IN THE SUPREME COURT OF NIGERIA

Suit No: SC244/2001

Petitioner: Alphonsus Nkuma

And

Respondent: Joseph Otunuya Odili

Date Delivered: 2006-03-10

Judge(s): Sylvester Umaru Onu , Aloysius Iyorgyer Katsina-Alu , Umaru Atu Kalgo , George Adesola Oguntade , Ikechi Franc

Judgment Delivered

The dispute leading to this appeal arose over the ownership of a parcel of land at a location near Oguta in Imo State. Between 1975 and 1976, the Nigerian Agip Oil company Limited (hereinafter described as AGIP) deposited in the office of the Divisional Officer, Oguta, the sum of Twenty-five thousand, one hundred and eighty Naira, thirty-two kobo (N25,180.32k). The money was intended as compensation for the use of the parcel of land now in dispute by AGIP which was using the land for its oil operations. The money was to be paid to the owners of the land.

This deposit led to the present dispute. The Ogwuma village community, now appellants, issued their Writ of Summons in 1977 claiming against the respondent as the defendant the following relief:

\" '... the payment over to them (i.e. the plaintiffs) of the sum of N25,180.32 and all other sums of money deposited as compensation by the Nigerian Agip Oil Company Limited for its mining operations on Egwe Oshimiri or Akri Oshimiri or Umu Ogwuma where the said company\'s Akri HI, Akri H3, Akri M, Akri N and Akri D oil locations and access roads and borrow pits are situated.\"

In reaction to the plaintiffs\' claim above, the defendant in 1978 filed a cross-action claiming against the plaintiffs the following reliefs:

(a) A declaration that the plaintiff is the person entitled to the compensation i.e. the sum of N25,180.30 paid by the Nigerian Agip Oil Company Limited for its oil locations on Egwe Ukwu land of the plaintiff.

(b) An order of injunction restraining the defendants, their servants, agents, privies and assigns from claiming or demanding the said sum of N25,180.32 now in the custody of the Secretary, Oguta District Council.\"

The Ogwuma village Community by their suit No HOG/181/77 claimed through their representatives - Messrs. Nwapa Anene, Ukachukwuaka Okororie and Alphonsus Nkuma against Joseph Otunuya Odili of Akone-Edem Family. Reciprocally, the defendant in plaintiffs\' suit, Joseph Otunuya Odili in suit No. HOG/37/78 brought his suit against the representatives of Ogwuma village community claiming as earlier stated above.

Before the conclusion of hearing at the trial court, 1st and 2nd plaintiffs died leaving only the 3rd to continue the suit.

The two suits were consolidated for hearing with the Ogwuma village community identified as the plaintiff, whilst Joseph Otunuya Odili was the defendant. The parties later filed and exchanged pleadings after which the suit was heard by Njiribeako J. At the hearing, the plaintiff called eight witnesses whilst the defendant called five witnesses. On 11-12-97, the trial judge in his judgment preferred the evidence of traditional history called by the defendant. He gave judgment in favour of the defendant in these words:

\"There will therefore be judgment for the plaintiff in suit No. HOG/37/78 i.e. judgment for Joseph Otunuya Odili against the Ogwuma people. Suit No. HOG/181/77 i.e. suit brought by Ogwuma people is hereby dismissed. Having found that the land belongs to Joseph Otunuya Odili, he is entitled to the compensation paid by the AGIP Oil Company Ltd. For its

oil location on the land i.e. the sum of N25,180.32 which was deposited with the District Officer, Oguta District. This case was filed in 1977 and has had a chequered history.\"

Dissatisfied, the Ogwuma people brought an appeal against the judgment of the trial court before the Court of Appeal, Port-Harcourt Division (hereinafter referred to as the \'court below\'). The court below in its unanimous judgment on 23-4-2001 dismissed the appeal and affirmed the judgment of the trial court. Still dissatisfied, the plaintiff has come before this Court on a final appeal. In the appellant\'s brief filed in this court on 26/7/2001, the issues for determination in the appeal were identified as the following:

\" 1. Whether considering the provisions of Decree 60 of 1991 and Decree 107 of 1993, the Court of Appeal was right in holding that the Imo State High Court was seized with jurisdiction to hear and determine the cases in point'

2. Whether in the absence of a claim for declaration of title to or ownership of the land in contest, the Court of Appeal was right in upholding the award of the sum of N25,180.32 to the respondent which sum is an ancillary, incidental and consequential claim to title or ownership of land.

