IN THE SUPREME COURT OF NIGERIA

Suit No: SC350/2001

Petitioner: Matthew Echere & 3 ors
And
Respondent: Christopher Ezirike & 6 ors

Date Delivered: 2006-05-12

Judge(s): Aloysius Iyorgyer Katsina-Alu , Akintola Olufemi Ejiwunmi , Dahiru Musdapher , Walter Samuel Nkanu Onnoghen ,

Judgment Delivered

This is an appeal by the Plaintiffs against the judgment of the Court of Appeal, Port-Harcourt Division delivered on 30 April 2001.

The Plaintiffs, in their action instituted against the 1st set of Defendants claimed as follows:

'1. Declaration of title to pieces of or parcels of land situate at Umuokwara-udu Umuobom in Orlu Division respectively known as and called (1) Ala Nwaikpa; (2) Ala Ogwugwu Awala; (3) Ala Okeahia (4) Ala Gbokogboko and (5) Ala Ugwun-nogo, within the Orlu Judicial Division and more particularly delineated on a Plan to be tendered at the hearing of this action, of an annual value of N 10.00 (ten Naira).

2. N200.00 (two hundred Naira) general damages for trespass into the said lands.

3. Perpetual Injunction restraining the Defendants, their servants and/or agents from entering into the said lands and acting therein in any manner inconsistent with the Plaintiffs' ownership and possession.'

The Plaintiffs did not sue the 2nd set of Defendants. It was the case of the 2nd set of Defendants that the Plaintiffs and the 1st set of Defendants incorporated in their respective plans, portions of land belonging to the 2nd set of Defendants.

Consequently, the 2nd set of Defendants applied to be joined and were joined as co-Defendants to protect their interest in the land in dispute.

After hearing evidence and the addresses of Counsel, the learned trial Judge in a reserved judgment found for the Plaintiffs. He held thus:

'As there was no dispute as to how PW2 and PW3 came to live on portions of the land in dispute, I consider it an academic exercise to dabble into the essentials of customary law of sale where PW2 and PW3 live are clearly shown in Exhibit A. It is also irrelevant to consider the issue of pledge. There is no dispute between the Plaintiffs on one side and PW2 and PW3 on the other side.

This case is based mainly on the facts adduced by each (sic) of the parties in this case. I am inclined to believe the Plaintiffs and their witnesses. There is also no dispute between the Plaintiffs and the 2nd set of Defendants. They know the boundaries of their respective lands.

I find for the Plaintiffs ....'

The 1st set of Defendants appealed to the Court of Appeal. Their appeal was allowed and the judgment of the trial Court set aside, and the claim of the Plaintiffs was dismissed. The Plaintiffs have now appealed to this Court against the judgment of the Court of Appeal upon a number of grounds.

The Plaintiffs submitted five issues for determination in this appeal. They read as follows:

1. Whether the Court of Appeal was right in applying the test of 'doubt' instead of preponderance of evidence in reversing the judgment of the trial Court that the Plaintiffs/Appellants proved that they were the owners of the land in dispute'

2. Whether the Plaintiffs/Appellants proved their case and should be entitled to judgment as held by the trial Court'

3. Whether the Court of Appeal was right in interfering with the findings of fact of the learned trial Judge that the land in dispute belongs to the Plaintiffs/Appellants'

4. Whether the Court below was right in holding that establishing acts of trespass to two plots of land out of five plots constituting the land in dispute was not enough to establish act of trespass against the 1st set of Defendants/Respondents in respect of the land in dispute'

5. Whether the judgment of the Court of Appeal is sustainable in this case'

The 1st set of Defendants did not file a Respondents' Brief of Argument even though they were duly served with the Appellants' Brief of Argument. At the hearing of this Appeal on 6 March 2006, the 1st set of Defendants were not in Court and were not represented by their Counsel even though they were served with the Notice of hearing for that day.

In this appeal, I shall deal with issues 1, 2, 3 and 5 together. In the course of its judgment, the Court of Appeal, per Pats-Acholonu J.C.A. (as he then was) stated as follows:

'With the doubt as to whether the lands have been alienated having regards to the evidence of P.W.2 and PW3, it cannot in all seriousness be said that Plaintiffs/Respondents were in serious or exclusive possession to maintain an action for trespass.'

