UKO & ANOR V. STEMCO LTD

(2018) LPELR-44873(CA)

MR. DONATUS GAUL UKO & ANOR

v. STEMCO LIMITED

(2018) LPELR-44873(CA)

In the Court of Appeal

(CALABAR JUDICIAL DIVISION)

On Thursday, the 24th day of May, 20 18

Suit No: CA/C/232/2016

Before Their Lordship

IBRAHIM MUHAMMED MUSA SAULAWA **Justice of the Court of Appeal**

STEPHEN JONAH ADAH **Justice of the Court of Appeal**

JOSEPH OLUBUNMI KAYODE OYEWOLE **Justice of the Court of Appeal**

Between

1. MR.DONATUS GAUL UKO

APPELANTS

2. NR. SYLVESTER GAU L UKO

And

STEMCO LIMITED RESPONDENTS

SUMMARY OF JUDGMENT

INTRODUCTION:

This appeal borders on Trespass to Land.

FACTS:

The appeal is against the decision of the High Court of Akwa lbom State delivered on the 4th February, 2016 by HON Justice Isangedighi.

The Appellants who were farmers of Ukana Ikot Eso village in Essien Udim Local Government Area of Akwa Iborn State, where the Respondent was then executing a road construction contract, alleged that the Respondent trespassed upon their farmland called 'lso Ubo' lying and situate in the said Ukana lkot Eso village and took out a writ of summons against the Respondent claiming Fifty Million Naira (N50 Million) damages for trespass.

On being served with the originating processes, the Respondent as Defendant filed a statement of defence denying the claim. At trial, the Appellants called two witnesses and tendered documentary exhibits while the Respondent called a lone witness. After taking final addresses of counsel for the two sides, the learned trial Judge delivered judgment dismissing the claim.

Dissatisfied, the Appellants brought this appeal.

ISSUES:

The Court determined the appeal on the Appellants' issues as follows:

1. Whether the Appellants successfully proved their title to the land subject matter of Suit/appeal to qualify them for the reliefs sought in the writ of summons and statement of claims filed on 25/7/2013.

2. Whether the trial Court was right in putting the identity of the land in issue when both Appellants and Respondent and their witnesses were referring to the same parcels/portions of farmlands. And

3. Whether from the evidence of both parties, title and identity of the subject matter of suit was in dispute to warrant the trial Court holding that proof of root of title confirm acts of ownership.

4. Whether the trial Court was right in visiting its oversight or mistake on the Appellants at the time of writing judgment by holding that the second/further sworn deposition was not adopted by the Appellants.

DECISION/HELD:

In the final analysis, the appeal succeeded and was allowed. Consequently, the Judgment of the trial Court was accordingly set aside and the sum of N1 million was awarded as general damages against the Respondent in favour of the Appellants for trespass.

RATIO DECIDENDI

LAND LAW - TRESPASS TO LAND - Who can maintain an action in trespass

"Trespass to hand is basically interference with possession. It is the unauthorized and wrongful entry unto another's hand thereby interfering with his exclusive possession thereof. It is therefore actionable at the instance of the party in exclusive possession of the hand who has a right of action against the whole world except the person with a superior title. For a Claimant to succeed in an action for trespass therefore, he has a duty to establish his exclusive possession of the hand in dispute. See AKUNYILI VS EJIDIKE (1996) 5 NWLR (Pt. 449) 381, ECHERE & ORS VS EZIRI KE & ORS (2006) LPELR— 1000(SC), ORIORIO & ORS VS OSAIN & ORS (2012) LPELR—7809(SC) and UFOMBA & ANOR VS AHUCHAOGU & ORS (2003) LPELR—3312(SC). Relying on the decision of the Apex Court in UMEOBI VS OTUKOYA (197B) 4 SC 33, ADEKEYE, JSC stated thus: only a person in possession of land at the material time can maintain an action for damages for trespass but when the issue is as to which of the two claimants has a better right to possession or occupation of a piece or parcel of land in dispute, the law will ascribe such possession and or occupation to the person who proves a better title thereto. Equally, when two parties are on land claiming possession, trespass can only be at the suit of that party who can prove that title to the land is in him. See ORIORIO & O RS VS OSAIN & ORS (2012) LPELR—7809(SC) at 27." Per **JOSEPH OLUBUNMI KAYODE OYEWOLE, JCA** (Pp. 9-10, paras. B-C)