3. Whether the Court of Appeal was right in upholding the jurisdiction for hearing and determination of HO/37/78 BY THE Imo State High Court when plaintiff in that case by his pleading and survey plan placed the land giving rise to the subject matter in Rivers State'

4. Whether the Court of Appeal was right in failing to consider and make a pronouncement on a crucial issue raised by the appellants in their brief before it in the lead judgment.

5. Whether the Court of Appeal was right in upholding a single judgment delivered by the trial court in two consolidated suits viz HOG/181/77 and HOG/37/78'\"

In the respondent\'s brief, the issues raised were similar to those reproduced above from the appellants\' brief.
I intend to consider all the issues raised together as they can be so conveniently treated.

Earlier in this judgment I observed that the sum of N25, 180.32 in respect of which the two parties brought their suits which were consolidated for hearing was deposited by AGIP so that the money could be paid as compensation to the owners of the land. The two parties claimed to be entitled to the money as the owners of the land. The plaintiff relied on traditional history claiming that their ancestors first settled on the 1 and. The defendant similarly relied on traditional history. Although the two suits bore the semblance of a claim of title, which in the conventional manner would have been pursued through an action for declaration of title, both parties chose instead to lay a direct claim to the money without asking for a declaration of title.

It is, I believe, this situation that the appellant\'s counsel tried to exploit under his issue No. 2. He submitted that a court could grant reliefs, which were incidental to the main relief as decided in Akapo v. Hakeem-Habeeb [1992] 6 NWLR (Pt.247) 266; and further that title to land implied the existence of facts from which the right of ownership could be inferred- Ogunleye v. Oni [1990J2 NWLR (Pt.135) 745. He argued further that a party seeking title to land must seek a declaration to either statutory or customary rights of occupancy pursuant to section 40 of the Land Use Act - Ikuomola v.Oniwaya [1990] 4 NWLR (Pt. 146) 617. He submitted that the court below should not have affirmed the judgment of the trial court since parties had not filed a claim for declaration of title.

I do not think that the submission of appellants\' counsel is well premised. It is a plaintiff who brings a suit that also nominates the issues for decision in the case. Once a plaintiffs suit is based on a right, which is cognisable under the law, it is not for the court to dictate to such plaintiff the manner by which to frame the remedy being sought. The crucial question is - Has the plaintiff called sufficient evidence that will enable the court grant to him the relief being sought' It is in my view eminently unjustifiable for this Court to lay it down as a principle that a person who merely wishes to claim compensation for land must first seek a declaration of title. It may well be that in order to be entitled to that

compensation, the plaintiff may need to call evidence as would have been ordinarily necessary in a claim for declaration of title but that is not the same as saying that he must per force make a claim for declaration of title. In the case on hand, both parties in order to show their entitlement to the amount deposited by AGIP pleaded and called evidence of traditional history. The trial court accepted the evidence called by the defendant in preference to that of the plaintiff, and granted the relief sought. I am unable to see anything wrong with this.

The appellant has also argued that because two suits were consolidated for hearing, the court below should have found that the trial court was wrong not to have written two judgments or considered separately in one judgment the respective claims of the two parties. Counsel relied on Kutse v. Bakfur (1994) 4 NWLR (Pt.337) 196 at 197 and Nwanyanwu v. Nweke [1995] 4 NWLR (Pt.394)227. The two cases above are the decisions of the Court of Appeal. Both in my view represent the correct state of the law. The first of the two i.e. Kutse v. Bakfur (supra) relied on the decision of this Court in Diab Nasir v. Complete Home Enterprises (Nigeria) Ltd. [1977] 5 SC. 1. In the case, this Court per Udo Udoma JSC. observed at page 10:

\"We therefore hold that the order striking out the petition was premature and that there should have been a determination on the merit in the consolidated causes after issues have been properly joined. In our view, once two cases are consolidated, they must be determined as a conso'lidated matter. The court cannot ignore one and determine the other. The learned trial Judge was, therefore, in error in striking out the winding up petition as he did and ignoring the originating summons in suit M/l 15/73.\"

