

# IN THE SUPREME COURT OF NIGERIA

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Suit No: SC364/2002

**Petitioner:** Chief Sunday Ogunyade

And

**Respondent:** Solomon Oluyemi Oshunkeye & Anr

Date Delivered: 2007-07-13

**Judge(s):** Niki Tobi, Dahiru Musdapher , Aloma Mariam Muhktar , Walter Samuel Nkanu Onnoghen ,Francis Fedode Tabai

## Judgment Delivered

In the High Court of Justice of Lagos State, in the Ikeja Judicial Division and in Suit No. ID/133/81 the first respondent herein as the plaintiff commenced these proceedings against the appellant as the defendant claiming in his writ of summons as follows:-

1. "The sum of N50,000.00 being damages for trespass committed by the defendant, his agents, servants and privies on plaintiffs landed property at Sholuyi Village, Gbagada, Ikeja Division of Lagos State and which said land with its dimensions and abuttals are more particularly described and delineated on the plan No. CD/41/71 drawn and attached to the Deed of Conveyance dated 18th December, 1972 and registered as No. 6-1 at page 61 volume 1467 of the Lands Registry Office Lagos and therein edged Pink"

2. "Injunction restraining the defendant by himself his servants and/or agents and otherwise from going or otherwise trespassing on or in any manner interfering with the plaintiffs possession or right of occupancy on the said land."

On the 30/11/1981 Ejiwunmi J (as he then was), granted the application filed by the 2nd respondent to join in the suit as the 2nd plaintiff. After a lot of delays caused by many factors until 1989 when the trial of the matter proceeded after the amendment of pleadings, the plaintiffs testified and called other witnesses. When after many adjournments, the defendant could not commence his defence, the trial court closed the defence and eventually took the address of counsel. Judgment was delivered in favour of the plaintiffs on the 2/12/1991. The defendant felt unhappy with the decision and appealed to the Court of Appeal. In its consideration of the issues submitted to it for the determination of the appeal by both parties, the Court of Appeal, in its judgment per Oguntade J.C.A, (as he then was), who read the lead judgment stated :-"The appellant did not call evidence at the trial. The result is that the evidence called by the respondents was unchallenged. When evidence called by a witness is unchallenged, the court is at liberty to accept such evidence in proof of the issue in contest. The lower court was therefore right to have accepted the evidence before it in proof of the fact that the appellant committed act of trespass on the land in the respondents' possession."

The appeal accordingly failed and was dismissed. This is a further appeal to this court. The Notice of appeal filed contains six grounds of appeal. The learned counsel for the appellant has identified formulated and submitted to this Court for the determination of the appeal, the following four arises:-

1. Whether the Court of Appeal was not in error in affirming the decision of the trial court which awarded the Plaintiffs/Respondents reliefs differently couched from those formulated on the Amended Statement of Claim.

2. Whether the Court of Appeal was not in error in affirming the judgment of the trial court in its findings relating to the joinder of different cause of action by the plaintiffs and the non-production of the originals of conveyances, particularly, Exhibits A, B, D, E &F

3. Whether the Court of Appeal was not in error in affirming the judgment of the trial court, when plaintiffs did not prove acts of trespass against the defendant/appellant.

4. Whether the Court of Appeal was not in error in its re-statement of the Rule in unchallenged evidence."

The learned counsel for the respondent raised objections on issues No.2 and 4 on the ground that issue No. 2 did not flow from any of the 6 grounds of appeal and that issue No. 4 is hypothetical "as it was not shown how a misapprehension of the "Rule on unchallenged evidence" resulted in error or misdirection in law. The counsel however, "ex-abundanti cautela" adopted all the four issues and argued them in the brief for the respondent. I shall also discuss the issues as formulated by the appellant's counsel and deal with the incompetency alleged appropriately.

