IN THE CUSTOMARY COURT OF APPEAL
EDO STATE OF NIGERIA
HOLDEN AT BENIN CITY

ON TUESDAY, THE 10TH DAY OF MAY, 2011

BEFORE THEIR LORDSHIPS

MARY NEKPEN ASEMOTA - JUDGE (PRESIDED)
PETER AKHIMIE AKHIHIERO - JUDGE
OHIMAI OVBIAGELE - JUDGE

APPEAL NO: CCA/9A/2009

B E T W E E N:

1. MR. MONDAY OJEMEN é . é . é .
2. MR. IREDIA OJEMEN é é . é . é } APPELLANTS

A N D

1. MR. PATRICK AUDU é . é . é . .
2. MR. SOLOMON AUDU é . é . é . . } RESPONDENTS

J U D G M E N T
DELIVERED BY MARY NEKPEN ASEMOTA (JCCA)

This is an appeal against the judgment of the Esan Central Area Customary Court, Irrua in a consolidated suit ECACC1/64T/93 delivered on the 23rd day of December, 2005.

Two separate suits namely: EACC1/64T/93 and ECACC1/47/2000 were instituted in the lower court by parties who have since died during the pendency of the cases and substituted with the appellants and the respondents, herein.

By an amended claim, in suit No. ECACC1/64T/93, the appellants (as

plaintiffs) claimed for themselves and on behalf of Ojemen Ihaza Iguanle family against the respondents (as defendants) substituted for Audu Eichie, a grant of a customary right of occupancy over a parcel of land measuring approximately 500 native plots consisting of 100 feet by 50 feet each, situate at Idumu-Abor Ibhiolulu, Irrua, ₦3,000 (three thousand naira) damages for trespass over 6 native plots out of a total of 500 plots, and perpetual injunction.

In the second suit, ECACC1/47/2000 Audu Eichie (as plaintiff) later substituted with the respondents claimed against the appellants (as defendants) jointly and severally a grant of a customary right of occupancy over the piece or parcel of land containing about 100 native plots lying behind his house at Ujabhole village, Irrua and perpetual injunction.

The appellants (as defendants) also counterclaimed against the respondents seeking a grant of customary right of occupancy, ₦7,000.00 (seven thousand naira) general damages for trespass as well as an order for perpetual injunction.

The appellantsô case at the trial court was that the land in dispute which is about 6 native plots forms part of the 100 native plots at Idumu-Abor, Ibhiolulu, Irrua belonging to Ojemen family. The land was deforested by the grandfather of the 1st appellant, who planted cash crops such as kolanut, cocoa trees etc. on the land. The 1st appellantôs father inherited the land and when he died, it passed to the 1st appellantôs elder brother who is the father of the 2nd appellant. When he also died, it passed to the 1st appellant as the present head of Ojemen family.

The 1st appellantôs father gave the land in dispute to one Obilia, an uncle of the 1st appellant for farming with an instruction not to plant economic or cash crops. He was to plant only seasonal crops. Obilia gave one native plot to the respondentsô father, Audu Eichie, who was living with him at the time and who is also his in-law. The respondentsô father expanded beyond the initial area given to him. He disobeyed the instruction not to plant economic crops by planting rubber trees and oranges on the land.

One Egbenomole trespassed into the land in 1959. The 1st appellant confronted him and some persons intervened and to make for peace, the 1st appellant was asked to compensate him by paying for the oranges and rubber trees which Egbenomole had planted. He paid £4 for his effort and the trespasser left the land.

The respondentsô father trespassed into the land in 1965 and the 1st appellant reported a case of malicious damage to the police. The 1st appellant dropped the police case when the respondentsô father and his relations begged him. The respondentsô father refused/failed to pay the compensation he was asked to pay for the damages to 1st appellantôs crops. The 1st appellant brought a civil suit against the respondentsô father at the Ubiaja Magistrateôs Court in 1966. The suit was decided in his favour.

The respondentsô father trespassed again in 1979 and planted crops such as plantain, ducanut, and pears on the land and started to erect a building thereon.

The 1st appellant instituted an action against him. The case went from the District Customary Court, Irrua to the Okpebho Area Customary Court, Irrua and eventually to this Court where a retrial was ordered. The retrial has culminated in this present appeal.

