SUPREME COURT

JUDICIAL BENCH

COMMON LAW DIVISION

File No .178/COM/CIV/2018
Appeal No 161/CIV/2008

Judgment No.15/COM
of 01rd July 2021
IN THE MATTER

BETWEEN

SANTA RURAL COUNCIL

And

FORYOUNG Nicholas SAH

FORYOUNG Joseph FON

COURT DECISION:

The Court:

- **The Appeal of SANTA RURAL COUNCIL is dismissed for lack of merits;**
- **The Appellant to bear the costs of these proceedings.**
- **Orders the Registrar-in-Chief of the Judicial Bench of the Supreme Court to notify a copy of this judgment to the Procureur General at the Court of Appeal of the North West Region and to the Registrar in Chief of the said Court for inscription or mention in their respective records;**

Delivered by their Lordships:

Pauline Christine NGO MANDENG…..PRESIDENT,

James George NGWENE……..…..JUDGE;

NYIAWUNG Alexander FOBELAH…….…….JUDGE;

In the presence of;

LUMUNGA Sarah epse AMOUGOU.....

BELINGA.....Advocate General;

NYAMSI Emerentia.....REGISTRAR.

- REPUBLIC OF CAMEROON -

- IN THE NAME OF THE PEOPLE OF CAMEROON

In the year two thousand and twenty-one, and on the 01st day of July

The Common Law Division of the Judicial Bench of the Supreme Court sitting in its Recess session open to the public, delivered the following judgement:

IN THE MATTER

BETWEEN

SANTA RURAL COUNCIL - Appellant, represented by Barrister SAMA Francis ASANGA, in BAMENDA;

ON THE ONE HAND

AND

FORYOUNG Nicholas SAH and FORYOUNG Joseph FON - Respondents, represented by Barrister AWAH TUMA Advocate in BAMENDA;

ON THE OTHER HAND.

THE COURT

Mindful of sections 35 and 53 (2) of Law No 2006/016 of 29 December 2006 to lay down the organisation and functioning of the Supreme Court;

Mindful of the memorandum of written submissions filed on the 06 February 2009 by Barrister SAMA Francis ASANGA Chambers;

Mindful of the memorandum of written submissions in reply filed by Barrister AWAH TUMA for the Respondents;

Hearing and determining the appeal filed on the 17th March 2008 at the Registry of the Court of Appeal of the North West Region, Barrister SAMA Francis ASANGA an advocate in Bamenda, acting for and on behalf of SANTA RURAL COUNCIL, appealed to the Supreme Court against judgment N°. BCA/18/08 delivered on the merits in respect of the parties on 06th March 2008, by the afore-mentioned Court adjudicating on a civil matter between his client and FORYOUNG Nicholas SAH and FORYOUNG Joseph FON;

Mindful of the submissions of the Procureur General at the Supreme Court, Mr. Luc NDJODO;

The appeal was declared admitted in judgment No 144/EP of the 11th July 2019 delivered by the Panel of Joint Divisions of the Judicial Bench of Supreme Court;

FACTS OF THE CASE

The facts of the matter are as follows:

"The Respondents were in possession of a parcel of National land at Mbei in Santa Sub Division. The respondents inherited the said parcel of land from their parents whose graves are on the land. The respondents had erected sheds on part of the land and also authorized other persons to erect sheds on part of the Land. These sheds were used as shops.

The Fons of Njong and Mbei wrote to the Appellants (Santa Rural Council) on the 10/05/2001 requesting them to construct a market in the area to the benefit of the two villages, alleging in the said letter that the land was theirs.

Upon receiving the said letter, the mayor of the Appellants served the Respondents with notices of their intention to demolish the sheds belonging to the Respondents and build new ones. No reasons were stated in the said notice for planning to demolish the said sheds.

The Respondents protested against the demolition exercise planned by the appellants and even promised that they will be willing to demolish the said sheds and rebuilt new ones in uniformity with the specification of the Appellants. The Respondents also wrote a petition to the Senior Divisional Officer of Mezam concerning the planned demolition of their sheds.

