

**IN THE SUPREME COURT OF NIGERIA**  
**HOLDEN AT ABUJA**

**ON FRIDAY THE 20<sup>TH</sup> DAY OF FEBRUARY, 2026**

**BEFORE THEIR LORDSHIPS**

**JOHN INYANG OKORO**  
**HELEN MORENKEJI OGUNWUMIJU**  
**ADAMU JAURO**  
**JUMMAI HANNATU SANKEY**  
**STEPHEN JONAH ADAH**

**JUSTICE, SUPREME COURT**  
**JUSTICE, SUPREME COURT**  
**JUSTICE, SUPREME COURT**  
**JUSTICE, SUPREME COURT**  
**JUSTICE, SUPREME COURT**

**SC. 486/2012**

**BETWEEN:**

**ALHAJI ABDULRAUF MOHAMMED**

**===**

**APPELLANT**

(SUBSTITUTED BY:

ENGR. MUHAMMAD RUFAI MUHAMMAD)

**AND**

**ALHAJI TAYI KUCHITA & 32 ORS**

**===**

**RESPONDENTS**

**JUDGMENT**

**[DELIVERED BY STEPHEN JONAH ADAH, JSC]**

This appeal is brought against the judgment of the Court of Appeal, Abuja Division, delivered on the 15<sup>th</sup> day of June, 2012. In that judgment, the Court of Appeal (hereinafter referred to as "the lower court" or the court below"), set aside the decision of Honourable Justice Tanko Yusuf Usman of the Niger State High Court of Justice, delivered on 29<sup>th</sup> June, 2009, in **Suit No. NSHC/BD/11/2004.**

At the trial court, the appellant was the plaintiff, while the respondent before this Court was the defendant. Conversely, before the court below, the present respondents were the appellants, and the present appellant was the respondent. The claim at the trial court from the Amended Statement of Claim had the following reliefs:

1. **The sum of Seven Million Naira (N7,000,000.00) being damages for trespass to the Plaintiffs marshy land known as LAWO lying and situate at SOMMAN village in Katcha Local Government Area of Niger State for a period of seven years from 2002-2008 at (N1,000,000.00) One Million Naira per annum.**
2. **The sum of One Million Naira (N1,000,000.00) for each subsequent year or any part thereof till the trespass is abated.**
3. **Interim injunction restraining the defendants, their agents and anybody claiming on their behalf from further trespassing into the land known as LAWO till the determination of this suit.**
4. **Perpetual injunction restraining the Defendants, their relatives, privies, agents and assigns from further and ever trespassing into the land known as LAWO.**
5. **Substantial cost for this litigation.**

The trial court's judgment was in favour of the appellant, whereas the decision of the lower court was in favour of the respondents.

Dissatisfied with the decision of the lower court, the appellant filed a Notice of Appeal dated 13<sup>th</sup> September, 2012, containing nine grounds of appeal. Following an order substituting the original appellant with his son, Engr. Muhammed Rufai Muhammed, the Notice of Appeal was amended, and the amended version was filed on 6<sup>th</sup> February, 2024. The extant Notice of Appeal, therefore, is the amended Notice of Appeal dated 20<sup>th</sup> February, 2024.

The judgment of the trial court is contained at pages 112 – 126 of the record, while the judgment of the lower court appears at pages 303 – 320. The appellant's Notice of Appeal is found at pages 321 – 328 of the record. The operative Amended Appellant's Brief of Argument is anchored on the Amended Notice of Appeal issued in the name of the substituted appellant, dated 20<sup>th</sup> February, 2024.

The Amended Appellant's Brief filed on 20<sup>th</sup> February, 2024, was settled by Chris Oghale Ubogu, Esq., while the Joint Respondents' Brief was filed on 21<sup>st</sup> October, 2025, was settled by the respondents' counsel Benjamin A. Adokwu, Esq.

The appellant distilled seven (7) issues for determination and these issues were adopted by the respondents. These issues are:

1. Whether the lower court's decision, to the effect that, the proceedings at the Chief Magistrate Court, Agaie (Exhibit D) was pleaded by the Respondents, for a two-fold purpose - abuse of process or malicious prosecution and issue of estoppel can be supported or justified in law, having regard to the totality of the averments contained in the respondents' further amended statement of defence, dated 9<sup>th</sup> June, 2009 and the evidence adduced by the Respondents, in support of the said averments.
2. Whether the lower court was right, to have raised *suo motu*, the issues of abuse of court's process and issue of estoppel in its judgment, when such issues were neither raised nor canvassed by the parties before it,
3. Whether the lower court was right, when it held that, the instant suit was prosecuted by the Appellant against the respondents at the trial court, constitute an abuse of court's process, in view of the criminal proceedings at the Chief Magistrate Court Agaie (Exhibit D) in case No AG/MC/CR/21/04 The State v. Alhaji Ndana & Six Others, and which proceedings, also raises issue of

estoppel against the Appellant and in favour of the respondents, when the said proceedings, was between the appellant and the respondent.