READ IN CONTEXT

VIEW ANALYTICS

ACTION - PLEADINGS - Nature of pleadings

"Civil cases in our trial Courts of record are conducted vide pleadings. Pleadings by their nature contain the facts constituting the case of each party and evidence would only be led in furtherance of the filed pleadings of the parties. Where admissions are made in the

pleadings, then such facts would need no further proof and where issues are joined and evidence is not led, then such pleading is deemed abandoned. Where however, evidence is adduced outside the pleadings such evidence will go to no issue." Per **JOSEPH OLUBUNMI KAYODE OYEWOLE, JCA** (P. 10, paras. D- F)

READ IN CONTEXT

VIEW ANALYTICS

PRACTICE AND PROCEDURE - RECORD OF COURT PROCEEDINGS - Mode of challenging and impeaching the record of proceedings of a Court

"The Court presumes in favour of the correctness of the records Df the Court and parties bound by it unless the contrary is proved. A challenge of the record of a Court is not taken lightly as it impugns the integrity and competence of the Judge. The procedure is for the party challenging the record to depose to an affidavit stating the omission Dr incorrectly stated fact or proceeding which affidavit would be served on the Judge or Registry of the Court involved. See GONZEE (NIG) LTD VS. NIGERIAN EDUCATIONAL RESEARCH & DEVELOPMENT COU NCI L & ORS (2005) LPELR—1332(SC). The principle of law involved was well captured by the FABIYI, JSC thus: Learned counsel for the appellant should appreciate that the act of recording proceedings in Court is a judicial act which enjoys presumption of regularity under the law to use the language Df Mallam Yusuf Ali, SAN for the 2nd respondent. The appellant who wants to impugn the integrity of the learned trial judge has a binding duty to prove the contrary. See Shitta Bay v. Attorney—General Federation & Ors. (199B) 10 NWLR (Pt. 570) 392 at 426; Sommer v.

Federal Housing Authority (1992) 1 NWLR (Pt. 219)548. It is incumbent on the appellant to realize that the Court and the parties are bound by the record of appeal as certified and it is presumed correct unless the contrary is proved. A party who challenges the correctness of the record of proceedings must swear to an affidavit setting out the facts or part of the proceedings omitted or wrongly stated in the record. Such affidavit must be served on the judge or registrar of the Court concerned. See ADEGBUYI V. APC & ORS (2014) LPELR-24214(SC) at 18—19. The Appellants in this case are challenging the record of the trial

Court without deposing to any affidavit. I agree with the Respondent and accordingly this issue is resolved against the Appellant and in favour of the Respondents." Per **JOSEPH OLUBUNMI KAYODE OYEWOLE, JCA** (P p. 22-24, paras. D-A)

READ IN CONTEXT

VIEW ANALYTICS

JOSEPH OLUBUNMI KAYODE OYEWOLE. J-C.A. **(Delivering the Leading Judgment):**

This is in respect of an appeal against the decision of the High Court of Akwa Ibom State delivered on the 4th February, 2016 by ISANGEDIGHI J.

The Appellants who were farmers of Ukana Ikot Eso Village in Essien Udim Local Government Area of Akwa Ibom State, where the Respondent was then executing a road construction contract, alleged that the Respondent trespassed upon their farmland called 'Iso Ubo' lying and situate in the said Ukana Ikot Eso Village and took out a write of summons against the Respondent claiming as follows:

1. Fifty Million Naira (N50 Million) damages for trespass into the land of the Claimants by The Defendant: in that the Defendant without: the consent of the Claimants trespassed into The Land of the Claimants known as "ISO UBO" and dumped evacuated topsoil and poisonous waste materials and continued in the trespass up till date.

