MOJEKWU V. MOJEKWU

(1997) LPELR-13777(CA)

AUGUSTINE NWOFOR MOJEKWU v. CAROLINE MGBAFOR OKECHUKWU MOJEKWU

(1997) LPELR-13777(CA)

In The Court Of Appeal

(ENUGU JUDICIAL DIVISION)

On Thursday, the 10th day of April, 1997

Suit No: CA/E/145/94

Before Their Lordship

AKINTOLA OLUFEMI EJIWUNMI	**Justice of the Court Of Appeal**
NIKI TOBI	**Justice of the Court Of Appeal**
EUGENE CHUKWUEMEKA UBAEZONU	**Justice of the Court Of Appeal**

Between

AUGUSTINE NWOFOR MOJEKWU	APPELLANT(S)

And

CAROLINE MGBAFOR OKECHUKWU MOJEKWU	RESPONDENT(S)

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SUMMARY OF JUDGMENT

INTRODUCTION:

This appeal borders on Customary Land Law.

FACTS:

This appeal is against the judgment of the High Court of Anambra State.

This appeal deals with property situate at and known as No. 61 Venn Road South, Onitsha. The appellant as plaintiff in the High Court, commenced an action against the respondent, as defendant. In the action, the plaintiff sought for a declaration that he is entitled to the property "in accordance with the Nnewi native law and custom".

The case of the plaintiff as claimed by him was that his father's name was Charles Nwofor Mojekwu. He died in 1963. Nwofor had an only brother, Okechukwu Mojekwu, who predeceased him. Okechukwu died in 1944. The property in dispute was owned by Okechukwu, who married two wives: Janet and Caroline, the defendant. Janet had two daughters while Caroline had a son. His name was Patrick Adina. He died during the Nigerian Civil War. Patrick was neither married nor had a surviving issue. Okechukwu, the plaintiff's uncle bought the property in dispute from the Mgbelekeke family of Onitsha under kola tenancy land tenure system.

The plaintiff inherited the property under the native law and custom of Nnewi. In addition, he paid the necessary "Kola", being the consideration to the Mgbelekeke family who recognised him as a kola tenant; the plaintiff being the eldest surviving son of his father, Charles and the eldest male in the Mojekwu family. The defendant and other people accompanied the plaintiff to the Mgbelekeke family for recognition and the two daughters of his deceased uncle-Okechukwu, signed the docket of consent from the Mgbelekeke family as witnesses.

After the Nigerian Civil War, the plaintiff went over to the Northern part of Nigeria, apparently to stay there. The first wife of Okechukwu - Janet - stayed at Nnewi. The plaintiff allowed Caroline - the defendant to come down from Nnewi to live in the property in dispute and collect rents from all the rooms but one, and to feed and take care of herself. That was in or about January, 1970. One of the daughters of Janet lived in the remaining room. When she left, Janet put in a rent paying tenant therein. The plaintiff exercised acts of ownership on the property and also performed the functions of a head of family. On 1st April, 1982, the defendant commenced moulding cement blocks on the property in dispute without the consent of the plaintiff, in preparation for construction of a building. The plaintiff stopped the defendant. He made public announcements and newspaper publications to prospective lessees. He thereafter filed the action.

The case of the defendant as claimed by them was that the plaintiff is not the head of Mojekwu family and did not inherit the property in dispute under Nnewi custom or any other custom. When the husband of the defendant died, the plaintiff's uncle sought to take over the property even when Adina Mojekwu was still living. Defendant took the plaintiff to Court. That was in Suit No. 399/59 at the District Court Grade 'A'. She obtained judgment. Esther Okakpu (DW1) the sister of the plaintiff gave evidence in favour of the defendant in Suit No.399/59. One Clement Udezue, an agent of the plaintiff, illegally occupied one of the rooms in the property in dispute. By Suit No. MO/312/82, the defendant successfully evicted him. Esther Okakpu (DW1) also gave evidence in favour of the defendant.

The appellant gave evidence for himself and called four witnesses. The respondent did not give evidence. She however called two witness. After submissions of counsel for the parties, the learned trial Judge dismissed the claim of the appellant.

Dissatisfied, the appellant appealed to the Court of Appeal.

ISSUES:

The Court determined the merits of the appeal on the issues joined by the parties.
DECISION/HELD:
In conclusion, the Court unanimously dismissed the appeal.

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RATIO DECIDENDI

APPEAL - BRIEF WRITING - Attitude of Court to inelegantly drafted brief

"Let me first deal with the way the briefs were written. I am not quite satisfied with both. As indicated earlier, the appellant's brief has nine issues. What has nine issues to do in this appeal? What is their real significance? It is my view that they are too many. The Supreme Court and this Court have condemned the proliferation of issues. Multiplicity of issues tends to reduce most of them to trifles. Most appeals are won on a few cogent and substantial issues, well framed, researched and presented, rather than on numerous trifling slips. See Ugo v. Obiekwe and Anor (1989) 1 NWLR (Pt.99) 566. Learned counsel gives the impression that every possible slip on the part of the learned trial judge constitutes an issue triable by this Court. That is very wrong. Such an approach merely reduces the place of issue in a brief. In my humble view, most of the issues are not only tautologous, but verbose, amorphous and overlap in some significant way. They are in great proliferation. See: Agu v. Ikewibe (1991) 3 NWLR (Pt.180) 385. Attorney-General Bendel State v. Aideyan (1989) 4 NWLR (Pt.l18) 646; Adelaja v. Fanoiki (1990) 2 NWLR (Pt.131) 137; Anon Lodge Hotels Limited and Anor v. Mercantile Bank of Nigeria Limited (1993) 3 NWLR (Pt.284) 721. There is also a related matter and it is the number of grounds formulated by learned counsel in the Notice of Appeal. They are fifteen. Again. I ask, what has fifteen grounds of appeal to do in this appeal? What is their real significance? The point should also be made here that it is not every conceivable slip of a judge that should be constituted as a ground of appeal. A ground of appeal must be drafted in such a way that it will assist an Appellate Court to resolve the appeal in favour of the appellant. Where slips of a trial judge are related, it is good drafting on the part of a counsel to formulate a single ground rather than different or separate grounds. That was what learned counsel did. The whole purpose of grounds of appeal is to give notice to the other party of the complaint the appellant has on the judgment, and these should be formulated concisely, succintly and accurately. Appellate Courts are not interested in vague, large and repetitive grounds, which are at large. So also vague, large and repetitive issues, which are at large. That takes me to the respondent's brief. It is the practice in brief writing that apart from the formulation of the issues for determination, it is necessary to identify in the body of the brief, under argument, the issue or issues taken. In other words, counsel should indicate by way of subheading the issue or issues he wants to argue before commencing his argument. This will not only facilitate easy identification of the issue or issues argued in the brief but also promote easy comprehension of the arguments in the brief. A situation where the Court is made to speculate what issue is argued, is most unhelpful. Learned counsel for the respondent did not see the necessity to identify in the body of his brief the issue or issues argued. And so, I was in great confusion. That is not good. It does not only waste the time of the Court, but also creates so much room for conjecture."
Per NIKI TOBI ,JCA (Pp. 15-17, paras. A-D)

READ IN CONTEXTVIEW ANALYTICS

ACTION - APPLICABLE LAW TO A SUIT - Whether the applicable law to a suit is the lex situs or the personal law of the parties

"It is necessary to take first the issue of applicable law. Is it the lex situs or the personal law of the parties? Lex situs simply means the law of the place where the property is situate or is situated. The general state of the law is that lands or other immovables are governed by the lex situs. In Udensi v. Mogbo (1976)7 SC 1, a case which also dealt with kola tenancy, the learned trial judge, Agbakoba, J. held as follows: "The property is situate at Onitsha and it seems to me that the lex situs which regulates the tenure will also govern the inheritance and succession of the property. The lex situs is the Mgbelekeke family kola customary tenancy." It is the argument of learned counsel for the appellant that the applicable law is the personal law of the parties which is the Nnewi customary law. And the customary law is known as "Oli-ekpe". The issue came up in Udensi v. Mogbo, supra where the learned trial judge held that the custom "is indeed repugnant to the terms of its nature." The Supreme Court had no cause to pronounce on the issue of lex situs and the "Oli-ekpe" custom in the light of the provisions of Section 3 of the Administration (Real Estate) Law Cap.3, Laws of Eastern Region of Nigeria, 1963 which he analysed in the judgment. Idigbe, JSC said at page 18: "We are, therefore, satisfied that in view of the above observations much of the arguments and submissions before us on the "Oli-Ekpe" custom of the people of Ezenifite and on the question whether the trial Court should have applied the personal law of the parties rather than the lex situs of the property in dispute is completely unnecessary." That issue is however necessary in this appeal because it has been vehemently and articulately presented by both parties. I will not go into the highly controversial jurisprudential debates as to whether there is any concept like or of customary personal law, as the issue does not arise at all. It is enough for me to say that personal law, in the context of succession cases, would appear to mean the law the deceased was normally subject to when he was alive. It is peculiar to him and his family unit and could be distinct from the law prevailing or predominant in the area or locality of the deceased. In most cases, it dovetails into and assimilated by the law prevailing or predominant in the area or locality of the deceased. There are instances where the lex situs and the personal law are the same. Such instances arise where the deceased was a native of the area or locality where the land is situate, to the extent that both share a common and uniform customary law. The present appeal is not one of such instances as the deceased was a native of Nnewi while the property in dispute is situate in Onitsha. And so, we have an internal conflict situation in this appeal. I resolve the conflict by accepting the decision of the learned trial judge that the applicable law is the lex situs, which is the Mgbelekeke family kola customary tenancy."
Per NIKI TOBI ,JCA (Pp. 17-20, paras. E-B)