4. Whether the lower court was not right, the failure of the trial court to properly evaluate the proceedings at the Chief Magistrate Court, Agaie (exhibit D) in the suit that was prosecuted by the appellant against the respondents (who are thirty in number) had occasioned a miscarriage of justice, when the said case, was not between the appellant and the respondents.
5. Whether the lower court was right, when it held that, the land which was shared or divided on the authority of Exhibit A (i.e the judgment of the Niger state High Court) failure of Justice (appellate Division) in Appeal No: NSHC/13A/82 between Mamman Kolo Shabako (appellant) v. Dan Darman Bida (respondent) was shared between the Appellant and the Respondents, when the said Exhibit A does not contain such a decision or facts.
6. Whether the court below, has any legal basis or justification for holding that, the title of the respondent of the respondents to Bata Kuso Kuchita land had been settled by the court, vide Exhibit A (ie the judgment of the Niger State High Court in Appeal No: NSHC/13A/82 between Mamman Kolo Shabako (Appellant) v Dan Darma Bida

(respondent) when the respondents or their privies, were not parties to the said judgment.

7. Whether the lower court was right, when it held that, Lawo Marshy Land and Bata Kuso Kuchita land, are two different parcels of land, owned by the appellant and the respondents respectively, vide Exhibits A, B and C, when it is manifestly clear that, the Niger State High Court of Justice (Appellate Division), did not declare or share Bata Kuso Kuchita land or any other land at all, in favour of the Respondents, vide exhibit A and when exhibit c which was tendered by the respondents before the trial court, is a document, which was made on behalf of the respondents, during the pendency of the suit, at the trial court.

The appellant in his Amended Appellant's Brief withdrew Ground Seven (7) of the Amended Notice of Appeal dated 20<sup>th</sup> February, 2024, as the said ground does not constitute a ground of law but rather one of mixed law and facts. Consequently, ground seven of the Amended Notice having been withdrawn is hereby struck out.

I shall adopt the seven (7) issues submitted by the learned counsel for the appellant, same having been adopted by counsel for the respondents, for the determination of the instant appeal. I take issues One, Two and Three together.

### Issues One (1), Two (2) and Three (3):

Counsel to the appellant submitted that parties are bound by their respective pleadings and evidence attached to if any, such that any averment that is unsubstantiated or supported by evidence goes to no issue. That the findings and conclusions of the lower court to the extent of the proceedings of Magistrate Court, Agaie (Exhibit D) pleaded to the effect that it amounts to an abuse of court process or malicious prosecution and issue estoppel cannot be sustained nor justified because they are not supported by pleadings to validate the findings of the court below. Counsel contended that there is no single paragraph in the Respondents' Amended Statement of defence dated the 9<sup>th</sup> June, 2009, that pleads Exhibit D for that specific purpose as granted by the court below. That by the provision of Order 42 Rules 4(1), (2) and Rule 6(3) of the Niger State Civil Procedure Rules, places a burden on the respondents to precisely and specifically plead exhibit D for the purpose of malicious prosecution or estoppel, failure by the respondents to specifically plead the requisite fact relating to abuse of court process, malicious prosecution and issue of estoppel, the finding of the court below cannot stand. That as a matter of law, the plea of *estoppel per ren judicata* must be pleaded by the defendant before he can be allowed to raise same.

appellant's counsel also contended that no witness was called upon by the respondents in relation to the purported claims of abused of court processes, malicious prosecution or issue of estoppel before the trial court to warrant the grant of the that relief by the court below as averments are not synonymous to evidence. See the cases of **Baliol (Nig.) Ltd. v. NAVCON (Nig) Ltd (2010) All FWLR (Pt. 532) 1672; Martchem Ind. (Nig.) Ltd v. M. F. Kent (W.A) Ltd. (2005) All FWLR (Pt. 271) 23-24 and West Construction Co. Ltd v. Batalha (2006) All FWLR (Pt. 315) 18.**