The respondentsô case on the other hand which was largely put forward by their father, Audu Eichie, before he died in 2005 is that the land in dispute which is located at Ujabhole was deforested by their late grand father, Eichie Okholegbe. The dimension of the land is one hundred native plots. Their grand father built a house on a part of the land for their father, Audu Eichie, the original defendant. Before the death of their grand father, he shared the land between the respondentsô father and his elder brother, Okosun. The land in dispute is the respondentsô portion of the land having inherited same. Rubber trees, cocoa, palm trees etc. were planted by their father on the land. This was in addition to some ducanut trees and pear tree planted by their grand father after the deforestation. The respondentsô father maintained the plantation and harvested the crops before he died. The land was initially fenced by the respondentsô father but some parts were pulled down during the construction of Ujabhole/Ibhiolulu road.

A relation of the appellants, Ebosele Ojeme, built a house on the land in dispute. The respondentsô father tried to stop him. When he pleaded, he obliged him and asked him to meet him for proper documentation. He failed to show up and the respondentsô father sued him. Ebosele disobeyed the courtôs restraining

order of injunction over the land.

The 1st appellant was given one and half plots of land free of charge by the respondentsô father to build a house after the intervention of the respondentsô fatherôs elder brother. The 1st appellant in turn gave a part of it to his brother, Ihaza Ojeme, to build a house as well. The 1st appellant rather than show gratitude sued the respondentsô father, to court.

The trial court, after hearing evidence and a visit to the ***locus in quo***, in a considered judgment found in favour of the respondents and dismissed the appellantsô case in its entirety.

Dissatisfied, the appellants filed a notice of appeal containing two grounds to wit: an omnibus ground of appeal and one other ground of appeal.

With leave of this Court, the appellants filed amended further grounds of appeal containing six grounds. All the eight grounds of appeal without their particulars are as follows:

ñ1. The Honourable President and members erred in law following the decision reached in the judgment dated the 23rd day of December, 2005.

2. The decision is against the weight of evidence.

3. The Honourable President and members erred in law and facts when they held that the defendants had better title to the land in dispute, without due regard to the plaintiffsô evidence of previous adjudication

and traditional history.

4. The trial court also misdirected itself in fact and law when it held that the 1st plaintiffs evidence showed that the 1st plaintiff did not have sufficient knowledge of the land in dispute.

5. The trial court also erred in law and facts when it failed to properly evaluate the evidence of the plaintiffs which was uncontroverted or unchallenged by the defendants particularly on the Esan Native Law and Custom of inheritance and succession applicable in Irrua.

6. The trial court also erred in law and facts by not complying with the legal or practice procedure in substituting the respondents as parties in the proceedings.

7. The trial court erred in law and fact when it failed to pronounce on the content or intendment of Exhibit ñAò vis (sic) the status of the 1st plaintiff to the land in dispute.

8. The trial court erred in law when it failed to evaluate separately and independently the evidence of parties in respect of the suits which resulted in the consolidation of this suit.ò

In consonance with the rules of this Court, the parties filed and exchanged their respective briefs of argument. It must be stated here that the appellant subsequently amended their grounds of appeal resulting in the respondent amending his brief of argument as well. The appellant thereafter also filed a

consequential amended brief of argument.

C.O. Ekuaze Esq., counsel for the appellants, formulated six issues for determination as follows:

ñ1. Whether the appellantsô amended notice of appeal in respect of this appeal is incurably defective and if the answer is in the negative;

2. Whether the lower court properly assessed the totality of evidence particularly in the face of a previous court judgment, Exhibit óAô, in respect of part of the disputed land which the appellants relied upon;

3. Whether the lower court was right in dismissing the appellantsô claim who led unchallenged evidence of traditional history in support of their case;

4. Whether on the basis of the respondentsô contradictory evidence, the decision of the lower court is tenable;

5. Whether non-consideration of the separate issues raised in the consolidated suits by the lower court is legally justifiable;

6. Whether the improper evaluation of evidence by the lower court did not occasion a miscarriage of justice to warrant a retrial.ò

On his part, learned counsel for the respondents, J.O. Udaze Esq., raised a preliminary objection against the competence of the appeal by incorporating it in his amended brief of argument. In the alternative, in case the preliminary objection is not upheld, counsel formulated a sole issue for determination as follows:

ñWho as between the appellants and the respondents have established by traditional evidence the right to customary right of occupancy over the land in dispute from the totality of the printed evidence.ò

The basis of the preliminary objection is that the grounds of appeal and the issues formulated therefrom by the appellants are not cognizable before this Court as they do not relate to questions of customary law. Counsel for the respondents further attacked the grounds of appeal as being too verbose and that the issues do not relate to the grounds.

