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INTRODUCTION

INTRODUCTORY COMMENTS

At all times, a court is faced with the problem of determining a case presented by the parties to the suit. In normal circumstances, the court can only resolve such problem after it has inquired into the facts of the case put forward by the parties, drawing inferences from the relevant facts by listening to the legal arguments of the parties to the case and the judicial evidence by which the facts are proved. Facts can only be proved by the oral evidence of the parties involved or by the production of relevant documents. It can also be proved by the inspection of things or a visit to *locus in quo,* all which come within judicial evidence. Judicial decisions had established that sometimes it is permissible to include other means of providing confessions and admissions, judicial notice, estoppel and presumptions.

The histories of the Nigerian Law of Evidence were mainly derived from customary courts presided over by traditional rulers. In Northern areas, there were Islamic courts presided over by Islamic religious leaders applying rules of evidence in their courts. Similarly, in Southern areas, the rules applicable included customary laws. However, the establishment of courts such as Magistrates Courts, High Courts, the Court of Appeal and the Supreme Court started with colonial masters. The Nigerian Law of Evidence in 1945 in the courts was the English common law of evidence since there was no local legislation as far as applicable in what was then known as the Colony and Protectorate of Nigeria. In June 1,1945, the Evidence Ordinance came into operation and until present day remained the same in substance and form though it has been amended from time to time and set out in the 1990 compilation of the Laws of Nigeria. The Evidence Act is the main source of the law of evidence containing the greatest bulk of the law relating to evidence.

The Act states that it shall apply to all judicial proceedings in or before any court established in the Federation of Nigeria. The court is defined in Section 2(1) as including all judges and magistrates, excepting arbitrators, all persons, legally authorized to take evidence, see *Daniel Adebona v. Bamgbola Amao (1965) 1 All NLR 370 (1960) NMLR (404)*. The Act in Section 2 (1) defines certain terms, such as 'a fact' which includes (a) any state of things or relation of things capable of being perceived by the senses and (b) any mental condition of which any person is conscious. Judicial evidence cannot include whatever the trial judge or a jury may discover on their own outside the proceedings. In *Muhammandu Duriminya v. Commissioner of Police (1962) NNLR 71, 72-74,* an accused was charged with fraudulent accounting and

stealing. The prosecution put the accused's book of account in evidence but only a few out of numerous relevant entries in the books were brought to the notice of the court by oral evidence or by examination. The court held that entries which had not been the subject of oral evidence or examined in court were not in evidence and the defect cannot be cured by an examination of the books outside court proceedings. It is not part of the duty of a trial court to do justice by making an inquiry into a case outside court, not even the examination of documents which are in evidence but which were not examined in the court. The judge pointed out that a trial is not an investigation and conducting investigation is not the function of the court. A trial is a public demonstration and test before a court of the cases of the contending parties. The demonstration is an assertion and evidence and testing is by cross- examination and argument. The function of the court is to decide between the parties on the basis of what has been so demonstrated and tested (See also *R. v. Gabriel Adaoju Wilcox (1961) All NLR 63)*.

The Evidence Act can be classified into oral evidence, real evidence and documentary evidence. Evidence is also classified into circumstantial evidence, hearsay evidence, the best evidence rule under constitutional provisions, while fundamental human rights is classified under the Law of Evidence. This is classified under (a) provisions as to fair hearing. See the decision in *Mallam Sadau of Kanya v. Abdul Kadir of Fagge (1956) 1 FSC 39, 41; Kano Native Authority v. Rapheal Obiora (1959) 4 FSC 226, 230; Okon Udofe & Ors v. Akpan Aquisisisua & Ors (1973) S.C. 119; Ibrahim Mai Abinkumi v. Kasimu (1952) 2 NNLR 26; Olawoyin & Ors v. Commissioner of Police (1962) NNLR 29* (b) right to free interpretation reference is made to Section 33(6) of the Constitution see *Ajayi v. Zaria Native Authority (1964) NMLR 61; Board of Customs & Exercise v. Garba Katsina; Peter Lockman & Anor v. The State (1972) 1 All NLR (Pt. 2) 62; R. v. Imadehor, Equabor (1962) All NLR 287; Umaru Garbor v. Commissioner of Police (1978) 1 LRN.*

RELEVANT REPORTED CASES

ADEKA (NIG.) LTD v. VAATIA
[1987] 1 NWLR 134

Court of Appeal (Jos Division)

Evidence – Section 131(1) of the Evidence Act – effect

Facts of the case:
The plaintiff/respondent claimed against the defendants/appellant at the trial court the sum of ₦54,300 as special damages for breach of a building contract between the plaintiff and the defendant. The plaintiff claimed that the defendant was awarded a contract for the

construction of 4 bedroom flats and 3 bedroom flats plus 6 boys quarters. The defendant then sub-awarded the contract to the plaintiff. The plaintiff claimed that there was an agreement between him and the defendant that 20% of every payment made after the presentation of a valuation certificate should be paid to the defendants and 80% to the plaintiff. The plaintiff further claimed that there have been several payments made to the defendant to a total of ₦121,000.00 out of which only ₦42,500 was paid to the plaintiff. The plaintiff claimed that by the mode of payment agreed upon by him and the defendant he was still entitled to a sum of ₦54,300 due to him from the defendant. While the plaintiff pleaded 'a schedule' attached to the letter of award of contract to him which describes the mode of payment, the schedule was not produced in evidence but the plaintiff adduced oral evidence as to the mode of payment. No oral agreement as to the mode of payment was pleaded by the plaintiff.

The defendants denied that there was such agreement between them and the plaintiff as to the payment of any percentage of the money collected under the main contract to the defendants, and claimed that they agreed to pay to the plaintiff a total sum of ₦60,000 when the plaintiff reached the roofing stages of the buildings. The defendants also claimed that the plaintiff has been paid a total sum of ₦57,880.00. The defendants contended that the plaintiff did not complete the buildings within the stipulated time and rather unilaterally abandoned them. The defendants letter of award to the plaintiff stipulated ₦1,000 per week as penalty to the plaintiff should he fail to complete the buildings within time. The defendants counter-claimed for the sum of ₦33,000 as damages. ₦13,000 as special damages and ₦20,000 as general damages. At the conclusion of trial the learned trial judge found for the plaintiff; held that the plaintiff was entitled to the sum of ₦40,163.12k as special damages for the breach of the terms of the contract the plaintiff complained of. The counter-claim of the defendants was dismissed on the ground that the plaintiff could not complete the contract within time due to frustration. The defendants appealed against the judgment in favour of the plaintiff and the dismissal of counter-claim.

Held: Unanimously allowing the appeal in part

1. If any member of a firm of solicitor acting for a litigant is unable for any reason to appear in court for the litigant, any other member of the firm should be able to represent the litigant.

2. Where the parties to an appeal have filed briefs of argument, the court can proceed to hear the appeal despite the absence of counsel to one of the parties.

3. Under Section 131(1) of the Evidence Act, when the terms of any contract have been reduced to a form of document, no evidence can be given of the terms of the contract except the document itself or secondary evidence of its content.

4. In the instant case, the plaintiff failed to prove his case by his failure to produce the schedule of payment attached to Exhibit I or by adducing secondary evidence of its contents.

5 Parties are bound by their pleadings and no party will be allowed to make out a case different from the one pleaded by him.

6. In the instant case, the case of the plaintiff as stated in his pleadings is that the terms of payment in the contract upon which he based his claim have been reduced into writing in a schedule to Exhibit 1. It was not the plaintiff's case that the terms of payment were contained in an oral agreement between him and the defendants.

7. The trial judge was wrong in granting the plaintiffs claim on the plaintiff's evidence that the terms of payment were based on an oral agreement between him and the defendant when this evidence goes to no issue on the state of pleading.

8. Hearsay evidence is inadmissible and cannot form the basis of any judgment given by any court. It is immaterial whether the evidence was objected to or not at the trial court.

9. The learned trial judge was right in dismissing the appellants' counter-claim on the ground that frustrating circumstances made it impossible for the plaintiff/respondent to complete the work within the stipulated time.

ANIA v. EMODI
[1996] 2 NWLR 348

Court of Appeal (Enugu Division)

Evidence – Evaluation of evidence – Duty on trial court in respect thereof.

Facts of the case:
The appellants as plaintiffs filed two individual cases in the Chief Magistrate's Court against the respondent as defendant in respect of contiguous lands, each claiming a declaration of title, damages and injunction. The two cases were consolidated by the magistrate. After taking the evidence of the parties, their witnesses and hearing address of counsel, the learned trial magistrate gave judgment for the appellants. In his judgment, he tried to summarize the evidence of the witnesses for the appellants and thereafter he took up the evidence of the respondent, castigating and demolishing it. In the process he said thus:

"I have dealt exhaustively on the weakness of the case of the defendant and after analyzing the defendant's case I am satisfied that there is no substance in the defendant's case and equally satisfied that the defendant has no land at all in the area." The learned trial magistrate then noted that nevertheless in an action for declaration of title the burden of proof was on the plaintiff. Having said this he proceeded to deal in *extenso* with the evidence of the appellants to which he attained all the probative value. Being dissatisfied with the judgment, the respondent appealed to the High Court. In his judgment the appellate High Court judge

criticized the judgment of the trial magistrate for demolishing the defence before giving any consideration to the appellant case. The learned judge gave his judgment in two installments. First, he allowed the appeal and set aside the judgment of the trial magistrate. He then invited counsel to address the proper order to make in respect of the claims of the appellants, whether it was an order of dismissal or of non-suit. When counsel addressed him, he dismissed the two suits filed by the appellants. Being dissatisfied with the judgment, the appellants appealed to the Court of Appeal.

Held: Unanimously allowing the appeal and ordering a retrial

1. *On duty of trial court in evaluating evidence*
   A trial court in the course of evaluating evidence, must have at the back of its mind, the evidential rules governing the burden of proof *(P. 363, para. B)*.

CHUKWU v. DIALA
[1999] 6 NWLR 674

Court of Appeal (Port Harcourt Division)

Evidence – Evaluation of evidence – Duty on trial court to consider evidence adduced by both sides.

Facts of the case:

The appellants, at the Owerri High Court, instituted an action for the declaration of title to a piece of land, damages and injunction against the respondents herein. The appellants' case was that they inherited the land from their ancestor called Alume. The respondents also claimed that they inherited the disputed piece of land from their forefathers.

The dispute that led to the institution of this action arose in 1977 as a result of another land dispute between the respondents and the Umuoguesi family in suit No. HOW/3/76 over a different piece of land. The respondents in making their survey plan in that case were said to have trespassed into the land in dispute for the first time without leave or consent of the appellants. When the appellant challenged the respondents, the respondents claimed ownership of the land and the appellants reacted by instituting this action. The High Court dismissed the appellant's action. The appellants were dissatisfied with the decision of the High Court which gave ownership to the respondents, hence this appeal.

Held: Unanimously dismissing the appeal

1. *On when the court can admit evidence on facts not pleaded*
   Where the existence of a suit is not pleaded or a certified true copy of the judgment in the suit is not tendered, the court can rightly accept evidence led on the existence of the suit where facts of the existence of the suit and its result were admitted by the parties.

Per AKINTAN, J.C.A. at page 678, para. A:
"In the instant case, the parties did not dispute the existence of suit No. HOW/3/76 or that the appellants lost the case which was in respect of an adjoining land to the one in dispute and which was shown on a survey plan tendered by the appellants *(Exh. A.)*. The parties also admitted that the same land is occupied by the respondents. The facts, in view are relevant and their admission was in accordance with the law."

2. *On treatment of unchallenged evidence*
Evidence of facts in issue not challenged or debunked ought to be accepted and acted upon by the court [*Omoregbe v. Lawani (1980) 3-4 S.C. 108; Agbaje v. National Motors (1971) 1 UILR; Akinrinmade v. Lawal (1996) 2 NWLR (Pt. 429) 218 referred to] (P. 681, para. H)*.

3. *On the duty of a trial court in civil cases*
A trial judge is required to carefully consider the evidence adduced by both sides and decide on the balance of probabilities which account he should accept [*Omoregbe v. Edo (1971) 1 All NLR 282 referred to] (P. 682, para. E)*.

OKONKWO v. ONOVO
[1999] 4 NWLR 110

Court of Appeal (Enugu Division)

Evidence – Evaluation of evidence – Power of Court of Appeal to evaluate evidence – Where derived – Section l6, Court of Appeal Act.