With respect to the appellants\' counsel, I do not think that he sufficiently adverted his mind to the nature of the dispute before the trial court. Whilst it is correct that in a consolidated matter a court must come to a separate decision on the issues agitated in each of the cases, it must be borne in mind that what is required is that the judgment of the court must show that the trial judge adverted his mind to all the issues arising from the consolidated suit. The manner in which a judge does this very often depends on the nature of the consolidated cases. In the instant case, the dispute was as to the ownership of the land in respect of which compensation was paid. Both parties relied on traditional history. The court compared and contrasted the evidence called and came to the conclusion that the land belonged to the defendant. That conclusion in my view adequately reflected the court\'s view of the issues in dispute in the consolidated case. A separate consideration of the cases consolidated for hearing is not done by a mechanical approach in which judgment given for a party is replicated in respect of the other party. It is in my view sufficient if the issues raised in all the cases consolidated have been addressed. Remarkably in this case, appellant\'s counsel failed to direct us to any issues arising from the plaintiff's case, which remained unaddressed in the judgment of the trial court.

Appellants\' counsel has also raised the issue of jurisdiction. That issue was pursued in two ways. First, it was argued that following the promulgation of Decrees No. 60 of 1991 and 107 of 1993, the trial court lost its jurisdiction to hear the case up to 11-12-97 when judgment was delivered. Counsel relied on Nwosu v. Imo State Environmental Sanitation Authority [1992] 2 NWLR (Pt. 135)688; Ogbuanyiya v. Obi Okudo [1979] All N.L.R. 105 at 118; Madukolu v. Nkemdilim (1992) 2 AllNLR 581 and Abioye v.Yakubu [1991]5 NWLR (Pt. 190) 130.

Secondly, it was argued that the respondent in his pleading averred that the land in dispute was situate in Nsukwa, Rivers State. Counsel referred to Exhibit \'C\' tendered by the respondent, which placed the land in Rivers State. Relying on Adeyemi v. Opeyori [1976] 3 SC.31, counsel submitted that the respondent having pleaded that the land in dispute was in Rivers State, the trial court in Imo State lacked the jurisdiction to hear and determine the matter.

Respondent\'s counsel in his brief conceded that cases connected with or pertaining to mines and minerals as set out under Decrees 60 of 1991 and 107 of 1993 could only be heard by the Federal High Court. He argued that this case concerned only entitlement to compensation deposited in court and had nothing to do with mines and minerals including oil fields. He referred to Shell Petroleum Development of Nigeria Ltd. V. Maxon & 15 Ors. [2001] 9 NWLR (Pt. 719) 541 at 553, Mpidi Barry & 2 Ors. v. Obi Era & 3 Ors. (1998) 8 NWLR (Pt.562) 404 at 422 and Shell Petroleum Development Co. Ld. V. Abel Isaiah [2003] 11 NWLR (Part 723) 168) at 178.

On the issue of territorial jurisdiction, respondent\'s counsel submitted that issues were joined on the point in parties\' pleadings and that evidence was called on the matter at the trial. The trial judge had to decide the point like any other

issue raised on the pleadings with reference to the evidence called by parties.

Sections 7(1)(p) of Decree No.60 of 1991 and 230(l)(o) of Decree No. 107 of 1993 are similarly worded. Both vest in the Federal High Court exclusive jurisdiction to hear civil causes and matters arising from mines and minerals including oil fields. Whereas Decree 60 of 1991 has an abatement provision in respect of suits pending in court at the promulgation of the Decree, the 1993 Decree No. 107 has no such provision. Section 7(1)(p) of Decree No. 60 of 1991 provides:

\"The Federal High Court shall to the exclusion of any other court exercise original jurisdiction to try civil causes and matters connected with or pertaining to mines and minerals including oil fields.\"

(Underlining mine)

The plaintiffs suit was filed in 1977 and the defendant\'s in 1978. It seems to me however that a simple claim concerning entitlement to compensation for land as in this case cannot be seen as one \"connected with or appertaining to mines and minerals including oil fields.\" It cannot be disputed that if the case was connected with or appertaining to land and minerals including oil fields it would abate by virtue of section 7 of Decree No. 60 of 1991 which came into force on 30-12-91. I think that appellant\'s counsel has stretched beyond reasonable limit the meaning to be ascribed to the expression \"connected with or appertaining to mines and minerals including oil fields.\" All the cases in which the Court of Appeal and this Court had decided that the provisions of both Decrees ousted the jurisdiction of a State High Court clearly touched on issues of compensation for pollution and damages resulting from mining operations and related matters, and none was on compensation for owners of the land. This case is simply a land dispute. It could well have been a land dispute as to who was entitled to the compensation for a land to be used for farming, golfing or a football field.