READ IN CONTEXTVIEW ANALYTICS

CUSTOMARY LAW - CUSTOMARY TENANCY - Nature of a Kola tenancy; nature of the interest conferred on a kola tenant

"I will go into some brief history in the light of the facts of this case and the opposing contentions. Before the enactment of the Kola Tenancy Law in 1935, the traditional practice was that land owners granted portions of land which they did not really need to grantees for a return of a kola, a genus of a West African tree developing into a nut used in drugs and for flavouring of the local drinks; a specie of special delicacy, in the context of this case, to the Igbos, especially of the Onitsha genealogy of the time or period. The 'Kola' tradition, which could be vaguely likened to the Isakole amongst the Yorubas, the Kyuta amongst the Nupes

and the Iru amongst the Igbos, was more of the brain child of the Onitsha people in the sense of origin. With time, the people received token payments in lieu of the kola. By the grant, the grantee virtually acquired the same legal status as the original owner of the land. With the economic value of land, the kola tenancy, which originated from the Mgbelekeke family of Onitsha, gave rise to a number of problems. The problems came to the open in 1931 in the case of Mgbelekeke Family v. Madam Iyaji (1931) SC. Suit No.4, decided at Onitsha on 29th August, 1931. The plaintiffs sued the successors in title of one of their kola tenants, Madam Iyaji, who had leased her Kola holding to the Societe Commerciale del' Quest African at a rental of N200 per annum, for a declaration of title and for an order of the Court that one half of this annual rent be paid to them. It is clear that the plaintiffs' claim could not succeed unless they proved either an express agreement between themselves and Madam Iyaji to share the rent in the proportion alleged or a rule of the customary law of kola tenancies to that effect. Although Madam Iyaji herself had earlier died the year before the action was brought, no agreement was in fact shown to have been concluded with her for such a sharing of rent; nor was it established that custom required that a proportion of the rent be paid by tenant to landlord under a kola tenancy arrangement. Accordingly, the Supreme Court held that the plaintiffs were entitled to the declaration of title sought but were disentitled to claim any proportionate part of the rent in the absence of express agreement. In Daniel v. Daniel (1956) I FSC 50 it was held that a piece of land held at Onitsha under kola tenancy could not be alienated by its current holder who inherited it through his mother; and that the fact that she had contracted a marriage under the Marriage Ordinance did not necessarily make the land devolve under English Law. In order to solve a number of the problems, the Kola Tenancy Law of 1935 was enacted. Section 2 of the Law defines a kola tenancy as a right of use and occupation of any land which is enjoyed by any native in virtue of a kola or other token payment made by such native or any predecessor in title or in virtue of a grant for which no payment in money or in kind was enacted. By Section 3, where a grantee or his successor in title receives a more substantial benefit than the grantor might have reasonably anticipated as likely to accrue to the tenant, the grantor is entitled to apply for the extinction of the tenancy. It would appear that the section was included as a result of the decision in Mgbelekeke in which the Supreme Court held that although the plaintiffs, who were the original grantors of the kola tenancy, were entitled to a declaration of title to land, but in the absence of any express agreement, could not claim title to any proportionate part of the yearly rent which was valued at N400.00. One very significant legal incident of a kola tenancy is that the tenant has a limited right of disposal. In other words, the kola tenant enjoys all the rights of an absolute owner but not the right of absolute disposition. What an allodial contradiction! A kola tenant has a transmissible right to his descendants but the grantor in law retains a reversionary right which is exerciseable on the determination of the tenancy. Because a kola tenant enjoys the right of an absolute owner, he is not restricted in the use to which he may employ the land."
Per NIKI TOBI ,JCA (Pp. 20-23, paras. B-E)

READ IN CONTEXTVIEW ANALYTICS

EVIDENCE - ADMISSIBILITY OF UNREGISTERED REGISTRABLE INSTRUMENT - The legal effect with regard to an unregistered document affecting land

"Let me take Exhibit 1. There is so much quarrel on it. Exhibit 1 is the conveyance between the Mgbelekeke Family of Onitsha and the appellant. The whole disagreement centres on the non-registration of the exhibit. Let me quote what the learned trial judge said at page 160 of the Record. "Before I consider the points raised by counsel, I will like to say a few words about

Exhibit 1... Under the Land Instrument Registration Law Cap. 71, Laws of Eastern Nigeria 1963, applicable in Anambra State every instrument, that is a document affecting land in the State which is intended to convey title shall be registered. If the said document is not registered as in this case, it shall not be pleaded or given in evidence in any Court as affecting land. As Exhibit 1 is stamped but not registered, it can only be accepted as showing that the plaintiff paid N600.00 to the Mgbelekeke family for the land in dispute." The learned trial judge, with the greatest respect, stopped half way. He ought to have moved further, and I want to do just that. Generally, by virtue of the Land Instruments Registration Law, an instrument affecting land shall not be pleaded or given in evidence unless it has been registered. However, a registrable instrument which has not been registered is admissible to prove an equitable interest and to prove payment of purchase money or rent. See Savage v. Sarrough (1937) 13 NLR 141; Ogunbambi v. Abowaba (1951) 13 WACA 222; Fakoya v. St. Paul's Church, Sagamu (1966) 1 All NLR 74; Oni v. Arimoro (1973)3 SC 163; Bucknor-Maclean v. Inlaks (1980) 8-11 SC 1. Where a purchaser of land or lessee is in possession of land by virtue of a registrable instrument which has not been registered, and has paid the purchase money or the rent to the vendor or the lessor; the purchaser or the lessee has acquired an equitable interest in the land which is as good as a legal estate and the equitable interest can only be defeated by a purchaser of the land for value without notice of the prior equity. See: Okoye v. Dumez Nigeria Limited and Anor (1985) 1 NWLR (pt.4) 783; Obijuru v. Ozims (1985) 2 NWLR (Pt.6) 167; Tijani v. Akinwunmi (1990) 1 NWLR (Pt.125) 237. It is therefore my view that Exhibit 1 is much more than evidence that the appellant paid the sum of N600.00 to the Mgbelekeke family for the land in dispute."
Per NIKI TOBI ,JCA (Pp. 24-25, paras. A-F)

READ IN CONTEXTVIEW ANALYTICS

COURT - RAISING ISSUE(S) SUO MOTU - Whether a Court can raise an issue suo motu and determine it without hearing parties

"While still on Exhibit 1, it is convenient to take the issue that the learned trial judge raised an issue suo motu, when he held that: "There is nothing to show from the above that the two daughters had full knowledge of their rights and interest in the disputed land under the law, before they witnessed Exhibit 1." I have carefully examined the Record of Appeal and I agree entirely with learned counsel that the issue was never raised by the parties either on their pleadings or on evidence before the Court. The learned trial judge raised the issue suo motu and he was wrong in doing so, particularly. When he did not give the parties opportunity to respond to it. See: Zimit v. Mahmoud (1993) 1 NWLR (Pt.267) 71; In Re: Arowolo (1993) 2 NWLR (Pt.275) 3 17; Ike v. Ugboaja (1993) 6 NWLR (pt.301) 539; Lekwot v. Judical Tribunal (1993) 2NWLR (Pt.276) 410; Hayaki v. Dogara (1993) 8 NWLR (Pt.313) 586; Ajuwon v. Akanni (1993) 9 NWLR (Pt.316) 182."
Per NIKI TOBI ,JCA (P. 26, paras. A-E)

READ IN CONTEXTVIEW ANALYTICS

CUSTOMARY LAW - DOCTRINE OF REPUGNANCY - Whether the Nnewi "Oli-ekpe" customary law of succession is repugnant to natural justice, equity and good conscience

"I have come to the conclusion that the applicable law is the lex situs. The lex situs is the Kola Tenancy Law. In Exhibit 5, Akunne Augustine Chike Peter Abomeli, now dead, gave evidence