Issue No 1

The complaints of the appellant under this head is that the reliefs sought and as formulated by the respondents in the Amended Statement of Claim were different from those granted by the trial court and affirmed by the Court of Appeal. It is submitted that it was wrong for the courts to grant to the respondents what was not claimed by them. The learned counsel refers to the case of Chief T. A. L. Akapo v Alhaji Hakeem Habeeb & Ors (1992) 6 NWLR (Pt 247) 266 at 309. The trial judge had no right to, suo motu, re-formulate the claims of the respondents without affording the parties the opportunity to address him on the issue, Katto v Central Bank of Nigeria (1991) 9 NWLR (Pt 214) 126. at 150. The Road Transport Employers' Association of Nigeria v The National Union of Road Transport Workers (1992) 1 NWLR (Pt 224) 381 at 392. It is submitted that the mere pleading of title and tendering of the conveyances in this case without more is not sufficient to identify the piece of land trespassed upon to justify a grant of damages for trespass. It is again added that it was the duty of the respondent to show that the particulars of the land trespassed is the same land they alleged was trespassed in their pleadings. See Borno Holding Co. Ltd v Alahji Hassan Bogoco (1971) 1 ALL N.L.R. 325. A relief sought from the court must not be a matter of speculation or doubt but must be certain and not subject to different interpretations vide Joe Golday Company Ltd Ors v Co-operative Development Bank Plc (2003) 13 N.S.C.Q.R. 542 at 559. The learned counsel for the respondents on the other hand argued that the trial judge acted properly and the Court of Appeal rightly agreed with him that in adding to the particulars of "the claim, the dimension of the law, which was pleaded and proved, to the relief sought, occasioned no miscarriage of justice. The complaint of the appellant is accordingly without any merit and should be discountenanced. It is submitted that there was sufficient evidence proving the possession of the land by the respondents and the act of trespass by the appellant The Joe Golday case supra does not apply. It is further confirmed that the "addition" of the "particulars of the land" was only incidental to the order sought and the trial court has inherent power to order such incidental issues to make the orders certain. It is again submitted that the failure to conclude the relief sought did not cause any miscarriage of justice and under the facts and the circumstances of this case, it cannot be said that the court granted the respondent what they did not pray for. Learned counsel referred to F.A.T.B. v Ezegbu (1993) 6 N.W.L.R. (Pt 297). Now, it is settled law that a judgment of court must demonstrate in full a dispassionate consideration of all the issues properly raised and heard and must reflect on the result of such exercise. In other words, it must show a clear resolution of all the issues that arise for decision in the case and end up with an ultimate verdict which flows logically from the facts as pleaded and found proved. See Ojogboe & Anor v Nnubia & Ors (1972) 1 ALL N.L.R. (Pt 2) 226. A judgment of court must be based and confined to the issues joined by the parties in their pleadings. See Aslemo v Amos (1975) 2 SC (Reprint) 54 at 63. A judgment unrelated to the relief sought or the issues joined of a claim tried on pleadings cannot be sustained. See Incar Nig Ltd v Benson Transport Ltd (1975) 3 SC (Reprint) 81; Metal Construction (W.A.) Ltd & 2 Others Vs. Migliore & Anor (1979) 6 - 9 SC (Reprint) 118 at 124. While a court may in a proper case award less than is claimed, the court cannot and should not award more than the claim in the pleadings. SCOA Motors v Abumchukwu (1973) 4 SC (Reprint) 34 at 40, Kalio v Daniel Kalio (1975) 2 SC (Reprint) 14 at 20 Ebosie v Phil-Ebosie (1976) 7 SC (Reprint) 72 at 83. Now in their claim the respondents prayed for (1) the sum of N50,000.00 damages for trespass to the land and (2) for perpetual injunction restraining further acts of trespass, The judgment delivered by the trial court which was affirmed by the Court of Appeal, the learned trial judge adjudged :-

"(i) The sum of N5000 being damages for trespass committed by the defendant, his agents, servants and privies on plaintiffs' landed property situated, lying and being at Sholuyi Village, Gbagada, Ikeja Division of Lagos state and which said land with its dimension and abutments are more particularly described and delineated in the area marked "A" and "B" in the plan No. CD 41/71 of 16/1/84 which is the same as plan No. CD/41/71 drawn and attached to the Deed of Conveyance dated 18th December, 1972 and registered as No. 61 at page 61 in volume 1467 of The Lagos Lands Registry and thereon edged Red.

(ii) Perpetual Injunction restraining the defendant by himself, his servants and agents and otherwise from going on or otherwise trespassing or in any manner dealing or interfering with the plaintiffs' possession and or right to possession of the land described in (i) above,"

In my view, a careful reading of the judgment and the reliefs claimed by the respondents constitutes no difference between the two. The learned trial judge did not award anything other than damages for trespass as claimed and the perpetual injunction also claimed. The mere fact that the land trespassed has been more particularized in the judgment is of no moment. The learned trial judge did not grant any other relief such as title to the land. The judgment only awarded damages for trespass and the injunction claimed. There is no substance in the complaint under this head. It is rejected by me. Issue No. 1 is resolved against the appellant.

Issue No 2

This is a complaint on the joinder of the causes of action by the two different plaintiffs and the non - production of the

originals of the conveyance, particularly exhibits A, B, D, E and F. It is submitted that the different plaintiffs (respondents herein) cannot unite different causes of action in a single suit. Learned counsel referred to *Kokoyi v Ladunni* (1976) 11 SC 245 at 253 - 256, *Busari Ayinde v Adedokun Akanji & Ors* (1988) 1 N.W. L.R. (Pt 68) 70 at 81. It is submitted that the cases cannot be united because the evidence required in proof of each act of trespass and the assessment of damages must be separately considered. On the issue of the non-production of the originals of the conveyances, Exhibits A, B, D and E were copies and no explanation was given why the originals were not tendered. Learned counsel referred to the cases of *Ude v Osuji* (1990) 5 N.W.L.R. (Pt 151) 488 at 514 and *Cordoso v Daniel* (1996) 4 NSCC Page 11 at 13 - 14 and argued that the respondents were duty bound to produce the Originals. The learned counsel for the respondents on the other hand argued that the learned counsel for the appellant raised the issue of the joinder before the trial court and was over ruled by the trial court and there was no appeal on the issue before the Court of Appeal, therefore the appellant cannot raise it again in the Supreme Court. Even the Court of Appeal in its judgment distinguished the fact of this case with those of the *Ladunni's* case and the appellant merely ignored it. Learned counsel relied on the case of *Cross Rivers State Newspaper's Corporation v Mr. J. L. Oni & Ors* (1995) 1 N.W.L.R. (Pt 371) 270 and argued that the joinder of the parties and the causes of action in this matter is permissible under this rules of the court. It is also argued that the appellant is not allowed to roll in two different lines of argument in one issue. It is not clear whether the appellant was quarrelling with the admissibility of the conveyances or the weight attached to them. Now, I have alluded at the beginning of the judgment above, that issue No. 2 did not flow from any of the grounds of appeal and also that the appellant is not permitted to lump two separate issues under one head. An issue for determination in an appeal must not only be derived from a legitimate ground of appeal, but must also be related to the decision of the court below. It is not every observation and passing remark of the court below that is appealable, to the appealable a complaint must be related to the decision appealed against. See *Nwankwo & Anor v (E.D.C.S.) U.A.* (2007) 1 - 2 SC 145 *Akibu v Oduntan* (2000) 7 SC (Pt 2) 106. Where an issue for determination does relate to any ground of appeal, this court has no option other than to discountenance it as it is incompetent. See *NFOR v Ashaka Cement Co. Ltd.* (1994) 1 N.W.L.R. (Pt 319) 222. It will similarly be ignored if it did not feature in the actual court below. In any event on the issue of the complaint of the joinder of causes of action in my view, it is not the causes of action that are joined but two individuals having a similar claim of trespass joined to prosecute the claim against the appellant. See order 15 rule 5 of the applicable High Court Rules. On the issue of the non-production of the original conveyance, the respondent in this matter were not claiming declarations of title to the piece of land in question. These claims were based on trespass to land and trespass to land is only concerned with the possession of the land and not ownership or title. The issue of the conveyance or their weight was clearly irrelevant. From all indications, the complaints under issue 2 are not valid and I resolve issue 2 against the appellant.