The Appellants have submitted that the statement of the Court of Appeal amounted to a misdirection, which occasioned grave miscarriage of justice. I agree. I will explain.

The Appellants were relatives of the 1st set of Defendants. I may add here that the 2nd set of Defendants have a common ancestor with the 1st set of Defendants. P.W.2 was Nnabugo Azubike. He gave evidence and said inter alia:

'I know the Plaintiffs who come from Umuori Umuokworaodu Umuobom. I know the Defendants in this case. I am from Durunwaneri family. The Defendants are all from Durunwaneri family .... I know the following land called Okohia - where I live, Ala Nwikpa, Gbakogboko, Ala Ugwunnogo, Ala Ogwugwu Awala. They are owned and they belong to the Plaintiffs. These pieces of land on which I live does not belong to me. It was shown to me live by one Agbarakwe of the Plaintiffs, 3rd Plaintiffs deceased)'

(underlining mine).

The next witness was Matthias Anyaeche. His evidence in part went thus:

'I am the Spiritual leader of my church. I know the Plaintiffs from Umueri, Umuobom. I know the two sets of Defendants. They are my relations I am from Durunwaneri family as well as 2nd Defendant of the 1st set of Defendants, 1st Defendant in the second set of Defendants called John Anyaeche whose father was my senior brother, and the 3rd Defendant in the second set of Defendants. We all are from Durunwaneri family. I am here on subpoena. I know where I am living now. It is not where I have been living since I was born. Formerly I was living in my father's compound Anyaeche at Ugwuabo where I was living formerly before was near where the 3rd and 5th Defendants were living. Where I am living now is not the land of Anyaeche, it was granted to me by one Agbarakwe Egwim from Umueri of the Plaintiffs. He had been in possession of the land before I was born. When Agbarakwe showed me the said land, his relations including the Plaintiffs knew about it. Agbarakwe Egwim invited his relations when I approached him to give me

a piece of land in Okohia where to build. His relations agreed. The land on which I am living is within the Ala Okohia of the Plaintiffs and it is one of the pieces of land in the present dispute.

PW 4 was Joseph Ehirim. In his evidence, he said:

'The Plaintiffs are from Umueri while the Defendants are from Ugwuabo as myself. I am from Umudurunwaneri Ugwuabo. The 2nd, 3rd and 5th Defendants are from Umudurunwaneri Ugwuabo like myself. I know the land in dispute. They are called Nwaikpa land, Ogwugwuawala land. Gbokogboko land, Okohia land and Ugwunnogo land. These five pieces of land in dispute belong to the Plaintiffs and their people and they are the owners. I live in Ugwuabo. I have land at Okohis, which shares common boundary with the land of the Plaintiffs at Okohia. I am also a palm wine tapper and used to tap raffia palms at Ugwunnogo before the present land dispute. I tap raffia palm trees there for the Plaintiffs and all palm wine collected by me from the said raffia palm trees were taken to Agbarakwe Egwim - the deceased third Plaintiff on record. I tapped the raffia palm trees in Ugwunnogo for about 30 years for the Plaintiffs without any disturbance or interruption from any one except when this dispute started ....'

This witness further told the Court that:

'Earlier, the 2nd defendant who is my tax collector summoned the Ugwuabo people at the house of Ikokwu and told us that they would dispute the land of Umueri which is near to them. We told the 2nd Defendant that we would not dispute the land of the Plaintiffs of Umueri because our fathers did not do so. We did not give authority or consent to the first set of Defendants to defend this action on our behalf 2nd Defendant said Umueri people are small in number and that we should kill the Plaintiffs and take their land.'

The learned trial Judge in his judgment held as follows:

'From the evidence before me, I am of the view that the 1st set of Defendants, because their own portions of land in the area are called the same names as the land of the Plaintiffs in that area, all having come from the common ancestor, the 1st set of Defendants tried to encroach on the land of the Plaintiffs with a view to claim the said land because the land in dispute is nearer to them and because Ugwuabo people are more in number than the people of the Plaintiffs, according to the evidence which I believe, given by PW2, PW3 and PW4, who are undeniably members of the Defendants' family.