2. An order directing the Defendant to evacuate the waste topsoil and poisonous waste materials dumped on the land and crops of the Claimants.

3. An order directing the Defendant to pay interest on the judgment sum at 10* per annum from dale of judgment titt dale of final payment

On being served with the originating processes, the Respondent as Defendant filed a statement of defence denying the claim which attracted a Reply to the statement of defence. At trial, the Appellants called two witnesses and tendered documentary exhibits while the

Respondent called a lone witness. After taking final addresses of counsel for the two sides, the learned trial Judge delivered a reserved judgment as aforesaid on the 4th February, 2016, dismissing the claim. Dissatisfied, the Appellant invoked the appellate jurisdiction of this Court via a notice of appeal filed on the 4th May, 2016 containing 4 grounds.

At the hearing of the appeal, Mr. Udo the learned counsel for the Appellants adopted the Appellants' brief filed on the 8th September, 2016 as well as the Reply brief filed on the 21st December, 2017 but deemed properly filed and served on the 27th March, 2018 as the arguments of the Appellants in furtherance of their appeal.

For the Respondent its counsel Mr. Nwachukwu adopted the Respondent's brief filed on 7th December, 2017 but deemed properly filed and served on the 27th M arch, 2018 as the arguments of the Respondent in contesting this appeal.

The Appellants formulated 4 issues from each of the 4 grounds of appeal which issues were adopted by the Respondent.

The said issues are as fo llows:

1. Whether the Appellants successfully proved their title to the Land subject matter of Suit/appeal to qualify them for the reliefs sought in the writ of summons and statement of claims filed on 25/7/2013.

2. Whether the trial Court was right in visiting its oversight or mistake on the Appellants at the time of writing judgment by holding that the second/further sworn deposition was not adopted by the Appellants.

3. Whether the trial Court was right in putting the identity of the land in issue when both Appellants and Respondent and their witnesses were referring to the same parcels/portions of farmlands.

4. Whether from the evidence of both parties, tittle and identity of the subject matter of suit was in dispute to warrant the trial Court holding that proof of root of Title confirm acts of ownership.

Issues 1, 3 and 4 are contiguous, interwoven and if I may add interpolated and shall accordingly be taken together. For clarity, the said issues are:

Whether the Appellants successfully proved Their title to The Land subject matter of Suit/appeal to qualify them for the reliefs sought in the writ of summons and statement: of claims filed on 25/7/2013.

Whether The trial Court was right in putting the identity of the hand in issue when both Appellants and Respondent and their witnesses were referring 1:o the same parcels/portions of farm lands. And

Whether from the evidence of both parties, title and identity of the subject matter of suit was in dispute to warrant the trial Court holding that proof of root of title confirm acts of ownership.

Appellants argued that by their uncontroverted pleadings and evidence they established their title to the land in issue through traditional evidence, acts of ownership extending over sufficiently lengthy period and acts of tong possession and enjoyment. Their learned counsel referred to **IMKPINANG VS NDEM (2013) 4 NWLR (PT 1344) 302 at 304-305 and ANYAFULU VS MEKA (2014) 7 NWLR (PT 1406) 396 at 402**.

Mr. Udo argued further that the pleadings of the Respondent disputing ownership and possession of the Appel\ants were evasive and that they failed to prove better tit\e to that of the Appellants who were in possession and presumed owners. He referred to **APATA VS OLANLOKUN (2013)17 NWLR (PT 1383) 221 at 228, ODUM VS UGANDEN (2009) 9 NWLR (PT 1146) 281 at 288, SAPO VS SUNMONU (2010) 11 NWLR (PT 1205) 374 at 383 and DIMKPA VS CHIOMA (2010) 9 NWLR (PT 1200) 482 at 489.**

Mr. Udo submitted that the Appellants claim was for trespass and not declaration of title as wrongly placed by the learned trial Judge despite the admission of the Respondent and its evasive denial which according to the learned counsel occasioned miscarriage of justice. He referred to **ASHEIK VS BORNU STATE GOVT (2012) 9 NWLR (PT 1304) 1 at 9, ORIORIO VS OSAIN (2012) 16 NWLR (PT 1327) 560 at 564-565 and APENA VS AILERU (2014) 14 NWLR (PT 1426) 111 at 116-117.**

The Appellants argued that the description of the land in dispute given by them in their pleadings and adduced evidence was not disputed by the Respondent in both its pleadings and evidence at trial thereby settling the issue of identity of the said land and that the trial Court misdirected itself on the said issue.