Facts of the case:
In the local government election held on December 5, 1998, the respondent contested for the councillorship of the Nomeh ward of Nkanu East Local Government Council of Enugu State. He contested on the platform of the Peoples Democratic Party (PDP). The appellant was declared winner. The respondent was not happy with the outcome of the election therefore he filed a petition at the Enugu State Election Tribunal asking that the appellant's election be declared a nullity and for a fresh election to be ordered. His complaints against the appellant's victory were that the appellant was not qualified to contest the said election; the appellant did not win majority of the valid votes cast; and that the election was characterized by corrupt practices, irregularities or offences against the Local Government (Basic Constitutional and Transitional Provisions) Decree. No. 36 of 1998.

The respondent contended that there was no election at the four polling booths designated for Nomeh ward, reason being that thugs procured and controlled by the appellant's party took over the polling booths and rendered voting impossible. He further stated that electoral materials meant for the four booths were in police custody and were kept there until they were produced at the tribunal as exhibits. At the conclusion of evidence, the tribunal nullified the election and return of the appellant and ordered a fresh election.

Dissatisfied with the judgment of the tribunal, the appellant appealed to the Court of Appeal contending that the respondent did not prove the allegation of fraud beyond reasonable doubt as his witnesses contradicted themselves in their testimonies and that the trial tribunal failed to give reasons why it preferred evidence of the respondent to that of the appellant.

Held: Unanimously dismissing the appeal

1. *On treatment of unchallenged evidence by court*
   A trial court can validly rely on an evidence when that evidence is unchallenged and uncontroverted particularly if it is an oral evidence establishing clearly the claim of the plaintiff against the defendant in terms of his writ and such evidence was not rebutted by the defence. In other words, evidence which is not controverted or discredited or challenged ought to be accepted as proving an existing or alleged fact. Once it is relevant to the issues joined, it ought to be accepted as the true facts sought to be proved. In the instant case, the respondent's witnesses, especially the PW3, testified to the effect that elections did not take place in the two polling booths that made up the Nomeh ward and, in respect of the other two centres where voting commenced, elections remained inconclusive. This evidence remained uncontradicted and the trial tribunal which had the advantage of seeing the witnesses was entitled to believe and act upon such evidence *[Adisa v. Afuye (1994) I NWLR (Pt. 318) 75 at 79; I.I.T.A. v. Amrani (1994) 3 NWLR (Pt. 332) 297 referred to] (P. 118, paras. C-F)*.

2. *On power of the Court of Appeal to evaluate evidence*
   The Court of Appeal has the powers under Section 16 of the Court of Appeal Act, Cap. 75 Laws of the Federation of Nigeria, 1990 to step into a trial court's shoes and carry out evaluation of evidence in circumstances which justify such exercise but not in all cases *(P. 19, para. A)*.

3. *On attitude of appellate court to evaluation of evidence by trial court*
   Evaluation of evidence, most appropriately, is the primary function of the trial court. Evaluation of evidence will only be undertaken by an appellate court if, truly, the trial tribunal had done so only in part or not at all. It equally will be the duty of an appellate court to carry out evaluation of evidence in instances where it was shown that although the trial court had dime the evaluation of the evidence before it, the court all the same arrived at a wrong and perverse conclusion consequent upon such an evaluation *(P. 119, paras. A-B)*.

4. *On duty of the party alleging improper evaluation of evidence by trial courts*
It is not enough for a party, such as the appellant in the instant case, to simply allege that a trial court or tribunal had not properly evaluated the evidence before it. He has a further burden of not only pointing out the error he complains about, but also to convince the appellate court that if correction of the errors are made, the decision of the court or tribunal will not stand. In the instant appeal, the appellant having not specified any point of perversity in the tribunal's evaluation of the evidence before it and the conclusions drawn therefrom, the Court of Appeal has no alternative than to confirm the view of the tribunal *[Chukwu v. NITEL (1996) 2 NWLR (Pt. 430) 290; Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360; Nwokoro v. Nwosu (1994) 4 NWLR (Pt. 337) 172; Kaduna Textiles v. Omar (1994)1 NWLR (Pt. 3I9)143 referred to] (P. 119, paras. B-D)*.

OSU v. IGIRI & ORS
[1988] 1 NWLR 221

Supreme Court of Nigeria

Evidence – Evidence Act, Section 131 – Applicability of – Not binding on customary or Area Courts.

Facts of the case:
The appellants/plaintiffs had previously instituted against the respondents/defendants suit No. 14/76 (Exhibit B) in respect of the same piece of land, which is the subject of the present appeal. However, based on the amicable agreement reached between the parties (Exhibit C), the appellants/plaintiffs withdrew the said suit. When the respondents/defendants failed to honour their own part of the agreement, the appellants/plaintiffs instituted a fresh action against the respondents/defendants in the District Court claiming a declaration of title in respect of the said land. The majority of the District Court believed the appellants/plaintiffs and awarded them a declaration of title.

On appeal to the Chief Magistrate's Court by the respondents/defendants, their appeal was allowed by the learned Chief Magistrate on the grounds *inter alia* that the traditional evidence of the appellants/plaintiffs was stronger and should not have been disturbed by the learned Chief Magistrate. The judgment of the Chief Magistrate's court was therefore set aside and the judgment of the District Court was restored. The respondent/defendants appealed to the Court of Appeal and it was contended on their behalf that exhibit C which was the agreement between the parties operated as an estoppel and the appellants/plaintiffs counsel contended that since the respondent/defendants had reneged on their obligations under, Exhibit C was no longer binding. The Court of Appeal relying on S. 131(1) of the Evidence Act held that extrinsic

evidence could not be admitted to prove what was not contained in exhibit C, and therefore set aside the judgment of the High Court. The appellants/plaintiffs consequently appealed to the Supreme Court where counsel for the respondent/defendants conceded that he would not argue the plea of *res judicata* but that of issue estoppel.

Section 131(1) of the Evidence Act provides:

"131(1) When any judgment of any Court or any grant or other disposition of property has been reduced to the form of a document . No evidence may be given of such judgment or grant or disposition of property except the document itself nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence provided that any of the following matters may be proved.

(c) The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract grant or disposition of property."

Held: Allowing the appeal

1. Customary courts by provisions of Section 1(4) of the Evidence Act are not bound by the Evidence Act.

2. The courts hearing appeals from customary or Area Courts or District Courts whatever the designation of these courts presided over by laymen, should be wary to apply the strict technicalities of procedure or Evidence Act in reviewing those appeals if such application will destroy the substance and merits of the matters heard in those inferior courts *(Afonja v. Aiyelagbe (unreported) FSC 317/1961 decided on 11/12/62 referred to)*.

3. Section 131 of the Evidence Act did not apply to this case, and even if it did, the Court of Appeal clearly lost sight of subsection (c).

   This was because there was to be a fulfillment of condition precedent before Exhibit C could take effect. In the instant case while the appellants granted their own land for the purposes of peace, the respondents granted none. Therefore evidence to alter or explain Exhibit C was therefore admissible.

4. Exhibit C is not a judicial decision and it could not therefore be *res judicata*, consequently, it could not raise an issue of estoppel *(Oliko v. Okonkwo (1970) 1 ANLR 86 and Nwabia v. Adiri (1958) 3 ESC 112, 114 followed)*.

Per WALI, J.S.C. at Page 234:

"The agreement, Exhibit C can neither operate as *res judicata* nor can the same operate as issue estoppel. It is a gentlemen's agreement, mutually concluded between the appellant on one part and the respondent on the other part subsequent to an oral agreement that the respondents would give certain portion of their land to the appellant in return to the portion of appellant's land ceded to the respondents. The respondents failed and refused

to honour their own side of the agreement. In my view, the appellants are at liberty to rescind Exhibit C and take back the portion of their land ceded to the respondents."

OLAGUNJU v. ADESOYE & ANOR
[2009] 9 NWLR 225

Supreme Court of Nigeria

Evidence – Evaluation of evidence – Evaluation of documentary evidence – Whether exclusive preserve of trial court – Evaluation of evidence – Summary of evidence – Distinction between – Evaluation of evidence by trial court – When appellate court will interfere therewith.

Facts of the case:
At the High Court of Kwara State holding in Offa, the 1st respondent sued the appellant claiming a declaration that the Certificate of Occupancy No. KW 5676 dated August 4, 1986 registered as No. 247 in Volume XVI at the Lands Registry, Ilorin and subsequently extended by Certificate of Occupancy No. KW 5676; his entitlement to quite enjoyment on the land; a declaration that the 1st respondent, having paid all the holders compensation for improvements and economic trees, was entitled to undisturbed possession and perpetual injunction. The appellant also filed an action at the High Court against the respondent claiming that the appellant's family was the exclusive owner of a large parcel of land situate and being along Igosun Road, Offa covering an area of about 222,500 square meters and covered by an alienation permit and that the appellant's family was exclusively entitled to a Certificate of Occupancy thereon; an order setting aside and declaring as irregular, wrongful, null and void the purported Certificate of Occupancy No. KW 5676 of April 23, 1988 or any other certificate or title document(s) whatsoever unlawfully obtained by the 1st respondent over the appellant's family land; an order of perpetual injunction; and special and general damages. Both suits were consolidated.

At the trial, the 1st respondent gave evidence that he applied for land in G.R.A. and after approval, the Kwara State Government gave him the comprehensive list of all those entitled to compensation for the unexhausted development on the land and he paid all of them, including grant, he applied for an extension which was also granted and he was asked to pay compensation for unexhausted development which he did. He stated that at the time he was put in possession, neither the appellant nor any other person was in possession. PW2, a Principal Land Officer in the Ministry of Lands, testified that the 1st respondent was allocated plots of land at the Government Reserved Area (G.R.A.), Offa for the construction of a secondary school, subject to the payment of compensation on any unexhausted improvement on the land. The Government carried out an assessment of the compensation payable on the unexhausted improvement on

the land, which the 1st respondent paid to all the beneficiaries and there was no complaint. After the payment of compensation, the Government issued a Certificate of Occupancy to the 1st respondent. The 1st respondent thereafter applied for an extension of the initial grant which was granted subject to the same conditions and the 1st respondent again effected payment of compensation for unexhausted developments on the land. The 1st respondent was issued a new Certificate of Occupancy, exhibit 1, covering the whole land. He stated that the land granted to the 1st respondent had been under the control of the Government as far back as 1956; that by exhibit 4, the land was designated as urban area since 1998, that all the processes for the issuance of Certificate of Occupancy were followed; and that some members of the appellant's family collected compensation. The appellant gave evidence to the effect that the land in dispute belonged to his forefather, that his ancestral father Bashorun came from Oyo and was friendly with Olofa Olatoni, the founder of Offa, that Bashorun was put in control of the piece of land at Oke-Agba and the land in dispute is part of the land which Olofa gave to him with authority to control.

At the conclusion of trial, the trial court held that the appellant failed to sustain his claim for a declaration of title to the land in dispute but that the 1st respondent amply established his case on the preponderance of evidence. Consequently, the trial court granted the 1st respondent's claim and dismissed the appellant's claim. The appellant's appeal to the Court of Appeal was dismissed and the Court of Appeal affirmed the judgment of the trial court. Dissatisfied, the appellant appealed to the Supreme Court. The 1st respondent cross-appealed against the part of the judgment of the Court of Appeal which held that "there is evidence before the court to show how the land in dispute devolved from Bashorun to the appellant." In determining the appeal, the Supreme Court considered the provision of Section 5(1) (a) of the Land Use Act which states thus:

"5(1) It shall be lawful for the Governor in respect of land, whether or not in an urbarn area:
(a) to grant statutory rights of occupancy to any person for all purposes"

Held: Dismissing the appeal and allowing the cross-appeal

1. *On distinction between evaluation of evidence and summary of evidence*
A summary or restatement of evidence by a trial court is not the same thing as evaluation of evidence which entails the assessment of evidence so as to give value or quality to it *[Oyekola v. Ajibade (2004) 17 NWLR (Pt. 902) 356 referred to] (P. 263, paras. E-F)*.

2. *On whether evaluation of documentary evidence is the exclusive preserve of a trial court*
The evaluation of documentary evidence is not the exclusive preserve of a trial court *[Abbey v. Alex (1999) 14 NWLR (Pt. 637) 148; Iwuoha v. Nigerian Postal Services Ltd (2003) 8 NWLR (Pt. 822) 318 referred to] (P. 263, paras. D-E)*.

3. *On when appellate court will interfere with evaluation of evidence by trial court*
Where a trial court fails to make findings on material and important issues of facts or wrongly approaches the evidence called by the parties, the appellate court will have no alternative but to allow the appeal *[Karibo v. Grend (1992) 3 NWLR (Pt. 230) 426; Morenikeji v. Adegbosin (2003) 8 NWLR (Pt. 823) 612 referred to] (P. 263, paras. F-H)*.