Granting portions of the land in dispute to people from the Defendant's family of Ugwuabo to live is in my view, sufficient acts of possession. There is again uncontradicted evidence of PW4, another man from Ugwuabe, that he was tapping raffia palm trees for the Plaintiffs on Ugwunnogo land - one of the pieces of land in dispute. No one interfered with him. This again confirms the Plaintiffs' act of ownership and possession of the land in dispute.'

The learned trial Judge cannot be faulted. The findings of the learned trial Judge are clearly supported by the evidence before him. It seems to me quite plain that the evidence of P.W.2, PW3 and PW4 who are from the 1st set of Defendants' family esta'blished that the pieces of land in dispute belong to the Plaintiffs/Appellants.
The principles upon which an appellate Court will interfere with the findings of a trial Court have been laid down in numerous cases. An Appellate Court will not and must not reverse a finding of fact made by a trial Court unless such finding is not supported it by the evidence and / is perverse. See Benedict Agwunedu & Ors. v. Christoper Onwumere (l994) 1 NWLR (Pt. 321) 375; Chief Ntiaro & Ors. v. Ibok Etok Akpan 3 NLR 10 at 11; Woluchem v. Gudi (1981) 5 SC. 291 at 292. It must be borne in mind that the learned trial Judge heard all the witnesses and was in the best position to weigh the conflicting evidence put before him. An Appellant Court will not interfere with the judgment of the learned trial Judge unless such judgment is shown to be perverse. There is absolutely nothing to show that the findings of the learned trial Judge in the instant case are perverse to warrant the setting aside of the judgment by the Court of Appeal.

I am therefore in complete agreement with that the findings of the learned trial Judge was based on the evidence adduced before him and therefore the Court of Appeal was in grave error to reverse them.

I come now to the issue of trespass. The Court of Appeal, in this regard, said:

'It is evident therefore that if there was any act of trespass it was only in respect of the 2 plots of land of the 5 plots which form the subject-matter of the action .... The argument of the Plaintiffs/Respondents that trespass into one or 2 parcels of land is a trespass to all the lands is unacceptable.'

Trespass is interference with possession. It is settled law that trespass to land is actionable at the suit of the person in possession of the land. See Akunyili v. Ejidike (1996) 5 NWLR (Pt. 449) 381. In the instant case, the two Courts below have held that the Plaintiff has, based on the evidence presented, proved sufficient acts of possession. He was held to have established possessory title to the land in question.

There is evidence that the 1st set of Defendants trespassed into two pieces of the land in dispute. The law is that every invasion of private property, be it ever so minute, is a trespass. The evidence that the Respondents went on two pieces of the land in dispute clearly makes them liable to an action in trespass. See Adegbite v. Ogunfaolu (1990) 4 NWLR (Pt. 146) 578; Emordi v. Kwentoh (1996) 2 NWLR (Pt. 433) 656.

In the result, this appeal is allowed and the decision of the Court of Appeal is set aside. There shall be costs of N 7, 000.00 in the Court below and N10, 000.00 in this Court respectively in favour of the Appellants against the 1st set of Defendants/Respondents.

Judgment delivered by
Akintola Olufemi Ejiwunmi, J.S.C.

I was privileged to have read the draft of the judgment just delivered by my learned brother, Katsina-Alu, J.S.C. As I agree entirely with the reasons given in the said judgment for allowing this appeal, I adopt it as my own. I also abide with the order made as to costs.

Judgment delivered by
Dahiru Musdapher, J.S.C.

I have had the honour to read before now, the judgment of my Lord Katsina-Alu, J.S.C. just delivered in the aforesaid judgment, his Lordship has lucidly and meticulously discussed all the issues submitted for the determination of the appeal. I agree with the conclusion reached and I accordingly find this appeal meritorious and I allow it. I set aside the decision of the Court below and I abide by the order for costs contained in the aforesaid judgment.