The Appellants rather set up a Committee to evaluate the said sheds and thereafter proceeded to demolish ail the sheds. The Appellants offered to pay compensation to the Respondents for the sheds and other properties destroyed on the land and their offer was rejected.

The Respondents filed suit No. HCB/68/01-02 before the High Court of Mezam in which they claimed 30.million francs as general damages for trespass to land, destruction and conversion of their property. In its Judgment delivered on the 19/06/2006, each Respondent was awarded the sum of 6.5 million francs as general damages for trespass, destruction and conversion. The Court further awarded costs of 700.000 frs in favour of the Respondents

Aggrieved by the said judgment, Santa Rural Council appealed to the Supreme Court.

On the 06th of February 2009, the Appellants filed a memorandum of submissions in support of their appeal which is articulated as follows:

" APPEALLANT'S WRITTEN MEMORANDUM OF SUBMISSIONS

This appeal emanates from the judgment of the North West Court of Appeal in BCV18/2007 dated 06/03/2008, found at pages 90 to 97 of the record of proceedings. Dissatisfied with the judgment, the appellant on 17/03/2008 filed Notice and Grounds of Appeal which are out at page 98 of the records.

(1) ADMISSIBILITY OF APPEAL

My Lords as provided on (1) of Law No 2006/016 of 29/12/2006 to lay down the Organisation and functioning of the Supreme Court, this appeal is admissible since it was filed within the legal time of 30 days from the date of the Court of Appeal Judgment. Moreso, all the Registry fees and charges were paid within time.

I therefor respectfully urge Your Lordships ta hold that the appeal is admissible and proper before the Judicial Bench of the Supreme Court and accordingly fit for determination.

(II) P ROCEDURAL HISTORY

My Lords, the records disclose that the 2 Respondent and 1 other, filed a Civil Suit in the Mezam High Court each claiming the sum of 10.000.000 francs for Trespass to Land, Destruction and Conversion. .

At the trial court, Learned Counsel for the Defence made an objection in limine on the JURISDICTION of the trial court to entertain the matter. Its objection was overruled.

*The Learned trial judge on the 18/7/05 (pages 36 of the records at line 6) adjourned the matter for a **visit to** the **locus**. Incidentally, there is no iota of evidence on record that the court effectively visited the locus in quo, nor that it recorded any evidence from locus witness. Yet in his judgment, the learned trial judge referred to evidence it observed at the locus (which is recorded no where in the proceedings) and these pieces of evidence formed an essential part of the radio decidenti of the trial Court's judgment.*

In his judgment, the trial Court awarded the sum of 6.500.000 francs to each plaintiff plus costs of 700. 000 francs after holding the 3rd Party, albeit his default, not liable to indemnify the defendant or contribute towards the judgment debt.

Disatified with the trial Court 's judgment, the present appellant challenged same before the North West Court of Appeal, namely:

The amnibus grounds,
Jurisdiction
Quantum of damages

Failure to hold the third partly defendant liable to contribute or indemnity.

The Lordship, Justices of the North West Court of Appeal in the unanimous judgment, now on appeal to the Supreme Court, partially allowed the appeal only on quantum of damages and dismissed the other grounds. They reduced the award of damages from 6.500.000francs each to 3.500.000 francs to each plaintiff/Respondent.

In their reasoned judgment, Their Lordships endorsed wrong the findings of the learned trial judge on the facts alleged obtained at the locus in quo.

1 shall now with leave of Your Lordships present written arguments in support of my grounds of appeal as follows after abandoning ground 5:

(a) ARGUMENTS IN SUPPORT OF GROUND 1 AND GROUND 4

My Lords, in stating the law violated under this Ground of Appeal, 1 inadvertently referred to S. 7 of Law No 2006/16 instead of Law No. 2006/15 of 29/12/06 on Judicial Organisation. 1 most respectfully urge Your Lordships to grant me leave to argue this ground with the aforecited corrections.