### Issue No 3

The question raised in this issue is a complaint that the respondents did not prove acts of trespass against the appellant. It is submitted that there was no credible evidence relating to the acts of trespass. The witnesses fail to show as per the plan tendered the portions of the lands in dispute sold by the appellant or the parts thereof indicating his point of entry in trespass on the land. Both the trial court and the Court of Appeal were correct, in my view, in finding the appellant liable to the respondent, in acts of trespass to their land. This constituted the concurrent findings of fact, which this court will not interfere with except where special reasons were shown by the appellant and in this case, the appellant has woefully failed to do so. See *Akeredolu v Akinremi* (1989) 5 SC 102, *Ibodo v Enarofia* (1980) 5-7 SC, *Ogunbiyi v Adewunmi* (1988) 5 N.W.L.R. (Pt 93) 217. Now, in the court of trial the first respondent testified as follows:-

"I had two men on the land to take care of the land and to be reporting to me from time to time. At the beginning there was no problem but after about 4 or 5 years that we had been on the land, my caretakers ran helter skelter to meet me in the office saying that one Sunday Ogunyade otherwise called Ajeti had brought in some hefty thugs x x x immediately I ran to Pedro Police Station to lodge a complaint. The police advised me to seek a redress in a court of law x x x x x

The caretakers were called to give evidence and corroborated the evidences of the 1st respondent. The 2nd respondent also testified as follows:-

"The defendant disturbed my land by going on it and sold portion to some people. The defendant also cut down all the tress on the land when I bought it."

Both the trial court and the Court of Appeal accepted the evidence led by the respondents and found the appellant guilty of acts of trespass. These are findings of fact borne out of credible evidence accepted by two lower courts. This court will not ordinarily interfere or disturb these findings unless it is clearly shown that the findings are perverse or not supported by evidence led. The appellant has woefully failed to show any special circumstances persuading me to disturb the findings. I accordingly also resolve the third issue against the appellant.

#### Issue No 4

This issue is concerned with the question whether the Court of Appeal was right in its restatement of the rule on "unchallenged" evidence. It is argued that although the appellant called no evidence at the trial, still that would not be sufficient for the courts to find for the respondents. The respondents were still duty bound to establish their claims by credible evidence. It is not the general rule that whenever the evidence tendered by the plaintiff is unchallenged or uncontradicted, the plaintiff is entitled to judgment. See *Nwogo Obia & Ors v Agwu Njoku & Ors* (1990) 3 N.W.L.R. (Pt 140) 570. The law in my view settled that where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it. *Odulaja v Haddad* (1973) 1 SC 35, *Nigerian Maritime Services Ltd v Alhaji Bello Afolabi* (1978) 2 SC 19. Unchallenged and uncontradicted evidence ought to be accepted by the court as establishing the facts therein contained. The courts below accepted the evidence. It was still after the trial court has evaluated the unchallenged evidence that it accepted it and acted on it. The complaints of the appellant on this issue are not made out and are rejected by me. In the result all the issues formulated for the appellant having been resolved against him, this appeal is bound to fail and I accordingly dismiss it. I uphold the decision of the court below affirming the decision of the trial court. The respondents are entitled to costs assessed at N10,000.00

Judgment delivered by

Niki Tobi. J.S.C.

This appeal has a fairly long and difficult history that I will not go into. It commenced in 1981. Ejiwunmi, J. (as he then was) started the case in the High Court of Lagos State. Ajao-Oshodi, J, took over and completed it. Efforts to settle the matter out of court failed. The case suffered from a number of adjournments; one of which was caused by the detention of the appellant who was the defendant in the High Court. Counsel changed hands too. The respondents, as plaintiffs, in the High Court in their Amended Statement of Claim, claimed as follows:

"(i) The sum of N50,000.00 being damages for trespass committed by the defendant, his agents, servants and/or privies on plaintiffs landed property at Sholuyi Village, Gbagada, Ikeja Division of Lagos State described above and  
(ii) Perpetual injunction restraining the defendant by himself, his servants and agents and otherwise from going on or otherwise trespassing on or in any manner dealing or interfering with the plaintiffs' possession and or right to possession and/or right of occupation of the said pieces of land described in (i) above."