With respect to the contention of the appellant that the jurisdiction of the High Court of Imo State to hear and determine the suit was not resolved, I think that appellant\'s counsel overlooked the well established principle of litigation in civil matters that when issues are joined on the pleadings, they can only be resolved by reference to the evidence called by parties. At page 75 of the record of proceedings, the defendant (now respondent) in paragraph 4 of their amended statement of defence pleaded thus:

\"4. ....The land in dispute which is known as \'Egwe Oshimiri\' or \'Ani Oshimiri\' is situate at Oguta in the Imo State of Nigeria and it is verged pink in the plan No. E/GA 998A/76\"

On the other hand, the plaintiff (now appellant) pleaded in paragraph 3 of their Further Amended Statement of Claim on page 109 thus:

\"3. The land in dispute in this case is known as an called Egwe Ukwu and lies at Isukwa village in Ogba/Ogbema/Ndoni Local Government Area of Rivers State. The boundaries and features of the land in dispute are clearly shown and verged pink in plaintiffs surveyor (sic) plan No. POMW 6 prepared by Late Pius Ndenu Esq., Licensed Surveyor and attached to the amended Statement of Claim.\"

In the above extracts of the pleadings of the parties, an issue was clearly joined as to the location of the land in dispute. The plaintiff pleaded that the land was in Imo State whilst the defendant pleaded that it was in Rivers State. In Lewis and Peat v. Akhimien [1976] 7S. C.I 57, the Court per Idigbe JSC observed that:

\"When as a result of exchange of pleadings by parties to a case a material fact is affirmed by one of the parties but denied by the other, the question thus raised is an issue of fact.\"

When an issue of fact is so joined, the duty on the trial court is to consider the evidence called by parties on the issue joined. In Bello v. Eweka [1981] 1SC 101 at 118, this Court per Eso JSC observed:

\"It is my considered view, my Lords, that in a case where pleadings have been settled (as in the instant case) the trial court, in conside'ration of such a case would first set out the issues as have been joined by the parties on the pleadings,

then consider the evidence by both parties in support of such issues as joined and the consideration of the evidence shall be in line with the decision of this Court in A. R. Mogaji & Ors. v. Madam Rabiatu Odofin & Anor. (1978) 4 SC.91 at 94''''..'

At the trial, the plaintiff who by his counsel are now argues that the land in dispute is in Rivers State called P.W.7, a licensed surveyor to testify. P.W.7 identified Exhibit A as the plan of the land in dispute. He further testified that the land was in Imo State. The evidence of P.W.7 was unchallenged, as the defendant did not call a surveyor to contest the truth of the evidence of P.W.7. The result was that the averment in the pleading of the defendant that the land in dispute was in Rivers State was not supported by any evidence. A mere averment in a pleading proves nothing at all if it is not supported by evidence unless it is admitted by the opposite side: See Adeponle v. Saidi [1956] 1 F.S.C. 79 at 80; Hutchful v. Biney [1971] 1 All N.L.R. 268.

The trial judge did not specifically in his judgment make any finding of fact that the Imo State High Court had jurisdiction to hear the case in view of the unchallenged evidence of P.W.7. However on 4-11-97, learned counsel for the defendant had said at page 254 of the record:

\"The identity of the land in dispute is not in dispute. I refer to the first three questions and answers of the co-defendant in cross-examination on 21st October, 1997.\"

Those three questions and answers referred by counsel for the defendant in the above passage are to be seen at page 242 of the record where the defendant testifying as D.W.5 said:

\"The plaintiff served me a copy of his plan in this case. I examined the plan. The land the plaintiff claims is the same as the land I am claiming.\"

The implication of the evidence of the defendant is that he agreed that the land in dispute was as depicted on Exhibit , 'A' which states that the land was in Imo State. In other words, the defendant who had at first pleaded that the land in dispute was in Rivers State shifted his position to agree that the land in dispute was in Imo State. It was this change of position, which led the defendant\'s counsel at the court of trial to say that the identity of the land in dispute was no longer in issue. It was in recognition of this situation that the trial court in its judgment at pages 260-261 of the record said:

\"On the other hand, there has been consi'derable dispute as to where the land lies - is it within Imo State or outside it. If outside this Court will have no jurisdiction. I made it absolutely clear that State boundaries are not boundaries for parcel of land of people in such boundary areas. Happily both sides agreed that the land for which compensation was paid lies well within Imo State. Evidence of P.W.7 Fan Ayeguala and Exhibits put the location beyond sensible controversy. The land lies within Oguta L.G.A. of Imo State within jurisdiction.\"

I am, to say the least, disappointed that appellant\'s counsel could in this Court raise as an issue for determination, a matter, which was mutually agreed between the parties. It is even more shocking that appellant\'s counsel is, by the said issue raised, canvassing a position which is contrary to the position which he took at the court of trial, and which represented an important element, in plaintiffs pleading before the trial court. It is necessary to say here that counsel appearing in matters before the court should see themselves first and foremost as officers of the court and refrain from imposing on the court the tedium of sending it on a wild goose chase.

And finally is the appellant\'s contention that the court below erred by failing to consider and resolve an issue submitted to it for determination. That issue reads:

\"Whether land situate in one autonomous community could validly be awarded to a native of a different autonomous community who claims through traditional history.\"

The short answer I give to this extremely frivolous issue is that the pleadings upon which the trial court tried the case did not even remotely raise the issue of the autonomous community of either the plaintiff or the defendant. The court below

did well by refusing to be drawn into a futile and fruitless exercise of deciding on ownership of land based on the nature of the community to which parties belonged.

In the final conclusion, this appeal fails. It is devoid of any merit. It is one which deserves to be discouraged through the award of punitive costs were it not for the limit ordinarily observed by this Court. I would award N10,000.00 costs in favour of the defendant/respondent against the plaintiff/appellant.

Judgement Delivered By
Sylvester Umaru Onu, J.S.C.

Having been privileged to read in draft before now the judgment of my learned brother Oguntade, JSC, I agree with him that the appeal lacks merit and must perforce fail.

I adopt both his reasoning and conclusion and have nothing further to add thereto.

Judgement Delivered By
Katsina-Alu, J.S.C.

I have had the advantage of reading in draft the judgment of my learned brother Oguntade J.S.C. in this appeal. I agree with him that the appeal is devoid of any merit. I therefore dismiss it with N10, 000.00 costs in favour of the respondent.

Judgement Delivered By
Umaru Atu Kalgo, J.S.C.

I have had the privilege of reading in draft the judgment just delivered by my learned brother Oguntade JSC in this appeal. I entirely agree with his reasoning and the conclusions reached therein and have nothing useful to add thereto. I therefore find that there is no merit in the appeal. I dismiss it with costs as assessed in the leading judgment.

Judgement Delivered by
Ikechi Francis Ogbuagu J.S.C.

I have had the privilege of reading before now the lead Judgment of my learned brother, Oguntade, JSC, just read and delivered in the open Court. I am in agreement with his reasoning and conclusion that the appeal is devoid of any merit and deserves being dismissed. By way of emphasis, I will make my awn contribution.

This is an appeal against the decision of the Court of Appeal, Port-Harcourt Division, delivered on 23rd April, 2000. I note that in the Respondent\'s Brief, (both in the earlier Brief filed on 14th December, 2001 and the one adopted on 12th December, 2005 when this appeal was heard which was filed on 22nd March, 2004), the date of the delivery of the said judgment, is stated to be 7th May, 2001 even though it is the same Appeal Suit No. CA\\PH/339/98. 1 am wondering from where the Respondent\'s learned counsel, got the said date in respect of the Judgment of the said Court of Appeal (hereinafter called \"the court below\"). The judgment was delivered on 23rd April 2001.

Dissatisfied with the said decision, the Appellant has appealed on five (5) grounds of appeal. Both parties in their respective Briefs have formulated five (5) issues for determination. The said issues are the same in substance or similar although differently couched.

I note that the 2nd defendant/Respondent, joined issues in paragraph 3 of his Statement of Defence in respect of the Appellant\'s averment in paragraph 3 of their Further Amended Statement of Claim as to the situs of the land in dispute. See page 99 lines 28 to 33 and page 100 lines 1-9 and page 109 lines 11 - 20 respectively of the Records. The issue was therefore, as to who of the parties, is entitled to the compensation of N25, 180. 32k (twenty-f ive thousand, one hundred and eighty naira, thirty-two kobo) paid by the Nigerian Agip Oil Co. Ltd deposited in the Divisional Office, Oguta in 1975 - 1976.