Judgment delivered by
Walter Samuel Nkanu Onnoghen, J.S.C.

I have had the benefit of reading in draft, the lead judgment of my learned brother, Katsina-Alu, J.S.C. just delivered. I agree with his reasoning and conclusion that the appeal has merit and should be allowed.

It must be pointed out that the appeal is not contested particularly as the 1st set of Respondents who are the real opponents of the Appellants in the controversy regarding ownership of the land in dispute and who obtained judgment in their favour in the Court of Appeal failed and or neglected to file any respondent's brief in this appeal while the 2nd set of Respondents in their brief of argument filed on 30/9/03 totally support the case of the Appellants as they have done all through the journey of the case from the trial Court. In law therefore, the 1st set of Respondents are deemed not to contest the appeal of the Appellants and have therefore conceded the issues raised and argued in the appellants' brief of argument filed on 10/6/02.

It is not in dispute that the Appellants and the 1st set of Respondents are relatives who also share a common ancestor with the 2nd set of Respondents thereby making the parties relatives.

At the trial PW2, PW3 and PW4 who are members of the family of the 1st set of Respondents testified in favour of the Appellants by stating that the land in dispute belongs to the Appellants. Their evidence was believed by the learned trial Judge who made the following findings of facts:

'From the evidence before me, I am of the view that the 1st set of Defendants, because their own portions of land in the area are called the same names as the land of the Plaintiffs in that area, all having come from the common ancestor, the 1st set of Defendants tried to encroach on the land of the Plaintiffs with a view to claim the said land because the land in dispute is nearer to them and because Ugwuabo people are more in number than the people of the Plaintiffs, according to the evidence which I believe, given by PW2, PW3 and PW4, who are .... members of the Defendant's family.

Granting portions of the land in dispute to people from the Defendant's family of Ugwuabo to live is in my view sufficient acts of possession. There is again, uncontradicted evidence of PW4, another man from Ugwuabo, that he was tapping raffia palm trees for the Plaintiffs on Ugwunnogo land - one of the pieces of land in dispute. No one interfered with him. This, again confirms the Plaintiffs' act of ownership and possession of the land in dispute.'

The above findings/holdings are supported by overwhelming evidence on record and I am unable to see any legal justification for the same being set aside by the Court of Appeal particularly as the judgment of the trial Court as regards the findings/holdings were not demonstrated to be perverse. It is now settled law that an appellate Court not interfere with the findings of a trial Court unless the finding(s) is/are not supported by evidence or is perverse.

In conclusion, I too allow the appeal and abide by the consequential orders contained in the said lead judgment of my learned brother, Katsina-Alu, J.S.C. including the order as to costs.

Appeal allowed.

Judgment delivered by
Ikechi Francis Ogbuagu, J.S.C.

I had the advantage of reading before now, the lead Judgment of my learned brother, Katsina-Alu, J.S.C., just delivered. I entirely agree with his reasoning and conclusion that the appeal is meritorious. However, I will make my own contribution by way of emphasis.

This is an appeal by the Plaintiffs/Appellants against the judgment of the Court of Appeal, Port-Harcourt Division (hereinafter called 'the Court below') delivered on 30th April 2001, reversing the decision of the trial Court ' per Ononuju, J. of the Orlu Judicial Division of the High Court of Imo State delivered on 30th January 1990. Seven (7) witnesses testified for the Plaintiffs/Appellants while eight (8) witnesses testified for the defence. Thereafter, Counsel for the parties later addressed the Court. In a considered judgment, the learned trial Judge at page 239 of the Records, held inter alia, as partly reproduced in the lead judgment of my learned brother, Katsina-Alu, J.S.C., at pages 7 and 8 thereof.

In order to show clearly that the learned trial Judge was on firm grounds in respect of his various findings of facts, he also stated at the same page 239 and also at page 240 of the Records inter alia, as follows:

' ...... There is evidence that 3rd Plaintiff always called his people and they agreed before the grant and that anyone who wanted to build on the granted land must inform the (sic) Plaintiffs who would lay the foundation stone'.

