

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON WEDNESDAY THE
28TH DAY OF FEBRUARY, 2018.

APPEAL NO: HCU/2CA/2017

BETWEEN:

MR. ODION ILENLEAYEí í í í í í í í í í í í í í í í í .RESPONDENT

AND

1. MR. JEROME AILENOKHUORIA
2. MR. PIUS OZIEGBE
3. MR. ANTHONY EIGBOCHIE
4. PASTOR EBARE

í í í í í í í í í í í í í í í í .APPELLANTS

JUDGMENT

This is an appeal against the judgment of the Amendokhian District Customary Court, delivered on the 15th of March 2017 wherein the Court awarded title to the land in dispute to the Respondent and ordered the 4th Appellant to refund the sum of ~~N~~40, 000.00 to the Respondent.

The facts giving rise to the judgment culminating in this Appeal is that the Respondent sued the Appellants jointly and severally in the lower court for declaration of title to land, general damages for trespass and injunction. The lower court gave judgment in favour of the Respondent and being dissatisfied with the judgment, the Appellants filed their Notice and Grounds of Appeal.

The Grounds of Appeal bereft of their particulars are as follows:

- 1. The lower court erred in law when it assumed jurisdiction to entertain and determine the subject matter of Suit No.ADCC/26/2014, which is within the competence of the High Court of Justice;*
- 2. The lower court erred in law when it granted a relief to the plaintiff/respondent which was not sought by him; and*
- 3. The lower court erred in law when it awarded title of the land in dispute to the plaintiff/respondent pursuant to the Esan Native Law and custom of Onewa, Uromi.*

Counsel for the parties filed and exchanged their respective briefs of arguments in consonance with the rules of this Court.

In his Brief of Argument, the learned Counsel for the Appellants, Okoeko J. Inegbeboh Esq., on behalf of J.A. Onoimoimilin Esq., identified three Issues for Determination as follows:

- 1) Whether the lower court has jurisdiction to entertain and determine the subject matter of this appeal;*
- 2) Whether the lower court was right in granting to the plaintiff/respondent, a relief not sought by him; and*
- 3) Whether the lower court properly evaluated the evidence before it, before awarding title of the disputed land to the plaintiff/respondent?*

On his part, learned counsel for the Respondent, Pastor Cyril Ose Aimionowane Esq., formulated a sole Issue for Determination in this appeal as follows:

Whether the lower court was not having jurisdiction and was not also right in its decision when it decided that the respondent having performed the final burial ceremony of his grandfather as well as his own father according to Esan native laws and custom thus becoming the omijiogbe' of his (akhare) family, is entitled to inherit everything including parcels of lands which are derivatives from omijiogbeship?

Upon a careful examination of the Issues formulated by the learned counsel for the parties I am of the view that the three Issues formulated by the Appellants' counsel are more germane to the determination of this appeal and I accordingly adopt them as such.

ARGUMENTS

ISSUE ONE:

On Issue one, the learned counsel for the Appellants submitted that the lower Court lacked the jurisdiction to entertain the subject matter of the claim before it. He posited that the land in dispute is situate at Onewa Uromi which is an urban area and that by virtue of Section 39(1) of the Land Use Act 1978, only the High Court of Justice of a State can entertain any claim bordering on the grant of a right of occupancy in an urban area. He pointed out that by virtue of the ***Bendel State Notice No. 19, of Urban Area (Order) 1987***, Onewa Uromi falls within the urban area of Edo State.

On the meaning of jurisdiction, learned counsel referred the Court to the case of: ***Babalola V. Osogbo L.G. (2003) 10 NWLR (Part) 829 Page 46 Sat 470 ratio 2***. On the effect of lack of jurisdiction, he cited the case of: ***Adamu V. Anaja (2004) 2 NWLR Part 858 Page 457 at 482, Paras. B – C***.

He submitted that for a Court to assume jurisdiction in a matter, the subject matter must be within its jurisdiction and cited the case of: ***Maishanu V. Manu (2007) 7 NWLR part 1032, page 42 at 51 paras. B – E***.