I will pause here, to note that on 2nd May, 1989, in the presence of the counsel for the parties, the Court of Appeal, Enugu Division, made an order that the said money/compensation, be withdrawn from the District Officer of Obaji/Egbema/Oguta Local Government and paid to the Deputy Chief Registrar of that court to be paid into the Savings Deposit with the First Bank of Nigeria Ltd. (Main Branch), Port Hcrcourt, pending the determination of the appeal against the decision of Ukattah, J. (as he then was) delivered on 14Th January, 1982. See pages 39 to 41 of the Records. That appeai was allowed on 1st June, 1989 and the consolidated suits, were remitted to the Imo State High Court in the Oguta Judicial Division for re-hearing before another Judge. See page 34 of the Records. Njiribeako, J. (rtd), heard the matter leading to the final appeal to this Court. The learned trial Judge, in a well considered judgment, (after treating/dealing with the two consolidated suits separately in his said judgment, dismissed the Appellants Suit HOG/181/77 while that of the Respondent, succeeded. He had this to say at page 302 lines 1 to 14 of the Records:

\"in the final result by reasons of my findings above I am satisfied that the defendant\'s traditional history of the land in dispute is more probable and therefore accepted. I am satisfied that the land in dispute was founded by the defendant\'s ancestor Edem who was the first person to disforest it and settle there. After his death, it passed to his son Ojugbali to Akono to Ndubuokwu to Odogwu to Odili defendant\'s father and then to defendant as defendant pleaded in suit No. HOG/37/78 and supported in evidence.

There will therefore be judgment for the plaintiff in suit No. HOG/37/78 i.e. judgment for Joseph Otunuya Odili against the Ogwurna people. Suit No. HOG\\181\\77 i.e. suit brought by Ogwurna people is hereby dismissed\".

I note that the Appellant called P.W. 7 as his witness. His evidence showed that the land in dispute, is in Imo State. The learned trial Judge at page 261 of the Records, lines 1 to 6 stated as follows-.

\"............Evidence of the P.W.7 Fan Ayeonuala and Exhibit \'B1 puts the location beyond any sensible controversy.
The land lies within Oguta L.G.A. of Imo State within jurisdiction. The major question is who should get the money deposited by the Agip Oil Coy Nig. Ltd. Ogwurna Village people of Oguta or Akono - Edem family of Isukwa village Ndoni Rivers State. The Ogwuma people sued claiming the money. Akono Edem family filed a cross action also claiming the money...........\".

[the underlining mine]

In other words, the nature of the claim by the parties themselves, is for compensation. There is no how, in my respectful but firm view, this ciaim, could have been determined, without the trial court, finding and determining the ownership of the land the subject-matter of the compensation. Afterwards, it is now settled, that it is the plaintiff\'s claim, that determines the jurisdiction of a trial court. See Chief Adeyemi v. Opeyori (1976) 9 - 10 5.C. 31 at 51; Western Steel Works Ltd. & anor. v. Iron ' Steel Workers Union of Nigeria & anor. (1987) 1 NWLR(Pt.49) 234 at 296-297; (1987) 2 SCNJ. 1: The Attorney-General of Anambra State v. The Attorney-Genera! of the Federation (1993) 6 NWLR (Pt. 302) 692. (1993) 7 SCNJ. (Pt. II) 245; Akinfolarin & 2 crs. y. Akiinnola (1994) 3 NWLR (Pt. 335) 659, (1994) 4 SCNJ. 30 just to mention but a few.

In other words, jurisdiction of a trial court, is determined by the subject - matter and claim before the court. Thus, in considering whether the court has jurisdiction to entertain the suit, It is the plaintiff\'s claim as endorsed on the writ of summons or Statement of Claim and not the defense. See Oba Aremo II v. Adekanye & 2 ors. (2004) 7 SCNJ. 218 at 231.