Mr. Udo contended that the entire evidence adduced by the Respondent at trial failed to prove any justification for entering the land and to specifically controvert the case of the Appellants and that its case was contradictory which in totality amounts to an admission thereby relieving the Appellant of the burden of proof. He referred to **ATUCHUKWU VS ADINDU (2012) 6 NWLR (PT 1297) 534 at 539 and WEMA BANK PLC VS LIT NIG LTD (2011) 6 NWLR (PT 1244) 479 at 4B5.**

Contrariwise, Mr. Nwachukwu argued for the Respondent that although the Appellants' claim was for trespass but that having claimed to have inherited the land in question the Appellants had the onus to plead and lead evidence on their root of title which they failed to discharge. He submitted that Appellants also failed to prove acts of ownership extending over a lengthy period of time and acts of long possession and enjoyment as claimed. He referred to **AKINRINLOLA VS AKINTEWE (2013) FWLR (PT 160) 1602 at 1605 and OYEDARE Vs KEJI (2005) ALL FWLR (PT 247) 1585 at 1586, AKINWALE VS ILLIASU (2005) ALL FWLR (PT 289) 1294**.

Respondent further argued that where radical tittle pleaded could not be established, acts of lo ng possession or acts of ownership derived from such title would not suffice. He referred to **DABO VS ABDULAHI (2005) ALL FWLR (PT 255) 1057 and INTERNATIONAL BEER AND BEVERAGES INDUSTRIES LTD & ANOR VS MUTUNCI COY NIG. LTD (2013) ALL FWLR (PT 640) 1286.**

The learned counsel that the evidence of the Appellants at trial was of sole ownership of the land in issue by the 1st Appellant thereby contradicting the pleadings and discrediting the case of the Appellants.

Learned counsel pointed out that the case of the Respondent at trial was that it was given a virgin land by the Village Head for use as dump site which differed from the cultivated land

of the Appellants and that the evidence was uncontradicted thereby raising the issue of identity of the land in dispute.

Counsel further contended that the Appellants failed to call evidence of its boundary owners deeming the averments in respect thereof abandoned. He referred to **MAERSK (NIG LTD VS ZATS INT'L LTD** (2013) ALL FWLR (PT 685) 386 at 388.

Mr. Nwachukwu argued for the Respondents that the Appellants failed to prove exclusive possession of the land in issue and cannot accordingly succeed in an action for trespass. He referred to **OKORONKWO VS CHUKWEKE (1992) 1 NWLR (PT 216) 17B, LEWIS VS OBAWOLE (2012) ALL FWLR (PT 636) 563 at 566 and BABATOLA VS ALADEJANA (2001) FWLR (PT 61) 1671 at 1673.**

He denied any admission by the Respondent and contended that the Appellants failed to adduced credible evidence in support of their claim which would enable the shift of the burden of proof to the Respondent and that a claimant must succeed on the strength of his case and not the weakness of the defence. He referred to **Sections 132 and 133 of the Evidence Act - 2011 and STIRLING CIVIL ENGINEERING NIG. LTD VS YAHAYA (2OO2) FWLR (PT 114) 565.**

He argued that even if it was conceded that the parties were ad idem on the identity of the land, the error of the learned trial Judge in this regard was insufficient to invalidate the judgment. He referred to **AGBEJE VS AJIBOLA (2002) FWLR (PT 92) 1692.**

In his reply brief, Mr. Uko rejected the contention that the Appellants gave contradictory evidence and submitted that the testimony of the 1st Appellant as PW1 was on behalf of the Appellants collectively.