as P.W.6 on 7th May, 1986 before His Lordship, Onwuamaegbu, J. On the incident of a Kola tenancy, the witness said under cross-examinations: "I know the custom of succession to hand held under the Onitsha kola tenancy, especially that of the Mgbelekeke family. The children of a kola tenant inherit the kola tenancy. The children includes girls so that even if the deceased had no male issues the female issues would inherit the kola tenancy... I have been a member of the Mgbelekeke Committee since the end of the Nigeria Civil War." Under re-examination, witness said: "Within the Mgbelekeke family a woman can inherit the kola tenancy of their deceased father (but not a widow only the offspring of the man) ... The above evidence is vindicated by the decision of the Supreme Court in Udensi v. Mogbo, supra, a case which is very instructive. I will narrate the facts in some length. In 1935, the Mgbelekeke family of Onitsha acknowledged the father of the respondent as kola tenant in respect of the parcel of land at 54 Moore Street, Onitsha in succession to one Peter Akor who surrended his tenancy in that year to the said family. By Exhibit A (a tenancy agreement) the respondent's father (John Udensi) accepted a tenancy under the "kola system" and in consideration of the sum of 10 pounds he paid to the Mgbelekke family aforesaid he was allowed the use of the land free from all incumbrances but subject to two conditions viz (a) that there was to be no alienation of the land, wholly or in part, without the prior consent of the landlords and (b) that every incoming tenant must be liable to further payment of kola to the landlords. Having taken possession of the land John Udensi in 1936, completed the building on the land and in which he and his family together with the father of the appellant (Dominic Udensi) lived from 1938 till his death in 1940. A year or two prior to the death of John Udensi, the father of the appellant had gone to live at Aba, but after the death of John Udensi, at the request of the mother of the respondents', came from Aba to Onitsha to live with the respondents and their mother at 54 Moore Street. After the death of John Udensi, Dominic made an unsuccessful claim to the property in dispute. A settlement of the dispute following the futile claim by Dominic was made in the house of Joseph Modebe between Dominic and the respondent's mother, who handed over to Dominic the plan of the property. Thereafter Dominic collected the rents in respect of the portion of the property in the dispute. Not occupied by the respondents and their mother but occupied by tenants. In 1971 Dominic Udensi died and his son, the appellant started to collect rents due on the property in dispute and was challenged by the respondents and consequently he laid claim to the property. The case of the appellant was that he succeeded to the property by right of inheritance. In the alternative, the appellant claimed the property in dispute but virtue of the "ill-ekpe" custom. The learned trial judge found in favour of the respondents. The Supreme Court dismissed the appeal. There are two significant decisions of the Court. The first one is that kola tenancy under the Mgbelekeke family customary law is inheritable by the children of a deceased kola tenant -no matter the sex- but only upon production by the succeeding child, and accepted by the Mgbelekeke family, of further kola. The second is that the "illi-Ekpe" custom did not apply to the property. The learned trial judge held in Udensi v. Mogbo, supra, that the "Ili-ekpe" custom was "repugnant to the terms of its tenure". What is this custom? I am talking about the "Oli-ekpe" custom. I should point out here that while the custom is spelt as "Oli-Ekpe in this appeal, it is spelt as "ili-ekpe" in the case of Udensi v. Mogbo, supra. It is likely that one could bean adulteration but I do not know which, I shall confine myself to the version in this appeal, hoping that they mean the same thing. It is clear from the Record that "Oli-ekpe" is a Nnewi custom under which males and not female inherit the father', property. "Oli-ekpe" according to PW3, means the first son of the late brother. In his evidence-in-chief, PW1., who claimed to be a 'titled man in Nnewi", and "conversant with the Nnewi native law and custom", said. "Under our custom, if a man dies leaving a male issue, the property belongs to the male child. If on the other hand, the man has no male issue, his brother will inherit his property. If the male issue who survive the father dies leaving no male issue, the father's brother will inherit the property. If on the other hand, the

deceased's brother dies leaving (sic) sons, the sons will inherit the property of the dead cousin. In particular the "diokpala" i.e the eldest son of the uncle will inherit the property. If a man dies and subsequently his only son and brother die, if the late brother has sons, the 1st son of the late brother will inherit all the property. We call the 1st son of the late brother 'Oliekpe' i.e. he inherited the property of his relation. The 'Oli-ekpe' inherits the land, the wives of the deceased and if the deceased had daughters he will give them in marriage. He the 'Oli-ekpe' in other words inherit the assets and liability (sic) of the deceased." And so P.W. 3 gave evidence as to the almighty position held by the "Oli-ekpe" in the inheritance of family property. The appellant claims to be that "Oli-ekpe". Is such a custom consistent with equity and fair play in an egalitarian society such as ours where the civilised sociology does not discriminate against women? Day after day, month after month and year after year, we hear of and read about customs which discriminate against the womenfolk in this country. They are regarded as inferior to the menfolk. Why should it be so? All human beings - male and female - are born into a free world and are expected to participate freely, without any inhibition on grounds of sex; and that is constitutional. Any form of societal discrimination on grounds of sex, apart from being unconstitutional, is antithesis to a society built on the tenets of democracy which we have freely chosen as a people. "We need not travel all the way to Beijing to know that some of our customs, including the Nnewi "Oli-ekpe" custom relied upon by the appellant are not consistent with our civilised world in which we all live today, including the - appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God, the Creator of human being, is also the final authority of who should be male and female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God Himself. Let nobody do such a thing. On my part, I have no difficulty in holding that the "Oli-ekpe': custom of Nnewi, is repugnant to natural justice, equity and good conscience." Happily, I have come to the conclusion that the applicable law is the lex situs, which is the Kola Tenancy Law of 1935 and not the personal law of the parties, which is the Nnewi custom of "oli-ekpe" I should say, for avoidance of doubt, and in the alternative that even if the applicable law was the "oli-ekpe", the position could not have been different. After all, a Court of law being a Court of equity as well, cannot invoke a customary law which is repugnant to natural justice, equity and good conscience. The "oli-ekpe" custom is one of such customs. I have so held."
Per NIKI TOBI ,JCA (Pp. 28-35, paras. D-B)

READ IN CONTEXTVIEW ANALYTICS

EVIDENCE - DOCUMENTARY EVIDENCE - Effect of attestation by witness(s) to a document

"So much has been said both by the learned trial judge and the appellant about Mrs. Basilia Nwokwu and Mrs. Theresa Iwuchukwu, the daughters of Okechukwu Mojekwu, by Janet the first wife. I do not see the necessity for the statements because the role they played in Exhibit 1 did not, or better still, should not, in law give rise to such statements. All that the two women did was to witness the signature of the appellant. And what is the legal implication of that? In my humble view, a person who attests to the genuineness of a signature to a conveyance or agreement is not by such attestation saying that he is satisfied with the authenticity of the document in terms of veracity of truth. On the contrary, by his signature, he vouches for the authenticity of the signature of the party to the document. That is the only way I see the role of the two women - Mrs. Basilia Nwokwu and Mrs. Theresa Iwuchukwu. And so, the speculative

position taken by the learned trial judge as to full knowledge of the two daughters of their rights and interests in the disputed land, is, with respect, unnecessary. Similarly, the position taken by learned counsel for the appellant that "by signing the document the content is an admission against interest with respect to be signatories including the daughters," whatever that means, is, with respect, a wrong application of the law of admission against interest. Since the two women did not append their signatures to Exhibit 1 to the effect that they agree with the contents therein, there cannot be any admission on their part against interest and therefore the plea of estoppel by learned counsel for the appellant against the women does not avail the appellant."
Per NIKI TOBI ,JCA (Pp. 38-39, paras. A-C)

READ IN CONTEXTVIEW ANALYTICS

COURT - RAISING ISSUE(S) SUO MOTU - Circumstance(s) in which a court may raise an issue suo motu

"I have dealt with the complaint of learned counsel for the appellant that the learned trial judge raised certain issues suo motu. It is not in every case that a trial judge raises issue suo motu that an appeal will be allowed. There are two major exceptions. First, if the learned trial judge gave opportunity to the parties or their counsel to react to the issue raised by him before taking a decision, an Appellate Court will not intervene in favour of an appellant. Second, where the issue raised suo motu by the trial judge does not affect the substance of the appeal, an Appellate Court will not intervene in favour of an appellant. I see the latter situation in this appeal. I shall therefore not intervene in favour of the appellant."
Per NIKI TOBI ,JCA (Pp. 39-40, paras. D-A)

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ACTION - CLAIM(S)/RELIEF(S) - Whether a relief claimed should be supported by pleadings

"It is my understanding of the law that for a Court of law to grant a relief, there must be averments in the statement of claim supporting it. In my view, a relief which is not supported by averments in the statement of claim goes to no issue and a trial judge is entitled to ignore such relief, and I so hold."
Per NIKI TOBI ,JCA (P. 41, paras. B-C)

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ACTION - CLAIM(S)/RELIEF(S) - Position of the law on alternative claims

"Learned counsel submitted that the learned trial judge failed to evaluate the evidence before him by not making pronouncements on the specific reliefs sought in paragraphs 14(b), 14(b)(1) and 14(d) of the Amended Statement of Claim. The paragraph 14 relief is so wordy or wordish. It is one of the relief in terms of wordishness that I have seen. Apart from the fairly tedious and ambitious wordings, the reliefs sought lack precision. It is the law that a relief must be precisely or concisely worded. A rigmarole language is not good enough for a relief seeking paragraph.

Paragraph 14 contains reliefs in two alternatives. I am not sure I sound clear. Let me make myself clearer. The paragraph contains two sets of alternative reliefs. Paragraph 14(a) seems to be the main relief. I do not want to sound dogmatic or final. It is not easy to comprehend the paragraph. I think the first alternative relief(s) is paragraph 14(a)(i) and 14(b). I also think the second alternatives relief(s) is paragraph 14(b)(i), (c) and (d). Untying the "alternative knots" in paragraph 14 unfold six apparently different reliefs, all germinating, better still, emanating from the base line relief of paragraph 14(a). It needs an arithmometer to work out the correct number of reliefs. I hope that I am not that wrong if I am wrong at all. And so the learned trial judge was faced with this list of reliefs. Where a plaintiff asks for relief in the alternative, it shows either that he is not positive in respect of his main relief or does not want to take chances. Where the alternatives are more than one (as in this case), then it becomes really worrying; a 'fortiori when some other "sub-reliefs" are packed into the alternative reliefs. In such a situation, a Court of law is entitled to think that the plaintiff is not sure of the relief he is seeking and decides to take a gamble as if he is involved in the game of chess or bagatelle. A Court of law is not a forum for either. On the contrary, a Court of law is a forum for well articulated, precise and succinct reliefs on the part of a plaintiff. Paragraph 14 of the Amended Statement of Claim, putting the situation most mildly, is not the best relief seeking paragraph. I now take the complaint of the appellant. Putting it simply, it is that the learned trial judge did not pronounce on the second set of alternative reliefs. They number up to three, all in the alternative. There are instances where an alternative relief becomes otiose or spent when a trial judge pronounces on the main relief. I see such a situation here. In view of the decision of the learned trial judge, the second set of alternative reliefs are superfluous or functionless. But the learned trial judge ought to have made fonnal pronouncement of their obituary. He forgot to do so. I do so here and my authority is Section 16 of the Court of Appeal Act. Cap.75 Laws of the Federation of Nigeria, 1990."
Per NIKI TOBI ,JCA (Pp. 41-44, paras. D-A)