The learned trial Judge, Ajao-Oshodi, J, gave judgment to the plaintiffs in the following terms:

"The judgment in this matter in favour of the Plaintiffs against the Defendant are as follows:

(i) the sum of N5,000.00 being damages for trespass committed by the Defendant, his agents, servants and privies on Plaintiffs landed property situate lying and being at Sholuyi Village, Gbagada, Ikeja Division of Lagos State and which the said land with its dimensions and abuttals are more particularly described and delineated in the area marked "A" and "B" in Plan No. CD/13/84 of 16/1/84, which is the same as the Plan No. CD/41/71 drawn and attached to the Deed of Conveyance dated 18th December, 1972 and registered as No. 61 at page 61 in Volume 1467 of the Lagos Lands Registry and thereon edged Red.

(ii) Perpetual Injunction restraining the Defendant by himself, his servants and agents and otherwise from going or otherwise trespassing or in any manner dealing or interfering with the Plaintiffs possession and or right to possession and/or right of occupation of the said pieces of land described in (i) above."

The defendant as appellant appealed to the Court of Appeal. The appeal was dismissed. The court dealt with the failure on the part of the appellant to call evidence at the trial. The court said at page 308 of the Record:

"The appellant did not call evidence at the trial. The result is that the evidence called by the respondents was unchallenged. When evidence called by a witness is unchallenged, the court is at liberty to accept such evidence in proof of the issue in contest. The lower court was therefore right to have accepted the evidence before it in proof of the fact that the appellant committed acts of trespass on the land in respondents' possession.

In the final conclusion, this appeal fails. It is dismissed with N4,500.00 costs in favour of the plaintiffs/ respondents." The appellant has come to this court. The appellant formulated four issues for determination. The respondents argued that only Issues 1 and 3 framed by the appellant are arguable. The appellant submitted that Issue 2 does not flow from any ground of appeal and that Issue 4 is hypothetical. What has four issues got to do in this simple appeal, I ask' It is elementary law that an appellant does not win an appeal by the quantity of issues but by their quality. While an appellant can win an appeal by a properly formulated single issue for determination, the appeal could fail even if the issues are many, such as the four packaged by the appellant. An appellant should not parade before an appellate court a proliferation of issues which serve no useful purpose.

I think the only issue arising for determination of this appeal is whether the Court of Appeal was right in affirming the judgment of the trial court. This generic issue covers all the four issues formulated by the appellant. Learned counsel for the appellant submitted that the High Court granted reliefs to the plaintiffs which are different from those claimed in their Amended Statement of Claim. The Court of Appeal dealt extensively on the issue. The Court examined with the issue at pages 293 and 294 of the Record: "The first issue raises argument as to whether or not the trial judge granted the respondents a relief which they did not claim... There was an indication that the respondents had intended to claim for trespass on another property by the use of the word "and" after describing the land at Gbagada. But what followed was a blank. When however the trial judge gave judgment, it did so in these words..." The Court of Appeal thoroughly examined paragraphs 1, 3, 5, 7, 8, 9, 10, 11 and 13 of the Amended Statement of Claim and came to the conclusion that the learned trial Judge "gave judgment only in respect of two parcels of land at Sholuyi Village in respect of which each of the respondents pleaded his title and tendered the relevant conveyance." In arriving at that conclusion, the Court examined Exhibits A, B, C, D, E and F in most admirable detail. Rejecting the argument of counsel for the appellant, the Court of Appeal said at pages 299 and 300 of the Record: "With respect to appellant's counsel, I am unable to see the basis of his argument that the lower court granted to the respondents a relief which they did not claim. From the averments in the amended statement of claim, it was made clear that each of the 1st and 2nd respondents was claiming that the appellant trespassed on the two parcels of land in the possession of each of the respondents. The evidence called by the respondents revealed that the portion claimed by the 2 respondent was the area identified as parcel 'B'. It is of course correct that the respondents in their amended statement of claim did not identify the parcels trespassed upon by the appellant with the same particularity as the trial judge did in his judgment but that did not lend the judgment to a criticism that the trial judge awarded what was not claimed. At the end of the day the trial judge gave judgment only in respect of two parcels of land at Sholuyi Village in respect of which each of the respondents pleaded his title and tendered the relevant conveyance. I decide the first issue against the appellant." "I cannot fault the Court of Appeal. The court is correct. In grammar or syntax, a sentence does not end with the word "and". It is a conjunction playing the role in grammatical construction of connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. In its conjunctive sense, the word is used to conjoin words, clauses or sentences, expressing the relation of addition or connection and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinate as where the elements preceding and succeeding the use of the words refer to the same subject matter. See Black's Law Dictionary, Sixth Edition, at page 86. While the co-ordinating conjunction can begin a sentence in certain instances, its function or role in the grammar of the Amended Statement of Claim is to add more thing or things to the reliefs sought. As a sentence cannot end with "and", it created a sudden blank or void in the relief sought in the Amended Statement of Claim which needed addition for purposes of completion. Importantly, the learned trial Judge did not embark on an exercise of wild and uncontrolled search for reliefs not related to the Amended Statement of Claim but on the contrary, obtained assistance from the evidence before him; and that was why he found the exhibits useful. The role of the court is to do substantial justice and not technical justice. It is justice in its reality or personification and not a caricature of it. As it is, the appellant needs technical justice. It is not available to him. The issue therefore fails. Let me take the issue on unchallenged evidence. It is the submission of learned counsel for the appellant that the Court of Appeal was in error in its statement of the rule on unchallenged evidence. What did the Court of Appeal say on unchallenged evidence? The court said at page 308 of the Record: "The appellant did not call evidence at the trial. The result is that the evidence called by the respondents was unchallenged. When evidence called by a witness is unchallenged, the court is at liberty to accept such evidence in proof of the issue in contest. The lower court was therefore right to have accepted the evidence before it in proof of the fact that the appellant committed acts of trespass on the land in respondents' possession." "What is wrong with the above conclusion that raises storm in the tea cup of the appellant? I do not see the need for it. The law is properly stated by the Court of Appeal. I do not agree with learned counsel for the appellant that the court was in error in the statement of the law on unchallenged evidence. The law presumes, and correctly for that matter, that a person who comes into a litigation should have a case to state, a case that will give him judgment. The case is made at the stage of the pleadings, be he a plaintiff or a defendant. While a plaintiff states his case in the statement of claim, a defendant states his case by way of defence in a statement of defence. If, at the hearing, the defendant decides not to give evidence to vindicate the statement of defence, the court is entitled to hold that the evidence of the plaintiff is unchallenged. Although at the stage of pleadings, the parties have joined issues, this was not the position at the hearing of the case. It is merely saying the obvious that pleadings do not have the brain and the mouth to talk and so they need the human being with the automation of the brain, mind and mouth to express the contents of the pleadings in open court. Where the human being in this context, the appellant, fails to talk for the Statement of Defence that, seems to be the end of the road for the