He reiterated his earlier arguments that there was no dispute on the identity of the land in issue, that the Appellants proved their exclusive possession thereto and duly established their title through credible evidence.

Trespass to hand is basically interference with possession. It is the unauthorized and wrongful entry unto another's land thereby interfering with his exclusive possession thereof.

It is therefore actionable at the instance of the party in exclusive possession of the hand who has a right of action against the whole world except the person with a superior title. For a Claimant to succeed in an action for trespass therefore, he has a duty to establish his exclusive possession of the Land in dispute. See **AKUNYILI VS EJIDIKE (1999) 5 NWLR (PL 449) 381, ECHERE & ORS VS EZIRIKE & ORS (2006) LPELR-1000 (SC), ORIORIO & ORS VS OSAIN & ORS (2012) LPELR-7809(SC) and UFOMBA & ANOR VS AHUCHAOGU & ORS (2003) LPELR-3312(SC).**

Relying on the decision of the Apex Court in **UMEOBI VS OTUKOYA** (1978) 4 SC 33, ADEKEYE, JSC stated thus:

Only a person in possession of land at the material time can maintain an action for damages for trespass but when the issue is as to which of the two claimants has a better right to possession or occupation of a piece or parcel of land in dispute, the law will ascribe such possession and or occupation to the person who proves a better title thereto. Equally, when two parties are on land claiming possession, trespass can only be at the suit of that party who can prove that title to the land is in him. See **ORIORIO & ORS VS OSAIN & ORS (2012) LPELR-7809(SC) at 27.**

Civil cases in our trial Courts of record are conducted vide pleadings. Pleadings by their nature contain the facts constituting the case of each party and evidence would only be led in furtherance of the filed pleadings of the parties. Where admissions are made in the pleadings, then such facts would need no further proof and where issues are joined and evidence is not led, then such pleading is deemed abandoned. Where however, evidence is adduced outside the pleadings such evidence will go to no issue.

The take-off point therefore would be the state of pleadings exchanged between the parties.

The case of the Appellants as Claimants at trial on ownership and possession of the said land is contained in paragraphs 3 of their Statement of Claim on pages 4-6 of the record of appeal as follows:

3. The Claimants are the bonafide owner of a parcel of land known and called "ISO UBO" in AnwaEso Layout lying and situate at UkanalkoEso Village in Essien

Udim LocaL Government Area. The said parcel of Land has economic crops and palm trees planted thereon by The Claimants who acquired the land by inheritance.

The allegation of trespass and description of the land in issue is in paragraph 4 thereof which goes thus:

4. lso Ubo hand destroying cassava and other crops planted by the Claimants on The said Land. The said land of the Claimants has the following boundary features and neighbours; On the first side by the Road Leading to Nsiak Village from Ikot Esoh Village.

On the second side by the land of Mr. John Jerome Etukudo.

On the third side by the land of Mr. Monday Ben Edu.

On the fourth side by the Road called "lkot Esoh Road".

Photographs of the Claimants' land and the negative after the trespass by the Defendant are pleaded and shall be relied upon at the trial.

The Respondent as Defendant filed a statement of defence on the 5th December, 2013 contained on pages 23 - 24 of the record of appeal. The said statement of defence has 9 paragraphs which for the proper appreciation shall be set out verbatim in full as follows:

1. The Defendant admits paragraphs 1 and 2 of the Statement of Claim.

2. The Defendant avers that: sometime in the month of November, 2012, she embarked on the construction of the designated roads along Ukana lkot Eso in Essein Udim LocaL Government Area of Akwa lbom State and its environs. In the process of the said road construction, the Defendant, through her Community Liaison Officer, Mr. Akpabio Enyienyie Otong, approached the Ukana lkot Eso Village Head for a parcel of Land to be used as dump sites for her work. The then Ukana lkot Eso village Chairman in charge showed The Defendant a forest, virgin hand and authorized Defendant to clear the said forest for the use as dump site of top soil. Based on the consent, authority and full knowledge and approval of the village head and village

Chairman of Ukana lkot: Eso Village, top soil from Defendant's road construction work were dumped on the site shown to the Defendant. The said top soil are neither toxic nor harmful in any way.