EJILEMELE v. OPARA & ANOR
[2003] 9 NWLR 536

Supreme Court of Nigeria

Evidence – Evaluation of evidence by trial court – Ascription of probative value to evidence by trial court – Attitude of appellate court thereto.

Facts of the case:
This is a land dispute. Both sets of parties are members of the same family. According to the respondents, the land in dispute was originally the family's land held under customary law, that the land was allocated to the 1st respondent and the deceased husband of the 2nd respondent in 1960 by the then head of their family, and another elder of the family who testified at the trial as P.W.1 on behalf of the respondents; that the 1st respondent and the deceased husband of the 2nd respondent took immediate possession of the land and the latter built a house in which he lived with his family until his death during the Nigerian Civil War and that he was buried on the land and a tomb was erected over his grave in 1971. It was also the case for the respondents that they cultivated the land and planted various economic trees on the land, and also let out a portion to Ogoni palm wine tappers as tenants. The respondents claimed that while they were away from home, the appellant without their knowledge, trespassed on the land in dispute and built a house on a portion of it. They further claimed that the appellant thereafter secretly made a survey plan of the land in dispute and fraudulently induced the then head and other elders of the family to sign a paper purportedly identifying the appellant to the Military Authorities for the purpose of collection of rent in respect of the appellant's house occupied by the Military Authorities.

As a result of this fraudulent inducement, the Deed of Conveyance exhibit 'A' under which the land in dispute was transferred to the appellant was signed and this was duly registered in the Ministry of Lands and Survey; and that armed with exhibit 'A', the appellant started making claims of ownership to the land. The respondents thereupon filed a suit at the High Court of Rivers State, Port Harcourt against the appellant in which they claimed a declaration that they are the rightful owners in possession of the customary right of occupancy over a named parcel of land; a declaration that a conveyance of the parcel of land purportedly made to

the appellant was obtained by fraudulent misrepresentation on the part of the appellant and therefore null and void notwithstanding the registration of same. The respondents also claimed for damages for trespass, and for an order of injunction to restrain the appellant from staying in wrongful occupation of the land in dispute.

P.W.1 who testified on behalf of the respondents gave evidence that he was at all material times in charge of the family land allocations; and this piece of evidence was not challenged by the appellant. He also testified that as an elder of the family, he participated in the allocation of the land in dispute to the 1st respondent and the deceased husband of the 2nd respondent jointly in 1960 and that they took immediate possession of the land and that they later built a house on the land, in which he lived until the death of the 2nd respondent's husband; that after the Nigerian Civil War, the appellant moved on the land and built a house on it without the permission of the family elders including himself. P.W.1 further gave unchallenged evidence that he did allocate a parcel of land west of the land in dispute to the appellant after the land in dispute had been allocated to the 1st respondent and the deceased husband of the 2nd respondent. The appellant, on his part, claimed that the land in dispute is part of the land which was allocated to him under customary law by the family in 1958 through the then head of the family, P.W.1 and some other members of the family. That, after the allocation, he developed the land by building houses on it and planted economic trees thereon. The appellant tendered a deed of conveyance of the property in his favour as Exhibit 'A'. He claimed that the deed of conveyance was signed before a Magistrate as P.W.1 was an illiterate. He denied that he fraudulently induced P.W.1 to sign the deed of conveyance as alleged by the respondents. He also denied that the land in dispute was allocated to the respondents by P.W.1, or by the elders of their family. He admitted that the 2nd respondent's husband built a house on the land in dispute but claimed that he, the appellant, authorised the erection of the structure. He also admitted that the tomb of the 2nd respondent's husband was erected on the land in dispute in 1972 by the 1st respondent but insisted that he did not misrepresent the nature of Exhibit 'A' to P.W.1.

In a considered judgment the trial court found the evidence of P.W.1 impressive and supportive of the respondents' case. It accepted that the land in dispute was allocated by the family to the 1st respondent and the 2nd respondent's husband as joint allotees and that P.W.1 signed Exhibit 'A' as a result of the false representation of the appellant as to the true nature of the document in the house of P.W.1 and not before a Magistrate as alleged by the appellant. Consequently, the court entered judgment in favour of the respondents. However, it refused to grant a declaration that the respondents were the owners of the land but held that they were in exclusive possession. The trial court further ordered the appellant to drive up exhibit 'A' to the Registrar of Deeds for cancellation, and consequential rectification of the Registrar of Deeds kept at the Lands Registry, Port Harcourt, Rivers State.

The appellant was dissatisfied with the judgment of the trial court and he appealed to the Court of Appeal which dismissed his appeal and affirmed the judgment of the trial court. The appellant, still dissatisfied, appealed to the Supreme Court.

Held: Dismissing the appeal

1. *On attitude of appellate court to evaluation of evidence by trial court*
   The evaluation of evidence and the ascription of probative value to such evidence are the primary functions of a court of trial which saw, heard and assessed the witnesses. In the instant case, the Council of Appeal was right when it found that the trial court duly evaluated and ascribed probative value to the evidence adduced by the parties and came to the conclusion that at no time whether in 1958 or thereafter, did the parties' family allocate the land in dispute through its head and elders to the appellant because there was abundant evidence on record in support of the findings of the trial court *[Akinloye v. Eyiyola (1968) NMLR 92; Woluchem v. Gudi (1981) 5 S.C. 291 referred to]*.

2. *On attitude of the Supreme Court to concurrent findings of fact*
   The Supreme Court will not disturb concurrent findings of fact by both the Trial Court and the Court of Appeal unless a substantial error apparent on the face of the record of proceedings is shown or whether such findings are perverse or are reached as a result of a wrong approach to the evidence or as a result of wrong application of a principle of substantive law or procedure or where it is established that there is a miscarriage of justice. In the instant case, none of the vitiating factors was established against the concurrent findings of the trial court and the Court of Appeal *[Enang. v. Adu (1981) 11-12 S.C. 25; Woluchem v. Gudi (1981) 5 S.C. 291; Ike v. Ugboaja (1993) 6 NWLR (Pt. 301) 539; Igwego v. Ezeugo (1992) 6 NWLR (Pt. 249) 561; NICON v. Power and Industrial Engineering Co. Ltd (1986) 1 NWLR (Pt. 14) 1 referred to] (Pp. 557-558, paras. G-A; 560, para. A)*.

AMADI v. AMADI
[2011] 15 NWLR 437

Court of Appeal (Port Harcourt Division)

Evidence – Evaluation of evidence – Duty on trial court in respect of – Principles governing – Evaluation of evidence – Evidence court may believe – Quality of.

Facts of the case:

The appellant in the action against the respondent claimed to be the owner of the land in dispute. By his pleadings, the family of the appellant descended from Olosi, the first person to clear the land in dispute when it was a thick forest, and thereby became the owner in accordance with Ikwerre customary law. The land was inherited by the three sons of Olosi and subsequently passed to the appellant who was the head of the family at the material time. In the course of events, the family granted a portion of the land to one Esau Ehie Amadi, father of the respondent, for farming purpose. After the death of Esau Eche Amadi, which occurred

during the civil war, the appellant's family in 1970 took over the portion earlier granted to him. In 1972, the respondent's family entered into the land without the permission of the appellant's family. The appellant's family ordered them to vacate the land, but upon pleading by the respondent's family, the appellant's family forgave them and allowed them to continue farming on the land. In 1987, the respondent's family commenced erection of physical structures on the land and when challenged, they used the police to secure the land and caused the arrest and detention of the appellant and some other members of his family for 5 days. It was upon this background that the action was filed.

The respondent's family joined issues with the appellant and contended ownership. At the end of the trial, the trial court found in favour of the respondent and dismissed the action.

Dissatisfied and aggrieved, the appellant appealed to the Court of Appeal.

Held: Allowing the appeal

1. *On attitude of appellate court to findings of fact by trial court*
   In the domain of findings of facts, particularly in the area of believing or disbelieving a witness, the trial court is the best judge. An appeal court will not readily interfere with the findings of fact unless it is shown that inference drawn by the trial court is not supported by the evidence and the facts before it, or where such inference is perverse *[Agbi v. Ogbeh (2006) 11 NWLR (Pt. 990) 65 referred to]*.

2. *On principle governing evaluation of evidence by trial court*
   A judge must consider the totality of the evidence of parties. He has to place on an imaginary scale the set of evidence given by a party against the evidence of the other party in order to arrive at his preference of the evidence of one party for the other. In the instant case, the trial court did not do proper evaluation before concluding that the evidence for the respondents were preferable to that of the appellant's witnesses. If it had done proper evaluation, it would have held otherwise, and in favour of the appellants [*Odofin v. Mogaji (1978) 4 S.C. 91 referred to] (P. 463, paras. G-H)*.

EKRETSU & ANOR v. OOYBEBERE & ORS
[1992] 9 NWLR 438

Supreme Court of Nigeria

Evidence – Evaluation of evidence – Weakness in defence case – Whether court entitled to rely upon to lend weight to plaintiff's case.

Facts of the case:
The appellant originally sued the first respondent at the High Court for damages for trespass and a perpetual injunction to restrain the 1st respondent howsoever and by whomsoever from continuing the acts of trespass in respect of a piece of land situate at Okpunoho land, Uwheru. Subsequently, the 2nd to 6th respondents applied to be joined as defendants and they were so joined thereby necessitating an amendment in the claim of the appellants by the addition of a further prayer to the effect that the appellants are entitled to the customary right of occupancy of the disputed land. The litigation arose, according to the appellants, when the 1st respondent trespassed into the land in dispute to commence digging the foundation of a building in 1976, without prior approval of the appellants family who were the owners thereof and for whom the appellants brought the action in a representative capacity. The appellants relied on traditional history in proof of their claim of ownership. They pleaded exclusive possession and ownership of the land, and stated that outsiders wishing to erect buildings on the land as a rule always approached them for permission to do so, which they refused. Their refusal to permit Orhoro people to erect buildings on their land which incidentally had gained greater economic significance due to the construction of the Ugheli-Patani road which traversed the land, led to an action for title, damages and trespass in the Customary Court in suit No. EU/63/77 which was pleaded as Exhibit A, and which was settled out of court. The terms of settlement were contained in a document, Exhibit E.

Subsequently, anybody not from the appellants Unuaro family desirous of building along the road obtained their consent and paid a token sum to them. The 1st respondent however went and paid this token sum to the 2nd to 6th respondents and commenced digging on the land, hence the appellants' resort to the court. Conversely, the respondents contended that the 1st respondent acquired the piece of land in dispute and that P.W.3 for the appellants out of spite asked the appellants' family to stop him from building his house thereon. Their traditional history differed slightly from that pleaded by the appellants. They admitted that there was a customary court case in 1972 which was settled out of court, but denied knowledge of Exhibit E, stating that the terms of settlement were not reduced into writing. The learned trial judge, Maidoh. J. found in favour of the appellants and granted their claims. The respondents were aggrieved and appealed to the Court of Appeal Benin City which allowed their appeal and dismissed the claim of the appellants. The appellants were dissatisfied, and they appealed to the Supreme Court.

Held: Allowing the appeal
1. *On whether a trial court can rely on the weaknesses of one party's case to find for adverse party*
   It is well settled that, in considering the weight of the case of a plaintiff, a trial court is perfectly entitled to take into account the weaknesses in the defence case which lend strength to the plaintiff's case. He will also add to the weight of the plaintiff's case, those parts of the defendant's case that support his case or such evidence in the case of the defendant to which the plaintiff is entitled to rely *[Woluchem v. Gudi (1981) 5 S.C. 291;*

Nwagbogu v. Ibeziako (1972) 2 ESCLR (Pt. 1) 355; Akinola v. Oluwo (1962) I SCNLR 352 referred to (Pp. 462- 463, paras. H-A).