He submitted that although the issue of jurisdiction was not canvassed at the Lower Court, jurisdiction being fundamental to adjudication, can be raised at

anytime even for the first time on appeal. For this view, he relied on the following decisions: *Nwokoro V. Ashue (2010) 29 WRN page 118 at Pp. 129 – 130 lines. 45 – 5. See also Iyanda V. Amori (2007) 37 WRN, page 87 at P. 98 lines 5 – 10.*

He maintained that where it is apparent that a court lacks jurisdiction to entertain a claim, the parties cannot by consent or agreement confer jurisdiction on it and relied on the case of: *Nigerian Postal Service V. Mordi (2008) 13 WRN page 99 at P. 122 lines. 20 – 30.*

He therefore urged the Court to resolve issue one in the negative.

ISSUE TWO:

On issue two, learned counsel submitted that the Lower Court acted outside its competence in ordering the 4th Appellant to refund the sum of ₦40, 000.00 to the Respondent when there was no relief to that effect in the claim of the Respondent. Again he contended that the Lower Court also acted without jurisdiction when it ordered the 1st Appellant to refund to the 4th Appellant, the purchase sum of the land in dispute when there was no counter-claim for that relief. He submitted that the Court not being a Father Christmas, cannot grant a relief not claimed by a party and relied on the case of: *Obaseki V. Orukwo (2007) 17 NWLR Part 1062 Page 138 at P. 60, paras. D-E.*

He therefore urged the Court to resolve issue two in the negative.

ISSUE THREE:

On issue three, Counsel submitted that the Lower Court failed to properly evaluate the evidence before making its findings. According to him, the Respondent testified that the 1st Appellant performed the burial ceremony of his deceased father but did not perform the burial rites of his grandfather. That consequent upon that development, he enquired from the elders who should perform the said burial rites and the elders told him that he was the rightful person hence he carried out the burial rites.

He stated that the Respondent testified that he performed the said burial rites with his wife as his brothers were not at home and that such burial is not open to the whole people or the quarters. Furthermore, he maintained that the Respondent testified that it was the 1st Appellant who gave out his daughter in marriage. He maintained that the PW2 under cross-examination confirmed this fact that it is the *Omondiogbe* that gives out daughters of junior brothers in marriage, hence the 1st

defendant gave out the daughter of the Respondent. He said that the PW2 admitted that the 1st Appellant remarried one Idogen's wife because he is the **Omodiogbe** of the family.

He submitted that under Esan Native Law and Custom the **Omondiogbe** is the traditional head of the family and the proper person to be granted rights of occupancy in respect of any property in the family. Counsel contended that since the PW2, alluded to the fact that it is within the 1st Appellant's right as **Omondiogbe** to give out daughters of his younger brothers, the core issue to determine the real **Omondiogbe** which the Respondent and 1st Appellant are laying claim to, had been resolved by the evidence of the PW2.

He submitted that the finding of the Lower Court in resolving the issue of ownership of the land in dispute in favour of the Respondent was therefore perverse. He maintained that once there is evidence that a particular party is the **Omondiogbe** of a family as in the instant case, a declaration of title cannot be made in favour of the adverse party.

On when a finding of fact is said to be perverse, learned counsel cited the case of: **Mini Lodge Limited V. Ngei (2010) 10 WRN page 58 at P. 92 lines 10 – 30.**

He pointed out that the evidence of the PW2 is in conflict with that of the Respondent particularly in the light of the PW2's revelation that the 1st Appellant is the **Omondiogbe** of the family and submitted that where the case of a party is contradictory, it cannot form the basis of a valid declaration. On the effect of material contradictions, he referred the Court to the case of: **Akande V. Oyewole (2003) 6 WRN, page 36 at 40 – 41 ratio 4.**

He referred the Court to: pages 25 lines 15 to 20 of the record of proceedings to show that when the 1st Appellant sold the land in dispute to the 4th Appellant, the PW1, Saturday Idogen admitted that he signed the deed of transfer, Exhibit 5B, as 1st defendant's witness. He pointed out that the PW2 who had earlier signed Exhibit 5B to authenticate the ownership claim of the 1st Appellant to the land in dispute, turned around to testify against the 1st Appellant in whose favour he signed as a witness in respect of the land in dispute.