defendant. The word "seems" is important here, as it vindicates the submission of learned counsel for the appellant. Failure on the part of a defendant to give evidence does not automatically mean that judgment must be given in favour of a plaintiff, who has a duty to prove his case. Where a plaintiff fails to prove his case on the balance of probability or on preponderance of evidence, his case will be thrown out, notwithstanding the fact that the defendant did not give any evidence. That is the basis of the principle of law that a plaintiff cannot rely on the weakness of the case of the defendant. But such is not the situation in this appeal. I think I can stop here. It is for the above reasons and the more-comprehensive reasons by my learned brother Musdapher, J.S.C, in his judgment that I too dismiss the appeal. I abide by the costs awarded by him.

Judgment delivered by  
Aloma Mariam Mukhtar, J.S.C.

As per the final amended statement of claim filed by the plaintiff (who is now the 1st respondent) in the High Court of Lagos State holden at Ikeja, the reliefs sought were as follows:-

"(1) the sum of N50,000.00 being damages for trespass committed by the defendant, his agents, servants and/or privies on plaintiffs' landed property at Sholuyi Village, Gbagada, Ikeja Division of Lagos State described above and  
(2) Injunction restraining the defendant by himself his servants and/or agents did otherwise from going or otherwise trespassing on or in any manner interfering with the plaintiffs possession and or right to possession and/or right of occupancy of the said land described in (i) above. Annual Rental Value - N100.00"

After the exchange of pleadings the plaintiff adduced evidence which were evaluated by the learned trial judge, who gave judgment in favour of the plaintiffs, the 2nd plaintiff having been joined by the court.

The defendant was dissatisfied with the judgment of the High Court, so he appealed to the Court of Appeal, Lagos division, which dismissed the appeal and found as follows as per the judgment of Oguntade J.C.A (as he then was).

"The appellant did not call evidence at the trial. The result is that the evidence called by the respondents was unchallenged. When evidence called by a witness is unchallenged, the court is at liberty to accept such evidence in proof of the issue in contest. The lower court was therefore right to have accepted the evidence before it in proof of the fact that the appellant committed acts of trespass on the land in respondents' possession".

Again, the defendant/appellant appealed to this court on six grounds of appeal, from which four issues for determination were distilled. These issues are:-

"(1) Whether the Court of Appeal was not in error in affirming the decision of the trial court which awarded the Plaintiffs/Respondents reliefs differently couched from those formulated on the Amended statement of claim'  
(2) Whether the Court of Appeal was not in error in affirming the judgment of the trial court in its findings relating to the joinder of different causes of action by the Plaintiffs and the non-production of the originals of conveyances particularly, Exhibits A, B, D, E & F.  
(3) Whether the Court of Appeal was not in error in affirming the judgment of the trial court when the Plaintiffs did not prove any acts of trespass against the Defendant/Appellant.'  
(4) Whether the Court of Appeal was not in error in its re-statement of the Rule on "unchallenged" evidence'

In the respondent's brief of argument, the learned counsel for the respondents in their brief of argument objected to issues (2) and (4) supra, which he submitted are not arguable. Learned counsel did not file a notice of preliminary objection attacking the issues, but rather raised it not as a preliminary objection, but attacked the said issues (2) and (4) under the heading issues for determination, in the respondent's brief of argument. Nevertheless, the omission will not preclude me from dealing with the attack on issue (2) supra, which learned counsel for the respondent argued does not flow, from any of the grounds of appeal filed. Learned counsel argued that quite aside from the impropriety of the issue in lumping two separate issues into one namely error in affirming the finding of the trial court with respect to joinder of different causes of action, he added an error in affirming the finding of the trial court with respect to non-production of the originals of conveyances. I have carefully perused the grounds of appeal in the notice of appeal, and what seems to be related to issue (2) above is ground (3) of appeal which reads:-"Their Lordships of the Court of Appeal erred in law in mis'construing the submission of counsel on the admission of Exhibits A, B, E and F - certified true copies of conveyances.

