

SUPREME COURT OF NIGERIA
17TH SEPTEMBER, 1993 SC S8/1988
CORAM: A.G. KARIBI-WHYTE, A.B. WALI,
O.OLATAWURA, M.E. OGUNDARE, S.U. ONU, JJSC

JIMOH ADEKOYA ODUBEKO PLAINTIFF/APPELLANT
AND
VICTOR O. FOWLER & ANOR DEFENDANTS/RESPONDENTS

ACTIONS - Limitation Law - whether it can be invoked against a person who is not a party to the action.

COMPUTATION OF TIME - Pleading a date as when the cause of action arose - whether it is permissible for court to compute time from such date as pleaded.

COURTS - Court formulating weakness of a case and resolving same in favour of one party - whether proper

COURT OF APPEAL - Where the trial court fails to assess evidence on some - whether the court of Appeal is right to interfere with its findings of fact

EVIDENCE - Certified true copy of a conveyance and a registered instrument - no issue raised by both sides as to genuineness or otherwise - no evidence of discrepancy between the two documents - whether there exists any basis for the court's finding that the documents created doubt

EVIDENCE - Land dispute - certified hand written copy of a typed document - no objection raised as to its certification - whether admissible - whether is sufficient proof of due execution of Deed of conveyance

EVIDENCE - Address of counsel on exhibits tendered in court viz a viz primary evidence of witnesses to the proceedings - which is more acceptable

LAND LAW - Two contending parties in a suit claiming to be in possession of the Land in dispute - which of the parties is entitled to succeed

LIMITATION LAW - Where Plaintiff has a cause of action - time specified by the limitation law having elapsed legal implications.

LIMITATION LAW - Accrual of cause of action - on who the onus to establish same lies.

LIMITATION LAW - Of Lagos State (s.21) - legal effects - of a party's failure to abide by its provisions.

FACTS

The Appellant as Plaintiff at the trial court sued the Defendants claiming interalia, damages for trespass, injunction and certain declarations. The case went to trial in which both parties sought to prove that they were in possession. The Appellant alleged that he bought the land in dispute from the Administrators of a certain Mrs. Wilson's Estate in 1970 and tendered a deed of conveyance in that behalf. The Respondents claimed they were owners of the land by inheritance from their father who they said purchased the land for value and also tendered a conveyance.

At the end of the case, the trial court found in favour of the Appellant. Being dissatisfied with this judgment, the Respondents appealed to the Court of Appeal which unanimously allowed the appeal. The Appellant then appealed to the Supreme Court. Among the several issues canvassed for the Supreme Court's determination was whether a hand written copy of a typed document but which hand written copy is certified is validly admissible in evidence.

HELD (unanimously dismissing the appeal)

1. There was no evidence led by both sides at the trial and none of the parties' counsel raised any issue as to the genuineness or otherwise of Exhibits 'L' and 'IP' (certified true copy of the conveyance and registered instrument) in their final addresses to the trial court. There

was also no evidence of discrepancy led between the two documents. There is therefore, no basis for the trial court's finding that Exhibits 'L' and 'IT created doubt P:116 L2)

2. There is no known law statutory or otherwise, which forbids the tendering of a hand-written copy of a typed document as a validly admissible evidence; especially where the copy was certified and where neither party nor the court quarrelled with the certification of the copy. (P. 116 L8)

3. The addresses of counsel had centered on the genuineness or otherwise of Exhibits 'L' and 'U' (certified true copy of the conveyance and registered instrument) but that notwithstanding such addresses cannot attain the acceptability of the primary evidence forthcoming from witnesses to the proceedings. (P. 116 L26)

4. The court is precluded from speculating or making a case for either party to the proceedings by suo motu formulating the weakness in the case (if any) and resolving same in favour of one of the parties. Thus in this case, the trial court and not the Court of Appeal introduced extraneous mailers into the case. It is therefore the trial court which erred in not using the facts of the case as presented before it. (P. 116 L38)

5. The trial judge by his findings misdirected himself. Thus the Court of Appeal was clearly justified in disturbing such findings by holding that the trial judge had no business trying to pick holes that did not exist in Exhibits "L" and "U" (P:117 L10)

6. It is glaring that two contending parties before the trial court were in effect claiming to be in possession. It is settled law that where two opposing parties claim to be in possession of land in dispute, the law ascribes possession to the one with the better title. (P:119 L11).