On issue two, learned counsel submits that issues bordering on whether or not the suit of the appellant amounted to an abuse of court process in view of Exhibit D, and the consequent issue of estoppel were never raised in the Respondents' Amended Statement of Defence to support the finding of the court below as the court raised it *suo motu* without calling on parties to address it on such issue. Counsel submitted that the three issues raised by the respondents at the court below were not pronounced upon nor were the issues predicated on the grounds of appeal, therefore the court below had no business considering same. That it is the duties of parties to raise issues in their pleadings where the case is tried on pleadings and while on appeal, issues for determination that are rooted to the

grounds of appeal and the court has the onerous duty as an unbiased umpire to determine issues submitted based on principles and laws and not to initiate controversies amongst parties. That the law is settled on procedures for court raising issues *suo motu*, parties must be called to address the court on the issue(s) raised or taken *suo motu* by the court, doing otherwise vitiates the validity of those findings. He stated that issues set out by the court below amounted to introduction of new issues or facts that the case never had from inception and made out a case for the respondents, hence the finding of the court of appeal which were arrived in variation of the set down principle of law in the instant appeal is liable to be set aside and counsel so urge this court. See the cases of **Ebba v. Ogodo (1984) 15 NSCC 255** and **Comptoir Commercial & Ind S. P. R Ltd. v. Ogun State Water Corporation & Anor (2002) FWLR (Pt. 105) 851**; **Obajimni v. A.G Western Nigeria (1967) ANLR 31**; **Kuti v. Balogun (1978) 11 NSCC 21**; **Badmus v. Abegunde (1999) 7 SC (Pt. 1) 78**; **Oloruntoba-Ojo v. Abdul-Raheem (2009) All FWLR (Pt. 497) 41**; **Chief Ogolo & Ors v. Chief Fubara (2003) FWLR (Pt. 169) 1285** and **Udengwu v. Uzuegbu & Ors (2003) FWLR (Pt. 179) 1173**.

On issue three, appellant's counsel submitted that the court had no legal basis for holding that the said criminal proceedings was

between the appellant and the respondents, as there is no connection whatsoever between the prosecution in Exhibit D with the appellant and therefore the court below erred in fact and law when it linked the appellant to the Exhibit D. That the instant suit was initiated by Alhaji Shaba Aliyu and Umaru Ndakotsu who died during the pendency of this suit and the appellant only took over after the completion of Exhibit D vide a Motion on Notice dated the 7<sup>th</sup> day of June, 2008 and that this suit was maintained concurrently with Exhibit D by two different courts against the respondents which is still in-tandem with laid down laws and practice procedures. That it does not follow on how the court below arrived at the conclusion that the criminal proceedings raises an issue of estoppel against the Appellant and in favour of the respondent when the appellant was neither a party nor a witness in the said criminal proceedings with parties as **The State v. Alhaji Ndada & Six Ors.**, in case No: **AG/MC/CR/21/04**, before the Chief Magistrate Court, Agaie, Niger State. That a close perusal of exhibit D reveals that the two complainants and witnesses in the criminal proceeding are Mohammed Jiya and Isah Isah with no remote connection or reference to the appellant, and that the seven defendants in the criminal proceeding were not entirely the same with the present thirty-three respondents (as Defendants) in this appeal. That

estoppel per rem judicata is also known as estoppel inter parties occurs where an earlier claim adjudicated upon by a competent court of law forms another claim or is raised as an issue before another court or subsequent proceeding between the same or similar parties/privies and the judgment relied upon is valid, subsisting and final. That the doctrine of estoppel cannot avail the Respondents nor invoked in this instant case hence the finding of the court below on this issue the provision of Section 46(2) of the Evidence Act 2011 cannot stand. He relied on the case of **Omnia Nigeria Ltd v. Oykrade Ltd (2007) All FWR (Pt. 394) 225-226** and **Oloruntoba-Oju v. Abdul-Raheem (2009) All FWLR (Pt. 497) 38.**

Learned Counsel to the respondents, submitted that the law is well settled that parties are bound by their pleadings, where pleadings are facts as perceived by the party relying on them, there must be oral and/or documentary evidence to show that the facts pleaded are true and pleadings without evidence goes to no issue. That the evidence obtained under cross-examination in support of a case forms integral evidence in support of the adverse party if such fact was duly pleaded. To align with the rule of traverse, a defendant may deny or refuse to admit an allegation or averment made, where such fact is not denied, it is taken and treated as an admission. See the cases