2. *On attitude of appellate court to findings of fact of trial court*
In an appeal based on findings of fact, the attitude of the appellate court is one of caution and of reluctance to interfere with such facts as found by the trial court. On the contrary, the appellate court normally attaches great weight to the opinion of the trial court in the absence of conditions such as would justify interference with such findings by the appellate court. This attitude is informed by the fact that the resolution of issues of facts by a trial court is often hinged on the credibility of witnesses based on their demeanour, and an appellate court, which does not have the benefit of seeing, hearing or observing the witnesses ought not to lightly interfere with the outcome of an exercise it is not equipped to undertake. Otherwise the appellate court would be substituting its own views of facts for those of the trial court, which the appellate court has no business doing where a court of trial has unquestionably evaluated the evidence before it and has appraised the facts properly such that the findings could not be said to be perverse. It is only where it can be shown that:

   (a) The court below was in obvious error in the appraisal of the oral evidence; or

   (b) Improper or imperfect use was made of the opportunity of seeing or hearing the witnesses; or

   (c) Wrong conclusions had been drawn from accepted facts that an appellate court would be justified in interfering with the findings of fact of a trial court *[Federal Commissioner for Works v. Lababedi (1971) 11-12 S.C. 15; Fatoyinbo v. Williams (1956) SCNLR 274; Omoregie v. Idugienwanyi (1985) 2 NWLR (Pt. 5) 41; Woluchem v. Gudi (1981) 5 S.C. 291; Ehha v. Ogodo (1984) 1 SCNLR 372; Adegbite v. Ogunfolu (1990) 4 NWLR (Pt.148) 578; Akinloye v. Eyiyola (1968) NMLR 92 referred to] [Pp.456, paras. E-G; 457, paras. A-B; 463; paras. A-C).*

TERIBA v. ADEYEMO
[2010] 11 NWLR 242

Supreme Court of Nigeria

Evidence – Evaluation of evidence – Duty on trial court in respect of – Nature of – Attitude of appellate court thereto – When appellate court can evaluate evidence.

Facts of the case:
The appellant claimed against the respondent, as 1st defendant, a declaration that he was entitled to a grant of certificate of occupancy in respect of the land in dispute, damages for trespass and injunction against the 2nd defendant, an injunction against the 3rd defendant

and an order of the court setting aside the Certificate of Occupancy with No. 14 15-2356. The 2nd defendant on his part counter claimed against the appellant and the respondent claiming amongst others, an injunction restraining the appellant and the respondent from continued acts of trespass on the land in dispute. While the appellant relied on a deed of conveyance made on July 15, 1964; Exhibit 'P4', the respondent relied on the deed of conveyance made on May 1, 1972. Exhibit 'D2'. However, the person described as the Head of the family in Exhibit 'P4' though the most senior member of the family, was infact not the Head of the Family at any time. Nevertheless, he had five other representatives of the family to assign the property to the appellant. But the validity of the deed was never challenged by any person or group within the family.

At the conclusion of hearing, the trial court granted the appellant's claim and dismissed the 2nd defendant's counter-claim. Dissatisfied with the judgment of the trial court, the respondent appealed to the Court of Appeal which allowed the appeal. Aggrieved by the decision of the Court of Appeal, the appellant appealed to the Supreme Court and contended amongst others that sale of family land by family members without the consent of the family head is void, while sale by the family head without the consent of the principal members of the family is only voidable.

Held: Allowing the appeal

1. *On treatment of ground of appeal from which no issue is formulated*
   A ground of appeal in respect of which no issue has been formulated, is deemed to have been abandoned and such must be struck out. In the instant case, the appellant did not raise any issues in respect of grounds 1, 2, 3, 4 and 6 of the grounds of appeal and they were deemed abandoned and struck out *[Onifade v. Olayiwola (1990) 7 NWLR (Pt. 161) 130; Ndiwe v. Okocha (1992) 7 NWLR (Pt. 252) 129; Ngilari v. Mothercat Ltd (1993) 8 NWLR (Pt. 311) 370 referred to] (P. 266, paras. F-H)*.

2. *On need for court to consider issue for determination formulated by parties*
   An issue formulated or distilled from a valid ground of appeal must be considered *[Otu v. A.C.B. Int. Bank Plc. (2008) 3 NWLR (Pt. 1073) 179 referred to] (P. 67, para. A)*.

3. *On whether finding in favour of an issue must result in allowing an appeal*
   Success by a party on an issue does not necessarily result in an appeal being allowed *[The Vessel "Leona 11" v. First Fuels Ltd (2002)18 NWLR (Pt. 799) 439 referred to] (P. 268, paras. F-G)*.

4. *On treatment of omnibus ground of appeal filed without leave of court*
   Where an appellant did not seek the leave of either the Court of Appeal or the Supreme Court in respect of an omnibus ground of appeal and which is not at large, the ground of appeal is incompetent and should accordingly be struckout *(P. 266, para H)*.

NEPA v. ROLE & ANOR
[2000] 7 NWLR 69

Court of Appeal (Ibadan Division)

Evidence – Evaluation of evidence by trial court – Where based on credibility of witnesses – Attitude of appellate court thereto.

Facts of the case:
In a consolidated action, the respondents sued the appellant for negligence claiming special and general damages for causing the death of the 1st respondent's daughter, and injuries caused to the respondents. The case of the respondents was that there were intermittent sparks on the high tension electric wire which ran through the front of the respondents' restaurant. Although the situation was reported to the appellant's office, no step was taken by the appellant's workers to rectify the situation. Eventually, the wire snapped and caused injuries to the respondent and caused the death of the deceased, Miss Adenike Role who was the daughter of the 1st respondent. It was the contention of the respondent that at all relevant times that the affected electric wire was under the sole management and control of the appellant. They therefore relied on the doctrine of res i*psa loquitur.* The appellant contended amongst other things that no report was made to it pertaining to the high tension wire which wrecked the havoc. In addition, that there were inconsistencies in the testimony of the 1st respondent as to the number of times she reported the matter to the appellant in that in her evidence in chief she said, that she reported the sparks to officials of the appellant three times but under cross-examination, she said she reported once.

At the conclusion of the case by the respective parties, the trial court entered judgment in favour of the respondents. The trial court noted the contradiction complained of by the appellant but held that it was not material to render the evidence unreliable. It went further to state that the officer who testified on behalf of the appellant not being an operator whose schedule of duties it is to receive such complaints might not know whether or not the respondent indeed made some reports or not to the appellant concerning the electrical fault. Not satisfied with the judgment of the trial court, the appellant appealed to the Court of Appeal.

Held: Dismissing the appeal:
1. *On attitude of appellate court to award of damages of trial court*
   An appellate court will not normally interfere with the award of damages by the trial court on the ground that it would have awarded a lesser amount if it had tried the case at first instance. In order to entitle an appellate court to interfere, the appellant must show:
   (1) That the trial court acted upon some wrong principle of law;
   (2) That the award was an erroneous estimate of the damages claimed and proved; or
   (3) That the damage awarded was manifestly too high or too low.

In the instant case it was clear from the record of appeal that the trial court adequately evaluated the evidence before taking a decision on the various items of claims. In addition to the medical evidence, the trial court saw the respondents and had some impressions about the extent to which they were disfigured and disabled. This was an advantage which the Court of Appeal did not have and as such could not be in vantage position to disturb the award of damages by the trial court. The assertion that the awards were excessive without more could not be enough to entitle the Court of Appeal to disturb the *awards [Eseigbe v. Agholor (1993) 9 NWLR (Pt. 316) 128; UBA Ltd v. Achoru (1990) 6 NWLR (Pt. 156) 254 at 279 and 288; Soleh Boneh Overseas (Nig.) Ltd v. Ayodele (1989) 1 NWLR (Pt. 99) 549 referred to]*.

Per ADEKEYE, J.C.A. at page 82, para. B:
"Damages awarded by the learned trial judge were not based on the wrong principle of law, neither was the overall amount extremely high or too low. These could have been cogent reasons to set aside the damages awarded by a trial court [*Nigerian Bottling Co. Plc. v. Pius Akor Borgundu (1999) 2 NWLR (Pt. 591) pg. 408]."*

2. *On attitude of appellate court to findings of facts by trial court*
The evaluation of evidence, the ascription of values to it and making findings based thereon are primarily the functions of the trial court which has the advantage of seeing and hearing the witnesses. And an appellate court which does not have that benefit of seeing and hearing witnesses would not normally interfere with the findings of a trial court unless it is satisfied that such findings are perverse. In fact, the appellate court must be satisfied not merely that the findings are probably wrong but that it is patently wrong. In the instant case, the contradictions complained of notwithstanding, there was nothing that suggested that the findings of the trial court were manifestly wrong to warrant the intervention of the Court of Appeal *[Woluchem v. Gudi (1981) 5 S.C. 291; Anyanwu v. Mbara (1992) 5 NWLR (Pt. 242) 386 at 404; Oladehin v. Continental Textile Mills Ltd (1978) 2 S.C. 23 at 32; Abisi v. Ekwealor (1993) 6 NWLR (Pt. 302) 643 at 68 referred to] (P. 77, paras. A-B; G-H)*.

3. *On attitude of appellate court to evaluation of evidence by trial court*
There are very strict limitations on the power of the Court of Appeal to set aside or reverse the decision of the trial court on issues of fact. Therefore when as in the instant case, the decision of the trial court is based mainly and substantially on his assessment of the quality and credibility of witnesses who testified before it, a Court of Appeal must in order to reverse, not merely entertain doubts whether the decision of the trial court is right but be convinced that it is wrong *[Woluchem v. Gudi (1981) 5 S.C. 291 at 295; Anyanwu v. Mbara (1992) 5 NWLR (Part 242) 386 at 404; Oladehin v. Continental Textile Mills Ltd (1978) 2 S.C. 23 at 32; Abisi v. Ekwealor (1993) 6 NWLR (Pt. 302) 643 at 688 referred to] (P. 77, paras. B-D)*.

Per TABAI, J.C.A. at page 78, paras. A-B:
"It is settled that where the evaluation of evidence by the trial court involves the credibility of witnesses, an appellate court cannot disturb findings based thereon. See *Kokoro-Owo v. Ogunbambi (1993) 8 NWLR (Pt. 313) 627 at 642 and Mogaji v. Odofin (1978) 4 S.C. 91*. If, as held by the trial court, a report of the intermittent sparks on the defendant's NEPA wires was reported to the defendant who failed to take prompt steps to correct the fault and avert the tragedy that struck, it was negligent. I would therefore resolve the 1st issue in favour of the respondents."

OLATUNDE v. ABIDOGUN & ORS
[2001] 18 NWLR 712

Supreme Court of Nigeria

Evidence – Evaluation of evidence by trial court – Attitude of appellate court thereto – When will interfere therewith – When will not – Rationale.

Facts of the case:
The respondents sued the appellants in the Ogbomoso High Court claiming, in the main, a declaration of entitlement to the Jagun Alasa chieftaincy of Ogbomoso under native law and custom, a declaration that the appointment of the 2nd appellant as the Jagun Alasa of Ogbomoso is null and void, an order of injunction and damages. The dispute between the parties was concerning the chieftaincy title of Jagun Alasa of Ogbomoso.

The dispute came to the fore when the 1st appellant appointed the 2nd appellant to the chieftaincy title. The respondents then instituted the action leading to this appeal. It was the respondent's claim that only the Jagun Alasa family had been providing exclusively the persons appointed to the chieftaincy title of Jagun Alasa. They by their pleadings traced their right to this title to Olusidi. This Olusidi was recognised for his valour and prowess by Ogunbi when the said Olusidi settled in Ogbomoso. Ogunbi, as a result of the friendship with Olusidi, then invited Olusidi to settle at a place variously called Isale Alasa or Abogunde.

Later Kumapayi, the son of Ogunbi, became the Aare Alasa of Ogbomoso and conferred on Olusidi the chieftaincy title of Jagun Alasa. Since that appointment, concerned descendants of Olusidi had been exclusively entitled to and succeeded the Jagun Alasa chieftaincy. The following persons, namely: Bamigboye, Olaniyan Abidogun Alamu Olaleye and Samuel Oyewo had at various times been Jagun Alasa. It was after the death of Samuel Oyewo that the present dispute arose. This was because the 1st appellant chose to appoint the 2nd appellant

as the Jagun Alasa. It was the contention of the respondents that the 2nd appellant not being a member of their family was not entitled to be so conferred. For the appellants, their case was structured upon the preposition that the Jagun Alasa chieftaincy is a chieftaincy under the Aare Alasa which, they claim, is a traditional title under the prescribed authority of the Soun of Ogbomoso.

They further claimed that the ancestor of the 2nd appellant was one Ogbagba-Inkagun who migrated into Ogbomoso in company of Ogunbi, the 1st Aare of Alasa of Ogbomoso.They claimed that the appellants became entitled to the Jagun chieftaincy through their ancestor, Ogbagba- Inakagun who was conferred with the title by Soun Toyeje of Ogbomoso. After the death of Ogbagba-Inkagun, Kwari Onibonteje was installed as the Jagun Alasa. And after the death of Ogunbi, Kumapayi became the Jagun Alasa.