7. The Court of Appeal was justified to have interfered with the trial court's findings of facts where the trial court had failed to assess the evidence of witnesses, form impression about them and evaluate their

evidence in the light of the impression formed especially where those evidence were formidable. (P.121 L31)

8. The Respondents and their predecessor-in-title have been in possession of land in dispute since 1943. An attempt to challenge their right to possess in 1945 failed. Where a registered conveyance such as Exhibit 'L' certified true copy (handwritten) but properly received as in this case, it be sufficient proof of due execution of such Deed of Conveyance (P.122 L4)

9. There having been proof by preponderance in Respondents' favour juxtaposed with Appellants case, the decision of the Court of Appeal that Respondents and not the Appellants had a better title to the land in dispute is unimpeachable (P.122 L18).

10. The Limitation Law cannot be invoked against a person who is not a party in an action. (P.122 L26).

11. The general rule is that a Plaintiff may have a cause of action but loses right to enforce it by judicial process because the period of time laid down by the limitation law for bringing such actions elapsed. (L. 123 L4)

12. The Onus is on the Defendant who relies on the defence of limitation action to establish when the cause of action accrued to the Plaintiff. In instant case, it is the Defendants/Respondents who should plead and prove that the action instituted against them by the Appellant is statute-bar (P. 123 L10)

13. It is not permissible for the court to compute time from the date pleaded so it is not enough to plead a particular date in the statement of defence the date the cause of action arose because if the date is not admitted by any reply of the Plaintiff to the statement of defence, it will be impossible compute the limitation period. Appellant filed no such reply. (P. 123 L14)

14. The pleadings of the parties and evidence made it clear that issues were joined and the date the cause of action arose was at least 1946 that is when the Respondents' father built on the land in dispute. That being the case, statute of limitation applied to extinguish

the interest of the Appellant. (P. L22 L123)

15. The effect of the Limitation Law of Lagos State is not only that the Appellant could not sue at the time he went to court but that by failure to abide by the provisions of s.21 of the same law (which
5 extinguishes title to land at expiration of the limitation period), the Appellant was suing the Respondent too late in the day to revive a dead claim. (P. 125 L3)

10 ***REPRESENTATION***

Yomi Alokolaro Esq. for the Appellant

M.P. Ohwovoriele, S.A.N. with S.W. Baidi Esq., for the Respondents.

CASES REFERRED TO

- 15 1. Macaulay v. NAL Merchant Bank (1990) 4 NWLR (Part 144) 238 at 321.
2. Chinweze v. Masi (1989)1 NWLR (Part 97) 254.
3. Egbe v. Alhaji (1990)1 NWLR (Part 127) 546 at 590
4. I.R.P. (Nig) Ltd v. Oviawe (1992)5 NWLR (Part 243) 572
- 20 5. C.A. & Magnusson v. Koiki (1991)4 NWLR (Part 483) 119 C.A
6. RE Randle, Nelson & Anor. v. Akofiranmu (1962) ALL NLR 130
7. Oduola v. Coker (1981)5 S.C. 197
8. Atolagbe v. Shorun (1985)1 NWLR (Part 2) 360
- 25 9. African Continental Seaways Limited v. Nigeria Dredging Roads and General Works Ltd. (1977)5 S.C. at 247
10. Ibuluya v. Dikibo (1976)6 S.C. 97 at 104
11. Ihewusi v. Ekeanya (1989)1 N.W.L.R (Part 96) 239 at 248
12. Omosanya v. Anifowoshe (1959)4 FSC. 94
- 30 13. Ajadi & Ors. v. Okenihun & 2 ors. (1985)1 NWLR (Part 2) 484 at 486
14. Jones v. Chapman (1848) Exch. 803.
15. Convey Island Commissioner v. Preedy (1922)1 Ch-179.
16. Mogaji & Ors. v. Odoim & Ors. (1978)4 SC. 91 at 96.
- 35 17. Alhaji J. Aromire & 2 Ors v. J.J. Awoyemi (1972) ALL NLR (Part 1) 101 at 112-115.
18. Kuforiji v. V.Y.B. Nigeria Ltd (1981) 6-7 SC. 40 at 84.
19. George Okafor v. Eze Idigo III & Ors. (1984) N.S.C.C. 360
20. Okpiri v. Jonah (1961) ALL N.L.R (Part 1) 107.