Particulars

Counsel's objection to these documents was not that they were not admissible but little or no weight should be attached to them because a majority of the accredited principal representatives of the chieftaincy did not sign them as per the evidence on the record."I do not see that the said issue (2) supra does not flow from the above reproduced ground of appeal. Another matter may have found its way into the issue, but that is not to say that it had no relationship

or connection whatsoever with the supra ground of appeal. It was definitely distilled from one of the appellant's grounds of appeal, and that ground of appeal is ground (3) supra. What can be described as an incompetent issue in this respect is an issue that is not borne out of any ground of appeal, not one that has an element of fluidity in it.

Issue No. 4, according to learned counsel, is hypothetical as it has not shown how a misapprehension of the rule on unchallenged evidence resulted in error or misdirection in law. What seems to be the related ground of appeal to me is ground (5) in the appellant's notice of appeal which reads:-

"5. Their Lordships of the Court of Appeal erred in law in stating the rule on 'unchallenged evidence' thus:- 'When evidence called by a witness is unchallenged, the court is at liberty to accept such evidence in proof of issue in contest, whereas un-challenged evidence must also be subjected to such tests like credibility and rationality.' Again, as in the objection above, I fail to see that the supra issue is incompetent for it is not hypothetical as suggested or submitted by learned counsel for the respondent. The two issues are therefore competent and deserve to be dealt with as such. I will in this contribution highlight issue (1) supra only. To properly deal with this issue it is imperative that I reproduce the pertinent excerpt of the judgment of the court of first instance which reads as follows:-"The judgment in this matter in favour of the Plaintiffs against the Defendant are as follows:

(i) the sum of N5,000.00 being damages for trespass committed by the Defendant, his agents, servants and privies on plaintiffs landed property situate lying and being at Sholuyi Village, Gbagada, Ikeja Division of Lagos State and which the said land with its dimensions and abuttals are more particularly described and delineated in the area marked "A" and "B" in Plan No. CD/13/84 of 16/1/84 which is the same as the Plan No. CD/41/71 drawn and attached to the Deed of conveyance dated 18th December, 1972 and registered as No. 61 at page 61 in Volume 1467 of the Lagos Lands Registry and thereon edged Red.

(ii) Perpetual Injunction restraining the Defendant by himself, his servants and agents and otherwise from going or otherwise trespassing or in any manner dealing or interfering with the Plaintiffs possession and or right to possession and/or right of occupation of the said pieces of land described in (i) above."The heavy weather made of the learned trial judge's judgment on the reliefs, by learned counsel for the appellant is in my view unnecessary, even if the order on the first relief is not completely in tandem with the relief sought in the final amended statement of claim. I disagree with learned counsel for the appellant that the trial judge re-formulated the claims for the plaintiffs. Definitely something was amiss in that first relief and any reasonable person will discern that something was left out or forgotten to conclude and make sense of the relief. Though this final amended statement of claim is supposed to be the pleading on which the court will base its decision, one must not lose sight of the fact that in the earlier pleadings what constituted the reliefs were contained therein. I mean it is a matter of common sense. In this respect, I refuse to subscribe to the argument that the learned trial judge granted reliefs not sought, for he was definitely within the periphery of the claim. The Court of Appeal was therefore right when in its judgment the following observation and finding was made:- "With respect to appellant's counsel, I am unable to see the basis of his argument that the lower court granted to the respondents a relief which they did not claim. From the averments in the amended statement of claim, it was made clear that each of the 1st and 2nd respondents was claiming that the appellant trespassed on the two parcels of land in the possession of each of the respondents. The evidence called by the respondents revealed that the portion claimed by the 2nd respondent was the area identified in the judgment as parcel 'A' and that claimed by 1st respondent as parcel 'B'. It is of course correct that the respondent as parcel 'B'. It is of course correct that the respondents in their amended statement of claim did not identify the parcels trespassed upon by the appellant with the same particularity as the trial judge did in his judgment but that did not, lend the judgment to a criticism that the trial judge awarded what was not claimed."I have had the opportunity of reading in advance the lead judgment delivered by my learned brother Musdapher JSC. In the light of the above contribution and the fuller reasoning in the lead judgment I am in full agreement that the appeal lacks merit and should be dismissed. This is an appeal on concurrent findings of facts, which this court cannot disturb, for the settled law is that an appellate court will not interfere with concurrent findings of fact which are supported by credible and relevant evidence, which are not perverse, and have not led to miscarriage of justice. See *Ntukidem v. Oko* (1986) 5 NWLR, *University of Lagos v. Aigoro* (1985) 1 NWLR part 1 page 143, *Woluchem v. Gudi* 1981 5 SC. 291.

In this wise, I also dismiss this appeal in its entirety, and abide by the consequential orders in the lead judgment.

Judgment delivered by

Walter Samuel Nkanu Onnoghen. J.S.C.