READ IN CONTEXTVIEW ANALYTICS

APPEAL - BRIEF WRITING - Attitude of Court to inelegantly drafted brief

"Let me add a few words on the briefs presented in this appeal. To say the least, they are unedifying. The appellant filed fifteen grounds of appeal and nine issues. Some of the issues are merely repetitive. Every small slip of the trial judge was made a ground of appeal or an issue whether it goes to the kernel of the appeal or not. I have said time without number that a good brief is pleasant to the judge and makes his task simple, while a bad brief is irksome to him. Repetition is no emphasis. Rather it tends to drown the real issue at stake within the mesh of unnecessary verbiage. When a point is made it is made. To repeat it a thousand times does not improve the argument. Counsel should therefore be more circumspect in formulating his issues and projecting his argument. What I have said above applies to the is grounds of appeal filed by the appellant. Frankly speaking, I am unable to see a case which cannot be disposed of by three to five grounds of appeal. Proliferation of grounds of appeal or issues for determination create the impression that the party formulating such grounds or issues is not sure of what he is complaining about. Grounds of appeal should be on the ratio decidendi of a judgment not on every slip or observation or obiter dictum of the judge. If this principle is observed, the work of the appeal Court will be less cumbersome."
Per EUGENE CHUKWUEMEKA UBAEZONU ,JCA (Pp. 46-47, paras. A-B)

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NIKI TOBI, J.C.A. (Delivering the Leading Judgment): This appeal deals with property situate at and known as No. 61 Venn Road South, Onitsha. The appellant as plaintiff in the lower Court, commenced an action against the respondent, as defendant. In the action, the plaintiff sought for a declaration that he is entitled to the property "in accordance with the Nnewi native law and custom". He asked for other reliefs in the alternative twice. In the first set of alternative reliefs, plaintiff asked for (a) A declaration that he, being the recognised kola tenant of the Mgbelekeke family of Onitsha is entitled to the statutory right of occupancy of the property. (b) A declaration that the defendant is only entitled to be accommodated at the property in accordance with Mgbelekeke family of Onitsha kola tenancy land tenure system and the kola tenancy law. In the second set of alternative reliefs, the plaintiff asked for (a) A declaration that the defendant is only entitled to be accommodated at the property, subject to good behaviour and maintained from the property by the plaintiff during her life time in accordance with Nnewi native law and

custom.

(b) A declaration that the defendant is only to be accommodated at the property, subject to good behaviour and maintained from the property by the plaintiff.

(c) Perpetual injunction restraining the defendant, her servants, agents and privies from putting in tenants on the property, leasing, selling or alienating the property or any part thereof without the plaintiffs permission

(d) An account of rents collected by the defendant on the property from the month of April 1982 until the delivery of judgment in the suit.

The case of the plaintiff as claimed by him could be summarised: His father's name was Charles Nwofor Mojekwu. He died in 1963. Nwofor had an only brother, Okechukwu Mojekwu, who predeceased him. Okechukwu died in 1944. The property in dispute was owned by Okechukwu, who married two wives: Janet and Caroline, the defendant. Janet had two daughters while Caroline had a son. His name was Patrick Adina. He died during the Nigerian Civil War. Patrick was neither married nor had a surviving issue. Okechukwu, the plaintiff's uncle bought the property in dispute from the Mgbelekeke family of Onitsha under kola tenancy land tenure system.

The plaintiff inherited the property under the native law and custom of Nnewi. In addition, he paid the necessary "Kola", being the consideration to the Mgbelekeke family who recognised him as a kola tenant; the plaintiff being the eldest surviving son of his father, Charles and the

eldest male in the Mojekwu family. The defendant and other people accompanied the plaintiff to the Mgbelekeke family for recognition and the two daughters of his deceased uncle-Okechukwu, signed the docket of consent from the Mgbelekeke family as witnesses.

After the Nigerian Civil War, the plaintiff went over to the Northern part of Nigeria, apparently to stay there. The first wife of Okechukwu - Janet - stayed at Nnewi. The plaintiff allowed Caroline - the defendant to come down from Nnewi to live in the property in dispute and collect rents from all the rooms but one, and to feed and take care of herself. That was in or about January, 1970. One of the daughters of Janet lived in the remaining room. When she left, Janet put in a rent paying tenant therein. The plaintiff exercised acts of ownership on the property and also performed the functions of a head of family. On 1st April,

1982, the defendant commenced moulding cement blocks on the property in dispute without the consent of the plaintiff, in preparation for construction of a building. The plaintiff stopped the defendant. He made public announcements and newspaper publications to prospective lessees. He thereafter filed the action.

The case of the defendant as claimed by them could also be summarised: The plaintiff is not the head of Mojekwu family and did not inherit the property in dispute under Nnewi custom or any other custom. When the husband of the defendant died, the plaintiff's uncle sought to take over the property even when Adina Mojekwu was still living. Defendant took the plaintiff to

Court. That was in Suit No. 399/59 at the District Court Grade 'A'. She obtained judgment. Esther Okakpu (DW1) the sister of the plaintiff gave evidence in favour of the defendant in Suit No.399/59. One Clement Udezue, an agent of the plaintiff, illegally occupied one of the rooms in the property in dispute. By Suit No. MO/312/82, the defendant successfully evicted him. Esther Okakpu (DW1) also gave evidence in favour of the defendant.

As usual, pleadings were filed and exchanged at the

lower Court. The parties gave evidence. The appellant gave evidence for himself and called four witnesses. The respondent did not give evidence. She however called two witness. After submissions of counsel for the parties, the learned trial Judge dismissed the claim of the appellant.

Dissatisfied; he has come to this Court. Again, as usual, briefs were filed and exchanged. The appellant formulated nine issues for determination. I do not think I will reproduce them here. The respondent formulated four issues. I will not also reproduce them.

Learned counsel for the appellant Mr. Nnamdi Ibegbu submitted that the learned trial judge was wrong in holding that Exhibit 1 cannot be pleaded or given in evidence in any Court as affecting land as it was not registered in view of the fact that every kola tenant of the Mogbelekeke family has no proprietary interest in land but merely has a possessory interest.

All he requires as a prospective kola tenant is a docket of consent in proof that he had paid the appropriate kola which was N600.00, learned counsel contended. Relying on **Oni v. Arimoro** (1973) 1 All NLR (Pt.1) 189;(1973) 3 SC 163;**Ogunbambi v. Abowaba** 13 WACA 222;

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Elegbede v. Savage 20 NLR 9; **Djukpan v. Orovuyovbe** (1967) NMLR 287; **Agwunedu v. Onwumere** (1994) 1 NWLR (Pt.321) 375; **Chukwu v. Anene** 3 ECSLR 48; **Okpata v. Obi ,** FSC 201/59 (Unreported); **Okoye v. Dumez Nigeria Limited and Ors** (1985) 6 S.C. 3 at 12; (1985) 1 NWLR (Pt.4) 783. Learned counsel submitted that absence of registration does not affect a receipt issued, as an unregistered document can be tendered as evidence of agreement or specific performance. It was also the submission of counsel that the exhibit can be used to show exercise of acts of ownership or as an admission against interest of the two stepdaughters of the respondent who signed it - Mrs. Basillia Nwokwu and Mrs. Theresa Iwuchukwu. Learned counsel further submitted that a registerable instrument which has not been registered is admissible to prove equitable interest and payment of purchase money or rent. He relied on **Tijani v. Akinwunmi** (1990) 1 NWLR (Pt.125) 237. It was the argument of learned counsel that since the two stepdaughters of the respondent signed Exhibit I, it operates as estoppel. He relied on **Ojiegbe and Anor v. Okwaranyia and Ors** (1962) 1 All NLR 605**; Awote v. Owodunni**

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(NO.2) (1987) 2 NWLR (Pt.57) 366 at 368 and **Hunter v. Walters** (1871) LR 7 Ch. Appeal 75 at 82.

Learned counsel submitted that the learned trial judge clearly formulated an issue not raised by the parties when he held that "there is nothing to show from the above that the two daughters had full knowledge of their rights and interest in the disputed land under the law, before they witnessed Exhibit I ". He relied on **Sagay v. M/S New Independence Rubber Company Limited**(1977) 5 SC 143; **Overseas Construction Company Nigeria Limited v. Creek Enterprises Nigeria Limited** (1985) 12 SC 158 at 164; (1985) 3 NWLR (Pt.13) 407; **Aseimo v. Amos** (1975) 5 U.I.L.R 17; **African Continental Seaways Limited v. Nigerian Dredging General Roads and General Works Limited** (1977) 5 SC 235 at 248 and Ejowhomu v. Edok-Eter Mandilas Ltd. (1986) 9 SC 41 at 56 and 57;(1986) 5 NWLR (pt.39) 1 SC. Learned counsel submitted in the alternative that there was no evidence to show that when the two daughters of Okechukwu took the appellant to the Mgbelekeke family for him to be recognised as their kola tenant that they did not know what they were doing.

Learned counsel submitted that Patrick Adina

Mojekwu, the son of the respondent, died during the Nigerian Civil War on 25th August, 1969 at the Ikot Ekpene Sector without any child. He pointed out that the respondent did not plead that Patrick contracted any marriage with Jimaima or anybody whatsoever. He therefore urged the Court to reject the evidence that Emeka is a son of Patrick. Counsel wondered how Patrick who died during the Nigerian War begot a son in 1973. He pointed out once again that there is no pleading or evidence to the effect that a son was born to Patrick years after his death. "The true position is that there was a woman to woman marriage in 1973 years after Patrick's death between the defendant and the alleged Jimaima who contracted a woman to woman marriage in 1973 after the death of Adina", learned counsel said. Relying on **Meribe v. Egwu** (1976) 3 SC 23: (1976) ECSLR 342; Edet v. Essian 11 NLR 47; **Enendu v. Ibezim** (1986) 1 QILR 222 at 224, learned counsel submitted that woman to woman marriage is repugnant to natural justice, equity and good conscience. A dead man does not bear a son and a boy should be the son of his biological father, learned counsel said.