of **Comerrom Airlines v. Mike Olutuizu (2011) 2 SCNJ 96;** **Mrs Eva A. Akomolafe & Anor v. Guardian Press Ltd & 3 Ors (2010) 1 SCNJ 283** and **Arison Trading & Engineering Co. Ltd v. The Military Governor of Ogun State & 2 Ors. (2009) 6 SCNJ 141.** Counsel submitted further that the respondents pleaded in paragraph 15 of their further amended joint statement of defence that the plaintiff/appellant maliciously laid false complaints against them before the Chief Magistrate Agaie and were discharged/acquitted and pleaded the record of the proceeding of the magistrate court which was not controverted by a way of reply to the averment to the further amended statement of defence to deny the said averment, appellant is deemed to have admitted paragraph 15 of the respondent further amended statement of defence. It is submitted that the appellant admitted taking the respondents before two courts in Bida and Agaie for the same parcel of land in dispute under cross examination, therefore, that the evidence of PW 1 (appellant) corroborates DW1 and supports the case and evidence of the respondents on the allegation of malicious prosecution. That the respondents by paragraph 18 (a) of the further amended statement of defence pleaded that the claims of the appellant be dismissed on the grounds that it constitutes an abuse of court processes. The appellant under cross-

examination admitted initiating two court processes before two different courts of competent jurisdiction (Magistrate court Agaie and State High Court Bida) in respect of the same subject matter (i.e LAWO MARSHY LAND) for trespass, this very fact was pleaded and proved that the parties, issues and subject matter in the previous case is same with the instant case, hence the need for this court to affirm the judgment of the court below. That once an abuse of court is established against a party, it operates as an estoppel against such party from further filing of any proceeding in respect of such claims against those parties on same subject matter, See the cases of **Chief Great Ovedje Ogbaru & Anor. v. Dr. Emmanuel E. Uduaghan & 2 Ors. (2013) 6 SCNJ 425; Central Bank of Nigeria v. Ahmed & Ors (2001) 5 SC (Pt. 11) 146; Edjeride v. Ikine (2001) 12 SC (Pt. 11) 125; Agwasim v. Ojichue (2004) 10 NWLR (Pt. 882) 613; Okorodudu v. Okoromadu (1977) 3 SC 21; Okafor v. A.G Anambra State (1991) 6 NWLR (Pt. 200) 659; Dagaci of Dere & 9 Ors. v. The Dagaci of Ebwa & 9 Ors (2006) 1 SCNJ 160 and ACB Plc v. Nwaigwe (2011) 7 NWLR (Pt. 1246) 380.**

On the issue two, learned counsel to the respondents submitted that Exhibit D was pleaded to the effect that the respondents were discharged and acquitted of allegations of trespass into the Lawo Marshy Land and from available evidence supported by

the appellant's oral testimony under cross-examination, it was either the appellant or his privies that initiated the criminal and instant proceedings, therefore the lower court was right when it held that Exhibit D was not only an abuse of court process but an issue estoppel. Counsel contended that the appellant in their brief of argument exonerated himself from the proceedings of Exhibit D in respect of Lawo Marshy land but the appellant pleaded before the trial court that he owned the subject land and had put tenants on the said land who paid him tribute in form of farm produce from year to year as the caretaker. This averment allude to the fact that acts done by those in possession are to actuate the interest of the appellant as his privies, cronies and agents of the appellant.

The admission of the appellant under cross-examination that he sued the respondents before the Chief Magistrate Court Agaie and State High Court Bida, both suits having the same issue, subject and parties are in pursuance of the interest of the appellant, hence constituting an abuse of court process regardless of the arguments. The argument of the appellant against this admitted evidence amounts to the appellant reprobating and approbating at the same.

The issue of abuse of the process of court is a judicial doctrine aimed at preserving the integrity, efficiency and fairness of the

adjudicatory procedure. This concept denotes the improper, vexatious or oppressive use of the machinery of the court in a manner that is inconsistent with the due administration of justice. It is well settled in our law that an abuse of court process occurs where a party engages in the institution or maintenance of multiple or parallel proceedings between the same parties in respect of the same subject matter already decided which leads to estoppel. The issue of abuse is an issue of law which can be raised by the defendants or the court at any stage of the proceedings. The grouse of the appellant is that the issue of abuse was raised by the lower court *suo motu* and without inviting parties to be heard on it. Let me lean on the decision of this court in the case of **Union Bank of Nigeria v. Awmar Properties Ltd (2018) 10 NWLR (Pt. 1626) 64**, to say that *suo motu* means on his own motion. It occurs where a judge decides an issue without giving counsel a hearing and proceeds to render a decision. See **Uzoho v. National Council on Privatization (2007) All FWLR (Pt. 394) P. 370**.