They also claimed that Olusidi, the ancestor of the respondents settled at Ile Ogudo and became friendly with Jekayinfa, then Aare Alasa, who used his prerogative to confer the title of Jagun Alasa on Olusidi. And that, since then, a custom developed wherein Jagun Alasa was selected rotationally from two separate families, namely; Jagun Alasa Olusidi; and Jagun Alasa Alugbin. It is upon the basis of this tradition of rotation that the 2nd appellant bid claim to be conferred with the title of Jagun Alasa, following the death of Samuel Oyewo.

At the end of the hearing, the trial court upheld the claims of the respondents, save for damages. Being dissatisfied with the judgment of the trial court, the appellants appealed against it at the Court of Appeal, which dismissed the appeal. The appellants then further appealed to the Supreme Court.

Held: Dismissing the appeal

1. *On attitude of appellate court to evaluation of evidence by trial court*
   If there has been a proper appraisal of evidence by a trial court, a court of appeal ought not to embark on a fresh appraisal of the same evidence in order to merely arrive at a different conclusion from that reached by the trial court.

   Furthermore, if a court of trial unquestionably evaluates the evidence, then it is not the business of a court of appeal to substitute its own views for the views of the trial court. In the instant case. the appellants have not been able to establish that the evaluation of evidence by the trial court was wrongful to warrant the interference of the Court of Appeal *[Woluchem v. Gudi (1981) 5 S.C. 291 referred to] (Pp. 722-723, paras. H-B)*.

OSUAGWU v. STATE
[2013] NWLR 361

Supreme Court of Nigeria

Evidence – Evaluation of evidence – Whether trial court can make inferences from evidence before it.

Facts of the case:
At the High Court of Ogun State, Abeokuta, the appellant was charged with conspiracy and armed robbery. The prosecution's case was that at about 8p.m. on November 27, 2011, the appellant and two others went to a shop at No. 2, School Rood. Ibafo, Ogun State, owned by PW3. When they arrived at the shop, the appellant pointed a loaded gun at PW3 and ordered him to lie down on the floor whilst the other two robbers proceeded to search the shop for money, which they found.

Subsequently, two of the robbers fled while the appellant continued the search. PW3, on seeing that the other two robbers had fled, engaged the appellant in the fight but was knocked on the head with the gun. Then the appellant ran away but as he was running away, several people chased him and he was arrested in the bush by the expressway. Two live cartridges and wraps suspected to be Indian hemp were found on him. Nearby in the bush, the damaged muzzle of the gun was also recovered. At the trial, the prosecution called six witnesses and tendered fifteen exhibits, which included the appellant's confessional statement, the damaged muzzle of the gun, five empty shells and the wraps of Indian hemp. A trial within trial was conducted wherein the appellant's confessional statement was admitted in evidence.

The appellant gave evidence in his own defence but called no witness. The appellant raised the defence of alibi in his first statement to the police on November 28, 2007. He also raised the defence when he gave evidence in court. At the conclusion of trial, the trial court, after reviewing the testimony of PW2 and PW3 and their statements to the police, held that there was robbery on that day, that the robbers were armed and that the appellant was one of the robbers. The trial court held that the appellant's confession could be sustained having tested it against other admitted facts, and that without the confession it believed the evidence of the prosecution witnesses implicating the appellant in the armed robbery. It therefore found the appellant guilty on both counts and sentenced him to death. The appellant's appeal to the Court of Appeal was dismissed. The Court of Appeal held that the manner in which the appellant was identified showed that an identification parade was unnecessary and that PW2 and PW3 identified the appellant at the earliest opportunity. Dissatisfied, the appellant appealed to the Supreme Court. In determining the appeal, the Supreme Court considered the provision of Section 27(1) of the Evidence Act which states thus:

"27. A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime."

Held: Unanimously dismissing the appeal

1 *On distinction between finding of fact based on credibility and finding of facts based on evaluation of evidence*

There is a distinction in finding a fact based on credibility of witnesses and a finding of fact based on evaluation of evidence. In the latter case, an appeal court is in the same position as the trial court and so it can proceed to examine the evidence and come to a different finding from that of the trial court. This is not the case with a finding of fact based on credibility of witnesses. The trial judge sees and hears the witness. He and he alone is in the best position to comment on the demenaour and credibility of a witness. In the instant case, after the trial court watched the appellant's demeanour and listened to his evidence, it did not believe him for good reason. The finding by the trial court could not be faulted and tremendous weight has to be given to its findings. Justice or violation of some principles of law or procedure. In the instant case, there was nothing to warrant the interference by the Supreme Court with the judgments of the trial court and the Court of Appeal *[Ugwanyi v. FRN (2012) 8 NWLR (Pt. 1302) 384; Afolabi v. State (2009) 3 NWLR (Pt. 1127) 160; Kponuglo v. Kodadja (1932) 2 WACA 24; Ibodo v. Enarofa (1980) 5-7 S.C. 42; Okofor v. Idigo (1984) 1 SCNLR 481 referred to] (Pp. 392, paras. F-H: 395, paras. F-G)*.

STATE v. RABIU
[2013] 8 NWLR 585

Supreme Court of Nigeria

Evidence – Evaluation of evidence – What it entails – Failure of trial court to evaluate evidence – Effect.

Facts of the case:

The respondent was charged at the High Court with the offence of culpable homicide punishable with death under Section 221(a) of the Penal Code. The charge against him was that on the November 10, 2005, while armed with a gun, he intentionally shot and killed one Nasiru Audu. In the course of the trial on 23/1/2008, the statement of the respondent taken on January 1, 2006 was admitted in evidence and marked exhibit 'B' by the learned trial judge. Subsequently, counsel for the respondent by motion on notice dated April 17, 2008, and brought pursuant to Section 6(6) of the Constitution of the Federal Republic of Nigeria and the inherent jurisdiction of the court sought for an order setting aside the entire proceedings of January 23, 2008 or in the alternative, an order setting aside the ruling admitting exhibit 'B' in evidence and revisiting the issue of the admissibility of the said document, etc. The application was opposed and arguments taken and in his ruling of July 10, 2008, the trial court set aside the earlier ruling of the court admitting the statement of the respondent in evidence as exhibit 'B' and adjourned

the case to September 25, 2008 for trial-within-trial. The trial-within-trial was duly conducted and addresses of counsel also duly taken. The trial court, in its ailing, held that the statement of the respondent to the police was freely and voluntarily made by him. The respondent's objection was overruled and the statement was admitted in evidence and marked Exhibit 'BB'.

Aggrieved, the respondent appealed to the Court of Appeal which allowed the appeal and set aside the ruling of the High Court delivered on March 30, 2009 which said ruling admitted the statement of the accused – Exhibit 'BB' in evidence. Aggrieved, the appellant appealed to the Supreme Court against the judgment of the Court of Appeal.

Held: Allowing the appeal by a majority ruling of 3 to 2, Muntaka-Coomassie and Ngwuta, JJSC dissenting

1. *On relationship between trial and appellate courts as regards evaluation of evidence and ascription of probative value thereto*
   It is only a trial court that has the duty of assessing the credibility of witnesses. It is only the trial court that has the duty of appraising evidence at a trial. It is pre-eminently placed in that position in that it saw and heard the witnesses. Appellate courts should exercise restraint in disturbing findings of fact made by trial courts. In other words, the evaluation of evidence and ascription of probative value to such evidence are primarily the function of a trial court and when such functions are duly and correctly discharged by the trial court, an appellate court has no business substituting its own view for that of the trial court *[Attah v. State (2010) 10 NWLR (Pt. 1201) 190; Akinloye v. Eyiyola (1968) NLR 92; Ebba v. Ogodo (1984) 1 SCNLR 372; Nor v. Tarkaa (1998) 4 NWLR (Pt. 544) 130; Eboade v. Atomesin (1997) 5 NWLR (Pt. 506) 490; Attah v. State (2010) 10 NWLR (Pt. 1201) 190 referred to] (Pp. 603-604, paras. E-A; 615, paras. E-G)*.

2. *On attitude of appellate court to finding of fact by trial court*
   A finding of fact by a trial court cannot be disturbed by an appellate court where the appellate court does not say in its judgment that the finding of fact by the trial court is perverse or occasioned a miscarriage of justice [*Odeh v. F.R.N. (2008) 13 NWLR (Pt. 1103) 1 referred to] (Pp. 603, paras. D-E; 615, paras. E-F)*.

3. *On attitude of appellate court to finding of fact by trial court*
   Once a court of trial has made a finding of fact, it is no more within the competence of the appellate court to interfere with that finding except in certain circumstances. The real reason behind this attitude of appellate courts is that the court hearing the appeal is at a disadvantage as to the demeanour of the witnesses in the trial court as they are not seen and heard by the appellate court. It is not right for the appellate court to substitute its own eyes and ears for those of the trial court which physically saw the witnesses and heard them and thus able to form opinion as to what weight to place on the evidence [*Woluchem*

v. Gudi (1981) 5 S.C. 291; Awote v. Owodunni (1986) 5 NWLR (Pt. 46) 941 referred to] (Pp. 604-605, paras. F-E; 609, paras. D-F).

4. *On when appellate court can interfere with finding of fact by trial court*
Where a trial court failed to properly evaluate the evidence before it or made the wrong inference from admitted facts, an appeal court can interfere by making the proper finding justified by the evidence *[High-Grade Maritime Services Ltd v. F.B.N. Ltd (1991) 1 NWLR (Pt. 167) 290; A.C.B. Plc v. Oba (1993) 7 NWLR (Pt. 304) 173; Nwosu v. State (1986) 4 NWLR (Pt. 35) 348; Buba v. State (1994) 7 NWLR (Pt. 355) 195 referred to] (Pp. 604, paras. A-B; 614, paras. B-C).*

AIYEOLA v. PEDRO
[2014] 13 NWLR 409

Supreme Court of Nigeria

Evidence – Evaluation of evidence by trial court-Attitude of appellate court thereto – When will interfere therewith – Relevant considerations.

Facts of the case:
At the High Court of Lagos State, the respondent sued the appellant seeking declaration of title to land situate at Igbede Road, Ajangbadi, Ilemba Hausa Village in Ojo Local Government Area of Lagos State for possession and injunction. Pleadings were filed and exchanged. At the trial, it was the respondent's case that she purchased the land in dispute from one Rafiu Johnson, who testified as PW1, on 3/1/78 and was duly put into possession. She commenced a building on the land up to the roofing stage but was unable to proceed further due to financial constraints. Two years later, the respondent decided to continue her building operations but when she got to the land she discovered that the building had been completed by unknown persons and let out to tenants. She reported the matter to her vendor, PW1, who advised her to take the matter to court. In support of her claim she tendered a purchase receipt and a survey plan of the land. They were admitted without objection in evidence and marked exhibits 'A' and 'B' respectively.

The appellant's defence, on the other hand, was that he leased the land in dispute from the Abu family in May 1976. He stated that the land is situate at Maxwell Street, Ilemba Hausa in Ojo Local Government. He tendered exhibit 'C', an agreement said to be between himself and the said family, signed by the head of the family, and exhibit D, his purchase receipt. He stated that he was put into possession of the land and thereafter surveyed it. He tendered a survey plan, which was marked ID1 for identification. It was not subsequently tendered as an exhibit in the

proceedings. He stated that he had built a house containing 12 rooms on the land since 1989 and put tenants therein, and that he remained in undisturbed possession until sometime in 1990 when a notice was pasted on the wall of the house on the instructions of the respondent, which was brought to his attention by one of his tenants.

He maintained that the land belonged to him. The head of the Abu family, Aliu Saliu, testified as DW1 and stated that the appellant had been their tenant since 1976 and that he personally put him in possession. At the conclusion of the trial, the High Court dismissed the respondent's claims in their entirety.

Being dissatisfied with this decision, she appealed to the Court of Appeal, Lagos Division which allowed the appeal and set aside the judgment of the trial court. The appellant appealed to the Supreme Court contending that the respondent did not prove her case at trial and that the Court of Appeal made a case for her which she did not make. The appellant also asserted that the respondent did not establish the identity of the land.

Held: Unanimously dismissing the appeal

1. *On attitude of appellate court to finding of fact by trial court*
   On appeal, there are rules of practice and one of the cardinal rules is that an appellate court should not re-open issues of fact unless there is a strong basis for that, such as where the fact supposedly laid to rest is shown to be perverse, illegal or not a proper exercise of judicial discretion *(P. 447, paras. E-F)*.

2. *On attitude of appellate court to evaluation of evidence by trial court*
   The attitude of the Court of Appeal or the Supreme Court, as the case may be, in respect of evaluation of evidence by a trial court is that in deciding whether or not a trial court properly evaluated the evidence, the essential focus should be on whether the trial court made proper findings and reached the correct judgment upon facts before it. It is not the method or approach that necessarily determines this.