He submitted that a witness cannot approbate and reprobate at the same time and that the Lower Court ought to have treated the evidence of the PW1 and the Respondent with a pinch of salt. On whether a witness or a party can approbate and reprobate, he cited the case of: **Hymn Hydraulic Machinery Company V Jaffar (2004) 15 NWLR part 896 page 343 at P. 366 paras. F-G.**

He submitted that from the evidence on record, the DW1 led unchallenged evidence of ownership of the land in dispute which was adjudged in his favour by the elders. He said that the DW1 told the Court that in resolving the land dispute, the elders told the Respondent that the land in dispute does not belong to him as the 1st Appellant has already performed the burial rites with the Respondent.

He maintained that where evidence was unchallenged, the lower Court was in error for failure to act on such unchallenged and uncontroverted evidence in its judgment. He cited the case of: *Shell Pet. Dev. Co. (Nig.) Ltd. V. Edamkue (2009) 47 WRN Page 1 at 16 ratio 14.*

Again, he referred to page 31 lines 5 ó 10 of the records to show that when the 4th Appellant summoned the Respondent to the Palace of the Onojie of Uromi over ownership of the land in dispute, the verdict was against the Respondent who was asked to refund the sum of ₦200, 000.00 to the 4th Appellant who earlier purchased the land in dispute from the Respondent for that amount. He said that the Respondent has since refunded the sum of ₦40, 000.00 (forty thousand naira) to the 4th Appellant out of the two hundred thousand naira with a promise to pay the balance instalmentally. He contended that the Respondent's act of complying with the verdict of the Onojie of Uromi is an admission of the 1st Appellant's ownership rights over the said vast expanse of land, part of which he sold to the 4th Appellant.

On the meaning of admission, he referred the Court to the case of: *Asaba Textile Mill Plc V Bona Textile Ltd (2007) 1 FWLR part 348, page 146.*

Counsel submitted that by the Respondent's admission, the Lower Court was on a frolic of its own in ordering the 4th Appellant to refund the sum of ₦40, 000.00 to the Respondent. He maintained that such an order was clearly against the weight of evidence. On when a judgment is against the weight of evidence, he referred to the case of: *Governor, Kwara State V Lafiagi (2005) 5 NWLR part 917 page 139 P. 151 paras. A – D*; and on the binding nature of an admission, he cited the case of: *Nwokhoba V. Dumez (Nig.) Ltd. (2004) 3 NWLR part 861 page 461 at P. 491, Para. E.*

He urged the Court to resolve Issue three in the negative, allow the appeal and set aside the judgment of the lower court.

Opposing the appeal, the learned counsel for the respondent, C.O. Aimionowane Esq., submitted that the trial court was right when it held that the respondent was entitled to judgment.

He posited that the trial court had the jurisdiction to hear the matter because the subject matter was not on title to land but on the right of inheritance in Esan

land and how ***Omijiogbeship*** passes in Esan native law and custom. He referred to the majority judgment of the lower court at page 56 and page 76 lines 5-15 and the dissenting judgment of the court at page 86 of the record of appeal.

Learned counsel submitted that although the respondent filed a claim relating to land, from the evidence before the court both parties were talking about inheritance to land via ***Omijiogbeship*** which the lower court can entertain.

He submitted that it is trite law that the course of action in District and other inferior Courts are usually formulated not only from the claim but from the evidence before it. For this view, he relied on the case of: ***ERHUNMUNSE V EHANIRE (2003) VOL.110 LRCN AT PAGES 1799 RATIO U***. He also relied on the case of: ***GARUBA V YAHAYA (2007) VOL. 145 LRCN 549*** where the Court held that:

“Appellate Courts should not be unduly strict or rigid with matters of procedure regarding appeals from native courts.”