The preliminary objection touches on the competence of this Court to entertain this appeal and it is therefore imperative to deal with it first.

We have observed that learned counsel for the respondents failed to comply with the provisions of Order 7 rule 17(1) of the Customary Court of Appeal Rules, 2000. The said provisions require a respondent intending to rely upon a preliminary objection to an appeal to file a notice giving the appellant seven clear days after service thereof before hearing, setting out the grounds of the objection.

The respondentsô counsel merely incorporated the preliminary objection and the submission in that regard in the brief of argument without giving the said notice. However, we are minded to consider the preliminary objection in the interest of justice since it has raised a fundamental issue on the competence of this appeal.

On the preliminary objection, it was counselôs submission that by virtue of

section 282(1) of the 1999 Constitution, the grounds of appeal and the issues formulated therefrom are not cognizable in this Court because they are not questions of customary law. He contended that the grounds of appeal are based on improper evaluation of evidence, contradictions and failure to follow one form of procedure or another in relation to consolidation of suits etc. Counsel cited the case of Ohai v. Akpoemonye (1999) 65 LRCN 77 at 79 r. 2.

He submitted that the lacuna created by the case of Oyediran v. Egbetola (1997) 50 LRCN 137 which enabled the customary courts to determine issues not related to customary law in order to avert injustice has been overruled by the case of Adisa v. Oyinwola (2000) 79 LRCN 2180 at 2193 r. 26. He argued that the High Courts can now determine cases bordering on customary rights of occupancy and that this Court has no power to determine issues not related to customary law. He cited the case of Akujinwa v. Nwaonuma (1998) 64 LRCN 5185 at 5210 in support.

He submitted that the notice of appeal containing the grounds of appeal is incompetent as no question of customary law was raised therein. He relied on the following cases:

1) Adegbite v. Raji (1992) 4 NWLR (Part 236) 478 at 481 r. 2;

2) Uwazurike v. A.G. Fed (2007) 149 LRCN 1449;

3) Ehuwo v. Ondo State INEC (2007) 147 LRCN 1543.

He contended that the attempt by the appellants to amend the notice and

grounds of appeal albeit belatedly to raise questions of customary law is of no moment as the notice of appeal is incurably defective and therefore cannot be amended. He cited the case of Global Transport Oceanic Co. S.A v. Free Enterprises Nig. Ltd (2001) 84 LRCN 574 at 598 r. 4 in support of the proposition.

In his response to the preliminary objection, learned counsel for the appellants in his appellantsô reply brief submitted that the further amended grounds of appeal adequately raised questions of customary law. He argued that the appellantsô notice of appeal clearly raised issues of customary law which this Court is empowered to entertain by virtue of section 282(1) of the 1999 Constitution. He contended that the case of Ohai v. Akpoemonye (1999) 65 LRCN 77 at 79 r. 2 cited by the respondentsô counsel was inapplicable to the present appeal as questions of customary law have been adequately raised herein. He urged the court to dismiss the preliminary objection.

We have carefully considered the submissions of both counsel on the preliminary objection. Learned counsel for the respondent had argued strenuously before the court that the grounds of appeal deal with improper evaluation of evidence, contradiction and failure to follow one form of procedure or another amongst others.

A close look at the original grounds of appeal and the further amended grounds of appeal show that the complaints are in the main against the application of the law to the evidence adduced before the trial court. The ground dealing with

consolidation notwithstanding, we believe that the particular ground is ancillary to the main issue of evaluation of evidence. It is pertinent to state here without equivocation that evaluation of evidence is known to all courts, including customary courts. See the decision of the Court of Appeal in the case of Gobang v. Shelim (2003) 3 NWLR (Part 807) 286 at 294.