   Thus, so long as a trial court does not arrive at its judgment merely by considering the case of one party before considering the case of the other, its judgment, if right, would not be set aside simply on the method of assessment of the evidence or the approach to the entire case it may have adopted *[Ajibulu v. Ajayi (2004) 11 NWLR (Pt. 885) 458; Woluchem v. Gudi (1981) 5 S.C. 291 referred to]*.

EZE v. OKOLOAGU & 125 ORS
[2010] 3 NWLR 183

Court of Appeal (Enugu Division)

Evidence – Evaluation of evidence – Duty on court to evaluate the whole evidence – Failure to properly evaluate evidence – Effect – Evaluation of evidence – Meaning of.

Facts of the case:
On 21/4/2007, an election was held to elect a Senator representing Enugu North Senatorial District. At the end of the election, the appellant was returned as the winner. The 1st respondent was not satisfied with the declaration and return of the appellant as the winner. Consequently, the respondent filed a petition on 21/5/2007 at the National Assembly/Governorship/Legislative Houses Election Petition Tribunal sitting in Enugu, challenging the election and return of the respondent/appellant (as Senator representing Enugu North Senatorial District). The petition was hinged on the grounds that the purported election is invalid, null and void by reasons of irregularities, malpractices and corrupt practices perpetuated by the respondents and their agents and that the purported election was not conducted in substantial compliance with the provisions of the Electoral Act, 2006 and INEC rules and guidelines. He therefore sought for an order nullifying the purported election held on April 21, 2007 in Enugu North Senatorial Zone, Enugu State; an order setting aside the declaration/return of the 1st respondent (appellant) as the winner of the purported election; and an order directing the 3rd-10th respondents to conduct a fresh election in Enugu North Senatorial Zone, Enugu State.

At the end of hearing, the tribunal in its judgment on 11/12/07 nullified the election of the appellant. It held that though the 1st respondent did not prove the irregularities as alleged, he proved non-compliance and non-voting as many voters were disenfranchised. The 2nd respondent (INEC) was ordered to conduct a fresh election within three months. Dissatisfied with the judgment, the appellant appealed to the Court of Appeal.

Held: Allowing the appeal

1. *On meaning of 'evaluation'*
   'Evaluation' means the assessment of evidence as to give value or quality to it [*Onwuka v. Ediala (1989) 1 NWLR (Pt. 96) 182 referred to] (P. 218, para A)*.

2. *On duty on court to evaluate the whole evidence*
   A court or tribunal is duty bound to evaluate the whole evidence adduced by both parties in order to come to the right decision. It is not for the court to pick and choose which set of the witnesses to believe and which to reject but must evaluate the totality of the evidence adduced by the parties. Any decision arrived at without a proper or adequate evaluation of the evidence cannot stand [*Onwuka v. Ediala (1989) 1 NWLR (Pt. 96) 182 referred to] (P. 218, para. A-B)*.

3. *On attitude of appellate court to evaluation of evidence by trial court*
It is pre-eminently the duty of trial court which saw and heard the witnesses to appraise evidence given at the trial. It is also its right to ascribe values to such evidence. A Court of Appeal may not therefore disturb a trial court's judgment simply on the ground that it would have come to a different conclusion on the facts as long as the judgment of the trial court is supported by evidence rightly accepted by the court. It is not part of the duty of an appeal court to disturb the findings of fact made by a trial court except in circumstances where the inference from established facts are wrong or where the findings just do not flow or follow from the given evidence. In the instant case, the findings of facts of the tribunal to the effect that PW1-PW5 testimonies were not contradicted by the testimonies of the appellant was perverse as it was not amply supported by the evidence placed before it. Therefore, there was reason why the Court of Appeal should disturb that finding *(P. 218, paras. C-F)*.

ATIKU & ORS v. STATE
[2010] 9 NWLR 241

Court of Appeal (Kaduna Division)

Evidence – Evaluation of evidence – Proper evaluation of evidence – How carried out by trial court.

Facts of the case:
The appellants along with four other persons were charged with the offence of culpable homicide punishable with death under Section 221 of the Penal Code, Cap. 96, Laws of Katsina State, 1991, at the Katsina State High Court. According to the evidence adduced by the prosecution, the appellants with the other four accused persons beat up one Mallam Daiyabu Abdullahi (deceased) and PW1 with sticks and that the deceased died as a result of the injuries he sustained from the beating. Specifically, evidence was adduced that the 1st appellant hit the deceased on the head with a bamboo stick and stepped on his stomach when he collapsed. That the 2nd appellant beat the deceased on the chest and that the 3rd appellant called out the other accused persons to beat up the deceased and he also participated in the beating. Evidence was adduced that blood gushed out from the mouth and nose of the deceased when he was hit by the 1st appellant with a bamboo stick on the head and he died on the night of the incident. The evidence adduced by the prosecution was substantially unshaken during cross-examination. At the completion of trial, the trial court delivered its judgment on October 4, 2006 wherein it discharged the other accused persons on grounds of doubt in the evidence of the prosecution against them but convicted and sentenced the appellants on the same evidence to death by hanging.

The appellants being aggrieved, appealed to the Court of Appeal. They contended that the prosecution failed to establish the charge of culpable homicide punishable with death against them. They also contended that the trial court was wrong, in discharging the four other accused persons and in failing to discharge and acquit them based on same evidence adduced against them by the prosecution and that the trial court failed to consider their defences.

Held: Allowing the appeal

1. *On how proper evaluation of evidence is carried out by trial court*
   Proper evaluation of evidence involves weighing the evidence of the parties against each other on the scale of justice in line with the applicable law to see which side of the scale is heavier in the case. The duty is primarily for the trial court and cannot fully and properly be discharged by the mere use of the usual 'I believe' or 'I do not believe' without setting forth sound reasons in law for either. The use of such phrases by a trial court is therefore not proof of proper evaluation of evidence and discharge of the primary duty *[Lawal v. P.G.P. (Nig.) Ltd (2001) 17 NWLR (Pt. 742) 393; Adebayo v. Shogo (2005) 7 NWLR (Pt. 925) 467 referred to] (P. 288, paras. D-F)*.

TUAH v. MICHAEL
[2010] 10 NWLR 519

Court of Appeal (Port Harcourt Division)

Evidence – Evaluation of evidence – Findings of fact – How made by court - On what based.

Facts of the case:

According to the respondent, she gave the appellant a loan of ₦9,000 sometime in August 1987 to enable him buy the property situate at No. 82, School Road, Mile 3, Diobu, Port Harcourt, with the understanding that if the appellant failed to pay the sum within two months, the respondent would be entitled to purchase the house from the appellant. This agreement was reduced into writing. The appellant defaulted and the respondent paid a sum of ₦21,000.00 in addition to the loan amount and therefore purchased the property. Consequent upon this, the parties approached a solicitor who prepared a power of attorney by the appellant in favour of the respondent in respect of the property. The appellant initially handed over the title document of the property to the respondent but later retrieved same on the pretext that he needed it to prepare an instrument of transfer in favour of the respondent. The appellant never returned the title documents to the respondent. However, before returning the title document to the appellant, the respondent made a photocopy of same which she kept. As a result of the failure of the appellant to give the respondent an instrument of transfer, the respondent moved into two empty rooms in the property in exercise of her claim of ownership.

The respondent then instituted an action against the appellant wherein she sought declaration of ownership of the property, an order of specific performance directing the appellant to execute a deed of assignment in her favour in respect of the property, an order directing the appellant to render an account of rents collected on the premises, and perpetual injunction restraining the appellant from interfering with the respondent's right over the property. The appellant, on his part, instituted another action against the respondent and one other claiming against them damages for trespass on the same property and an order of perpetual injunction restraining them from further acts of trespass on the property. Both suits were later consolidated. In proof of her case, the respondent tendered the agreement, the photocopy of the appellant's title document and the power of attorney in evidence and also called the solicitor who prepared the power of attorney as PW2. On his part, the appellant denied the transaction and denied executing any agreements with the respondent. The appellant alleged that the signatures on the agreement and power of attorney alleged to be his were forgeries. He called DW 3 as an handwriting expert, who stated in his opinion that the signature of the appellant was forged on the agreements. However, DW3 who stated that he was an Assistant Superintendent of Police attached to Zonal Criminal Investigation Department, Zone G Headquarters, Calabar, only stated that he was an examiner of questioned documents and a finger print expert, without stating his qualification in that regard. After a review and evaluation of the evidence before the trial court including that of the DW 3, the trial court delivered a single judgment in the consolidated actions wherein it granted the claims of the respondent and dismissed those of the appellant. Dissatisfied, the appellant appealed to the Court of Appeal.

Section 57 of the Evidence Act provides:

"57(1) When the court has to form an opinion upon a point of foreign law, native law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, native law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts.

(2) Such persons are called experts."

Held: Dismissing the appeal:

1. *On attitude of appellate court to findings of fact by trial court*
   An appellate court would be reluctant to interfere with the findings of fact by a trial court, unless such findings are unreasonable, or perverse, or not supported by the evidence before it. In the instant case, the appellant was unable to satisfy the Court of Appeal that the judgment appealed against was perverse. The Court of Appeal, therefore, declined to interfere with it *[Ngige v. Obi (2007) 9 NWLR (Pt. 999) 1; Ebba v. Ogodo (1984) 1 SCNLR 372; Fyneface v. Fyneface (2007) 9 NWLR (Pt. 1040) 558 referred to] (P. 539, paras. E-F).*

JATAU v. DANLADI
[1995] 8 NWLR 592

Court of Appeal (Jos Division)

Evidence – Evaluation of evidence – Duty of trial court in respect thereof – Proper evaluation – What it entails – Duty on trial court.

Facts of the case:
At the Upper Area Court, Pankshin, Plateau State, the appellant, as plaintiff, sued the respondent who was defendant claiming customary title to a farmland situate and lying at Fuwangi Kunbon District in Mangu Local Government Area of Plateau State. The appellant claimed that he inherited the land in dispute from his late father, Watkus. The appellant's late father, Watkus, during his life time loaned the disputed land to the respondent some 30 years earlier on the condition that when the respondent leaves the area, the land should revert to the family of Watkus. The appellant claims that the respondent had since returned to Mbwai from where he came to Fuwangi in the first instance. Despite repeated demands, the respondent has refused to release/surrender the said land in dispute to the appellant. As a result, the appellant has brought the present action. At the trial, the appellant testified as PW1 and called five (5) other witnesses in support of his claim. While the appellant testified before the trial court, that he inherited the titled land in dispute, his other witnesses contradicted him as to who in fact, his father was, but not Watkus.

The respondent denied the claim, saying that the land in dispute was not loaned to him by the appellant's father, Watkus, or at all. The respondent claimed ownership and title to the said land in dispute, which he said, he inherited from his own late father and had been in actual possession and control over 30 years before the present action arose. The respondent testified on his behalf and called three (3) other witnesses in his defence. DW3 Yiserap Danter, elder brother of the respondent testified, that their late father while alive, shared the land in dispute between him and the respondent. The respondent has returned to Mbwai while he is still at Funwangi cultivating his own portion of the land undisturbed. PW3 testified that the land in dispute was never loaned to the respondent or his late father. They inherited it from their late father. The appellant never cultivated the land in dispute.

Upon conclusion of hearing, the trial Upper Area Court entered judgment in favour of the appellant. Aggrieved with the judgment, the respondent appealed to the Customary Court of Appeal, Jos, which set aside the judgment of the trial Upper Area Court and entered judgment in favour of the respondent at the Customary Court of Appeal. Dissatisfied with the judgment of the Customary Court of Appeal, the appellant in turn, appealed to the Court of Appeal. In resolving the appeal, the Court of Appeal considered the provisions of Sections 146 and 179 (1) of the Evidence Act Cap. 112 Laws of the Federation of Nigeria, 1990 which provides:

"146. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving, that he is not the owner is on the person who affirms that he is not the owner."

"179(1) Except as provided in this section, no particular number of witnesses shall in any case be required for the proof of any fact."

Held: Dismissing the appeal

1. *On duty on trial court in the evaluation of evidence*
   The duty of appraising evidence given at the trial is preeminently that of the trial court which saw and heard the witnesses. It is the right of that court to ascribe values to such evidence [*Egri v. Uperi (1973) 11 S.C. 299; Ogundulu v. Phillips (1973) 2 S.C. 71 referred to] (P. 609, paras. D-E)*.