He submitted that in the determination of jurisdiction, the court process to be used is the pleadings of the Plaintiff which are his statement of claim and other affidavits filed which stands for all intents and purposes as vindicating the plaintiff's claim. He asserted that it is the case put forward by the plaintiff that determines jurisdiction. He maintained that what the Respondent put forward at the lower court is the issue of inheritance known as Omijiogbge going by the claim and the various affidavits that he filed. He relied on the case of: ***INAKOJU V ADELEKE (2008) VOL. 30 WRN PAGE 1 AT PAGE 40 RATIO 14***.

He submitted that in the ***INAKOJU V ADELEKE'S*** case supra it was also held that the court may need to take some evidence before determining the issue of jurisdiction in native and other inferior courts. He also cited the case of: ***ADAWON V ASOGBA (2008) 38 WRN 111 AT 116 RATIOS 2&10*** where the court held that:

“Customary courts are courts of substance and not form. --- (in) determining the real subject matter in dispute and issues presented at and decided by a native/customary courts, an appellate court has a duty to look carefully not only at the claim, but the entire proceeding including the evidence of the parties, inspection notes if there was a visit to the locus and the judgment and orders of the court”.

He referred the Court to the case of: ***OGUNDELE V AGIRI (2010) VOL. 180 LRCN 138 AT 143 RATIO 6*** where the Supreme Court stated thus:

“--- if I may add, the attitude of an appellate court towards Native, Area or Customary Courts' Proceedings has also been long established in many

decided cases to the effect that the court should and ought to look at the substance rather than the form”.

Learned counsel submitted that greater latitude must be given and broad interpretation placed on such proceedings.

Counsel submitted that it is a misconception to formulate and rely on issue 2 of the Appellants appeal having regard to the fact that inheritance by OMIJIOGBESHIP is the cause of action in the suit at the lower court. He maintained that it is an office associated with assets and liabilities of the ancestors in the family by inheritance. He submitted that the grant of the refund of ₦40,000 (forty thousand naira), by the 4th Appellant to the Respondent is a consequential order which arose from the judgment that was delivered in favour of the Respondent.

He contended that a party need not seek a consequential order(s) and the court can *suo moto* make one depending on the circumstances of the case before it. For this view, he referred to the case of: ***AMAECHI V INEC & ORS (2008) VOL. 158 LRCN 1 AT PAGE 129 PARAGRAPH JJ*** where the Supreme Court held thus:

“It is the law even where a person has not specifically asked for a relief from a court, the court has the power to grant such relief as a consequential relief. A consequential order must be one made giving effect to the judgment which it follows. It is not an order made subsequent to a judgment which derails from the judgment or contains extraneous matters”.

Learned counsel submitted that the parcel of land that accrues to the office of OMIJIOGBESHIP automatically accrues to the Respondent according to the judgment. He maintained that the parcels of land in question were not the subject matter of the litigation before the lower court but the parcels of land which belongs to the OMIJIOGBE as per inheritance. He posited that since the Respondent is the OMIJIOGBE, all the lands that accrues to the office now belong to him.

Counsel submitted that the trial court before arriving at its decision evaluated the evidence before it, made findings of facts and apportioned probative value to the evidence as can be seen from the record of appeal where the parties and their witnesses all gave evidence in chief and were cross examined.

He referred to the case of: ***ADAWON V ASOGBA (SUPRA) AT RATIO 1***, where the court stated thus:

“it is trite law that the evaluation of evidence and ascription of probative value thereto is the primary duty of the trial court. It is only the trial court

that can determine which witness to believe and which one not to believe--- the cause of action, the nature of the claim, the subject matter of the suit, the issues canvassed, the real parties before the court and the decision of the court are to be ascertained from the substance of the customary court's judgment".

