendering it probable that owner of such connected or adjacent land would in addition be the owner of the land in dispute, may rank also as a means of proving ownership of the land dispute…"*

See also: ***Idundun vs Okumagbe (supra)***

Under the well-known rule in **Kojo II vs Bonsie (1957) 1 WLR 1223** where parties to a land dispute present conflicting traditional histories as in the instant case, the proper approach for the court in ascertaining which of the two sets of traditional should be accepted as more probable is by reference to acts of ownership within living memory. **See: Sanusi vs Amoyegun (1992) 4 NWLR (Pt. 237) 527 at 548; Nkaegbu vs Nwololo (2007) 3 NWLR (Pt. 1127) 194 at 230-231**

The rule or principle propounded in the judgement of the privy council delivered by Lord Denning **in Kojo II vs Bonsie (supra) 1 WLR 1223** gave the proper approach to be adopted in the assessment and evaluation of traditional evidence, predicated on traditional history, which has been handed down by word of mouth from generation and more particularly where there is conflict in the two versions placed before the trial court. It is to the following effect.

> "*Where there is a conflict of traditional history, one side or the other must be mistaken, yet both may be honest in their belief. In such a case demeanour is little guide to the truth. The best way to test the traditional history is by reference to the facts in recent years as established by the evidence and by seeing which of the two competing histories is more probable…"*

Per Lord Denning at page 1226 of the report which has been quoted with approval in the case of **Otuaha Akpapuna vs Ors. Vs Obi Nzeka II &Ors** (1983) 7 SC 1/59- 60.

> ***"****What is to be noted and re-emphasised is that the party claiming title to land is not bound to plead and prove more than one root of title to succeed. If he relies on more than one root, that is merely to make assurance doubly sure. He does that abundantia cauteli."* -per Oputa, JSC **in Chief Oyelakin Balogun & Ors vs Oladosun Akanji & Anor. (1988) 2 S.C. (Pt. 1), 199 at 234."**

In the instant case, it can be rightly surmised that the appellants did not adduce concrete evidence of recent acts of ownership within living memory as opposed to the respondent who clearly adduced such evidence. Hence, the respondent as opposed to the appellant proved continuous and recent acts of ownership and possession of the land by himself and his Okeaye people by planting crops and putting tenant thereon, having and maintaining a shrine on the land.

Again, simply put, while "a trial is the finding out by due examination the truth of the point in issues, the truth of essential question or questions between the parties… A finding is a conclusion upon an inquiry of the facts in issue. "Per Oputa, JSC in **Veronica Graham & Ors. Vs Lawrence Ilona Iamade Esumai &Ors. (1984) II SC 123/145.** I have had the privilege of seeing and scrutinising the documentary evidence in this case. I have given considerations to the submissions contained in the brief of argument filed by the learned counsel for the parties. I have also read the authorities referred to and relied upon therein. I am of the firm viewpoint that while the appellants were unable to satisfactory establish their root of title and thereby disentitled to the grant of the declaratory reliefs sought in their counter-claims, the respondent duly established his root of title to the land in dispute and his entitlement to succeed in his claim thereon.

The respondent herein in paragraph 1 of his reply to appellants further amended statement of defence and defence to counter- claim, (P. 131 of the record of appeal) admitted paragraphs 3,4,17,18,27,44,45,46,63,65 and 66 of the said further amended statement of defence and counter-claim (P.123 – 129) of the record of appeal) which considerably substantiated his assertions in this case. It is a settled and elementary principle of practice that parties are bound by their pleadings and will be disallowed to set up in a court a case which is at variance with their pleadings. Again, it is to be expected that each case must be determined by the particular fact of the case. So be it in the instant case. The law is also trite that where there is evidence to support the conclusion reached by a trial court in dismissing the claim of a party, be it claimant or counter-claimant as in the instant case; an appellate court will not interfere therewith. **See Lion Buildings Ltd. Vs Shodipe (1976) 12 135.**

To my mind and in the instant case, there is an indication on record with regard to how the learned trial judge reasoned, preferred the evidence of the respondents to the one adduced by the appellants and thereafter arrived at his conclusion. I am thus of the humble and firm view point that the decision of the learned trial judge was right for some other reasons inclusive of the ones argued and or proposed by the learned counsel for the respondent. Issue 3 is also resolved in favour of the respondent.

Thus, at the end of it all and having given considerations to the complaints regarding what was described as a failure on the part of the learned trial judge to pronounce on all the issues raised before it by the parties and the way he handled the documentary evidence tendered by both parties before it, coupled with the sustainability or otherwise of the trial court's decision and upon the resolution of the issues raised herein for determination of this appeal in favour of the respondent, I am satisfied that there is no ample basis for me to interfere with the decision of the trial court.