It was the submission of

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learned counsel that the issue of anxiety of Patrick's mother over his marriage was not pleaded and therefore ought not to have been raised by the learned trial judge. He urged the Court to expunge all the evidence relating to Patrick's marriage because they were not pleaded, and the learned trial judge was clearly in error in formulating such an issue. He relied on Emegokwue v. Okadigbo (1973) 4 SC 113 at 117; **Enang v. Adu** (1981) 11/12 SC 25; **Aseimo v.**

Amos(1975) 5 UILR. 17; **Overseas Construction Company Nigeria Limited v. Creek Enterprises Nigeria Limited** (1985) 12 SC 158 at 164-165; (1985) 3 NWLR (Pt.13) 407; Kalio v. Kalio (1975) 2 SC 15 at 21; **Ajayi v. Texaco** (1987) 3 NWLR (Pt.62) 577.

Learned counsel described as shocking the finding of the learned trial judge that there was no averment in support of the relief sought by the appellant that under kola system of tenancy, he was entitled to the land in dispute. Counsel referred to what he regarded as averments in the Amended Statement of Claim as well as evidence before the learned judge in respect of the relief. He also called the attention of the Court to the Amended Statement of Defence where the

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respondent joined issues with the appellant on the relief. He contended that nobody gave evidence that Exhibit 1 was fraudulent, an issue which must be properly pleaded and proved beyond reasonable doubt. He relied on Okunola v. Oduola (1987) 4 NWLR (Pt.64) 141 at 143. Counsel dealt in some detail with the definition and incidents of a kola tenancy at page 24 to 27 of the brief. He relied on **Udensi v. Mogbo** (1976)7 SC 1 at 9-19; **Ochonma v. Unosi** (1965) NMLR 321 and **Okagbue v. Romaine** (1982) 6 SC 133 at 170.

Counsel submitted that the learned trial judge made no pronouncement on the specific reliefs sought by the appellant in paragraphs 14(b), 15(b)(i), 14(c) and 14(d) of the Amended Statement of Claim. All that the learned trial judge did was the dismissal of the claim after

dealing with the other issues which related to paragraph 14(a) and its alternative relief in paragraph 14(a)(i). Relying on **Nzekwu v. Nzekwu** (1989) 2 NWLR (Pt.104) 373 at 394 and 395, counsel submitted that a married woman on the death of her husband and without a male issue surviving cannot by efflux ion of time, claim the property of her husband as her own, she however, has a right to

occupy the building or part of it but subject to good behaviour. He argued therefore that the respondent has no title in the property in dispute. Calling the attention of the Court to **Ehimare v. Emhonyon** (1985) 1 NWLR (Pt.2) 177and**Ati v. Ekpenyong** (1963) 7 ENLR 21, learned counsel contended that a party cannot profer conflicting assertions in respect of claim to property. He submitted, on the authority of Okagbue v. Romaine , supra that where an invitee to a premises exceeds his area of invitation or permission, he becomes in law, a trespasser.

Counsel also submitted that the learned trial judge failed to evaluate the evidence with respect to the appellant being the head of the Mojekwu family and next in line to inherit, in the absence of a male successor, from his uncle's immediate nuclear family. He also submitted that the learned trial judge erred in law by dismissing the appellant's claim and believing the testimony of the respondent's witness. Counsel examined specific evidence in the brief and urged the Court to enter judgment in favour of the appellant.

Learned counsel for the respondent, Dr. Onyechi Ikpeazu, submitted that in view of the evidence of

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Akunne Augustine Peter Chike Abomeli as contained in Exhibit 5, the appellant was not entitled to the relief he sought in the case. He pointed out that in the evidence contained in Exhibit 5 the witness said that in a kola tenancy the children of a kola tenant inherit the kola tenancy, including .girls. Arguing that this tradition is in conflict with the Nnewi. "Oli-ekpe" custom, learned counsel submitted that in the matter on appeal, the applicable law is the lex situs which is the custom of the Mgbelekeke family. He called in aid Udensi v. Mogbo (1976) 7 SC 1. It was the submission of learned counsel that since there are material contradictions in the evidence of the appellant, the case totally breaks down. He relied on**Mogaji and Ors v. Cadbury Nigeria Limited and Ors** (1985)7 SC 59; (1985) 2 NWLR (Pt.7) 393 SC. He submitted further that since the appellant did not prove the reliefs sought, the learned trial judge rightly dismissed the case. To counsel, any purported recognition of the appellant as a tenant is null and void and of no effect whatsoever. He relied on **Macfoy v. U.A.C.** (1962) AC 152 at 160; **Skenconsult Nigeria Limited v. Ukey** (1981)1 SC 6;

Romaine v. Romaine , (1992)4 NWLR (Pt.238) 650 at 665.

Learned counsel submitted that the learned trial judge was right in holding that Exhibit 1 the docket of consent, did not confer on the appellant any valid claims over the property in dispute. He contended that Exhibit 1 cannot confer greater title than the facts upon which it was based. It is not just a document that establishes the rights or title of an individual but the transaction or set of facts forming the basis of the document, learned counsel further contended.

Learned counsel argued that the issue of whether Emeka Mojekwu was born in 1973 as the lawful son of Patrick Adina Mojekwu can only arise where the appellant successfully proved his case that the "Oli-ekpe" custom in Nnewi is the applicable law. Having thus failed to establish that the said custom was applicable to the transaction and there being no appeal against the determination of the learned trial judge in that regard, the issue is indeed not necessary, learned counsel argued.

Counsel contended that the evidence of the appellant in respect of burial of Patrick was inconsistent, particularly as it relates to his age at the time of

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burial. Counsel urged the Court to accept the evidence of DW1. He urged the Court not to accept the evidence of James Okoronkwo. Counsel submitted that the respondent pleaded that Patrick was married, contrary to the contention of the appellant. He referred the Court to

paragraph 5(a) of the Amended Statement of Defence.

Learned counsel submitted that the learned trial judge made findings on the evidence before him and pronounced on the reliefs sought in the Amended Statement of Claim. He urged the Court to dismiss the appeal.

This Court *suo motu* raised the issue of the admissibility of the evidence of the dead witnesses by the trial judge. Counsel addressed on it. Learned counsel for the appellant submitted that the evidence of dead witnesses who had earlier testified were properly admitted. He relied on Obawole v. Williams (1996) 10 NWLR (Pt.77) 146 at 163 and 164; and **Okpo v. Udo** (1962) All NLR (Pt.2) 524 at 526. In his reply, learned counsel for the respondent merely said that even if the evidence of dead witnesses are ignored, there is still enough evidence to justify the findings of the learned trial judge.

Let me first deal with the way the briefs were written. I am not quite satisfied with both. As indicated earlier, the appellant's brief has nine issues. What has nine issues to do in this appeal? What is their real significance? It is my view that they are too many. The Supreme Court and this Court have condemned the proliferation of issues. Multiplicity of issues tends to reduce most of them to trifles. Most appeals are won on a few cogent and substantial issues, well framed, researched and presented, rather than on numerous trifling slips. See **Ugo v. Obiekwe**

and Anor (1989) 1 NWLR (Pt.99) 566. Learned counsel gives the impression that every possible slip on the part of the learned trial judge constitutes an issue triable by this Court. That is very wrong. Such an approach merely reduces the place of issue in a brief. In my humble view, most of the issues are not only tautologous, but verbose, amorphous and overlap in some significant way. They are in great proliferation. See: **Agu v. Ikewibe** (1991) 3 NWLR (Pt.180) 385. **Attorney-General Bendel State v. Aideyan** (1989) 4 NWLR (Pt.l18) 646; Adelaja v. Fanoiki (1990) 2 NWLR (Pt.131) 137; **Anon Lodge Hotels Limited and Anor v. Mercantile Bank of Nigeria**

Limited (1993) 3 NWLR (Pt.284) 721.

There is also a related matter and it is the number of grounds formulated by learned counsel in the Notice of Appeal. They are fifteen. Again. I ask, what has fifteen grounds of appeal to do in this appeal? What is their real significance? The point should also be made here that it is not every conceivable slip of a judge that should be constituted as a ground of appeal. A ground of appeal must be drafted in such a way that it will assist an Appellate Court to resolve the appeal in favour of the appellant. Where slips of a trial judge are related, it is good drafting on the part of a counsel to formulate a single ground rather than different or separate grounds. That was what learned counsel did. The whole purpose of grounds of appeal is to give notice to the other party of the complaint the appellant has on the judgment, and these should be formulated concisely, succintly and accurately. Appellate Courts are not interested in vague, large and repetitive grounds, which are at large. So also vague, large and repetitive issues, which are at

large.

That takes me to the respondent's brief. It is the practice in brief writing

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that apart from the formulation of the issues for determination, it is necessary to identify in the body of the brief, under argument, the issue or issues taken. In other words, counsel should indicate by way of subheading the issue or issues he wants to argue before commencing his argument. This will not only facilitate easy identification of the issue or issues argued in the brief but also promote easy comprehension of the arguments in the brief. A situation where the Court is made to speculate what issue is argued, is most unhelpful. Learned counsel for the respondent did not see the necessity to identify in the body of his brief the issue or issues argued. And so, I was in great confusion. That is not good. It does not only waste the time of the Court, but also creates so much room for conjecture .