It is paramount to note here that the law is well settled that it is incumbent on the court to invite parties, particularly the party that may be adversely affected as a result of the point raised *suo motu*, to address it on such a point before basing its decision thereupon. This is a matter of duty and a fulfillment of the

constitutional requirement of fair hearing, the breach of which is very fundamental. I however, must underline the fact that we cannot downgrade the competence and capacity of a court to raise a point *suo motu* for purpose of serving the interest or course of justice. The need to give the parties a hearing when a judge raises an issue on his own motion or *suo motu* would primarily not be necessary if:

**(a) the issue relates to the court's own jurisdiction.**

**(b) both parties are/were not aware or ignored a statute which may have bearing on the case. That is to say where by virtue of statutory provision, the judge is expected to take judicial notice. See Section 73 of the Evidence Act.**

**(c) when on the face of the record serious questions of the fairness of the proceedings is evident.**

See **Omokuwajo v. FRN (2013) NWLR (Pt. 1359) 300**. Outside these slim exceptions, it is not open to the Court of Appeal to raise issues which the parties did not raise themselves either at the trial court or during the hearing of appeal.

In the instant case, the issue raised by the lower court is that of abuse of court process which was elicited by the lower court from issue estoppel. The parties themselves were the ones who

referred to the issue of previous decisions between the parties over the same position of land. In that circumstance, there is nothing wrong with the lower court's inference of an abuse of the process of court. The appellant in this wise, is completely out of order to accuse the court of generating the issue *suo motu*. From the foregoing therefore, these issues one, two and three are resolved against the appellant.

**Issues Four (4) and Five (5):**

Learned counsel for the appellant submitted that the trial court failed to adequately and appropriately evaluate Exhibit D in its judgment. This, the lower court resolved does not occasion a miscarriage of justice on the appellant because the piece of evidence has no evidential value nor relevance to the instant case. The court's finding ought to have reflected that Exhibit D had no symbolic worth or relevance to this instant case. That the law is trite that the court cannot rely or act on a piece of evidence that is not supported by or founded on the pleadings, because it is not the record of proceedings as contemplated by the respondents' paragraph 15 of their Further Amended Statement of Defence that was eventually tendered in evidence as Exhibit D. That the record of proceeding of another court in respect of different case and parties ought not to be considered without proper foundation linking both cases and that the court

below ought to have deemed same inadmissible. Moreso, that the admissibility of Exhibit D without opposition from the appellant does not bind the court as the court has inherent powers to jettison the said evidence if its finding is that a piece of evidence is irrelevant in the determination of issues placed before it. Counsel urged this court to set aside the finding of the court below on this argument. He relied on the cases of **Durosayo v. Ayorinde (2005) All FWLR (Pt. 260) 167; Shanu & Anor v. Afribank Nigeria Plc (2003) FWLR (Pt. 136) 823** and **Elegushi & Ors v. Oseni & Ors (2005) All FWLR (Pt. 282) 1837.**

On issue five, learned counsel submitted that parties in **Mamman Kolo Shabako v. Dan Darma Bida**, were never parties to the instant case that gave rise to this appeal. That the parcel of land divided by the authority of Exhibit A is Budu Marshy land and Lawo Marshy land was granted to Mustapha Dan Darma from where the appellant derive his title to Lawo Marshy land. That there is nowhere in Exhibit A where portion of land called Bata Kuso Kuchita was mentioned by the court that delivered judgment contrary to what the lower court held in its judgment. That neither the respondents nor their privies were parties to that suit nor were they mentioned in Exhibit A as one of the beneficiaries of the court's judgment. The appellant

submitted that they were perplexed at the finding of the court that gave rise to its finding on Exhibit A. He therefore, urged the court to discountenance such finding of the lower court in this wise. He cited the cases of **Madu v. Madu (2008) All FWLR (Pt. 414) 1604; Chief Ogolo & Ors v. Chief Fubara (supra)**, in support.

Learned counsel to the respondents surmised that the said parcel of land litigated upon by **Mamman Kolo Shabako v Dan Darma Bida**, in **Suit No: NSHC/13A/82**, is Budu Marshy land which was given to Mamman Kolo Shabako while Lawo Marshy was given to Mustapha Dan Darman Bida. However, the respondents pleaded a survey plan of their land known as Bata Kuso Kuchita containing fish ponds which is different from the appellant's land known as Lawo Marshy land. This has been the argument of the respondents from their further Amended Statement of Defence. That they never trespassed into the Appellant's Lawo Marshy Land but that they have an unchallenged title to Bata Kuso Kuchita land which is not subject matter at the trial court. That the respondents were able to prove that the land of the appellant known as Lawo Marshy land is separate and different from the respondents' Bata Kuso Kuchita land having regards to evidence of PW9 who sketch Exhibits B and C and DW4's oral testimony of what he witnessed

on a visit to both lands respectively. Counsel submitted that an error of a court cannot be appealed upon if it does not occasion a miscarriage of justice. See the cases of Benjamin Nwakubairoagbara v. David Utomadu (2009) 6 SCNJ 196 and Silas Sule v. The State (2009) 6 SCNJ 89.