At page 240, he stated further, inter alia, as follows:

' The 1st set of Defendants and the 2nd set of Defendants are all Ugwuabo people. But the 2nd set of Defendants support the Plaintiffs. DW2 said so. Both the Plaintiffs and the 1st set of Defendants told the Court that they accept the

plan of the 2nd set of Defendants - Exhibit C. This puts the case of the Plaintiffs beyond doubt that they are the owners in possession of the land in dispute. It has not been shown by the 1st set of Defendants why their people namely PW2, PW3, PW4 and the 2nd set of Defendants do not support them in this case. They declare that the Plaintiffs are the undisputed owners of the land in dispute. It is noteworthy that PW2, PW3 and PW4 do not only know the pieces of parcels of the land in dispute, which they gave in evidence, they also know the boundaries. I believe them. The evidence of PW3 lent credence to the traditional history of the Plaintiffs and acts of possession as given in evidence by PW1.

Both parties from the evidence before me know the land in dispute very well. This can be seen from the evidence of PW1, PW2, PW3, PW4 and the 2nd set of Defendants. I do not believe the 1st set of Defendants and their witnesses. The 1st set of Defendants appear to me to be greedy people and land grabbers who want to claim the land of the Plaintiffs at all costs. Their story was full of contradictions'.

[the underlining mine]

He clearly stated those contradictions. I note that all the above findings are clearly borne out from the evidence before the trial Court at pages 139 to 141, 143 to 146 to 151, of the Records. It is noted by me, that the P.W.2, is a relation of the 1st set of Defendants/Respondents and he was in fact, according to him, the oldest man living in Ugwuabo at the time he testified. He comes from the same Durunwaneri family with the Defendants/Respondents except the 2nd Defendant in the 2nd set of Defendants/Respondents. So also is the PW3. He was the uncle of the 3rd Defendant in the second set of Defendants. They came as witnesses on subpoena. The PW4 is also from the same Umudurunwaneri Ugwuabo with the 2nd, 3rd and 5th Defendants. I can go on and on.

The learned trial Judge rightly in my respectful view, stated at page 24, lines 28 to 32 of the Records, that the case is based mainly on the facts adduced by each of the parties in the case. He believed the Plaintiffs/Appellants and their witnesses. He found as a fact and held that there is no dispute between the Appellants and the 2nd set of Defendants and that they all know the boundaries of their respective land in dispute. I cannot fault all his findings of facts. Dr. Ume (SAN) ' learned Counsel for the Appellants, on 6th March, 2006 when this appeal came up for hearing, also stated that the appeal, is basically on facts and that the 2nd set of Defendants agree rightly so, with the Appellants' submissions in their Brief of Argument. He submitted rightly too, that in my respectful view, an Appeal Court does not interfere with the findings of facts.

It is no surprise to me, that the 1st set of Defendants/Respondents, did not file any Respondents' Brief in opposition to this appeal, notwithstanding that they were duly served with all the relevant processes in this appeal including the Appellants' Brief. It is to be borne in mind and this also settled that, failure of a Respondent to file a Respondent's Brief, is immaterial and of no moment. This is because, an Appellant, must succeed or fail in his own Brief, in other words, that an Appellant succeeds on the strength of his own case. It is not automatic that when once a Respondent fails to file his Brief, that is it ' the Appellant automatically, must win or succeed in the appeal. No.

But there is a rider or call it a big BUT. The consequence of such failure is that the Respondent, will be deemed to have admitted the truth of everything stated in the Appellant's Brief. So be it in this appeal. See the cases of John Holt Venture Ltd. v. Oputa (1996) 9 NWLR (Pt. 470) 101 @ 12; Onyejekwe v. The Nigeria Police Council & Anor. (1996) 7 NWLR (Pt. 463) 704 @ 710; Akpan v. The State (1992) 6 NWLR (Pt. 248) 439; and Sofolahan & 5 Ors. v. Chief Folahan & 12 Ors. (1999) 10 NWLR (Pt. 621) 86 @ 95; just to mention but a few. In Sofolahan & Ors. v. Chief Folahan\'s case (supra), it was held that it will be deemed that the Respondent is not interested in the appeal or that it will be deemed that he has agreed to be bound by the outcome of the appeal. I think that this is the true position in the instant appeal.