3. The Defendant avers that she never knew or meet the Claimants at any point in time during the entire period when the construction work was going on. The Defendant never dump any waste top soil on the land of the Claimants. The Defendant further avers that some neighboring land owners who complained of top soil spilling on to their land were adequately taken care of by the Defendant through her Community Liaison Officer, Mr. Akpabio Enyienyie Otong.

4. The Defendant denies paragraphs 4 and 5 of the Statement of Claim. The Claimants never protested nor reported any invasion to their Land to the Defendant. The Defendant's Liaison Officer never received any complainant or protests from Claimants whatsoever.

5. The defendant avers that, after the top soil had been dumped at the designated sites shown to the Defendant by the village head, the Defendant proceeded to level the heaps of sand thereby making it habitable for further use.

6. The Defendant avers that the Claimants proceed to purchase the said land after the Defendant had leveled the land and completed the Ukana lkot Eso project.

7. The Defendant denies paragraphs 8,9 and 10 of the Statement of Claim. The photographs shown by the Claimants are not ascertainable as the true picture of the said land. The Claimant owned an adjoining Land to the Land in issue and proceeds 1:o buy the Land in issue after the Defendant had almost completed the Road construction and abandoned the dump site.

8. The Defendant further avers that there were barely any economic crops on the said land when top soil was dumped on if.

9. Whereof the Claimants are not entitled to any or all of the reliefs sought in paragraph 10 of their Statement of Claim and the Defendant shall at the trial of this

suit, urge this Honourable Court to dismiss this action with substantial cost as being frivolous, vexatious and a waste of the time of this Honourable Court.

From the pleadings, there obviously was no confusion between the parties as to the identity of the land on which the Respondent dumped top soil from their road construction activities.

The Respondent as defendant admitted dumping top soil from their construction works on the land claimed to belong to the Appellants but without claiming ownership of the said land but relied on the permission said to have been granted to them by unnamed Village Chairman and Village Head of Ukana lkot Eso Village. There were therefore no competing ownership claims from the pleadings.

The earlier position of the Respondent in paragraph 2 that the land they dumped top soil was virgin forest was abandoned in paragraph 8 where they now averred that there were barely any economic crops on the said land when top soil was dumped on it. This admission of the presence of economic crops on the said land confirms adverse possession and leans towards the averments of the Appellants.

The Appellants filed a Reply to the Statement of Defence wherein they reiterated their ownership to the hand and issue and joined issues with the Respondent on the authority said to have been granted it to enter the said land and dump top soil thereon.

At trial, the Appellants led evidence in support of their pleadings through Pw1, the 1st Appellant and PW2 a co-villager who notified the 1st Appellant of the Respondent's trespass.

The Respondent on its part gave evidence at trial through its Community Liaison Officer who played a prominent part in the transaction.

The learned trial Judge in the judgment now on appeal noted that the Appellants failed to adopt the further sworn deposition of PW1 and failed to call the listed additional witnesses relating to the Reply to the Statement of Defence and thereafter made the following finding in lines 1-7 on page 97 of the record of appeal:

One contentious issue in this case is the identity of the Land, which is the subject-matter of This suit. While the Claimants assert that the Land in dispute has been theirs since 2005, the defendant claims that the Land they were given by the Village is not the

Claimant's land. What this translates to is that parties are referring to two distinct and separate parcels of land. The facts abandoned by the Claimants, if adduced would have fixed the parties to the same parcel of land but those facts had been abandoned.

With due respect to his lordship, the above position does not correspond with the state of pleadings and adduced evidence. As earlier pointed out, the averments of the Respondent in paragraphs 6, 7 and 8 of its statement of defence made it abundantly clear that the parties were ad idem on the identity of the land said to have been trespassed upon. For emphasis, the said paragraphs are as follows:

6. The Defendant avers that the Claimants proceed to purchase the said land after the Defendant had leveled the land and completed the Ukana lkot Eso project.