He also referred to the case of: **OKONKWO V OKONKWO (2003) 51 WRN 112 AT PAGE 121 RATIO 18** where the court opined thus:

"--- what counts is whether the learned trial judge has reached a correct decision on the evidence before him about which I entertain no doubt. On this point, I must be guided by the principle that what an appellate court has to decide is whether the decision of the trial judge was right and not whether his reasons were---".

Counsel submitted that the lower court arrived at its decision on the preponderance of evidence before it. See: **OILSER LTD V L.A. IBEANU & CO.NIG.LTD (2008) PART 1070 NWLR 191 AT 197 RATIO 10.**

Finally, he referred to observations of the court in the case of: **OKONKWO V OKONKWO (SUPRA) AT RATIO 14** thus:

"The fact that the relative weight put on the evidence of each side was not expressly categorized or otherwise expressed does not imply that the evidence of the parties are not weighed as what determines the weight of evidence is 'the value, credibility, quality as well as the probative value of the evidence' as expounded in Onwuka V Ediala (1989)1 NWLR (pt. 96) 182, 208-209 within the range of the five factors posited in Mogaji V Odofin (1978) 3-4 S.C 91, 94-95, namely admissibility, relevancy, credibility, conclusiveness and probability of the evidence by which the weight of evidence of both parties is determined".

He urged the Court to dismiss the appeal.

The Appellant's counsel filed a Reply Brief on points of law. In his reply brief, learned counsel submitted that it is the Plaintiff's claim and not the evidence of the parties that determines the jurisdiction of the Court. For this view, he relied on the case of: **Attorney General of Oyo State V Nigerian Labour Congress (2003) 8 NWLR part 821, page 1 at P. 27 paras. C-F.**

Furthermore, he submitted that where the statute establishing a Court or any other statute does not confer jurisdiction on the Court to entertain a suit, such Court as in the instant case, has no jurisdiction to entertain the matter. See: ***Onuorah V. Kaduna Refinery & Petrochemical Co. Ltd. (2005) 6 NWLR, Part 921, Page 393 at P. 404, Paras. F-G.***

On whether the Lower Court has jurisdiction to entertain the subject matter of this appeal which is on declaration of title to land in Onewa, Uromi, an urban area, counsel referred the Court to the case of: ***Goji V. Ewete (2007) 6 NWLR Part 1029, page 72 at P. 81, paras. C-D.***

On the submission of respondent's Counsel that the order for the refund of the sum of ₦40, 000.00 by the 4th appellant to the respondent, is a consequential order, he submitted that a consequential order is made to complement a finding of fact germane to a relevant issue upon which evidence was satisfactorily led and not in respect of a relief not claimed by a party.

Finally, on the meaning of consequential order, he cited the case of: ***Suji V. Ekeocha (2009) Vol. 177 LRCN 134.***

I have carefully considered all the processes filed in this appeal, together with the arguments of the learned counsel for the parties.

As earlier stated, the Issues for Determination in this appeal are as follows:

- 1) ***Whether the lower court has jurisdiction to entertain and determine the subject matter of this appeal;***
- 2) ***Whether the lower court was right in granting to the plaintiff/ respondent, a relief not sought by him; and***
- 3) ***Whether the lower court properly evaluated the evidence before it before awarding title of the disputed land to the plaintiff/ respondent?***

I will go ahead to resolve the issues *seriatim*.

ISSUE 1:

Whether the lower court has jurisdiction to entertain and determine the subject matter of this appeal?

The issue of jurisdiction is fundamental and pivotal to any proceedings. It has been described as the life blood of any adjudication. It is the fiat, the stamp of authority to adjudicate. It is a threshold issue. See: *Okoro vs. Egbuoh* (2006) 15 NWLR (Pt. 1001) 1; *A.P.C vs. Nduul* (2018) 2 NWLR (Pt.1602) 1 at 9.