It is necessary to take first the issue of applicable law. Is it the lex situs or the personal law of the parties? *Lex situs* simply means the law of the place where the property is situate or is situated. The general state of the law is that lands or other immovables are governed by the *lex situs.* In **Udensi v. Mogbo** (1976)7 SC 1, a case which also dealt with kola

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tenancy, the learned trial judge, Agbakoba, J. held as follows: "The property is situate at Onitsha and it seems to me that the *lex situs* which regulates the tenure will also govern the inheritance and succession of the property. The lex situs is the Mgbelekeke family kola customary tenancy."

It is the argument of learned counsel for the appellant that the applicable law is the personal law of the parties which is the Nnewi customary law. And the customary law is known as "Oli-ekpe". The issue came up in **Udensi v. Mogbo , supra** where the learned trial judge held that the custom "is indeed repugnant to the terms of its nature."

The Supreme Court had no cause to pronounce on the issue of lex situs and the "Oli-ekpe" custom in the light of the provisions of Section 3 of the Administration (Real Estate) Law Cap.3, Laws of Eastern Region of Nigeria, 1963which he analysed in the judgment. Idigbe, JSC said at page 18: "We are, therefore, satisfied that in view of the above observations much of the arguments and submissions before us on the "Oli-Ekpe" custom of the people of Ezenifite and on the question whether the trial Court should have applied the personal law of

the parties rather than the *lex situs* of the property in dispute is completely unnecessary."

That issue is however necessary in this appeal because it has been vehemently and articulately presented by both parties. I will not go into the highly controversial jurisprudential debates as to whether there is any concept like or of customary personal law, as the issue does not arise at

all. It is enough for me to say that personal law, in the context of succession cases, would appear to mean the law the deceased was normally subject to when he was alive. It is peculiar to him and his family unit and could be distinct from the law prevailing or predominant in the area or locality of the deceased. In most cases, it dovetails into and assimilated by the law prevailing or predominant in the area or locality of the deceased. There are instances where the *lex situs* and the personal law are the same. Such instances arise where the deceased was a native of the area or locality where the land is situate, to the extent that both share a common and uniform customary law. The present appeal is not one of such instances as the deceased was a native of Nnewi while the property in

dispute is situate in Onitsha. And so, we have an internal conflict situation in this appeal. I resolve the conflict by accepting the decision of the learned trial judge that the applicable law is the *lex situs*, which is the Mgbelekeke family kola customary tenancy.

And what is that tenancy? I will go into some brief history in the light of the facts of this case and the opposing contentions. Before the enactment of the Kola Tenancy Law in 1935, the traditional practice was that land owners granted portions of land which they did not really need to grantees for a return of a kola, a genus of a West African tree developing into a nut used in drugs and for flavouring of the local drinks; a specie of special delicacy, in the context of this case, to the Igbos, especially of the Onitsha genealogy of the time or period. The 'Kola'

tradition, which could be vaguely likened to the Isakole amongst the Yorubas, the Kyuta amongst the Nupes and the Iru amongst the Igbos, was more of the brain child of the Onitsha people in the sense of origin. With time, the people received token payments in lieu of the kola. By the grant, the grantee virtually acquired the same legal

status as the original owner of the land. With the economic value of land, the kola tenancy, which originated from the Mgbelekeke family of Onitsha, gave rise to a number of problems. The problems came to the open in 1931 in the case of Mgbelekeke Family v. Madam Iyaji (1931) SC. Suit No.4, decided at Onitsha on 29th August, 1931. The plaintiffs sued the successors in title of one of their kola tenants, Madam Iyaji, who had leased her Kola holding to the *Societe Commerciale del' Quest African* at a rental of N200 per annum, for a declaration of title and for an order of the Court that one half of this annual rent be paid to them. It is clear that the plaintiffs' claim could not succeed unless they proved either an express agreement between themselves and Madam Iyaji to share the rent in the proportion alleged or a rule of the customary law of kola tenancies to that effect. Although Madam Iyaji herself had earlier died the year before the action was brought, no agreement was in fact shown to have been concluded with her for such a sharing of rent; nor was it established that custom required that a proportion of the rent be paid by tenant to landlord under a kola

tenancy arrangement. Accordingly, the Supreme Court held that the plaintiffs were entitled to the declaration of title sought but were disentitled to claim any proportionate part of the rent in the absence of express agreement.

In **Daniel v. Daniel** (1956) I FSC 50 it was held that a piece of land held at Onitsha under kola tenancy could not be alienated by its current holder who inherited it through his mother; and that the fact that she had contracted a marriage under the Marriage Ordinance did not necessarily make the land devolve under English Law.

In order to solve a number of the problems, the Kola Tenancy Law of 1935 was enacted. Section 2 of the Lawdefines a kola tenancy as a right of use and occupation of any land which is enjoyed by any native in virtue of a kola or other token payment made by such native or any predecessor in title or in virtue of a grant for which no payment in money or in kind was enacted. By Section 3 , where a grantee or his successor in title receives a more substantial benefit than the grantor might have reasonably anticipated as likely to accrue to the tenant, the grantor is entitled to apply for the extinction of the tenancy.

It would appear that the section was included as a result of the decision in Mgbelekeke in which the Supreme Court held that although the plaintiffs, who were the original grantors of the kola

tenancy, were entitled to a declaration of title to land, but in the absence of any express agreement, could not claim title to any proportionate part of the yearly rent which was valued at N400.00.

One very significant legal incident of a kola tenancy is that the tenant has a limited right of disposal. In other words, the kola tenant enjoys all the rights of an absolute owner but not the right of absolute disposition. What an allodial contradiction! A kola tenant has a transmissible right to his descendants but the grantor in law retains a reversionary right which is exerciseable on the determination of the tenancy. Because a kola tenant enjoys the right of an absolute owner, he is not restricted in the use to which he may employ the land. The impact of the Land Use Act, 1978 on the kola Tenancy Law of 1935, I will not stop here to consider, since the issue does not arise in the appeal. And that is a very large area of jurisprudence. I will not touch it.

Let me take Exhibit 1. There is so much quarrel on it. Exhibit 1 is the conveyance between the Mgbelekeke Family of Onitsha and the appellant. The whole disagreement centres on the non-registration of the exhibit.

Let me quote what the learned trial judge said at page 160 of the Record. "Before I consider the points raised by counsel, I will like to say a few words about Exhibit 1..... Under the Land Instrument Registration Law Cap. 71, Laws of Eastern Nigeria 1963, applicable in Anambra State every instrument, that is a document affecting land in the State

which is intended to convey title shall be registered. If the said document is not registered as in this case, it shall not be pleaded or given in evidence in any Court as affecting land. As Exhibit 1 is stamped but not registered, it can only be accepted as showing that the plaintiff paid N600.00 to the Mgbelekeke family for the land in dispute." The learned trial judge, with the greatest respect, stopped half way. He ought to have moved further, and I want to do just that. Generally, by virtue of the Land Instruments Registration Law, an instrument affecting land shall not be pleaded or given in evidence unless it

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has been registered. However, a registrable instrument which has not been registered is admissible to prove an equitable interest and to prove payment of purchase money or rent. See **Savage v. Sarrough** (1937) 13 NLR 141; Ogunbambi v. Abowaba (1951) 13 WACA 222; **Fakoya v. St. Paul's Church, Sagamu** (1966) 1 All NLR 74; **Oni v. Arimoro** (1973)3 SC 163; **Bucknor-Maclean v. Inlaks** (1980) 8-11 SC 1. Where a purchaser of land or lessee is in possession of land by virtue of a registrable instrument which has not been registered, and has paid the purchase money or the rent to the vendor or the lessor; the purchaser or the lessee has acquired an equitable interest in the land which is as good as a legal estate and the equitable interest can only be defeated by a purchaser of the land for value without notice of the prior equity. See: **Okoye v. Dumez Nigeria Limited and Anor** (1985) 1 NWLR (pt.4) 783; **Obijuru v. Ozims** (1985) 2 NWLR (Pt.6) 167; **Tijani v. Akinwunmi** (1990) 1 NWLR (Pt.125) 237. It is therefore my view that Exhibit 1 is much more than evidence that the

appellant paid the sum of N600.00 to the Mgbelekeke family for the land in dispute.

While still on Exhibit 1, it is convenient to take the issue that the learned trial judge raised an issue suo motu, when he held that: 'There is nothing to show from the above that the two daughters had full knowledge of their rights and interest in the disputed land under the law, before they witnessed Exhibit 1." I have carefully examined the Record of Appeal and I agree entirely with learned counsel that the issue was never raised by the parties either on their pleadings or on evidence before the Court. The learned trial judge raised the issue *suo motu* and he was wrong in doing so, particularly. When he did not give the parties opportunity to respond to it. See: **Zimit v. Mahmoud** (1993) 1 NWLR (Pt.267) 71; In Re: Arowolo (1993) 2 NWLR (Pt.275) 3 17; **Ike v. Ugboaja** (1993) 6 NWLR (pt.301) 539; **Lekwot v. Judical Tribunal** (1993) 2NWLR (Pt.276) 410; **Hayaki v. Dogara** (1993) 8 NWLR (Pt.313) 586; Ajuwon v. Akanni (1993) 9 NWLR (Pt.316) 182. I shall return to Exhibit 1 later in the judgment.

Related to the above is Issue 4 formulated in the appellant's brief. This is another complaint of the learned trial judge raising an issue *suo motu*. He said in the judgment as follows: "It is my view that

any person in Ibo land whose only son was up to 25 years of age and joined the Army would have been anxious to get a wife for him. I hold that Patrick was married to Jemimah in 1968."

I also agree with learned counsel for the appellant that the issue of the anxiety of the respondent in respect of the son taking a wife was not raised at the trial.