7. The Defendant denies paragraphs 8,9 and 10 of the Statement of Claim. The photographs shown by the Claimants are not ascertainable as the true picture of the said land. The Claimant owned an adjoining land to the land in issue and proceeds to buy the land in issue after the Defendant had almost: completed the Road construction and abandoned the dump site.

8. The Defendant further avers that: there were barely any economic crops on the said Land when top soil was dumped on it.

The learned trial Judge stated the correct position of the law in fines 23-28 of page 97 of the record of appeal as follows:

It is trite law that a claim for trespass to hand is rooted in exclusive possession. All that the Claimants need to establish to succeed in such a claim is that they have exclusive possession or the right to such possession of the \and in dispute. If the land were the same and the defendant Laid claim to it, they must establish a better title than the Claimants. SEE **TENALO V. PIARO (1976) 12 S.C. 31.**

However, in lines 5-24 of page 98 fundamental errors creeped in, to wit:

Again, it is the duty of the Claimants in a claim for declaration of title to establish with certainty and accuracy the identity of the Land in dispute.

In their pleading, the claimants merely asserted that they are the bonafide owner of a parcel of Land known as and called "ISO UBO" in Anwa Eso layout lying and situate at Ukana lkot Eso village in Essien Udim Local Government Area without more.

Ordinarily, they ought to aver:

(a) facts relating to the founding of the Land in dispute

(b) the founders of the Land

(**c) on whom the land devolved since founding, till the claimants became vested with it. Apparently, the Claimants did not advert their minds to the above mandatory requirements in their pleadings. See NWOKORONBIA V. NWOGU (2009) 10 NWLR (PT 1180) 553 at 557, Ration 2.**

It is important to note that it is only after a party's root of title is first established that consequential acts flowing therefrom can then qualify as acts of ownership.

Consequently, where the title pleaded is not proved, it will be totally unnecessary to consider acts of possession or ownership because such acts are no longer acts of possession or ownership but acts of trespass.

The claim of the Appellants was for damages for trespass not declaration of title and the pleadings of the parties do not reflect any contest on title to the land in issue. The Respondent did not even challenge paragraph 3 of the statement of claim containing the Appellants' title claims.

The parties had no conflict on the identity of the land and any doubt that the learned trial Judge had it all mixed up was cleared by tines 25-26 of the same page 98 of the record of appeal, where his lordship of trial stated thus:

This is as it should be. However, the defendant says What: the land she acquired is not the same hand claimed by the Claimants.

The Respondent did not state anywhere in its pleadings that it acquired any land or the land trespassed upon. The case of the Respondent was that it had the permission of the Village Chairman and Village Head to enter upon the land. This is not an assertion of acquisition and would not apropos be a claim for title as to require the Appellants to establish their title to the land in issue.

The learned trial Judge then concluded the vexed judgment on lines 25-26 and 1-6 of pages 98 and 99 respectively of the record of appeal as follows:

There is nothing in Exhibits 1-1C or 1D to establish the identity of the hand as same as the one claimed by the claimants. There is no contrary evidence from the claimants to show Shah The defendant's claims are not correct.

it is for the above reasons that I find as a fact that there is no sufficient evidence of proof of the claimants' claim. The Lone issue is resolved in favour of the defendant.

This suit therefore lacks merit and it is accordingly dismissed.

The Respondent by its pleadings admitted dumping top soil from its construction activities on the Land not belonging to it and which Land had economic crops thereon. The Respondent asserted that its action was based on the permission from unnamed

Village Chairman and Village Head of the Claimants who are owners and occupiers of the said land. To disprove trespass, onus of proving legitimate entry must be discharged by the Respondent through credible evidence. Throughout the trial, the Respondent, a corporate entity, however failed to adduce any documentary evidence in support of its assertion and failed to call either the Village Chairman or Village Head as witness.

I therefore resolve the three issues in favour of the Appellants and against the Respondent.

The remaining issue is:

Whether the trial Court was right in visiting its oversight or mistake on the Appellants at the time of writing judgment by holding that the second/further sworn deposition was not adopted by the Appellants.