In the premise and having regard to all other circumstances to which considerations have been given by this judgement, I find no merit in this appeal. I dismiss it in its entirety as it lacks merit. I uphold and or allow the respondent's notice and affirm the decision of the trial court upon grounds other than the ones relied upon the said trial court. I award N30,000.00 costs against the appellant and in favour of the respondent.

MASSOUD ABDULRAHMAN OREDOLA
JUSTICE, COURT OF APPEAL

JIMI OLUKAYODE BADA, J.C.A

I had the opportunity of reading before now the lead judgement of my learned brother, **MASSOUD ABDULRAHMAN OREDOLA, J.C.A,** just delivered.

My lord has dealt with the issues for determination in this appeal in a very lucid form and I agree with the reasons contained in the Judgement as well as the conclusion reached.

I am also of the view that the appeal is unmeritorious and it is dismissed by me.

I endorse the consequential orders made in the said lead judgement including the order on costs

JIMI OLUKAYODE BADA, J.C.A

JUSTICE, COURT OF APPEAL

UCHECHUKWU ONYEMENAM, J.C.A.

From the record it is clear that both parties relied on traditional history to establish their individual title to the disputed land. In addition, the claimant relied on act of long possession. The appellants'' complain that the learned trial judge merely mentioned the 16 issues raised by both parties for the determination of the appeal without more is unassailable. The learned trial judge did not specifically consider the issues as raised by the parties. He determined the case on the evidence of the acts of long possession put forth by the claimant which he found credible in the

face of the obvious conflicting traditional histories of both parties. The appellants have urged on this court in the circumstance to allow the appeal as failure of the learned trial judge to resolve or pronounce on the issues submitted for determination occasioned a miscarriage of justice.

I have noted and examined the issues raised by the Appellants and respondent at page 155 and 191-192 of the record respectively. As I earlier said, it is correct that the learned trial judge failed to specifically consider and pronounce on the issues as formulated by the parties for determination.

The least to be expected of a judge in the adjudication of a matter is to determine same based on the issue that have been joined and raised before him. Undaunted, a court should determine issues raised before it. It is a serious lapse in the performance of his duty for a judge to shy away from determining issues before him. The reasoning stems from the fact that a party to a dispute must be heard before his right can be determined by a court of competent jurisdiction. It has to do with a party's right to fair hearing in a suit which is a principle of natural justice embedded in constitution. Accordingly, where a court fails to consider and pronounce on issues joined and raised before him; it is an error of law because the omission amounts to a denial of a right to fair hearing of the party complaining. **See UZUDA V. EBIGAH (2009) 15 NWLR (PT. 1163) 1.**

There is a slim but sharp distinction between where a court fails to consider issues joined and raised before it and where a court fails to consider specific issues as raised before it. While in the former the judgement is a nullity, in the later the rule is not absolute. **See: Uka v. Irolo (2002) 7 SCNJ 137 at 164**. Failure to consider and pronounce on all issues submitted to a court will not per se, constitute a denial of a right to fair hearing unless such omission occasioned a miscarriage of justice. See **ISHAYA BAMAIYI V THE STATE & ORS (2001) 8 NWLR (PT. 715) 270; KOTOYE V CENTRAL BANK OF NIGERIA & ORS (1989) 1 NWLR (PT.98) 419**

From the position of the law, it does appear to me that there are three situations in which a court would have fallen short of the strict performance of its duty to consider and resolve issues submitted to it. The three different occasions attract different legal effects.

The first is an occasion where the court fails to consider and decide material issues; resolution of which will ordinarily settle the controversy. Failure of a court in this regard constitutes a breach of the constitutional right to fair hearing of the complaining party for which the decision of the court will be nullity.

The next is where a court fails to consider and pronounce on specific issues submitted to it for adjudication but would have in the course of the determination of the case subsumed the issues raised. In this case, although all issues would not have been resolved specifically, the issue(s)

resolved would lay the dispute to rest. In the circumstance, failure to resolve issues though would be frowned at but not lead to the setting aside of the decision on appeal same not having occasioned a miscarriage of justice.

The third scenario, is a situation where the court fails in its entirety to consider issues joined and raised before it. Any decision reached by the court in such circumstance will amount to the court abandoning the case of the parties and deciding the dispute on case made out by itself. The court would not in that event be said to have settled the parties' controversy. The decision of the court would amount to a breach of the complaining party's right to fair hearing and as such a nullity.

In the instant appeal, the learned trial judge at page 361 of the record stated thus:

> *"In their Written Address (sic) they formulated issues for determination. The plaintiff formulated 6 issues for determination while the defendant formulated 10 issues.*

This was all the learned trial judge said and addressed a far as the specific issue formulated by the parties were concerned. He thereafter went on to decide the dispute based on the acts of long possession which he found credibly established by the claimant. Although, the lower court did not formally adopt any of the issues formulated by the parties nor for some legal reasons categorically reformulated the issue did not go outside the issues joined and raised by the parties.