This Court has in a number of its decisions stated and restated that customary law is a matter of fact to be proved by evidence. It follows therefore that customary law and the procedure for establishing the facts are interwoven. An issue of customary law cannot be formulated without reference to the facts that are necessary to prove the customary law in question. Section 282(1) of the Constitution of the Federal Republic of Nigeria, 1999 cannot be construed otherwise. See the following decisions of this Court:

1) Obokhai Oratokhai & anor v. Mrs. D.O. Imiere & anor (Unreported.) Appeal No. CCA/25A/2006, a judgment of this Court delivered on the 25th day of February 2008 at page 11 and

2) Mrs Nene Amoni v. Mr. Smart Amoni (Unreported) Appeal No. CCA/4A/2006, a judgment of this Court delivered on the 31st day of March, 2009.

We therefore hold that the grounds of appeal are competent before this Court. The preliminary objection fails and is accordingly dismissed.

The preliminary objection having been disposed of, we shall now consider the substantive appeal.

We have carefully examined the issues formulated by both counsel ***vis a vis*** the grounds of appeal. We observe that no issue was formulated from ground six of the grounds of appeal. It is trite that where no issue is formulated from a ground of appeal, the said ground is deemed to have been abandoned. See the following cases:

(1) Tsemudiara v. Messrs F.G.S. & Co. Ltd (2008) 7 NWLR (Part 1085) 84 at 89 rr. 7 & 8.

(2) Okonkwo v. Okonkwo (2004) 5 NWLR (Part 865) 87.

Accordingly, ground six of the amended additional grounds of appeal is hereby struck out.

Furthermore, Issue 1 as formulated by the appellant has no foundation in any of the grounds of appeal. It is also trite that an issue must arise from a ground of appeal or a combination of grounds of appeal. Therefore where an issue does not arise from a ground of appeal, it is a non-issue and has to be struck out. In the event, issue 1 and the arguments advanced in support, not having been distilled from any of the grounds of appeal is struck out. See the following cases:

1) Tsemudiara v. Messrs F.G.S. & Co. Ltd (supra)

2) Margi v. Yusuf (2009) 17 NWLR (Part 1169) 162.

3) Obumseli v. Uwakwe (2009) 8 NWLR (Part 1142) 55

In our view, Issues 2 and 4 formulated by the learned counsel for the appellants adequately deal with this matter. We adopt the said issues and reframe them and tie them to the grounds of appeal as follows:

1) Whether the trial court properly assessed the evidence adduced before it, particularly Exhibit óAô, a previous court judgment, before it reached a decision. (Grounds 2, 3, 4, 5 and 7.)

2) Whether the trial court was right to have delivered a single judgment after the consolidation of the appellantsô and respondentsô suits and whether it occasioned a miscarriage of justice. (Grounds 1 and 8)

On Issue one, learned counsel for the appellants submitted ***inter alia*** that the trial court failed to properly assess and evaluate the evidence of the appellants and their witnesses. He contended that the trial court failed to consider the following pieces of evidence adduced by the 1st appellant:

1. How the original defendant was permitted to farm on the land by the 1st appellant.
2. The activities of trespassers on the land which were successfully curtailed by him.
3. The unauthorized activities of the father of the respondents which 1st appellant challenged. The report of malicious damage made to the police. The plea by the father of the respondents which led to the withdrawal of the case.

4. The 1st appellantôs evidence of his proprietary interest in the land as present head of Ojemen family.

5. The traditional history of ownership of the disputed land including the genealogical tree of succession.

6. A certified true copy of judgment Exhibit óAô in Suit No. EK/21/66 in respect of the land in dispute adjudging that it belonged to the 1st appellant.

It was counselôs submission that it is the primary duty of the trial court which watched and heard the parties to evaluate such evidence and ascribe probative value to them. Counsel cited in support the case of Okwejiminor v. Gbakeji (2008) 17 WRN 1 at 48. He further submitted that where a trial court failed to properly assess the evidence adduced before it, the appellate court can interfere and draw necessary inferences therefrom. He cited the following cases in support:

1) Sokwo v. Kpongbo (2008) (sic) 34 page 1 at 16

2) Hilary Farms Ltd v. M/V ñMahtraò (2007) 53 LRCN 34 at 53.