I commend Onyebukwa, Esqr, - learned Counsel for the 2nd set of Defendants/Respondents, for appreciating the fact that it serves no useful purpose, to kick ones leg, on a stone or brick wall so to say. This is how, a Counsel who cherishes his self-respect and the honourable profession, should respond. It does not hurt, instead, it results in good and sound sleep. For during the oral hearing of the appeal, he urged the Court to allow the appeal as he said that they are not opposing the same. I note that the Court below - per Pats Acholonu, J.C.A., (as he then was), at page 413, last sentence of the Records, stated,

'The 2nd sets of Respondents have nothing at stake in this case'.

Why should they have' 'I or one may ask. With the overwhelming evidence before the trial Court, of course, they distanced themselves with the land in dispute when the facts were clearly demonstrated in the said Judgment of the trial Court.

Afterwards and this is firmly established, that it is trite law that the learned trial Judge who saw and heard the witnesses, was in a better position than an Appellate Court, to assess the evidence and his assessment thereof, is entitled to the highest respect. See Akinloye v. Eyiyola (1968) NMLR 92 @ 95; Asani Balogun v. J.R. Akinrinmisi (1974) 1 All NLR (Pt. 2) 66 @ 72 ' 73; Bale Adegbaiye v. J.R. Akinrinmisi (1974) 1 All NLR (Pt. 2) 75 @ 84; Chief Frank Ebba v. Chief Ogodo & Ors. (1984) 4 S.C. 84 @ 109 '110; Alhaji S. Amida & Ors. v. T. Oshaboja (1984) 7 S.C. 68 @ 89; Akpapuna & Ors. v. Nzeka & Ors. (1982) 2 S.C. NLR 1 @ 14 referred to in Qbodo & Anor. v. Ogba & Ors. (1987) 2 NWLR (Pt. 54) 1; (1987) 3 S.C. 459 @ 460 ' 61, 466, 480 - 482 @ 485; (1987) 3 SCNJ. 82 and Ngillari v. NICON (1998) 8 NWLR (Pt. 560) 1 @ 2O - 21; (1998) 6 SCNJ. 16 - per Onu, J.S.C., and many others.

It is in this wise, that with profound humility, I think with respect, that it was unfair and not justified at fill, when the Court below, allowed the appeal of the 1st set of Defendants/Respondents. It is noted by me, that the trial Court, found in favour of the Appellants in the three (3) reliefs they claimed which included a claim for damages for trespass and injunction. I therefore, render my answer to Issue No 3 of the Appellant, in the negative.

In respect of the award of N200.00 (two hundred Naira) for trespass, I note that at page 412 of the Records, the Court below posed the question,

'Were there acts of trespass in all the lands to create the cause of action'. (no ' mark).

After reproducing the averment in paragraph 13 of the Statement of Claim, the Court below stated, inter alia, as follows:

'It is evident therefore that if there was any act of trespass it was only in respect of the 2 plots of land of the 5 plots which form the subject matter of the action. But as I held earlier, it has not been proved that the Plaintiffs/Respondents were in exclusive or even in possession or that they had not prior to the institution of the action alienated their land. The argument of the Plaintiffs/Respondents that trespass into one or 2 parcels of land is trespass to all the lands is unacceptable. There must be precision and clarity of proof ....'.

[the underlining mine]

But of course, with the utmost respect, there was precision and clarity in the proof of trespass. There is the concession by the Court below, that if there was any act of trespass,

'it was only in respect of the 2 plots of land of the 5 plots which form the subject matter of the action'.

It is now firmly established that trespass is actionable, at the suit of the person in possession of the land. The slightest possession in the plaintiff, enables him to maintain an action for trespass if the Defendant, cannot show a better title. See Tongi v. Kabil 14 WACA 31; Adeshoye v. Shiwoniku 14 WACA 86; Emegwara v. Nwaimo 14 WACA 347 and Amakor v. Obiefuna (1974) 3 S.C. 67 just to mention but a few.