S. 7 of LAW No. 2006/15 of 29/12/06 provides as follows, and 1 quote,

"All judgment shall set out the reason upon which they are Based in fact and in law: Any breach of this provisions shall render the judgment null and void"

This provision of law is a replica of8.5 of Ordinance Na 72/4 of26/8/72. 1shall argue this ground under the following sub-heard;

(1) WRONG FINDINGS BASED ON INEXISTENT LOCUS EVIDENCE

My lords, at page 92 in their judgment. Their Lordships again held as follows: (fines 23.

"The trial court visited the locus in quo and after

A full trial found for the respondent"

Again at page 92 in their judgment, Their Lordship again held as follows; (lines 23 to 24)

"There is no doubt that the land which the appellants demolished sheds stood was national Land. The trial court found this fact during the visit to The locus"

Now referring to the records of the records of the trial. Your Lordships will find that the trial court NEVER visited the locus in quo. All that is on record about visit to locus is sketch and as follows:

> *At page* 36 *line* 6 *to* 26 *the trial Court made the following entry;*
>
> *"Matter adjourned ta 21/7/05 for visit to the locus: Matter Resumed on 22/7/05.*
>
> *Parties present*
>
> ……..
>
> ……..
>
> *Matter adjourned to 9/905*
>
> *Matter resumed in 9/9/05*
>
> *Parties present*

COURT NOTE: The locus witnesses who were asked to appear have all been absent. They are the Fon Mbei. Atanga Isaiah Ndangoh Bibiana.
Matter adjourned to 7/10/05.
Court Note: Locus witness absent. Last adjourned equally Absent. Absent today: This Court having visited the locus the Court shall dispense of these witnesses. Matter adjourned to 14/10/05 for addresses of counsel"

My Lords there is not entry made of the visit by the Court to the locus. Neither the notes of the Court nor the evidence of the alleged locus witnesses are found anywhere on record

Yet in his judgment, the findings of which the learned Justice of Appeal upheld based on the inexistent locus evidence.

> *"Page 41.Line 13 to 13 to 29 and page 42 lines 1 to 9 and 28-38) adjourned for a for a visit to the locus in quo. This was effectively done on the 21/07/05 at the locus the court listened to the plaintiff and the defendants' representative with*

three witness to wit; Atanga Isaiah Ndangoh Bibiana and the fon of Mbei. They pointed out sheds and distances. The court noted that on the disputed site there were three houses (structures) partitioned into sheds. The long houses were about 55 m long each with 15 sheds each (3). Behind these houses is an expanse of land of about 102 m sq. and belonging to the Foryoung 's family. There are four compounds on this land belong to the Foryoung's father, the 1st and 2nd plaintiff and late Foryoung's Peter Ngu who was originally the 1st plaintiff. This land is continuous with the land on which stand the houses hearing the sheds. In fact the 1st plaintiff's house to the first shed is about 5 m There is also a company of 2 house and a kitchen belonging to the late mother of the Foryoungs. There are also the graves of the late parents and Peter Foryoung and coffee, plantains and other crop trees.

Page 42 lines 1 to 9

« It is to be noted that on the land said to be the Foryoung's family land were an old coffee farm eucalyptus and some kola nut other trees: all belonging to the Foryoungs. The house bearing the sheds are about 9-10mfrom the edges of the road .

After the locus inspection. Those witnesses were asked to come to court, but after 4 adjournments during which they failed to turn up the court produced to adjourn for judgment.

After listening to the testimonies of the parties, the cross-examination by counsels, the observations of the court at the locus and the evidence of the parties and witnesses at the locus, and the submissions of counsels, 1 am to make the following observations. "

Lines 28 to 38

"This is the land the court inspected during the visit to the locus.

There 's thus no doubt that this piece of land is

the one which the plaintiffs inherited from their late father.