Learned counsel for the respondents submitted that the testimonies of DWs 1, 2, 3 maintained that the respondents owned Bata Kuso Kuchita land while the order of the Niger State High Court divided the other lands between Mamman Kolo and Dan Darma Bida where the appellant derived its title. In urging this court to affirm the judgment of the lower court, counsel submitted that testimonies of PW9 and DW4 as well as Exhibits B and C confirms that the Lawo Marshy land is in the possession of the appellant and was never trespassed upon by the respondents or any of their privies.

The crux of these two issues generated by the parties is about the evaluation of evidence and the identity of the particular land in focus in this case. the land was well described and specified as a parcel of land known as Lawo situate in Somman Village in Katcha Local Government Area of Niger State. From the pleadings and the evidence both oral and documentary, the appellant in his claim maintained that the land is the Marshy land

known as Lawo. In the case of **Ezeani v. FRN (2019) LPELR – 46800 (SC)**, my lord, Okoro, JSC, held that:

**“Evaluation of evidence which is in the province of the trial court is the appraisal of both oral and documentary evidence and the ascription of probative value to the evidence resulting in the finding of facts. See Buhari v. INEC (2008) 19 NWLR (Pt. 1120) 246, Adamu v. The State (1991) 4 NWLR (Pt. 187) 530, (1991) LPELR – 73 (SC).”**

In the instant case, the lower court studiously reviewed the evaluation of evidence by the trial court and found that the issue before the trial court was trespass simpliciter into the land of the appellant before us and not the ownership of the land of the respondents. The lower court then, reversed the decision of the trial court. The evidence before the trial court significantly showed that the land of the respondents is known as Bata Kuso Kuhita and not the Lawo Marshy Land.

From the pleadings and the evidence on record, there is no way this court can fault the decision of the lower court. The lower court was extremely right in its appreciation and findings on the claim of the parties. These issues are resolved against the appellant.

### **Issues Six (6) and Seven (7):**

Appellant's counsel submitted that the sole reliance of the lower court on exhibits to deliver its judgment and conclude that the title of the respondents on Bata Kuso Kuchita land has no legal basis or justification because they were not parties to Exhibit A, nor any fact supports their being beneficiaries whatsoever. That there was no declaration made regarding Bata Kuso Kuchita Land by the said court in favour of the respondents so, the finding of the court below is perverse.

On issue seven, appellant counsel submitted that the lower court had no legal justification or basis for holding that Lawo Mashy land and Bata Kuso Kuchita land are two different parcels of land owned by the appellant and the respondents respectively, vide Exhibits A, B and C, since it is manifestly clear that the Niger State High Court of Justice did not declare or share Bata Kuso Kuchita land or any other land at all in favour of the respondents, vide Exhibit A.

Learned counsel for the respondents maintained that the land known as Bata Kuso Kuchita is different and separate from Lawo Marshy Land which is not a subject of litigation at the moment. That there cannot be a case for trespass to Lawo Marshy land when the respondents never trespassed nor possess same.

That there is no doubt that the lower court was right when it relied on Exhibits A, B and C in holding that the parcels of lands are distinct and separate from the land in dispute. That the appellate courts are bound by the record and it has no jurisdiction to go outside the record of proceedings of the trial court. Counsel submitted that the lower court relied on the records transmitted to it by the trial court to draw its inference in accordance with the law. That from the records of appeal, it will be revealed that the lower court's decision was predicated on Exhibits A, B and C which reflect that the two lands are distinct and different from the other lands owned by both the appellant and respondents. See the case of **Paul D Fubara & Ors v. Raymond D Ogolo & Ors (2003) All FWLR (Pt. 169) 1285; Prof. B. J Olufeagba & 48 Ors v. Prof. Shuaibu Abdulraheem & 30 Ors. (2009) 12 SCNJ 349; Daggash v. Bulama (2004) 14 NWLR (Pt. 891) 144; Chief M. D. A Agbaisi & 30 Ors v. E. Ebikorefe & 60 Ors. (1997) 4 SCNJ 147.**

The lower court had relied on the evidence on record to make the findings of facts upon which the judgment was delivered. There was nothing extraneous in the conclusion of the lower court from the record before us. Exhibit A is a record of proceedings that played a dominant role in the trial court. The

lower court was therefore, right to draw conclusion from it. These issues are also resolved against the appellant.