In order to determine this issue of the ownership of the land the subject matter of the compensation, as I had stated

hereinabove, the parties, relied on traditional history. The Appellant\'s pleaded and gave evidence that the land is situate in Imo State. The defendant/Respondent pleaded that the land in dispute, is in Nsukwa in Rivers State. The court below - per Akpiroroh, J.C..A. Stated at page 399 of the Records inter alia, as follows:

\" With respect to the submission of learned counsel to the appellants that since the respondent pleaded that the land in dispute is in Nsukwa in Rivers State, the learned trial Judge was left with no other course than to strike out the plaintiffs claim, this submission lost sight of the pleadings filed by the parties. Issues were joined as to the situs of the land in dispute while the respondent claimed that the land in dispute lies in Nsukwa in Rivers State, the appellant\'s maintained that It lies in Imo State. Pleadings is not evidence. See J.O.O. Imana vs. Madam Jarin Robinson (1979) 3 - 4 S.C at10. At the trial of this case, the only evidence led as to the situs of the land was offered by the appellants and the learned trial Judge believed their evidence and held that the land in dispute is in Imo State. This only conferred jurisdiction on the trial Judge to entertain the suit. The ownership of the land is a different matter, which has to be proved by evidence. I am therefore unable to acede (sic) to the submission of learned counsel for the appellants on this issue\".

[the underlining mine]

In other words, the court below, upheld the judgment of the trial court.

Remarkably and notably, Pats-Acholonu, JCA, (as he then was) in his concurring Judgment at page 401 of the Records, stated inter alia, as follows:

\"The singular issue that agitated the mind of the appellant seems to focus on the decision of the court below that the Respondent being a native of Ndoni in Rivers State should not be entitled to compensation in respect of the land adjudged to be situate in Imo State. I believe that Nigerians are carrying the issue of Statism to a ridiculous extent. It must not be forgotten that before the Nigerian Civil War, Ndoni was in Eastern Nigeria and therefore an Ndoni man who owned a piece of land now situate in Oguta Local Government Areas does not cease to be the owner simply because the creation of a State puts him in a different area. If A is ordinarily resident in one State and acquires land in another State which now produces oil or gas or other mineral in that other state, no one in his right senses could question his right to due compensation.

The right of compensation that was found due to the Respondent was from the finding that he made a better case than the appellant as he controls the land and exercises the necessary animus possidendi\".

I cannot agree more. I do not see how the question of whether the land in one autonomous Community, could validly be awarded to a native of a different autonomous Community who claims through traditional history as appears under Issue No 4, arises or becomes a valid and relevant issue having regard to the claims of the parties.

The said issue and all the arguments in respect thereof, are accordingly discountenanced by me and they are accordingly struck out.

As regards Issue No. 5, I have noted that the learned trial Judge reviewed and evaluated separately, the case of the respective parties. The court below held rightly in my view, that the complaint of not delivering separate judgments and that this occasioned the miscarriage of justice,

\"is misconceived because the learned trial Judge delivered separate judgments on the two suits'.

At page 303 lines 11 - 14, he said:

\"There will therefore be judgment for the plaintiff in suit No. HOS/37/78 i.e. judgment for Joseph Otunuya Odili against the Ogwurna people. Suit No. HOS/181/77 i.e. suit brought by Ogwuma people is hereby dismissed\".

I agree. I had noted or stated in substance earlier in this judgment, that the learned trial Judge, in his well considered

judgment, gave separate judgments. This issue lacks substance and it is dismissed together with the arguments proffered in respect thereof.

I should quickly add here, that there are concurrent findings of two (2) lower courts and the attitude of this Court in respect thereof, is long and consistently settled. See Enana v. Adu (1981) 11 - 12 S.C. 25 at 42, Olujinle v. Adeagbo (1986) 2 NWLR (Pt. 75) 238 at 253 and recently, Otunba Owoyemi v. Prince Adekoya & 2 ors. (2003) 12 SCNJ. 131 149 and Ferodo Ltd. & anor. v. Ibero Industries Ltd. (2004) 2 SCNJ. 71 at 92, (2004) 2 S.C. (Pt.1) at 22, and many others.

In conclusion, if there is any appeal that is bereft of any substance or merit, this is certainly, one of them. The learned counsel for the Appellant, with respect, have dissipated unnecessary energy in his effort to raise \"a matter that is like a person that is stone dead\". I am afraid, miracles do not happen in litigation, at least, not in our adversary system.

It is for the foregoing and the much fuller lead judgment of my learned brother, Oguntade, J.S.C., that I have no hesitation in also dismissing this frivolous appeal. I hereby and accordingly affirm the decision of the court below affirming the judgment of the trial court delivered on 11th December 1997. I abide by the consequential order in respect of costs.