It was counselôs submission that the evidence of traditional history led by the appellants was unchallenged under cross-examination and the trial court ought to have acted on it as establishing the truth of the matter. He relied on the case of Udo v. Cross River State Corporation (2002) FWLR (Part 104) 665.

He argued that where evidence of a party as in the instant case is unchallenged, proof of his case depends on a minimum proof. He cited the following cases in support:

1) Nwankwo v. Abazie (2003) NWLR (Part 834) 384

2) Trade Bank PLC v. Chani (2003) (sic) NWLR 158

3) Gaji v. Paye (2003) NWLR (Part 836) 158.

Counsel also referred to section 75 of the Evidence Act and submitted that facts admitted need no further proof.

In his reply on Issue one, learned counsel for the respondents submitted that the root of title of the appellants was discredited by unexplained gaps and inconsistencies in their story. He argued that from the evidence adduced by the appellants, it could not be said with certainty whether the land in dispute belonged to the 1st appellant by inheritance or to the 2nd appellant who is his nephew according to Esan customary law. He contended that the line of succession or devolution of the land was not made clear to the trial court by the appellants. Furthermore, he submitted that while the appellantsô witness (p.w1) stated in one breath that the land belonged to 1st appellant, in another breath, he stated that it belonged to the 2nd appellant without explanation as to the inconsistencies. According to counsel, these vital inconsistencies are fatal to the appellantsô root of title. He cited the following cases in support:

1) Lemonu v. Asore (1986) C.A part 2 page 272 at 289.

2) Dike v. Okoloedo (1999) 71 LRCN 2970 at 2977.

3) Alli v. Adesinloye (2000) 77 LRCN 724 at 749 r. 5.

It was counselôs further submission that once the foundation of traditional evidence of the appellants had been destroyed by evidence, their acts of possession became acts of trespass to the respondentsô land. He cited the case of Odofin v. Ayola (1984) NSCC 720 in support.

He submitted that the respondentsô root of title on the other hand which was predicated on deforestation by their grandfather, gift ***inter vivos*** and partition by their grandfather in favour of their late father was unassailable. Counsel submitted that where a trial court heard and saw the witnesses, visited the ***locus***, assessed and had drawn its own conclusion from its findings, an appeal court cannot interfere with such unequivocal appraisal of facts and evidence. He cited the following cases in support:

1) Awoyoolu v. Aro (2006) 135 LRCN 729 at 736 rr. 9 and 10.

2) Bunge v. Governor (Rivers State) (2006) 141 LRCN 2227 at 2232 r. 5

Counsel also cited the case of Egboran v. Akpotor (1997) 51 LRCN 1842 at 1847 and submitted, without conceding, that even if the traditional history by both sides were found wanting by the trial court, the resort to contemporary acts of ownership do not enure in favour of the appellants but to the respondents especially when it was shown that the respondentsô house on the land is over fifty years old. Moreover, he asserted that there were crops planted by the 1st

respondentsô father starting from the back of the said house and extending to the entire land.

Counsel contended that the trial courtôs visit to the ***locus in quo*** confirmed the respondentsô evidence that their father gave the 1st appellant land to build a house which gesture the 1st appellant extended to his brothers. He submitted therefore that the contiguity rule under section 46 of the Evidence Act, 2004 which rule presumes the owner of land adjacent to the land in dispute to be the owner as well does not avail the appellants. He cited in support the case of Kasali v. Lawal (1986) 3 NWLR (Part 28) 305 at 306 ï 307.

It was counselôs submission that Exhibit óAô, the judgment of the Magistrateôs Court, Ubiaja which was for wilful and malicious damage to rubber trees in respect of two native plots had nothing to do with the ownership of the land in dispute whose dimension is 100 native plots. Counsel contended that the D.W. 2 had testified that he only sold the rubber trees and not the land to the 1st appellant. He submitted that the sale of the rubber trees does not confer title to land under customary law, and cited in support the case of Meggison v. Iyamu (1979) 8 ï 10 C.A 236 at 243 ï 244.

We have carefully considered the submissions of both counsel on this Issue which borders in the main on the evaluation of evidence by the trial court.