The evidence of the Fon of Mbei at the locus that this plaintiffs land was a market was not substantiated Mention was made by the representative of the defendants that the Mile 12 *market is one of the oldest gazetled in Santa Sub-Division. Unfortunately such gazette or even evidence to substantiate this averment was not brought before this court. What this court was shown as a market was the line of sheds in front of the building of the plaintiffs as gleaned from Exhibit "F. "*

This court did not see any area it was call a market. "

At pages 43 *of the judgment, even though there is nothing on record to back this fact the learned trial judge held as follows: (line* 35-36)

> *"Only the Fon of Mbei appeared when Court visited the locus on 21/7/75.*
>
> *He made certain evasive representations at the locus"*

My Lords the law as to the visit to the locus in quo is very clearly settled and water-right.

Section 76(11) of the EVIDENCE ACT pro vides as follows

> *" If oral evidence oral evidence refers to the existence or condition of Any material thing other than a document, the court may if it thinks fit require the production*

of such material thing for its inspection, or may inspect or may Order or permit a jury to inspect any movable or immovable property the inspection of which may be material to the proper determination of the question in dispute. In the case of such inspection being ordered or permitted, the court shall either be adjourned to the place where the subject matter of the said inspection may be and the proceedings shall continue at the place until the further adjourns back to its original place of sitting or to same other of sitting, or the court shall attend and make an inspection of the subject only, of what transpired

there being given in court afterwards. In either case, the accused if any shall be present"

My lords, The Supreme Court of Nigeria in the case of ***SEISMOGRAPH SERVICE LTD VS. BENEDICT ONOKPASA,*** *SC73170 DATED* 21/4/72 *held as follows: (see AGUDA ON EVIDENCE PAGE127)*

"Places pointed out and everything else said by witnesses at the locus Must be confirmed an oath in the Court otherwise the court Cannot act on such statement which are not part of the evidence in the case."

I respectfully urge Your Lordships to hold from foregoing that all the findings made by the learned trial judge and subsequently affirmed by the Court of Appeal, based on the non-existent locus evidence, is null and void as it was not taken in compliance with the provisions and procedure provided in S. 76 *OF THE Evidence. Act, thereby rendering the whole judgment a NULLITY.*

(b) THE OUANTUM OF DAMAGES WAS NOT JUSTIFIED

MY Lords, in their judgment at page 96 *of the records. Their Lordships of the North West Court of Appeal held as follows (line* 22 *to 26)*

"We confirm their earlier judgment at the lower Court but vary the awards as follows for each respondent:-

1) *Trespass - 500. OOOfrs*
2) *Destruction - 2000.000frs*
3) *Conversion -1.000.000frs*

TOTAL. . 3.500.000FRS

This review follows their earlier finding at page 94 *as follows;*

"White we agree that the trial court properly found appellants fiable for Conversion we feel the awards made under

this head were high in view of the fact that no special damage were proved"

I respectfully submit that Their Lordships apart from stating that they feel the awards were high.

Failed to justify why each respondent should in the circumstances still be awarded 3.500.000jrs.

In the case of SCRC VS. NGANG CLETUS, Judgment No. 277/CC of 16/06/05, The SUPREME COURT OF CAMEROON in a unanimous reasoned judgment delivered by His Lordship Mr.JUSTICE EPULI held as follows:

"Upon the ground of appeal raised by the court, on its own motion, that Is to say that the North West Court of Appeal erred in law in that it F 'ailed to justify the award of 3 *0.000.000 francs general damages to the Respondent/cross appellant (NGANG CLESTUS CHE), thereby violating The provisions of section* 5 *of Ordinance No.* 72/4 *of August 1972.*

Considering that section 5 *of Ordinace No.* 72/ *of* 26 *Qugust 1972 ordains that every court decision shall contain reasons there for in law and in fact on pain of being declared null and void:*

Considering that in the instant case in varying the Mezam High Court, award of 33.500.000 francs general damages to 30.000.000 francs the judgment delivered on 17 *February 2000 in suit No. BCA/15197 and now on appeal, states as follows (at page* 146 *of the records)*

"The respondent counter claimant (that is to say NGANG CLETUS CHE) there for

deserves an award of damages but we *are of the considered opinion that the award made by the trial court was to some extent excessive in the circumstances. We therefore vary it to read* 3 *0.000.000 francs and accordingly enter judgment*

in favour of the respondent in that amount. "