A Court can claim to have jurisdiction in respect of a matter if:

- (1) *It is properly constituted as regards members and qualifications of the members of the Bench and no member is disqualified for one reason or another;*
- (2) *The subject matter of the case is within its jurisdiction and there is no feature of the case which prevents the Court from exercising its jurisdiction; and*
- 3) *The case comes up before the Court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of the jurisdiction.*

In support of the foregoing, see the following decisions on the point:

Madukolu vs. Nkemdilim (1962) 1 All NLR 587; *Dangana & Anor vs. Usman & 4 Ors* (2012) 2 S.C. (Pt.111) 103; and *WESTERN STEEL WORKS LTD vs. IRON STEEL WORKERS UNION* (1986) 3 NWLR Part 30d Pg. 617 D-H, 628.

In determining the issue of jurisdiction, it is the Claimant's originating processes that are to be considered. See: *Okorochoa vs. UBA Plc.* (2011) 1NWLR (Pt.1228) 348 at 373; and *A.G. Federation vs. A.G.Abia* (2001) 11NWLR (Pt.725) 689 at 740.

Furthermore, it is settled law that it is the statute creating the Court that determines the jurisdiction of that court. See: *Chief Daniel Awodele Oloba vs. Isaac Olubodu Akereja* (1998) 7 S.C.(Pt.1) 1 at 21.

The gravamen of this Issue is whether the lower Court was vested with the jurisdiction to entertain the suit before it in view of the contention of the learned counsel for the Appellants that the land in dispute is situate at Onewa Uromi which is an urban area and that by virtue of Section 39(1) of the Land Use Act 1978, only the High Court of Justice of a State can entertain any claim bordering on the grant of a right of occupancy in an urban area. He relied on the *Bendel State Notice No. 19, of Urban Area (Order) 1987*, which he alleged designated Onewa Uromi within the urban area of Edo State.

It is indisputable that Onewa Uromi is an urban area by virtue of: ***Schedule VII of the Designation of Urban Areas (Order) 1987 of Bendel State now applicable to Edo State***. The Respondent's counsel did not dispute that fact.

However, the learned counsel for the Respondent has argued very forcefully that the subject matter of the suit is not title to land but on inheritance over which the lower Court is seized of jurisdiction.

It is settled law that in determining the real subject matter in dispute in customary courts, an appellate court is enjoined to examine both the claim and the evidence adduced by the parties at the trial. See the following decisions on the point: ***ERHUNMUNSE V EHANIRE (2003) VOL.110 LRCN AT PAGES 1799 RATIO U; GARUBA V YAHAYA (2007) VOL. 145 LRCN 549; and OGUNDELE V AGIRI (2010) VOL. 180 LRCN 138 AT 143 RATIO 6.***

In the case of: ***ERHUNMUNSE V EHANIRE (2003) Supra***, particularly at page 1791, the Court expounded thus:

"...the trial Customary Court was duty bound to consider not only the claim before it but also the defence of the defendant in order to determine what the real issue between the parties is and whether or not it had jurisdiction to entertain the suit. In other words, the trial court ought to consider the totality of the case of both the plaintiff and the Defendant in order to form a balanced and objective opinion as to whether or not it had the requisite jurisdiction to entertain the suit".

The crucial issue to be resolved therefore is whether from the totality of the evidence, the subject matter canvassed was on title to land or on inheritance.

Looking at the Claim before the lower court, it is evident that the Respondent sued the Appellants jointly and severally in the lower court for declaration of title to land, general damages for trespass and injunction. However as the evidence unfolded, the issue of inheritance of land through the authority of the rightful ***Omijiogbe*** became very pivotal in the determination of the suit. The issue of inheritance of family property after burial was a recurring decimal from the evidence adduced by both parties to the final judgment of the trial court.

I will highlight such pieces of evidence as follows: At p.16 (lines 9 to 11) of the records, the P.W. 1 stated thus:

"When Ilenleaye died, he did perform the final burial of Akharuele the father of Ilenleaye. The properties of Akharuele now became the property of my father's i.e Idogen Akharuele's properties."