This is an appeal against the judgment of the Court of Appeal, holden at Lagos in appeal NO. CA/L/159/93 delivered in February, 2002 in which it dismissed the appeal of the appellant against the judgment of the Lagos State High Court, holden at Ikeja in suit No. ID/133/81 delivered by that court on the 2nd day of December, 1991 in favour of the respondents. The claim of the respondents against the appellant in the above suit is as follows:-

(i) "the sum of N50,000.00k being damages for trespass committed by the Defendant, his agents, servants and /or privies on Plaintiffs Landed Property at Sholuyi Village, Gbagada, Ikeja, Division of Lagos State described above, and

(ii) perpetual injunction restraining the Defendant by himself, his servants and agents and otherwise from going on or otherwise trespassing or in any manner dealing or interfering with the Plaintiffs' possession and/or right of occupation of the said pieces of land described in (i) above". Pleadings were exchanged between the parties and after a prolonged delay, the respondents testified and called four witnesses in proof of their case, while the appellant failed and/or neglected to call any evidence. It is therefore very clear that the appellant is not contesting the facts of the case since he called no evidence. At the conclusion of the trial, the learned trial judge considered the facts of the case and the issues raised by the parties. As regards the issues raised by learned counsel for the defendant/appellant, the trial court found/held at pages 187 - 193, inter alia: "Mr. Apampa learned counsel for the defendant raised about 5 questions which he submitted make the claims of the plaintiffs unacceptable and should be dismissed. Since if the defence succeeds in their submission the claim must fail, then it is expedient that I consider the issue raised by the defence counsel first. The first issue is whether 2 plaintiffs can sue jointly for trespass committed on two different and distinct parcels of land and claimed jointly a sum of money. Mr. Apampa submitted that our law provides for joinder of plaintiffs but not joinder of different causes of action. I regret that this is not the position of the law since Order 15 Rule 5 of the 1972 Rules. Furthermore, this point has not been raised by the pleading - the amended statement of defence and therefore fails to comply with the provisions of Order 16 Rule 11 and Order 18 Rule 18 of the 1972 Rules. The defence cannot now take advantage of this issue if at all it does exist. Another issue is the admission in evidence of certified true copies of conveyances in evidence without explaining where the originals were. Whilst I agree that certified true copies of documents are secondary evidence but these particular documents are protected by section 96 (1) (e) and 96 (2) (c) of the Evidence Act. The documents are therefore admissible. Also whether there is need in this case to call all those who executed the conveyances. In this case the evidence of the 5th P.W. is relevant when he said that he is one of those who executed the conveyances and that the other members of the family who signed are dead. 5th P. W also gave the names of those who executed exhibit D in favour of the 4th P. W. 5th P. W. also referred to them as the principal members of Oloto Chieftaincy family the undisputed owner of the radical title. They were not said to be representing branches of the family. Mr. Apampa raised the issue whether the plaintiffs have proved special damages for N50,000.00 I regret to say that the claims of the plaintiffs do not contain special damages but only damages which could be termed nominal damages for trespass. The other issue raised is in respect of Exhibit B which was registered on the 17th day of April, 1978 and that it has no governor's consent hence it offends against Section 34 of title Land Use Act. Exhibit B was made on the 27 day of March, 1978 and registered on the 17th day of April, 1978; it is therefore protected by the Land Use Act for it was signed before the Land Use Act came into force...." The court then concluded that the submissions of learned counsel for the defendant/appellant have no merit and proceeded to consider the case of the plaintiffs/respondents on the authority of the case of *Atilade v Atilade* (1968), ANLR 27. After exhaustively evaluating the evidence called by the plaintiffs/respondents, the court concluded as follows: "I have in this case dealt on title or ownership and I have held that the plaintiffs have better titles and the law ascribes possession to them. The Defendant has not denied forcefully ejecting the plaintiffs on (SIC) the land in dispute. The claim for damages for trespass succeeds. Having held that the plaintiffs are entitled to possession the claim for perpetual injunction must therefore follow (SIC): - The judgment in this matter in favour of the Plaintiffs against the Defendant are as follows: -

(i) the sum of N5,000.00 being damages for trespass committed by the Defendant his agents servants and privies on Plaintiffs landed property situate lying and being at Sholuyi Village, Gbagada, Ikeja Division of Lagos State and which the said land with its dimensions and abutments are more particularly described and delineated in the area marked "A" and "B" in plan No. CD/13/849/6/1/84 which is the same as the plan No. CD/41/71 drawn and attached to the Deed of Conveyance dated 18th December, 1972 and registered as No. 61 at page 61 in volume 1467 of the Lagos Lands Registry and thereon edged Red

(ii) perpetual injunction restraining the Defendant by himself, his servants and agents and otherwise from going or otherwise trespassing or in any manner dealing or interfering with the Plaintiff's possession and/or right to possession and/or right of occupation of the said pieces of land described in (i) above".

Appellant, who was defendant at the trial court, was not satisfied with the above judgment and consequently appealed to the Court of Appeal which dismissed same resulting in the instant appeal to the Supreme Court. The issues identified for determination by learned counsel for the appellant, M. A Apampa Esq in the appellants brief of argument filed on 19th day of September, 2005 are as follows: -

(i) "whether the Court of Appeal was not in error in affirming the decision of the trial court which awarded the Plaintiffs/Respondents relief differently couched from those formulated on the amended statement of claim'



(ii) Whether the Court of Appeal was not in error in affirming the judgment of the trial court in its findings relating to the joinder of different cause of action by the plaintiffs and the non-production of the originals of conveyances, particularly, exhibits A, B, D, E & F.