And that sequentially takes me to the issue on Patrick, the late son of the respondent. The learned trial judge disbelieved the evidence of the appellant and his witnesses that Patrick died in August, 1969. In his view, Patrick died between 1970 and 1977. He invoke the provisions of Section 143(1) of the Evidence Act, Cap. 62, Laws of the Federation and Lagos , now Section 144(1) of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990 . He said:

"The Civil War ended in January 1970. We are in 1993. The evidence before me does not disclose of any circumstance to account for Patrick not being heard of without assuming his death. I therefore hold that Patrick is now dead. As to the time of his death, I hold that there is (not) (sic) convincing evidence to fix the time of death between 1970 when he was last

seen and 1977."

Since both parties agree that Patrick is dead, it is my humble view that the word "not" is the printer's devil. In view of the fact that the retention of the word in the sentence will not make any meaning. I hereby expunge it. After all, the parties did not raise the issue. They must have taken it for granted.

The learned trial judge held that Patrick was married to Jemimah in 1968 and that Emeka is his lawful son. The appellant does not agree with the above conclusion. It is his case that Patrick died in August, 1969 and that Emeka, who was born in 1973, is not the son of Patrick. I have examined the findings and conclusions of the learned trial judge and I am in difficulty to disagree with them.

I have come to the conclusion that the applicable law is the *lex situs.* The *lex situs* is the Kola Tenancy Law. In Exhibit 5, Akunne Augustine Chike Peter Abomeli, now dead, gave evidence as P.W.6 on 7th May, 1986 before His Lordship, Onwuamaegbu, J. On the incident of a Kola tenancy, the witness said under cross-examinations:
"I know the custom of succession to hand held under the Onitsha kola tenancy, especially that of the Mgbelekeke family. The

children of a kola tenant inherit the kola tenancy. The children includes girls so that even if the deceased had no male issues the female issues would inherit the kola tenancy..... I have been a member of the Mgbelekeke Committee since the end of the Nigeria Civil War." Under re-examination, witness said: "Within the Mgbelekeke family a woman can inherit the kola tenancy of their deceased father (but not a widow only the offspring of the man) .... The above evidence is vindicated by the decision of the Supreme Court in **Udensi v. Mogbo , supra,** a case which is very instructive. I will narrate the facts in some length. In 1935, the Mgbelekeke family of Onitsha acknowledged the father of the respondent as kola tenant in respect of the parcel of land at 54 Moore Street, Onitsha in succession to one Peter Akor who surrended his tenancy in that year to the said family. By Exhibit A (a tenancy agreement) the respondent's father (John Udensi) accepted a tenancy under the "kola system" and in consideration of the sum of 10 pounds he paid to the Mgbelekke family aforesaid he was allowed the use of the land free from all incumbrances but subject to two conditions viz

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(a) that there was to be no alienation of the land, wholly or in part, without the prior consent of the landlords and (b) that every incoming tenant must be liable to further payment of kola to the landlords. Having taken possession of the land John Udensi in 1936, completed the building on the land and in which he and his family together with the father of the appellant (Dominic Udensi) lived from 1938 till his death in 1940. A year or two prior to the death of John Udensi,

the father of the appellant had gone to live at Aba, but after the death of John Udensi, at the request of the mother of the respondents', came from Aba to Onitsha to live with the respondents and their mother at 54 Moore Street. After the death of John Udensi, Dominic made an unsuccessful claim to the property in dispute.

A settlement of the dispute following the futile claim by Dominic was made in the house of Joseph Modebe between Dominic and the respondent's mother, who handed over to Dominic the plan of the property. Thereafter Dominic collected the rents in respect of the portion of the property in the dispute. Not occupied by the respondents and their mother but occupied by tenants.

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In 1971 Dominic Udensi died and his son, the appellant started to collect rents due on the property in dispute and was challenged by the respondents and consequently he laid claim to the property. The case of the appellant was that he succeeded to the property by right of inheritance. In the alternative, the appellant claimed the property in dispute but virtue of the "ill-ekpe" custom. The learned trial judge found in favour of the respondents. The Supreme Court dismissed the appeal.

There are two significant decisions of the Court. The first one is that kola tenancy under the Mgbelekeke family customary law is inheritable by the children of a deceased kola tenant -no matter the sex- but only upon production by the succeeding child, and accepted by the Mgbelekeke family, of further kola. The second is that the "illi-Ekpe" custom did not apply to the property.

The learned trial judge held in **Udensi v. Mogbo , supra** , that the "Ili-ekpe" custom was "repugnant to the terms of its tenure". What is this custom? I am talking about the "Oli-ekpe" custom. I should point out here that while the custom is spelt as "Oli-Ekpe in this appeal, it is spelt as

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"ili-ekpe" in the case of **Udensi v. Mogbo, supra.** It is likely that one could bean adulteration but I do not know which, I shall confine myself to the version in this appeal, hoping that they mean the same thing.
It is clear from the Record that "Oli-ekpe" is a Nnewi custom under which males and not female inherit the father', property. "Oli-ekpe" according to PW3, means the first son of the late brother. In his evidence-in-chief, PW1., who claimed to be a 'titled man in Nnewi", and "conversant with the Nnewi native law and custom", said.
"Under our custom, if a man dies leaving a male issue, the property belongs to the male child. If on the other hand, the man has no male issue, his brother will inherit his property. If the male issue who survive the father dies leaving no male issue, the father's brother will inherit the property. If on the other hand, the deceased's brother dies leaving (sic) sons, the sons will inherit the property of the dead cousin. In particular the "diokpala" i.e the eldest son of the uncle will inherit the property. If a man dies and subsequently his only son and brother die, if the late brother has sons, the 1st son of the late

brother will inherit all the property. We call the 1st son of the late brother 'Oliekpe' i.e. he inherited the property of his relation. The 'Oli-ekpe' inherits the land, the wives of the deceased and if the deceased had daughters he will give them in marriage. He the 'Oli-ekpe' in other words inherit the assets and liability (sic) of the deceased." And so P.W. 3 gave evidence as to the almighty position held by the "Oli-ekpe" in the inheritance of family property. The appellant claims to be that "Oli-ekpe". Is such a custom consistent with equity and fair play in an egalitarian society such as ours where the civilised sociology does not discriminate against women? Day after day, month after month and year after year, we hear of and read about customs which discriminate against the womenfolk in this country. They are regarded as inferior to the menfolk. Why should it be so? All human beings - male and female - are born into a free world and are expected to participate freely, without any inhibition on grounds of sex; and that is constitutional. Any form of societal discrimination on grounds of sex, apart from being unconstitutional, is antithesis to a society

built on the tenets of democracy which we have freely chosen as a people. "We need not travel all the way to Beijing to know that some of our customs, including the Nnewi "Oli-ekpe" custom relied upon by the appellant are not consistent with our civilised world in which we all

live today, including the - appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God, the Creator of human being, is also the final authority of who should be male and female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God Himself. Let nobody do such a thing. On my part, I have no difficulty in holding that the "Oli-ekpe': custom of Nnewi, is repugnant to natural justice, equity and good conscience." Happily, I have come to the conclusion that the applicable law is the *lex situs* , which is the Kola Tenancy Law of 1935 and not the personal law of the parties, which is the Nnewi custom of "oli-ekpe" I should say, for avoidance of doubt, and in the alternative that even if

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the applicable law was the "oli-ekpe", the position could not have been different. After all, a Court of law being a Court of equity as well, cannot invoke a customary law which is repugnant to natural justice, equity and good conscience. The "oli-ekpe" custom is one of such customs. I have so held.

I return once again to Exhibit 1. It is the fulcrum of the appellant's case. He relies on it as the basis of his claim. Being a document before the trial Court, I am entitled to interprete it in the light of the evidence before the Court. It does not appear to me that Exhibit 1 agrees with the incidents of kola tenancy as given in evidence by PWS 6, who was also the third signatory to the Exhibit. Similarly, the Exhibit does not agree with the decision of the Supreme Court

in **Udensi v. Mogbo , supra.** I say this because by the Exhibit, only the appellant can inherit the kola tenancy, excluding all other children of late Okechukwu Mojekwu. Why should PW6 who knows the inheritance rights of a kola tenancy be a signatory to Exhibit 1? I am clearly of the view that the evidence he gave is contrary to the legal incidents of Exhibit 1.

It does not appear from the evidence

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of DW 1 that the preamble has stated the correct pedigree of the Late Okechukwu Mojekwu's family. It would be recalled that DW1 is the half sister of the appellant, both being the children of Late Charles Nwofor Mojekwu. The learned trial judge placed so much reliance on the evidence of the witness. She gave evidence to the effect that on the death of her father, Joseph Okonkwo Nwofor became the oldest male member of the family and next to him was Louis. She said in examination-in-chief:

"My father who is also the plaintiff's father died in 1963. The oldest male member when my father died was Joseph Okonkwo Nwofor next to him was Louis... The present head of Nwofor Mojekwu's family is Joseph Okonkwo Nwofor (I mean by the present head the head of my father's family. He is still alive (sic) living in Lagos."

It was the case of the appellant that Joseph is dead. The following dialogue ensued during cross-examination of DW1: Q. Joseph Okonkwo is now dead. A. He is not dead

Q. Where is he now?

A. He is at Lagos.

Put. Joseph is dead and the plaintiff is now your eldest surviving brother.

A. No"

As I said above, the learned trial judge placed so much reliance on the

evidence of the witness. He said at page 163 on the Record: "This witness gave evidence against her father when the latter was sued in respect of the property by the defendant. She also gave evidence when the defendant sued P.W.5 for possession. In my view, she is out to see that just justice is done in the family. I believe her."

I have no cause to disagree with the findings of the learned trial judge. I was not there. He was there and saw the witness including her demeanour.