At pp.22-23 (lines 22 to 28 & 1 to 3 respectively), P.W.2 stated:

"It is true that the Plaintiff did the final burial ceremony and is the owner of the said piece of land...The Plaintiff said the land belongs to him

because he already performed the burial ceremony of their grandfather...Left with me, the land belongs to the one who carried out the burial ceremony of their father and the one who also carried out the final burial ceremony of their grandfather.”

At p.25, the D.W.1 stated thus:

“We the elders told the Plaintiff that he did not have right over the land in dispute because the father of the 1st Defendant has already performed the final burial ceremony...”

In its judgment at p84 (lines 22 to 25) the court made a finding that:

“In view of the Plaintiff, 1st defendant, 2nd defendant, 4th defendant, P.W.1, P.W.2, D.W.1 and the submission of the learned counsels to the plaintiff and defendant, this court is of the view that the right to inheritance is anchored on the performance of burial rites of the deceased.”

Again at p.85 (lines 19 to 24), the court held thus:

“Therefore, since the evidence of the Plaintiff as regards the burial of Pa. Akhare was not challenged, he remains the Omijiogbe of Akhare while the 1st defendant remains the Omijiogbe of Ilenleaye. The piece of land the 4th defendant bought from the Plaintiff remains valid. The 1st defendant should refund the repurchased amount of money to the 4th defendant, Pastor Ebare.”

From the totality of the evidence and the findings of the trial court highlighted above, it is clear that the real issue canvassed was not on title to land but on inheritance, which is within the jurisdiction of the trial court.

I therefore resolve Issue 1 in favour of the Respondent.

ISSUE 2:

Whether the lower court was right in granting to the plaintiff/ respondent, a relief not sought by him?

It is a general principle of law that a court will not grant a party a relief that was not claimed nor will a court grant a party more than what was claimed. See the cases of: *Jeric Nigeria Ltd. vs. UBN Plc (2000) 15 NWLR (Pt.691) 447 at 464; and First Bank of Nigeria Plc vs. Dr. Abdulkadir Oniyangi (2000) 6NWLR (Pt.661) 497 at 513.*

The grouse of the Appellants here is that the lower court went beyond the Respondents claims when they ordered the 4th Appellant to refund the sum of ₦40,000.00 to the Respondent when there was no relief to that effect in the claim of the Respondent. Again they contended that the Lower Court also acted without

jurisdiction when it ordered the 1st Appellant to refund to the 4th Appellant, the purchase sum of the land in dispute when there was no counter-claim for that relief.

The Respondent has seriously contended that the reliefs granted were consequential orders flowing from the substantive claims.

It is settled law that a consequential order is an order founded on the claim of the successful party. It is merely incidental to a decision properly made to give effect to the decision. It is an order which flows necessarily, naturally, directly and consequentially from the decision or judgment delivered in a matter. It arises logically and inevitably by reason of the fact that the order is patently consequent upon the judgment and does not need to be specifically claimed as a distinct or separate head or relief. See the cases of: *Akapo vs. Hakeem Habeeb (1992) 6 NWLR (Pt.247) 266 at 296*; and *Ogbahon vs. Registered Trustees of Christ Chosen Church of God (2002) 1 NWLR (Pt. 749) 675 at 701*.

In view of the fact that I have held that the subject matter of this suit is on inheritance and not on title to land I do not think the orders to refund money in respect of the transactions relating to the land can qualify as consequential orders.

In the first place, the order for the 1st Appellant to refund the amount of repurchase to the 4th Appellant was clearly in error because the 4th Appellant never counter-claimed against the 1st Appellant. A court of law is not a charitable institution doling out reliefs which have not been claimed. See: *Ilona vs. Idakwo (2003) 11 NWLR (Pt.830) 53 at 86*.

Furthermore, the order for the 4th Appellant to refund the sum of N40, 000 to the plaintiff does not flow directly from the decision of the court which is essentially on the right of the Plaintiff to inherit by virtue of his position as the Omijiogbe of Pa Akhare.

The claims for sums of money paid by individuals for failed land transactions should come under different causes of action with distinct reliefs for such monetary claims and since the land in question is in an urban area, the lower court cannot entertain such a suit. It will be tried at the High Court.