2. *On evaluation of evidence by trial court*
   It is trite law for a trial judge to produce a judgment which is fair, just and an enduring verdict on a case put up before him by two or more contending parties, he must:
   (a) Fully consider the evidence proferred by all the parties before him;
   (b) Ascribe probative value to them;
   (c) Make definite findings of fact as justified by the evidence proffered; and
   (d) Come to some just conclusion on the case before him *(Leko v. Soda (1995) 2 NWLR (Pt. 378) 432; Woluchem v. Gudi (1981) 5 S.C. 291; Olufosoye v. Olorunfemi (1989) 1 NWLR (Pt. 95) 26 referred to] (Pp. 607-608, paras. H-B)*.

JUDICIAL SERVICE COMMITTEE & ORS v. OMO
[1990] 6 NWLR 407

Court of Appeal (Benin Division)

Evidence – Evaluation of evidence – Duty on court.

Facts of the case:

The respondent who was the plaintiff at the trial court was a Chief Magistrate Grade 1 in the Bendel State Judiciary from 1980-1985. On the March 21, 1985, he was served with a letter by the Judicial Service Committee informing him of his retirement from the State Judicial Service. The letter, which was admitted as Exhibit 'C' at the trial, and its precursor, Exhibit 'L' state as follows:

"Military Governor's Office
Office of the Secretary to the Military Government and Head of Service Benin City,
Bendel State of Nigeria.

Your Ref;
Our Ref; SGA. 13/ 29/ 183
March 21, 1985
The Secretary,
Judicial Service Committee,
Benin City.

Mr Michael Omo - Chief Magistrate
The Military Governor, Brigadier J.T. Useni, has approved the immediate retirement from the State Judicial Service of Mr Michael Omo, Chief Magistrate. You would please issue the necessary letter to him today.
(SGD) (P.I.G. ONYEOBI)

Secretary to the Military Government and Head of Service."

"Bendel State Judicial Service Commission
P.M.B. 1505, Benin City,
Bendel State of Nigeria.
When replying please quote the reference No. and date of this letter.
OurRef: CD. 118/225
M.A. Omo Esq., March 21, 1985
u.f.s.The Chief Registrar,
High Court of Justice,
Benin City.

Sir,
Mr Michael Omo, Chief Magistrate
I am directed to inform you that the Military Governor, Brigadier J.T. Useni, has approved your immediate retirement from the State Judicial Service. You would please hand over Government properties in your possession to the Chief Registrar, High Court of Justice, Benin City. (SGD).

(J.I. Edokpa),
Secretary
Judicial Service Commission."

Following the retirement order, the respondent instituted an action against the Judicial Service Committee and the Attorney-General of Bendel State wherein he challenged, *inter alia*, his purported retirement and sought an order of reinstatement with the payment of all his salaries and entitlements up to 1994. He also sought an order of injunction to restrain the defendants and/or any of their agents from giving effect to the letter of retirement pending the determination of his suit.

Before pleadings were filed and exchanged, the respondent sought and obtained an order of the trial court to join the Military Governor of Bendel State as the 3rd defendant in the suit and in the affidavit he swore to in support of the application, he deposed that the Military was

'personally and directly responsible' for his purported retirement. On the filing of the statement of claim, by the respondent, the appellants moved the trial court for an order dismissing the statement of claim and the writ of summons on the ground that the action was not maintainable by virtue of the Public Officers (Special Provisions) Decree, No. 17 of 1984 and in support of the application, one Patricia Ifeoma Okoye, a State Counsel in the Bendel State Ministry of Justice deposed to the fact that the Military Governor of Bendel State approved the immediate retirement of the plaintiff/respondent in the exercise of his power as the Military Governor. The respondent filed a counter-affidavit in reply to Miss Okoye's affidavit.

After the learned counsel for both parties had addressed the court on the application to dismiss the suit, the learned trial in a considered ruling dismissed the application holding that it was not established, that the retirement of the respondent was made pursuant to Decree No. 17 of 1984. Consequently upon the ruling, leave was sought and granted to the parties to amend their pleadings and the case duly proceeded to trial.

During the trial the respondent gave evidence and called one witness while the appellants called four witnesses in support of their defence. After the learned counsel for both parties had addressed the court, the learned trial judge in a considered judgment found for the plaintiff/ respondent.

Being dissatisfied with the judgment, the defendant appealed to the Court of Appeal.
The provisions of Decree No. 17, December 31, 1983. The Federal Military Government hereby decrees as follows:

"(1) Notwithstanding anything to the contrary in any law, the appropriate authority if satisfied that;

(a) it is necessary to do so in order to facilitate improvements in the organization of the department or service to which a public officer belongs; or

(b) by reason of age or ill health or due to any other cause a public officer has been inefficient in the performance of his duties; or

(c) the public officer has been engaged in corrupt practices or has in any way corruptly enriched himself or any other person; or

(d) the general conduct of a public officer in relation to the performance of his duties has been such that his further or continued employment in the relevant service would not be in the public interest, the appropriate authority may at any time after December 31, 1983;

(i) dismiss or remove the public officer summarily from his office; or

(ii) retire or require the public officer to compulsorily retire from the relevant public service.

(2) For the avoidance of doubt, it is hereby declared that any act or thing done at any time between December 31, 1983 and the making of this Decree by the appropriate authority in respect of:

(a) The dismissal, removal from office or compulsory retirement of any public officer; or

(b) The conduct of any inquiry into any aspect of the exercise by a public officer of his duties; shall be deemed to have been done pursuant to this Decree.

(2) Where any public officer is dismissed, removed or retired compulsorily, from his office pursuant to section 1 of this Decree, the appropriate authority shall direct;

(a) whether appropriate retirement benefits are to be paid; or

(b) whether those benefits shall be forfeited.

(3) In this section, the reference to appropriate retirement benefits is a reference to any benefits payable under any enactment of law of the Federation or of a State.

(3)(a) For the purposes of this Decree, the operation of the provisions of Sections 159 and 190 of the Constitution of the Federal Republic of Nigeria 1979, which protect the pension rights of persons in the public service of the Federation or of a State respectively, are hereby excluded.

(b) The provisions of any enactment, law or instrument (including the Constitution of the Federal Republic of Nigeria 1979) relating to matters to which this Decree applies or relating to the appointment, benefits, dismissal and disciplinary control of a public officer shall have effect subject to this Decree.

(c) No civil proceedings shall be or be instituted in any court for or on account of or in relation of any act, matter or thing done or purported to be done by any person under this Decree and if any such proceedings have been or are instituted before, on or after the making of this Decree, the proceeding shall abate, be discharged and made void.

(d) Chapter IV of the Constitution of the Federal Republic of Nigeria 1970 is hereby suspended for the purposes of this Decree and the question whether any provision thereof has been, is being or would be contravened by anything done or purported or proposed to be done in pursuance of this Decree shall not be inquired into in any court of law.

(4) In this Decree, 'Public Officer' means any person who holds or has held any office on or after December 31, 1983 in:

(a) The public service of the Federation or of a State within the meaning assigned thereto by Section 277(1) of the Constitution of the Federal Republic of Nigeria 1979;

(b) The service of a body whether corporate or in-corporate established under a Federal or State law;

(c) The Company in which any of the Governments in the Federation has a controlling interest.

(2) In the operation of this Decree, the appropriate authority;
(i) in respect of any office which was held for the purposes of any State, shall be the Military Governor of that State or any person authorised by him; and
(ii) in any other case, shall be the Head of the Federal Military Government or any person authorised by him or the Supreme Military Council.

(5) In this Decree, any reference to the Constitution of the Federal Republic of Nigeria is a reference to that Constitution as led by the Constitution (Suspension and Modification) Decree, 1984. The decree may be cited as the Public Officers (Special Provision) Decree, 1984 and shall be deemed to have come into force on December 31, 1983. Made at Lagos this 27th day of June, 1984."

Paragraph 2(b) of the Code of Conduct for public Officers contained in part 1 of the 5th Schedule to the 1979 Constitution provides as follows:
"2. Without prejudice to the generality of the foregoing paragraph, a public officer shall not;
(b) engage or participate in the management or running of any private business, profession or trade but nothing in this sub-paragraph shall apply to any public officer who is not employed on full-time basis."

Paragraph 9 of the 3rd Schedule of the 1979 Constitution as amended by Decree No. l of 1984 spells out the power of the State Judicial Service Committee as follows:

"9. The Committee shall have power, subject to such conditions as may be prescribed, to appoint, dismiss and exercise disciplinary control over the Chief Registrar and Deputy Chief Registrar of the High Court, the Chief Registrars of the Sharia Court of Appeal and Customary Court of Appeal, Magistrates, District Court, judges and members."

Also, Sections 75, 76(b) and 148(c) of the Evidence Act which came up for construction by the court state as follows:
"75. All facts, except the contents of documents may be proved by oral evidence."

"76. Oral evidence must in all cases whatever, be direct;
(a) If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact."

"148. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case, and in particular the court may presume;
(c) that the common course of business has been followed in particular cases."

Held: Allowing the appeal

1. *On evaluation of evidence*
   It is not enough for a trial judge to say 'I do not accept' evidence without giving reason(s) for not accepting same, for a trial judge is duty bound to evaluate the evidence before him before deciding whether or not to accept it *[Abiku v. Opaleye (1974) 1 All WLR 334 at 356 referred to]*.

BAMGBADE & ORS v. BALOGUN & ORS
[1994] 1 NWLR 718

Court of Appeal (Ibadan Division)

Evidence – Certified true copy of previous proceedings – When relevant to subsequent proceedings.

Facts of the case:

The respondent as plaintiff instituted a representative action in the High Court of the then Oyo State at Ile-Ife against the appellants as defendants claiming as follows: " The plaintiff's claim against the defendants jointly and severally for the sum of ₦3,000.00 (Three thousand Naira) being general damages for trespass committed by the defendants on the plaintiff's farmland situate at Ladugbo Village via Ile-Ife in that on or about the 11th day of February, 1982 to date the defendants unlawfully entered the plaintiff's farmland and reaped all economic crops thereon and still persist in remaining on the said land." The facts in support of the respondent's claim are as follows: "Sometime in the month of February, 1982, all the three appellants had entered the respondent's farmland situate in Ladugbo village without the respondent's permission. Thereon the appellants had committed further acts of trespass by plucking and harvesting cocoa, kolanuts and yams. The original owner of the farmland allegedly trespassed onto was Anamo. He was the respondent's grandfather."

The 1st appellant was once a tenant to Anamo and later to Ojuade Balogun the successor-in-title to Anamo. During the period of tenancy, the 1st appellant exceeded the limits of his hold on the land without the consent of his landlord by cutting virgin bush or forest belonging to his landlord. Consequently, both the 1st appellant and one Isaiah Disu (Dosu) were successfully sued in suit No. 4/50 (Exhibit 4). The 1st appellant and Isaiah Disu (or Disu) could not pay the judgment debt recovered against them in the action (Exhibit 4). As a result, the only two farmlands belonging to the 1st appellant in Ladugbo village were sold by public auction to satisfy the judgment debt. This was in 1954. Gabriel Ogunleye Omibeku bought those farmlands. The sale notwithstanding, the 1st appellant in 1958 in suit No. 88/55 (Exit. I) sued both Jimoh Balogun the respondent's elder brother and Gabriel Ogunleye Omibeku in respect of those "five sections of cocoa farmlands" claiming the sum of £70.00 (seventy pounds) in

former Nigerian currency, as the value of the cocoa allegedly harvested by the respondent in that suit (Exhibit I). The 1st appellant action was however dismissed in its entirely.

It is part of the respondent's case that after the sale of the 1st appellant's two farms at Ladugbo village in 1954 the 1st appellant 'disappeared' to re-appear in the farmland, the subject matter of the alleged trespass in February 1982. Hence, his action against the 1st appellant. Regarding the 2nd and the 3rd appellants, the respondent's case was that both of them were seen with the 1st respondent's in his (appellant's) farmland in Ladugbo in February 1982 plucking and harvesting cocoa, kolanuts and yams, without his authority or consent.

The 2nd and the 3rd respondent's had previously trespassed into the respondent's farmland in 1958 for which they were sued successfully in suit No. 98/58 (Exhibit 2). Since after the action in Exhibit 2e, the 2nd and 3rd appellants had refrained from committing any further trespass on the respondent's farmlands until their present act of trespass in concert with the 1st appellant in February 1982. The appellant denied trespassing into the respondent's farm. The 2nd and 3rd respondent's claimed that the farmlands allegedly trespassed upon were theirs. The 1st appellants claimed that he owned 7 (seven) farmlands and he did not trespass on the respondent's land. The respondent gave evidence at the hearing and called six witnesses. The 1st appellant also gave evidence and called 2 witnesses. The 2nd and 3rd respondent's offered no evidence. At the conclusion of the trial, the learned trial judge entered judgment for the respondent against all the appellants jointly and severally and awarded ₦750.00 as general damages for trespass.