In a claim for a declaration of title, the duty of the trial court is mainly to ascertain whether the parties have discharged the burden of proof to entitle either

of them to a declaration. See the case of Kodilinye v. Mbanefo Odu (1936) 2 WACA 337. This burden is discharged when credible evidence of the highest probative value adduced by the plaintiff is of sufficient strength to outweigh the other evidence and establish without equivocation the title of the plaintiff. See the case of Mogaji v. Odofin (1978) 4 S.C. 9.

In the instant appeal, the trial court, after an exhaustive review of the evidence adduced, including its observations at the visit to the ***locus in quo*** made specific findings of fact. It held that the appellants could not establish whether the land in dispute is family land or the personal property of the 1st or 2nd appellant by inheritance, as the evidence of the appellants and their witnesses were contradictory.

It noted that in Exhibit óAô which were proceedings in respect of a case of malicious damage of rubber trees instituted by the 1st appellant against the father of the respondents, the 1st appellant stated that he acquired the land by inheritance.

The trial court observed that the description of the land in dispute as given by one of the appellantsô witnesses (i.e p.w 2) was contrary to the evidence of both parties and the findings of the trial court during the visit to the ***locus in quo***. It noted that while this witness stated that Ogbemilaôs land lies to the right of the land in dispute when facing it, and the respondentôs to the left, the evidence of the parties showed that Ogbemilaôs land lies on the opposite side of the road while the respondentôs land was to the right of the land in dispute.

The trial court disagreed with the 1st appellantôs evidence that he paid compensation to the respondentôs witness (D.W. 2) for the effort in planting the rubber trees and found as a fact that 1st appellant bought the rubber trees from the said witness. It stated further that it was inconceivable that an owner of land would be paying a trespasser for rubber trees planted on the land by a trespasser.

The trial court also found as a fact during the visit to the ***locus*** that the respondentôs house on the land was over fifty years old and some of the trees planted by the respondent led credence to the fact that the respondent had been on the land longer than the appellant. The foregoing were some of the findings of the trial court which had the privilege of seeing, hearing the witnesses and assessing their credibility.

It is trite law supported by a plethora of authorities that an appellate court will not interfere with the findings of fact of a trial court unless such findings are found to be perverse. See the following cases.

1. Woluchem v. Gudi (1981) 5 S.C 319
2. Akinloye v. Eyilola (1968) NMLR 92
3. Popoola v. Adeyemo (1992) 8 NWLR (Part 257) 1.
4. Okegbemi v. Akintola (2008) 4 NWLR (Part 1076) 53 at 58 r. 7

In the instant appeal, we are satisfied that the trial court painstakingly evaluated the evidence and made crucial findings of fact which were amply supported by evidence.

The evaluation of evidence and the ascription of probative value to such evidence is the primary duty and function of the trial court which had the opportunity of seeing, hearing and assessing the witnesses. Where as in the instant appeal, the trial court has unquestionably evaluated the evidence and drawn the right conclusions, the appellate court cannot interfere with the decision of the trial court. See the following cases:

1. Amadi v. Nwosu (1992) 5 NWLR (Part 241) 273.
2. Wali v. Bafarawa & 3 ors (2004) (Part 898) 16 NWLR 1 at 11 r. 12
3. Auta v. Olaniyi (2004) 4 NWLR (Part 863) 394 at 398 r. 3.

The learned counsel for the appellants made heavy weather of the content of Exhibit óAô which is a court proceeding in Suit No. EK/21/66 between the 1st appellant and the father of the 1st respondent. That claim was simply that of trespass and malicious damages to rubber trees. It was decided in favour of the 1st appellant. However, the issue of ownership of land was never canvassed before that court and the appellant was certainly not declared to be the owner of the land. In any event, it is trite law that a mere occupier of land can maintain an action in trespass and malicious damage without necessarily being the owner. Trespass ***per se*** is actionable by someone in possession.

Issue one is answered in the affirmative.

Issue two is whether the trial court was right to have delivered a single judgment after the consolidation of the appellantsô and respondentsô suits and

whether it occasioned a miscarriage of justice.