Any form of possession, is sufficient to maintain an action for trespass against a wrong doer so long as it is clear and exclusive. So it is in the instant case leading to this appeal. It is not necessary, that in order to maintain an action for trespass, the Plaintiff's possession, should be lawful. Actual possession is good against all except those who can show a better right to possession in themselves. See Atunrase & Anor. v. Alhaji Sunmola & Anor. (1985) 1 NWLR (Pt. 1) 1O5; (1985) 1 S.C. 349.

It need be stressed and this is settled, that trespass to land, is actionable at the suit of the person in possession of the land. That person can sue even if he is neither the owner nor a privy of the owner. It is no answer to the claim for a

Defendant to show that title to the land is with another person. See Amakor v. Obiefuna (supra) @ 78; Oyebanjo v. Okunola (1968) NMLR 231 @ 223 and recently, Mrs. Lydia Thompson & Anor. v. Alhaji Arowolo (2003) 4 SCNJ. 20 @ 56 ' per Ejiwunmi, J.S.C.

I have already in this Judgment, reproduced part of the findings of fact of the learned trial Judge. He found as a fact, among others, that the plan ' Exhibit 'C' of the 2nd set of Defendants/Respondents,

'... puts the case of the Plaintiffs beyond doubt, that they are the owners in possession of the land in dispute'.

Also settled, is that mere possession is sufficient to maintain an action for trespass. See Yusuf v. Abina & Ors. (1868) 2 ANLR, 167. Afterwards, possession means possession of that character of which the thing possessed is capable. See Mogaji v. Cadbury Fry (Export) Ltd. (1972) 2 S.C. 97 @ 104 and Oguche v. Iliyaso & Ors. (1972) 2 UILR 424. This is why, the entry into land by a trespasser, does not ipso facto, put the trespasser, into possession. Any such entry is a wrongful disturbance of possession. See Qloriode & Ors. v. Oyebi & Ors. (1984) 5 S.C. 1 @ 12 - 15; Oluwi v. Eniola (1967) NMLR 339, 340; (1972) 6 S.C. 116 @ 138; Nwosu v. Otunola (1974) 1 ANLR (Pt. 1) 533 and recently, Chief Ezekwesili & 2 Ors. v. Chief Agbapuonwu & 2 Ors. (2OO3) 4 SCNJ. 174 @ 197 - per Musdapher, J.S.C.

To conclude in respect of Issue No 4 of the Appellants, it need be borne in mind and this is also settled, firstly, that where two or more persons, commit an act of trespass (as in the instant case leading to this appeal), each of them, is responsible for the injury sustained by reason of their common act, their liability being joint and several. The person injured, has a cause of action, against any or all of them and may obtain judgment against them jointly and severally in that action. See Ekine Eze & Ors. v. Chief Owusoh & Anor. (1962) 1 ANLR 619.

Secondly, a claim for trespass is not even dependent on declaration of title. See Oluwi v. Eniola (supra) and Ekretsu & Anor. v. Oyobabere & 5 Ors. (1992) 11-12 SCNJ. (Pt. II) 189 @ 205. This is because, trespass is an injury to a possessory right and therefore, the proper Plaintiff in an action for trespass, is the person who was or who is deemed to have been in possession.

Said the learned trial Judge also reproduced earlier in this Judgment, inter alia, as follows:

' ..... The evidence of PW3 lent credence, to the traditional history of the Plaintiffs and acts of possession as given in evidence by PW1'.

See also, Adeniji v. Ogunbiyi (1965) NMLR 395 and the pronouncement of Bairamian, J.S.C., in the case of Onyekaonwu & Ors. v. Ekwubiri (1966) 1 ANLR 32, 34 '35, and of course, Section 146 of the Evidence Act.

Thirdly and finally, a Plaintiff in a trespass action is entitled to recover damages even though he has sustained no actual loss. See Yellow v. Morley (1910) 27 TLR. 20.

It is from the foregoing and the conclusion in the lead judgment of my learned brother, Katsina-Alu, J.S.C., that I too allow the appeal, set aside the said judgment of the Court below and hereby and accordingly, restore the decision of the trial Court.

I abide by the consequential order in respect of costs.