Considering that by stating laconically as if did, that in its considered opinion the award made by the trial court was in same extent excessive in the circumstances" without stating the circumstances which made the award excessive or justified if being fixed at 30.000.000francs, general damages to NGANG CLESTUS CHE, the North West Court of Appeal failed to give reason for its decision, thereby violating the provisions of section 5 of Ordinance No. 7214 of26 August 1972 *aforecited.*

That accordingly the ground of appeal has merit, the appeal succeeds and the judgment on appeal should be quashed and set side"

ARGUMENTS IN SUPPORT OF GROUND THREE AND FIVE

"WANT OF JURISDICTION"

My Lords, 8.3551° *OF Law No. 2006/016 pro vides in (a) that an appeal to the Supreme Court may be based on "want of jurisdiction"*

In the present case, counsel for the appellant right from the trial raised by way of objection in limine, that the High Court had no jurisdiction to entertain the matter. Also before the North West Court of Appeal, the appellant argued that the trial lacks jurisdiction to entertain the matter as citing 8.5(3) *of LAW NO.19 of26111183 and Ordinance No.* 74-1 *of617174 on land tenure.*

The evidence disclosed that the plaintiff as the time of instituting this action possessed no Land Certificate over the land issue. On the other land the defendant to enter the land. This is prima facie evidence of a land dispute over which the High Court had no jurisdiction.

Section 5(3) of Law NO.19 of26/11/83 amending the provisions of Ordinance No. 7411 of617174 on rules governing Land tenure provides as follows;

"The Jurisdiction of the Court and Consultative Boards referred to in Article

(a) The settlement of the following landed property case shall full with the jurisdiction of the consultative:

(i) Objection to registration pending in the lands services at the time of this ordinance comes into force.

(ii) Objections to registration of land made within the framework of the Of the implementation of the decree provides for in Article 7 of this Ordinance;

(iii) Any claim or dispute of a right to property an unregistered lands filed in by Communities or individuals before the court.

(b) All other landed property cases shall fall within the jurisdiction of the court 's excepting cases relating to inter-communal boundary disputes."

From the foregoing, 1 respectfully urge Your Lordships to hold that the Mezam High Court lacked the jurisdiction to entertain the suit and ought to have referred same to the Land Consultative Board of Santa Sub-Division. In confirming the judgment of the High Court on the issue of' jurisdiction, the North West of Appeal equally violated the cited law. 1 accordingly urge Your Lordships to allow this ground of appeal.

From the foregoing 1 respectfully urge Your Lordships to allow the entire appeal, quash the judgment of the North West Court of Appeal and direct that the matter be referred to the Santa 1. and Consultative Board if necessary.

DATED AT BAMENDA THIS 4TH DAY OF FEBRUARY 2009."

The memorandum of submissions in support of the Appeal raised no ground of appeal. Learned Counsel for the Appellants, Barrister SAMA Francis mentioned grounds 1 and 4, and grounds 3 and 5 in the memorandum of submissions in support of the appeal. We have given the most anxious attention to the length and breath of the said submissions and observe that the grounds of appeal in question mentioned are inexistent as the Appellants failed to raise any ground of appeal except "want of jurisdiction" which is alleged to be grounds three and five. It is inadmissible for this Court to agree that "want of Jurisdiction are two grounds of appeal.

Arguments and legal issues highlighted in memorandum of submissions in supported of appeal, must relate to a ground of appeal succinctly raised in the said submissions. Legal issues and arguments which have no bearing on a ground of appeal are incompetent or inadmissible except the said issues or arguments exceptionally relate to the jurisdiction of a Court to grant relief or remedies not claimed.

The submissions of the appellants failed to comply with the provisions of

section 53(2) of Law No.2006/016 of 29th December 2006 to lay down the organization and functioning of the Supreme Court which provides as follows:

"The duly stamped memorandum of submissions in support of the appeal shall cite the provision of the law violated and argue the legal grounds of the appeal."