Being dissatisfied with the judgment the appellant appealed to the Court of Appeal.

Held: Dismissing the appeal

1. *On meaning of trespass*
   By Nigerian law, every invasion of private property be it ever so minute is a trespass. No man can set his feet on the ground of another without the license for that, without being liable to an action in trespass *[England v. Palmer (1955) 14 WACA 659 AT 660 referred to] (P. 740, paras. D-E)*.

2. *On what constitutes trespass to land*
   The wrong of trespass to land (*trespass* quare clausum fregit) consists of:
   (a) Entering upon the land in the possession of the plaintiff or
   (b) Remaining upon such land or
   (c) Placing or projecting any material object upon it, in each case without lawful justification. The commonest form of trespass consists in a personal entry by the defendant or by some other person through his procurement, into land or building occupied by the plaintiff. The slightest crossing of the boundary is sufficient, for example to put one's hand through a window or to sit upon a fence *(P. 739, paras. G-H)*.

3. *On who can maintain an action for trespass to land*
Because trespass is an inquiry to the right of possession, the proper plaintiff in any action for trespass is generally the person who is in actual or constructive possession at the time the trespass occurred; he can always maintain an action for trespass against anyone but the true owner or one who can trace his title to the true owner *[Adeniji v. Ogunbiyi (1965) NWLR 395 at 397; Nwosu v. Otunola (1974) 1 ANLR (Pt. 1) 153 followed] (P. 740, paras B-C)*.

4. *On who can maintain an action for trespass to land*
Trespass to land is actionable at the suit of the person in possession of the land. That person can sue for trespass even if he is neither the owner nor a privy to the owner. This is because exclusive possession of the land gives the person in such possession the right to retain it and to have undisturbed enjoyment of it against all wrongdoers except a person who could establish a better title *[Amakor v. Obiefuna (1974) 3 S.C. 67b at 75 followed) (P. 739-740, paras H-B)*.

5. *On basis of a claim for trespass and proof of identity of land involved in action for trespass*
The basis of a claim founded in trespass to land is the exclusive and peaceable possession of the plaintiff of the land, the subject-matter of the trespass alleged and complained of. It therefore, lies on the claimant to plead and prove the boundaries of the land of which he claims to be in exclusive possession. There ought to be evidence legally acceptable and accepted in proof of the identity of the land trespassed upon *(P. 742, paras B-C)*.

6. *On what plaintiff in an action for trespass must prove to succeed*
A party maintaining an action for trespass to land must prove his possession or right to possession in order to succeed *[Nwosu v. Otunola (1974) 1 ANLR (Pt. 1) p. 153] (P. 749, paras. D-E)*.

7. *On what defendant in a trespass action must show to escape liability*
If a defendant in an action for trespass admits his act then to escape liability he must show by way of justification that some positive law has empowered or excused him in his act. If he fails to justify his action, then judgment will be entered against him *[England v. Palmer (1955) 14 WACA 659] (P. 740, paras. E-F)*.

CALABAR CEMENT CO. LTD v. DANIEL
[1991] 4 NWLR 750

Court of Appeal (Enugu Division)

Evidence – Proof – Wrongful dismissal or termination of employment – On whom onus lies – How discharged.

Facts of the case:
The plaintiff was employed as a security staff by the defendant. Subsequent to an Administrative Enquiry instituted by the defendant over certain lost property belonging to it for which the plaintiff came under suspicion, his appointment was terminated by a letter dated May 25, 1979 (Exhibit I). No reason was given for the termination, but the plaintiff was paid one month's salary in lieu of notice. The plaintiff however instituted the present action against the defendant claiming the sum of ₦40,000.00 as general damages for wrongful termination of appointment. The trial judge found for the plaintiff and awarded him special and general damages totalling ₦29,433.11 with ₦200 costs.

Dissatisfied with the judgment the defendant appealed. Article 29 of the Junior Staff Conditions of Service (Exhibit 5) which governed the employment of the plaintiff with the defendant provided as follows:

"Termination of Employment
An employee who successfully completes his probationary period as set out in Article 6 above may terminate his employment by giving 2 weeks notice or forfeiture of wages amounting to not more than 2 weeks pay. The company may terminate any employee's service by giving 2 weeks' notice of intention to terminate his employment or by paying 2 weeks basic pay in lieu of notice. This payment will not be made in the case of summary dismissal. Similar conditions shall also apply to staff. In either case, one month's notice shall be given or payment of salary in lieu of notice. It is clearly understood that neither the Company nor employee is obliged to give or assign any reason whatsoever for termination of appointment."

Held: Allowing the appeal
1. *On distinction between dismissal and termination of a contract of employment*
   It is settled practice that the two provisions for dismissal and termination of a contract of employment operate independently of each other. The reason is because termination gives the parties the right to determine the contract at any time by giving the prescribed period of notice, the dismissal on the other hand, is a disciplinary measure without benefits. The power to dismiss is a power exercised by the employer without a corresponding power in the servant *[Adeko v. Ijebu-Ode District Conned (1962) 1 SCNLR 349 applied] (P. 759, paras. E-G)*.

UNION TRADING CO. (NIG.) LTD v. NWOKORUKU
[1993] 3 NWLR 295

Court of Appeal (Enugu Division)

Evidence – Proof of special damages – Requirement of 'strict proof' – Connotation of strict proof

Facts of the case:
The plaintiff (respondent herein) was employed in 1978, as a senior staff by the defendant Company (appellant herein). He was placed on one year probation. His appointment was subsequently confirmed after the expiration of the one year, with enhanced conditions of service. The respondent's appointment was however terminated by a letter dated 6/6/84 which was slated to take effect from 15/6/84. The respondent wrote some representations to the appellant, but no favourable response was received. Subsequently, he instituted an action against the appellant Company in 1986 for 'wrongful dismissal' wherein he claimed ₦500,000 as special and general damages – which include his salaries, Christmas bonus, productivity bonus, retirement scheme, rent allowance, leave allowance - all to the year 2002 when he would have compulsorily retired at the age of 55. At the trial, the respondent maintained that his wrongful dismissal was based on an uninvestigated, malicious and false internal audit report prepared by K.B. Sanusi (D.W.1) an internal auditor of the appellant company. It was also stated that when D.W.I was in Calabar, the respondents was away on official business D.W.1 had in the course of the investigation of the respondent's department discovered certain improprieties among which was that the respondent's personal car was repaired in the appellant's workshop and that labour charge of ₦4,410 which the respondent ought to pay was surreptitiously and fraudulently transferred to the account of a customer. One of the recommendations of D.W.1 was that 21 labour hours spent on the respondent's car be reversed from the wrongful debited account to his (respondent's) account and the respondent be made to pay. The import was not communicated to the respondent and no investigation was carried out. The appellant however maintained that the respondent's appointment was terminated in accordance with the terms and conditions of the contract of employment between the two parties. At the end of the trial, the learned trial judge entered judgment in favour of the respondent in the sum of ₦8,539.18 as special damages and ₦30,000 as general damages. He also awarded ₦1,500.00 costs against the appellant.

Dissatisfied, the appellant appealed to the Court of Appeal where he contended *inter alia* that the trial judge erred in law and in fact when he held that the dismissal of the respondent was unlawful. The respondent also filed a cross-appeal contending that the learned trial judge ignored the principles laid down by *Alderson J in the case of Hadley v. Baxendale (1854) 9 Exch. 34* in awarding damages. The relevant portion of the letter of appointment of respondent admitted at the trial as Exh. 1-1A reads:

"Appointment – Management Trainee

(i) Not relevant.

(iii) Probation – The appointment is subject to twelve months of probation during which the notice of termination by either party is one month, or one month's salary in lieu of notice,

(iii) Confirmation – At the end of the probationary period and subject to a satisfactory appraisal of your performance, your appointment will be confirmed as a permanent staff, and the notice of termination thereafter shall be three months or three months salary in lieu of notice."

Clause 9 of the condition of service for Senior Staff of the appellant – Exh. '3-3A' states:
"9. Termination of Appointment

(a) The Company may terminate an employee by giving him notice in writing as stipulated in his appointment letter, or payment in lieu thereof.

(b) A member of staff may also terminate his employment after giving to the Company notice in writing as stipulated in his letter of appointment or payment in lieu thereof.

(c) A senior member of staff may be terminated for serious misconduct, if found justified by the company, in which case no notice is given and all privileges are forfeited."

The relevant portion in the letter of termination, Exh. 9 reads as follows:
"Termination of Appointment
This is to inform you that the Company no longer requires your services with effect from June 15, 1984 which will be your last day with the Company. The senior pay officer, by a copy of his letter is requested to withhold the settlement of your terminal benefits pending the settlement of the following:
(1) The cost of repair of your personal car Beetle 1500 which was carried out in the Company Workshop.
(2) The cost of repair of the staff car allocated to you which was carried out without the approval of the Insurance Company.

This money will be refunded to you as soon as the Insurance Company settles the bill."

Held: Allowing the appeal in part and dismissing the cross-appeal

1. *On measure of damages recoverable for breach of contract of employment*
It is inappropriate to award general damages in a breach of contract of employment as award of general damages is known only in the law of tort. In a breach of contract, damages do not exceed an amount naturally arising from the contract as may be expressed or seen within the contemplation of both parties. In the instant case, the award of general damages went beyond the principle of *restitutio in integrum* which is indemnity for breach of contract, but the learned trial judge rather proceeded to the grant of a windfall which

is *restitutio in opulentiam* and unknown to the law of contract *[P.Z. & Co. Ltd v. Ogedengbe (1972) 1 ANLR (Pt. 1) 202 at 205 - 206 ; Okongwu v. N.N.P.C. (1989) 4 NWLR (Pt. 115) 296 at 309 referred to] (P. 312, paras. F-H)*.

2. *On proof of special damages*
It is the law that special damages must be strictly proved, but the term 'strict proof' of special damages really requires no more than that the evidence must show the same particularity as is necessary for its pleadings *[Imana v. Robinson (1979) 3-4 S.C. 1 at 23 referred to] (Pp. 310- 311, paras. H-A)*.

GABRIEL MBISIKE CHUKWU & MATHIAS EKE v. FOUR ORS
[1999] 6 NWLR 674

Court of Appeal (Port Harcourt Division)

Evidence – Evaluation of evidence – Duty on trial court to consider evidence adduced by both sides.

Facts of the case:
The appellants, at the Owerri High Court, instituted an action for declaration of title to a piece of land, damages and injunction against the respondents herein. The appellants' case was that they inherited the land from their ancestor called Alume. The respondents also claimed that they inherited the disputed piece of land from their forefathers. The dispute that led to the institution of this action arose in 1977 as a result of another land dispute between the respondents and the Umuoguesi family in suit No. HOW/3/76 over a different piece of land. The respondents, in making their survey plan in that case were said to have trespassed into the land in dispute for the first time without leave and/or consent of the appellants. When the appellant challenged the respondents, the respondents claimed ownership of the land and the appellants reacted by instituting this action. The High Court dismissed the appellant's action. The appellants were dissatisfied with the decision of the High Court which gave ownership to the respondents, hence this appeal.

Held: Unanimously dismissing the appeal
1. *On when court can admit evidence on facts not pleaded*
Where the existence of a suit is not pleaded or a certified true copy of the judgment in the suit is not tendered the court can rightly accept evidence led on the existence of the suit where fact of the existence of the suit and its result were admitted by the parties *(P. 681, para.G)*.

Per AKINTAN, J.C.A. at page 678, para. A:
"In the instant case, the parties did not dispute the existence of suit No. HOW/3/76 or that the appellants lost the case which was in respect of an adjoining land to the one in dispute and which was shown on a survey plan tendered by the appellants (Exh. A.). The parties also admitted that the same land is occupied by the respondents. The facts, in view are relevant and their admission was in accordance with the law."

2. *On treatment of unchallenged evidence*
Evidence of facts in issue not challenged or debunked ought to be accepted and acted upon by the court *[Omoregbe v. Lawani (1980) 3-4 S.C. 108; Agbaje v. National Motors (1971) 1 UILR; Akinrinmade v. Lawal (1996) 2 NWLR (Pt. 429) 218 referred to] (P. 681, para. H)*.

3. *On duty on a trial court in civil cases*
A trial judge is required to carefully consider the evidence adduced by both sides and decide on the balance of probabilities which account he should accept *[Omoregbe v. Edo (1971) 1 All NLR 282 referred to] (P. 682, para. E)*.