(iii) Whether the Court of Appeal was not in error in affirming the judgment of the trial court when the plaintiffs did not prove any acts of trespass against the Defendant/Appellant'

(iv) Whether the Court of Appeal was not in error in its re-statement of the Rule on 'unchallenged' evidence'

It is very clear that appellant's issue 1 deals with respondents' relief 1 earlier reproduced in this judgment, which relief contained more details in the judgment of the trial court, also earlier reproduced. To demonstrate the additions, and for the purposes of clarity and emphasis, I again reproduce the relevant portion of the said judgment hereunder. "N5,000.00 damages for trespass committed by the Defendant his agents, servants and privies on plaintiff's landed property situate lying and being at Sholuyi Village, Gbagada, Ikeja Division of Lagos State and which the said land with its dimensions and abuttals are more particularly described and delineated in the area marked "A" and "B" in plan No.CD/13/84 of 16th January, 1984 which is the same as plan No.CD/41/7/ drawn and attached to the Deed of Conveyance dated 18th December, 1972 and registered as No. 61 at vase 61 in volume 1467 of the Lagos Lands Registry and thereon edged Red" When the above is compared with the reliefs claimed on the writ of summons or amended statement of claim, it is clear that the underlined portions in the judgment of the trial court are additions to relief 1. It is not in doubt that the underlined portion was not included in either the writ of summons or the amended statement of claim. It is the contention of learned counsel for the appellant that the learned trial judge erred in including the underlined portion in the judgment and that by including the said portion the trial court granted what was not claimed by the respondents. It is not disputed that the trial court granted the main claim of damages for trespass which is the essence of relief 1 of the respondents. The said relief 1, however, failed to supply the particulars of the portion of land to which the damages and trespass relate by ending abruptly at "and". This clearly shows that there was an error of omission by learned counsel for the respondents who drafted and filed the pleadings which error was never discovered at the trial hence the absence of an application to remedy the situation by way of amendment. However, looking at the facts of the case, which as earlier stated in this judgment have not been disputed by testimony to the contrary, the particulars of the identity of the disputed land had been given in evidence by the respondents and their witnesses and the trial judge merely completed the relief 1 of the respondents by copying out the particulars of the identity of the disputed land from the survey plans tendered and admitted in evidence and other evidence already on record before the court. It is not the case of the appellant that the facts contained in the particulars of the disputed land, such as contained in the survey plans, were not pleaded neither has the appellant contended that the above holding is perverse. Rather, the pleading of the respondents and evidence in support thereof, support the holding by the trial court. I therefore do not agree that the trial court has no power to do what it did having regards to the fact that it is both a court of law and equity. I also do not agree that the trial court granted a relief not sought when what the court did was to grant the relief sought but with sufficient particularity as borne out of the pleadings and evidence before it. I hold the further view that the stand of the trial court is supported by the case of *Fate v Ezegbu* (1993) 6 NWLR (off. 297) 1 at 14 when this court stated, inter alia thus: "While it is my view that a court should not generally grant to a party a relief not claimed by that party, there is nothing wrong in a court, in the exercise of its inherent power, to grant to a party a relief which, in the circumstances of the case that is entitled to. In this case although prayer (iii) of the Defendants' motion dated 21st November, 1991 asked for an order: "Generally restoring the status quo ante, at the 1st plaintiff/respondent bank, as at the date of judgment delivered on the 1st of November, 1991" It is obvious from the submissions of their counsel that what was sought was the restoration of the status quo before the date of judgment which the Court of Appeal granted. In any case, it has not been shown that what the Court of Appeal granted was more than what the defendant prayed for. I see no substance in this appeal". With the above position of the law in mind, I hold the view that the trial court was right in what it did and that the Court of Appeal was also right in affirming the decision of the trial court on the matter. On the issue as to whether there was a joinder of causes of action contrary to law, I had earlier reproduced the decision of the trial court on the issue. I have gone through the record as regards the proceedings before the lower court and I do confirm that the appellant never appealed to the Court of Appeal on the decision of the trial court that the issue ought to have been raised in the appellant's pleading and that not being so raised, it was too late to raise it on address. It is rather too late in the day to now raise the issue before this court, without leave of either the lower court or of this court to that effect as the law is settled that any point(s) of law, or facts not appealed against is deemed to have been conceded by the party against whom it was decided and that the said point(s) remain(s) valid and binding on the parties. On the issue of admission of certified true copies of conveyances without explanation as to the whereabouts of the originals, it is clear that the contention of learned counsel for the appellant is not supported by law having regards to the facts of this case. It is settled law that where a certified true copy

of a registered Deed of Conveyance, as in the instant case, is properly received in evidence, this will be sufficient for the proof of execution of such Deed of Conveyance - see *Cardoso v Daniel* (1966) 1 All NLR 25 and *Adelaja v Fanoiki* (1990) 2NWLR (Pt.131) 137 at 154. It is for these and the more detailed reasons contained in the lead judgment of my learned brother Musdapher, J.S.C that I agree that this appeal is without merit and should be dismissed and accordingly dismissed same with costs as assessed and fixed in this said lead judgment.

Appeal dismissed.

Judgment delivered by

Francis Fedode Tabai. J.S.C.

I was privileged to read, in draft, the leading judgment of my learned brother Musdapher J.S.C. He meticulously dealt with each of the four issues formulated by the Appellant and resolved each against the Appellant, holding in conclusion that the appeal lacked merit. The appeal was accordingly dismissed. I agree entirely with the reasoning and conclusion in the said judgment. There is no substance in the appeal which is accordingly dismissed by me as well. I assess the costs of this appeal at N10,000.00 in favour of the Respondents.

Counsel

M.A. Apampa Esq " For the Appellant

O.A.R. Ogunde Esq " For the Respondent

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