The lower court from the records before us elaborately considered all the issues raised and gave a unanimous decision allowing the appeal of the respondents in the instant appeal. The lower court per Eko, JCA, (as he then was) decisively concluded at page 315 of the record of appeal as follows:

**“My lords, I have gone through the full gamut of the pleadings, evidence and judgment in this case and it is my firm judgment that the respondents, as plaintiffs, did not prove the trespass the appellants were alleged to have committed in Lawo Marshy land. The suit was an abuse of process. It was frivolous and vexatious. Unfortunately, the learned trial judge fell for it.**

**In consequence of, all I have been saying; I have no difficulty allowing the appeal in its entirety. I allow the appeal. The judgment including all order therein, made by the learned trial judge on 29<sup>th</sup> June, 2009, in the Suit No: NSHC/BD/11/2004, is hereby set aside. In its stead I enter an order dismissing the suit. And that shall be the order of the trial court.**

**The appellants are entitled to costs which they had thrown away or suffered in defending the suit at the trial court and in prosecuting this appeal. There are 33 Defendants/Appellants in the suit that smacks of abuse of court's process: a malicious one for that matter. Costs, I know are not intended to be punitive. But they have to be realistic. An award of N300,000.00 in**

**my assessment is reasonable. The said sum is hereby awarded to the Defendants/Appellants jointly and/or severally, as costs both at the trial court and here.”**

My lords, notwithstanding the lucid and clear decision of the lower court, the appellant has pursued this further appeal in respect of a claim of trespass to a parcel of land described as “Marshy Land,” known as Lawo, situate at Somman, a village within Katcha Local Government Area of Niger State. It is important to note that the dispute before this Court is not one of title but purely one of alleged trespass.

With due respect, such a complaint ought not, in all sincerity, to have engaged the further attention of this Court. However, since the appeal has been entertained, it becomes necessary to examine whether the lower court was right in allowing the appeal of the respondents.

I have carefully and dispassionately reviewed the totality of the facts, the evidence on record, and the evaluation and resolution of the issues by the lower court. I am unable to discern any error or miscarriage of justice in its decision. The appellant plainly failed to establish the claim of trespass at the trial court.

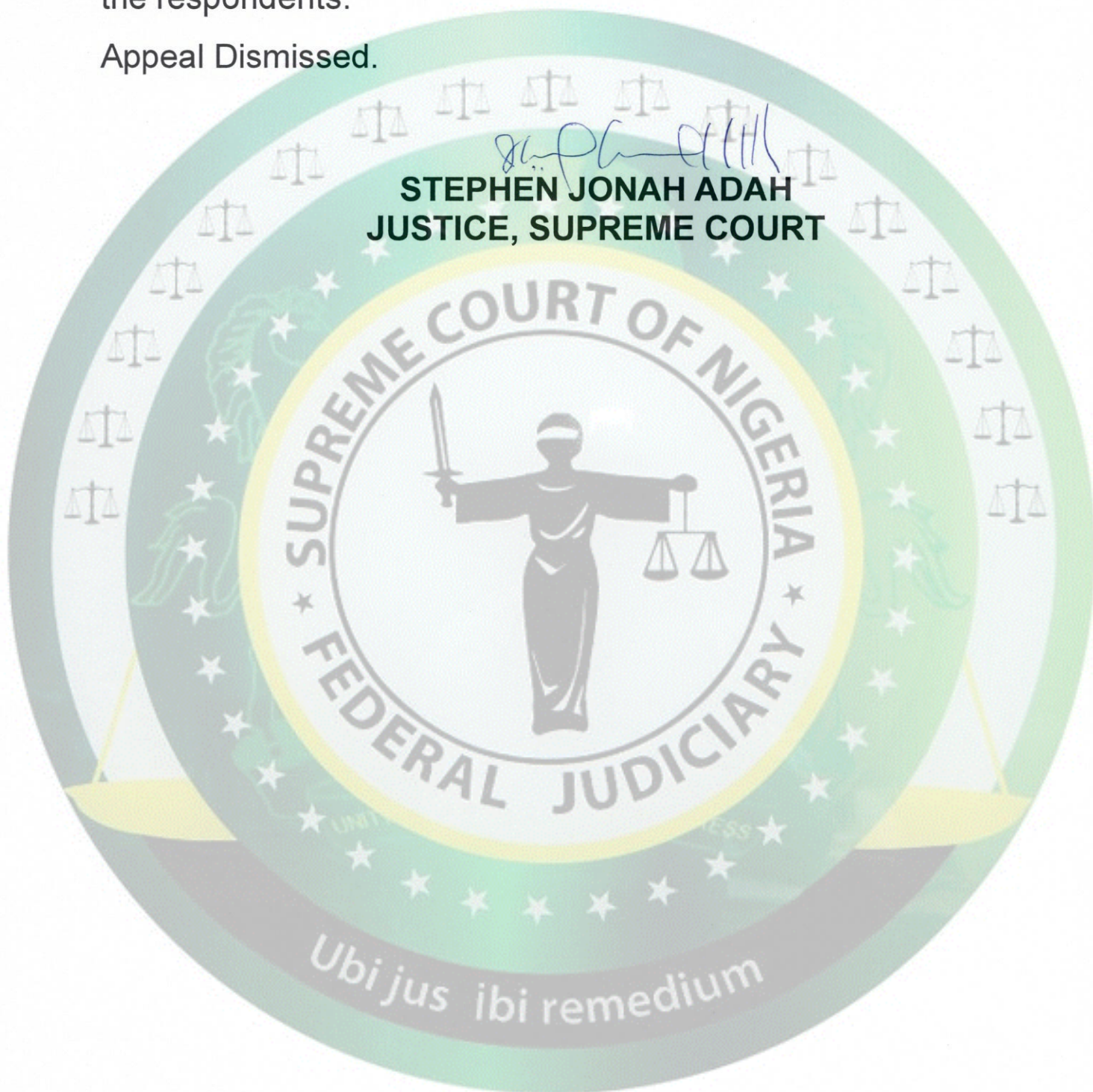
The action was clearly frivolous, vexatious, and constituted an abuse of the judicial process. Consequently, this appeal is devoid of merit and is hereby dismissed.