The above provision of the law makes it abundantly clear that only legal grounds of appeal must be argued. This ipso facto implies that an appellant must first of all raise a legal ground of appeal, that is a ground of appeal which is in conformity with the provisions of section 35(1) (a) to (i) of Law No.2006/016 of 29th December 2006 cited above .

Secondly the appellant must proceed to argue the said legal grounds of appeal raised by reproducing or citing verbutin without errors the provision of Law or the general principle of Law violate, misinterpreted or wrongly applied. In order words, the appellant must demonstrate how, or in what way the Lower Court violated, misinterpreted or wrongly applied the law or general principle of Law.

In the instant case Counsel for the appellant failed to cite any provision of law or general principle of law violated by the Court of Appeal of the North West, let alone showing how or in what way the said provision of law or general principle of law was violated, misapplied or wrongly interpreted.

Besides, it may perhaps be expedient to draw the attention of Counsel drafting grounds of appeal to the erroneous and illegal practice whereby grounds of appeal are raised in a notice of appeals in violation of the form of appeal to the Supreme Court provided for in sections 42 and 43 of Law No. 2006/016 of 29/12/2006 cited above.

Grounds of appeal raised in a notice of appeal are inadmissible since 53(2) of the aforementioned law requires the said grounds to be raised in a memorandum of submissions in support of the appeal.

A notice of appeal in which grounds of appeal are raised is irregular in form and thus inadmissible since section 42 and 43 of Law No. 2006/016 of 29/12/2006 cited above does not require that grounds of appeal be inserted in a notice of appeal.

Finally we also consider it significant to underscore the point that the award of substantial general damages as compensation for the torts of trespass to land, destruction and conversion of property and indeed for ail other torts is not dependent upon the proof of special damages by the plaintiff. The principle that governs the award of special and general damages in the law of torts is "Restititio in integrum" that is, the parties must be put to the position in which they stood before the tort was committed.

It is also palpably wrong for an appellate Court to vary general damages awarded by a trial Court for the sole reason that it is of the opinion that the damages awarded by the trial Court were high. For the opinion or view of the Court of Appeal that general damages awarded by the trial Court were high or excessive to be tenable compelling legal reasons must be advanced to ground such a view by indicating how and in what way the said damages are excessive or outlandish or by demonstrating that the Lower Court violated the principles laid down for the assessment of the quantum of damages.

In the light of the above, the

memorandum of submissions in support of the instant appeal is inadmissible for failing to raise and argue, legal grounds of appeal.

The appeal of Santa Rural Council lacks merit. It should be declared unfounded and the Appellants should bear the costs of the proceedings.

Considering the report of the rapporteur, Mr WANKI Richard TSENIKONTSA (JSC), the President of the Common Law Division of the Supreme Court;

Considering that Mrs Sarah LUMUNGA epse AMOUGOU BELINGA, Advocate General at the Supreme Court, representing the Legal Department, addressed the Court;

Considering that the instant judgment is being delivered in a public hearing after having deliberated on the matter in accordance with the law;

UPON THESE GROUNDS

- The Appeal of SANTA RURAL COUNCIL is dismissed for lack of merits;
- The Appellant to bear the costs of these proceedings.

- Orders the Registrar-in-Chief of the Judicial Bench of the Supreme Court to notify a copy of this judgment to the Procureur General at the Court of Appeal of the North West Region and to the Registrar in Chief of the said Court for inscription or mention in their respective records;

So has it been judged and pronounced by the Common Law Division of the Judicial Bench of Supreme Court in its open ordinary session held on the third day of June two thousand and twenty-one composed of their Lordships;

Pauline Christine NGO MANDENG…..PRESIDENT,
James George NGWENE…….……..JUDGE;
NYIAWUNG Alexander FOBELAH…….……JUDGE;

In the presence of Mrs Sarah LUMUNGA epse AMOUGOU BELINGA, Advocate General at the Supreme Court, representing the Legal Department;

And with the assistance of Mrs KOME Judith Registrar;

In witness whereof, the judgment has been signed by the President, the Judges, and the Registrar;

Inappropriate words cancelled- none;

THE PRESIDENT, THE JUDGES, THE REGISTRAR.