On Issue two, learned counsel for the appellants submitted that the trial court was wrong when it failed to consider separately the consolidated suits. He added that the trial court merely alluded to the consolidation of the suits without more. It was counselôs submission that where two or more actions are consolidated, the trial court has a duty to consider separately the evidence adduced by the parties in respect of the various actions and give a separate judgment in respect of each suit. He cited the case of Okoye v. Ezemenike (2003) 3 NWLR (Part 806) 52 at 67 paras B ï E in support of this proposition.

In his brief response to Issue two, learned counsel for the respondents submitted that customary courts are to do substantial justice rather than procedural or technical justice.

According to counsel, failure to give separate judgments in respect of the consolidated suits is immaterial because the court took cognizance of the fact of consolidation. For this proposition, he relied on the cases of Mba v. Agu (1999) 72 LRCN 3152 at 3156 r. 5; Odufuye v. Fatoke (1977) 4 SC 11 at 16 and Funfa Oil Ltd. v. A.G. Fed 2007 112 LRCN 2127 at 2131.

We have carefully considered the submissions of both counsel on this Issue. It is pertinent to state here that there were two separate suits in this matter i.e Suit No. EACC1/64T/93 and Suit No. ECCACC1/47/2000 including a counterclaim in the latter. The suits were consolidated by the trial court and as it is the usual

practice, the two suits now bore a single suit number during the trial.

Consolidation of suits is employed by courts to save costs and time where one action would adequately determine the rights of the parties who have similar or same interest in order to guard against multiplicity of actions. See the following cases:

1) Nasr v. Complete Home Enterprises (1977) 5 S.C1.

2) Lediju v. Odulaye (1943) 17 N.L.R. 15.

The appellants and the respondents in the instant appeal filed separate suits against each other, over the same subject matter and claimed similar reliefs.

It is the contention of the appellants that the trial courtôs decision in giving a single judgment rather than separate judgments in the consolidated suit was wrong.

We agree with learned counsel that in a consolidated action, each suit retain its separate identity and each must be considered on its merit and a verdict given in respect of each suit. See the following cases:

1) Enigwe v. Akaigwe (1992) 2 NWLR (Part 225) 505 at 509 r. 4

2) Ume v. Ifediorah (2001) 8 NWLR (Part 714) 35 at 39 rr. 7 & 8.

3) Haruna v. Modibbo (2004) 16 NWLR (Part 900) 487 at 510 r. 22.

The above authorities and the authority cited by learned counsel for the appellants represent the position of the Law on consolidated actions. However we note that these cases emanated from various High Courts as distinct from the present appeal which emanated from an Area Customary Court. Appellate Courts

now treat proceedings from Area and Customary courts with caution and great latitude is given to proceedings from these courts by not insisting on strict compliance with rules of evidence and procedure. In any event, the general trend now is to do substantial justice rather than technical justice. Therefore, once it is apparent on the face of the record that the proceedings have been conducted in such courts in a manner leading to substantial justice, appellate courts hardly interfere. See the following cases:

1) Chief Karimu Ajagunjeun & 5 ors v. Sobo Osho of Yeku Village (1977) 5 S.C 89.

2) Ikpang v. Edoho (1978) L.R.N. 29, 35 ï 36

3) Ieka v. Tyo (2007) 1 NWLR (Part 1045) 385 at 389 r. 4.

In the instant appeal, although the trial court failed to give separate verdicts on the consolidated suits, we are of the firm view that all the issues raised in the suits were adequately addressed by the trial court in its judgment. It is trite that it is not every mistake that will lead to a reversal of the judgment of the trial court. In the instant appeal, the trial court in its judgment addressed all the issues that arose from the consolidated suits. There was therefore no miscarriage of justice as to warrant a reversal of the judgment.

Issue two is resolved in favour of the respondents.

Having resolved the two Issues in favour of the respondents, we hold that this appeal lacks merit and is accordingly dismissed.

Consequently, the judgment of the Esan Central Area Customary Court, Irrua delivered on the 23rd day of December, 2005 with the consequential orders made therein are hereby affirmed.

The appellants are to pay the respondents costs which we have assessed at ₦3,000.00 (three thousand naira).

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HON. JUSTICE M. N. ASEMOTA

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HON. JUSTICE P. A. AKHIHIERO

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HON. JUSTICE O. OVBIAGELE

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J. O. Udaze Esq., é é é é é Counsel for the Respondents