The judgment of the lower court in **Appeal No: CA/A/235/09**, delivered on the 15<sup>th</sup> day of June, 2012, is hereby affirmed.

Appellant to pay a cost of Two Million Naira (₦2,000,000.00) to the respondents.

Appeal Dismissed.

  
**STEPHEN JONAH ADAH**  
**JUSTICE, SUPREME COURT**



## **COUNSEL:**

Chris Ubogu, Esq., with Sunday O. Ake, Esq., **for the Appellant.**

Benjamin A. Adokwu, Esq., **for the 1<sup>st</sup> to 4<sup>th</sup> Respondents.**

Clifford I. Omozeghian, Esq., with Emeka Ohanebo, Esq., Ndubuisi S. Okochi, Esq., **for the 5<sup>th</sup> Respondent.**

Desmond Yamah, Esq., **for the 6<sup>th</sup> and 7<sup>th</sup> Respondents.**

Angus Obinna Chukwuka, **Esq., for the 8<sup>th</sup> Respondent.**

Gweke Akudihor, Esq., **for the 9<sup>th</sup> Respondent.**

D.O. Nosile, Esq., **for the 10 and 11<sup>th</sup> Respondents.**

F.T. Eruli-Ede, Esq., **for the 12<sup>th</sup> Respondent.**

S.I. Imokhe, Esq., **for the 13<sup>th</sup> Respondent.**

Michael Akinleye, Esq., **for the 14<sup>th</sup> and 31<sup>st</sup> Respondents.**

Opeyemi O. Ogunleye, Esq., **for the 15<sup>th</sup> Respondent.**

D.G. Uduru, Esq., **for the 16<sup>th</sup> Respondent.**

Dr. Donald Atogbo, Esq., **for the 17<sup>th</sup> Respondent.**

J.D. Olaniyan, Esq., **for the 18<sup>th</sup> Respondent.**

Alex Mouka, Esq., **for the 19<sup>th</sup> Respondent.**

J.W. Dong, Esq., **for the 20<sup>th</sup> Respondent.**

Adeniji A. Oni, Esq., **for the 21<sup>st</sup> Respondent.**

Olufemi Akintomiwa, Esq., **for the 22<sup>nd</sup> Respondent.**

Viktor Ibim Benibo, Esq., **for the 23<sup>rd</sup> Respondent.**

Collins C. Dike, Esq., **for the 24<sup>th</sup> Respondent.**

Chukwudi Maduka, Esq., **for the 25<sup>th</sup> Respondent.**

Adepeju O. Jaiyeoba, Esq., **for the 26<sup>th</sup> Respondent.**

Kelechi Onwuegbuchulem, Esq., **for the 27<sup>th</sup> Respondent.**

Henry C. Chibor, Esq., **for the 28<sup>th</sup> Respondent.**

Babajimi Ayorinde, Esq., **for the 29<sup>th</sup> Respondent.**

Ifeanyi G. Ezeuko, Esq., **for the 30<sup>th</sup> Respondent.**

Osita Solomon Mbamalu, Esq., **for the 32<sup>nd</sup> Respondent.**

Anthony Biose, Esq., **for the 33<sup>rd</sup> Respondent.**