Arguing this issue, Mr. Udo submitted that the Learned trial Judge omitted to record the adoption by PW1 of his additional sworn deposition and visited this error on the same party by holding the Appellants liable for non-adoption of the said deposition thereby occasioning a miscarriage of justice.

The rebuttal of the Respondent was that the record of appeal did not contain the assertion of the Appellants and that they were by implication challenging the records of the Court and would only be permitted to do so in compliance with the extant procedure set out in **DARAMOLA VS A.G. ONDO STATE (2001) FWLR (PT 6) 1013.**

In the Reply brief the Appellants maintained that mistakes or oversights of Courts should not be allowed to affect the rights of the parties.

The Court presumes in favour of the correctness of the records of the Court and parties bound by it unless the contrary is proved. A challenge of the record of a Court is not taken lightly as it impugns the integrity and competence of the Judge. The procedure is for the party challenging the record to depose to an affidavit stating the omission or incorrectly stated fact or proceeding which affidavit would be served on the Judge or Registry of the Court involved. See **GONZEE (NIG) LTD VS. NIGERIAN EDUCATIONAL RESEARCH (2005)** & **LPELR-1332(SC).**

The principle of law involved was well captured by the FABIYI, JSC thus:

Learned counsel for the appellant should appreciate that the act of recording proceedings in Court is a judicial act which enjoys presumption of regularity under the law to use the Language of Mallam Yusuf Ali, SAN for the 2nd respondent. The appellant who wants to impugn the integrity of the learned trial judge has a binding duty to prove the contrary. See. **Shitta Bay v. Attornev-General Federation & Ors**. **(1998) 10 NWLR (Pt. 570) 392 at 426, Sommer v. Federal Housing Authority (1982) 1 NWLR (Pt. 219) 548.**

It is incumbent on the appellant to realize that the Court and the parties are bound by the record of appeal as certified and it is presumed correct unless the contrary is

proved. A party who challenges the correctness of the record of proceedings must swear to an affidavit setting out: the facts or parl: of the proceedings omitted or wrong ay stated in the record. Such affidavit must be served on the judge or registrar of the Court concerned. See ADEGBUYI V. APC & ORS (2014) LPELR-24214(SC) at 18-19.

The Appellants in this case are challenging the record of the trial Court without deposing to any affidavit. I agree with the Respondent and accordingly this issue is resolved against the Appellant and in favour of the Respondents.

In view of the conclusion reached on the issues earlier considered, I find merit in this appeal and I accordingly allow it.

The judgment of the trial Court in Suit No HT/94/2013 delivered on the 4th February, 2016 is hereby set aside.

The Appellants are entitled to succeed in their claims and it is accordingly adjudged as fo llows:

1. The sum of N1million is awarded as general damages against the Respondent in favour of the Appellants for trespass committed by the Respondent in dumping top soil unto the appellants' land known as ISO UBO lying being and situate in Ukana Ikot Eso Village of Essien Udim Local Government Area of Akwa Ibom State, without the consent of the Appellants.

2. The Respondent is hereby ordered to evacuated the waste top soil dumped on the Appellants' land and crops forthwith.

3. Cost of the action is assessed in the sum of N100,000.00 and awarded against the Respondent in favour of the Appellants.

IBRAHIM MOHAMMED MUSA SAULAWA. J.C.A.: I have had the privilege of reading, before now, the draft of the judgment just delivered by Oyewole, JCA. Having concurred with the reasoning reached therein, to the conclusive effect that the instant appeal

is meritorious, I hereby adopt same as mine. Accordingly, I hereby allow the appeal and abide by at1 the consequential orders made in the judgment.

STEPHEN JONAH ADAH, J.C.A.: I read in advance a copy of the judgment just delivered by my learned brother, J. O. K. Oyewole, JCA.

I agree with the reasoning and the conclusion that this appeal has merit.

I therefore do allow this appeal and I abide by all the consequential orders inclusive of the order as to costs as made in the lead judgment.

Appearances:

M R. D. G. UDO for Appellant(s)

M R. N. NWACHUKWU For Respondent(s)