If the evidence of DW1 is believed, (and I have no cause to come to the contrary conclusion in the light of the position taken by the learned trial judge) it comes to reason that the preamble to Exhibit 1 which gave rise to the kola tenancy, did not give the full pedigree of the appellant's father's family. This is because of the exclusion of Joseph Okonkwo Nwofor.

Even if the above conclusion is not correct, Exhibit 1 is not of much assistance to the appellant. Instead of articulating the incidents of kola tenancy, the preamble re-enacts of "Oli-ekpe"

Nnewi custom which I have held is not the applicable law. I have also declared it as contrary to natural justice, equity and good

conscience. I will not repeat myself.

So much has been said both by the learned trial judge and the appellant about Mrs. Basilia Nwokwu and Mrs. Theresa Iwuchukwu, the daughters of Okechukwu Mojekwu, by Janet the first wife. I do not see the necessity for the statements because the role they played in Exhibit 1 did not, or better still, should not, in law give rise to such statements. All that the two women did was to witness the signature of the appellant. And what is the legal implication of that? In my humble view, a person who attests to the genuineness of a signature to a conveyance or agreement is not by such attestation saying that he is satisfied with the authenticity of the document in terms of veracity of truth. On the contrary, by his signature, he vouches for the authenticity of the signature of the party to the document. That is the only way I see the role of the two women - Mrs. Basilia Nwokwu and Mrs. Theresa Iwuchukwu. And so, the speculative position taken by the learned trial judge as to full knowledge of the two daughters of their rights and interests in the disputed land, is, with respect, unnecessary. Similarly, the position taken by

learned counsel for the appellant that "by signing the document the content is an admission against interest with respect to be signatories including the daughters," whatever that means, is, with respect, a wrong application of the law of admission against interest. Since the two women did not append their signatures to Exhibit 1 to the effect that they agree with the contents therein, there cannot be any admission on their part against interest and therefore the plea of estoppel by learned counsel for the appellant against the women does not avail the appellant .

I have dealt with the complaint of learned counsel for the appellant that the learned trial judge raised certain issues *suo motu* . It is not in every case that a trial judge raises issue *suo motu*that an appeal will be allowed. There are two major exceptions. First, if the learned trial judge gave opportunity to the parties or their counsel to react to the issue raised by him before taking a decision, an Appellate Court will not intervene in favour of an appellant. Second, where the issue raised *suo motu* by the trial judge does not affect the substance of the appeal, an Appellate Court will not

intervene in favour of an appellant. I see the latter situation in this appeal. I shall therefore not intervene in favour of the appellant.

This Court raised *suo motu* whether the learned trial judge acted properly on the admissibility of the evidence of dead persons. In the light of the reaction of both counsel, I do not intend to pursue the issue further. Both counsel do not seem to see the issue as fundamental. I should also drop it here, and for good since they have not joined issues on the matter.

I now take the issue of averment in respect of the relief or reliefs sought by the appellant. The learned trial judge said at page 167 of the record: "Finally, I observe that the averments in the statement of claim are predicated on 'oli ekpe' System under the Nnewi Native Law and Custom. It is trite law that any relief sought must be supported by an averment in the body of the pleading. In my view, there is no averment in support of the relief sought by the plaintiff, that under the Onitsha Kola System of Tenancy he is entitled to the land in dispute."

In response to the above, learned counsel relied on paragraphs 8 and 14(a)(1) of the Amended Statement of

Claim. There is no averment in paragraph 8 of the Amended Statement of Claim that under the Onitsha kola system of tenancy, the plaintiff is entitled to the land in dispute. The averment in paragraph 8 is in respect of "Nnewi Native Law and Custom". I do not think that paragraph 149(a)(1) assist the appellant, being the relief sought. It is my understanding of the law that for

a Court of law to grant a relief, there must be averments in the statement of claim supporting it. In my view, a relief which is not supported by averments in the statement of claim goes to no issue and a trial judge is entitled to ignore such relief, and I so hold.

Learned counsel submitted that the learned trial judge failed to evaluate the evidence before him by not making pronouncements on the specific reliefs sought in paragraphs 14(b), 14(b)(1) and 14(d) of the Amended Statement of Claim. The paragraph 14 relief is so wordy or wordish. It is one of the relief in terms of wordishness that I have seen. Apart from the fairly tedious and ambitious wordings, the reliefs sought lack precision. It is the law that a relief must be precisely or concisely worded. A rigmarole language is not

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good enough for a relief seeking paragraph. Paragraph 14 contains reliefs in two alternatives. I am not sure I sound clear. Let me make myself clearer. The paragraph contains two sets of alternative reliefs. Paragraph 14(a) seems to be the main relief. I do not want to sound dogmatic or final. It is not easy to comprehend the paragraph. I think the first alternative relief(s) is paragraph 14(a)(i) and 14(b). I also think the second alternatives relief(s) is paragraph 14(b)(i), (c) and (d). Untying the "alternative knots" in paragraph 14 unfold six apparently different reliefs, all germinating, better still, emanating from the base line relief of paragraph 14(a). It needs an arithmometer to work out the correct number of reliefs. I hope that I am not that wrong if I am wrong at all. And so the learned trial judge was faced with this list of reliefs.

Where a plaintiff asks for relief in the alternative, it shows either that he is not positive in respect of his main relief or does not want to take chances. Where the alternatives are more than one (as in this case), then it becomes really worrying; a *'fortiori* when some other "sub-reliefs" are packed into the

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alternative reliefs. In such a situation, a Court of law is entitled to think that the plaintiff is not sure of the relief he is seeking and decides to take a gamble as if he is involved in the game of chess or bagatelle. A Court of law is not a forum for either. On the contrary, a Court of law is a forum for well articulated, precise and succinct reliefs on the part of a plaintiff. Paragraph 14 of the Amended Statement of Claim, putting the situation most mildly, is not the best relief seeking paragraph. I now take the complaint of the appellant. Putting it simply, it is that the learned trial judge did not pronounce on the second set of alternative reliefs. They number up to three, all in the alternative. There are instances where an alternative relief becomes otiose or spent when a trial judge pronounces on the main relief. I see such a situation here. In view of the decision of the learned trial judge, the second set of alternative reliefs are superfluous or functionless. But the learned trial judge ought to have made fonnal pronouncement of their obituary. He forgot to do so. I do so here and my authority is Section 16 of the Court of Appeal Act. Cap.75

Laws of the Federation of Nigeria, 1990 .

There is also the complaint that the learned trial judge failed to evaluate the evidence before him that the plaintiff "is the surviving male issue in the Mojekwu family who is entitled to inherit the property in dispute in accordance with Nnewi Native Law and Custom". I have the impression that I have dealt with this issue. Let me take it briefly, for whatever it is worth. It may well be that the learned trial judge failed to deal specifically with the evidence in respect of the appellant's status in the family. In the light of the totality of his findings and conclusions, that is not an issue really available to the appellant, and I so hold. In view of the fact that the learned trial judge held that the applicable law is not "Oli-ekpe", the issue of the appellant being the surviving male issue in the Mojekwu family entitled to inherit the property in dispute in accordance with Nnewi Customary Law, does not arise. I do not think I will take the last issue raised at page 32 of the appellant's brief in respect of Patrick. I have done enough on Patrick. I will not do more.

Learned counsel for the appellant raised in

passing the so-called Igbo custom of woman to woman marriage, which he said resulted in the birth of Emeka. Since the point was not raised as an issue, I shall not waste my time to deal

with it.

I have, in obedience to learned counsel for the appellant, dealt with virtually all the issues he formulated in the brief though most verbose and repetitive. I am unable to come to the conclusion that this appeal has merit. On the contrary, I come to the conclusion that the appeal has no merit and it is hereby dismissed. I award N2,000.00 costs in favour of the respondent.

AKINTOLA OLUFEMI EJIWUNMI, J.C.A. : I was privileged to have read the judgment just delivered by my learned brother Niki Tobi, J.C.A., As he has examined in great detail the issues raised in this appeal, I do not have anything further to add. In the result I also agree with the conclusion reached in respect of the resolution of the issues. I therefore also dismiss the appeal and award to the respondent the sum of N2,000.00 costs.

EUGENE CHUKWUEMEKA UBAEZONU, J.C.A. : I have had the opportunity of reading in draft the judgment of my brother Tobi, J.C.A. just delivered. I agree

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that the appeal has no merits and should be dismissed.

Let me add a few words on the briefs presented in this appeal. To say the least, they are unedifying. The appellant filed fifteen grounds of appeal and nine issues. Some of the issues are merely repetitive. Every small slip of the trial judge was made a ground of appeal or an

issue whether it goes to the kernel of the appeal or not. I have said time without number that a good brief is pleasant to the judge and makes his task simple, while a bad brief is irksome to him. Repetition is no emphasis. Rather it tends to drown the real issue at stake within the mesh of unnecessary verbiage. When a point is made it is made. To repeat it a thousand times does not improve the argument. Counsel should therefore be more circumspect in formulating his issues and projecting his argument. What I have said above applies to the is grounds of appeal filed by the appellant. Frankly speaking, I am unable to see a case which cannot be disposed of by three to five grounds of appeal. Proliferation of grounds of appeal or issues for determination create the impression that the party formulating such grounds or issues is not sure

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of what he is complaining about. Grounds of appeal should be on the*ratio decidendi* of a judgment not on every slip or observation or *obiter dictum* of the judge. If this principle is observed, the work of the appeal Court will be less cumbersome.

I do not intend, at this stage, to express an opinion as to whether the *lex situs* or the personal law of the appellant will apply in a case such as in the instant appeal. On the whole I agree that this appeal should be and is hereby dismissed. I abide by the order for costs made in the leading judgment.

Appeal dismissed.

Appearances:

Nnamdi Ibegbu For Appellant(s)

Dr. Onyechi Ikpeazu For Respondent(s)