In the event, I hold that the lower court was in error when they granted the reliefs not sought by the respondent. I therefore resolve Issue 2 in favour of the appellant.

ISSUE 3:

Whether the lower court properly evaluated the evidence before it before awarding title of the disputed land to the plaintiff/ respondent?

It is settled law that the evaluation of evidence and ascription of probative value is the primary duty of the trial court which saw, heard and assessed the witnesses. Where the trial court has properly appraised the evidence, it is not the business of the appellate court to substitute its own findings. See the following decisions on the point: *Alhaji Ali vs. Alhaji Hussaini & Ors (2003)FWLR (Pt.138) 1414*; and *Stephen Idugboe & Sons Ltd. vs. Mrs. Anenih & Ors (2003) FWLR (Pt.149) 1418 at 1440*.

Going through the judgment of the trial court, I observed that the court painstakingly evaluated the evidence adduced by the parties before making salient findings of fact. They carefully juxtaposed the evidence of the respondent with that of the appellants and found that it preponderated in favour of the respondent.

I will highlight some of their evaluation of the evidence adduced at the trial. At p.84, lines 19 to 25 the court stated thus:

“We observed that the evidence of the 2nd defendant was at variance with that of the 1st defendant and corroborated that of the plaintiff. In view of the Plaintiff, 1st defendant, 2nd defendant, 4th defendant, P.W.1, P.W.2, D.W.1 and the submission of the learned counsels to the plaintiff and defendant, this court is of the view that the right to inheritance is anchored on the performance of burial rites of the deceased.”

Again at p.85 lines 3 to 8, the court held as follows:

“(2) The plaintiff claimed that he had done the burial ceremony of his grandfather Pa.Akhare. The evidence was not controverted by the defence in their evidence.

(3) The 1st defendant said in his cross examination evidence that he was the omijiogbe of Ilenleaye and not of Akhare because Ilenleaye did not perform the burial rites of Akhare.

(4) It was established that late Pa Idogen became the Omijiogbe of Akhare after the death of Pa. Ilenleaye who failed to perform the said burial of Akhare.

(5) That the 2nd defendant admitted before the court that the land given to him by the 1st defendant belong to Akhare.”

At lines 19 to 23 of p.85, the court concluded thus:

“Therefore, since the evidence of the plaintiff as regards the performance of the burial ceremony of Pa, Akhare was not challenged, he remains the Omijiogbe of Akhare while the 1st defendant remains the Omijiogbe of Ilenleaye. The piece of land the 4th defendant bought from the plaintiff stands valid.”

There were no material contradictions between the Plaintiff and the P.W.2 on the salient issue of the rightful Omijiogbe of Pa Akhare. At p.23 lines 8 to 11, the P.W.2 maintained thus:

“The 1st defendant is not the omijiogbe to the plaintiff because the 1st defendant is not the omidiogbe to their grandfather.”

From the above analysis, it is evident that the findings of the trial court cannot be said to be perverse. They were based on a proper evaluation of the evidence which established the salient fact that the respondent was the authentic Omijiogbe of Akhare, having performed the final burial rites of Pa Akhare.

In this appeal I cannot usurp the function of the trial court in the absence of any perverse finding on their part. I can only further affirm their findings.

In the event, I resolve Issue 3 in favour of the Respondent.

Having resolved Issues 1 and 3 in favour of the Respondent, and Issue 2 in favour of the Appellants, this appeal only succeeds in part.

I hereby set aside the following orders made by the trial court:

- I. That the 1st Appellant should refund the repurchased amount of money to the 4th Appellant; and***
- II. That the 4th Appellant should refund the sum of N40, 000 (forty thousand naira) to the Respondent.***

I make no order as to costs.

P.A.AKHIHIERO
JUDGE
28/02/18

COUNSEL:

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C.O.Aimionowane Esq.í í í í í í í í í í í í í í Counsel for the Respondent.