STATUTES REFERRED TO

1. Limitation Law of Lagos State ss. 16(2)(a), 18, 19, 21

LEAD JUDGMENT BY ONU JSC

In the High Court of Lagos State presided over by Oshodi, J. ⁵
the appellant, who was the plaintiff, caused a writ of summons to
issue against the respondents who therein were defendants, for:

*"1. Declaration of title in fee simple on a piece or parcel of land
situate, lying and being at No. 20 Idera Street, Palmgrove, Mushin ¹⁰
West, Lagos State, a site plan of which shall be filed later.*

2. N200.00 for general damages for trespass to the said land.

*3. Perpetual injunction restraining the defendants, their ser-
vants and/or agents from committing further acts of trespass to the
said land. Annual rental value is about N20.00" ¹⁵*

Pleading were ordered, duly filed and exchanged with the same
being further amended by various court orders. The case went to
trial with the appellant giving evidence and calling two witnesses whilst
the respondents, for their defence, called three witnesses in all. The
learned trial Judge gave judgment for the appellant on 8th October, ²⁰
1982.

Being dissatisfied with the judgment, the respondents appealed
to the Court of Appeal sitting in Lagos which unanimously allowed
the appeal, set aside the decision of the trial court and dismissed the ²⁵
appellant's claim.

Aggrieved by the decision, the appellant has further appealed
to this Court on five grounds, the last of which is with leave of this
Court.

The background facts to the case ought briefly to be stated as ³⁰
follows:

It was common ground that the land belonged originally to
Ojomo Eyisha Chieftaincy Family. According to the appellant, the
said family in 1910 sold land which included the land in dispute to
one Larinde Agba, who in turn sold it to Emmanuel Seton. As a ³⁵
result of Suit No. 169/32 between one Bello Larinde and the said
Emmanuel Seton, whereby the latter became a judgment debtor,
the whole land of 41,786 acres was sold by auction by order of Court
on the 4th of March, 1936. Joseph Adewunmi and Joseph Adebisi

bought the land at the auction sale as per their certificate of purchase (Exhibit' A') dated 13th June. 193R. In 1944, the two purchasers sold and conveyed the land by a registered conveyance (Exhibit B), to one Janel Ebum Adesola, also called Mrs. Ebum Adesola Wilson. After the death of Janet Ebum Adesola Wilson, her husband, Ezekiel
 5 John Adeyinka Wilson, administered her estate until his death in 1953. After his death, Thomas Wilson and three other persons were appointed administrators of Mrs. Wilson's Estate by order of Court (Exhibit B) dated 31st March, 1969. The Letters of Administration were
 10 tendered as Exhibit C. The appellant maintains that the land in dispute was sold and conveyed to him by the administrators of Mrs. Wilson's Estate about the year 1970. A deed of conveyance later executed in his favour, was admitted as Exhibit F dated 5th July, 1972. It then transpired that in 1977 when he had prepared his
 15 building plans to wit, Exhibit G and was in the process of commencing building operations on the land, the respondents disturbed him and he instructed his solicitors to seek redress in court.

The respondent's case is that they, are owners of the land in dispute by inheritance from their father, Christopher Kolade Fowler,
 20 who died on 2nd December, 1962. They made a statutory declaration of their right to the land on 3rd March, 1967 vide Exhibit M and duly registered same. They asserted that their father was a purchaser for value of the land by virtue of a registered deed of conveyance, the certified true copy of which was tendered as Exhibit L and later,
 25 the original instrument received as Exhibit U with both (being the same documents) dated 29/11/43.

The respondents also pleaded and gave evidence of other acts of possession and ownership by their father. These included the erection of a residential house with approved plans on a portion of the
 30 plots purchased by him in 1946. That he let parts of the house as well as portions of the vacant land to rent-paying tenants, some of who testified. It was also part of their case that the land in dispute does not form part of the land purchased pursuant to till order of court on 4th
 35 March, 1936 alluded to by the appellant. They in addition demonstrated they paid tenement rates to Mushin Town Council since 1971. They also pleaded the Supreme Court decision in SC.165/1968 and pleaded long possession, Limitation Law and equitable defences.

As earlier stated, after hearing, the learned trial judge found in

favour of the appellant. The respondents' appeal against that decision having been upset by the Court of Appeal (hereinafter referred to as the Court below) he has now appealed to this court as hereinbefore stated.

The parties acting pursuant to the rules of Court exchanged 5
briefs of argument. The appellant in his two briefs of argument, the first which was dated and filed on 18th May, 1988 and the second which was dated and filed on 24th May, 1991, have jointly submitted therein five issues (three in the first and two in the second) thus:

1. Whether the Court of Appeal has the right to introduce 10
extraneous matter into the respondent's case on which no evidence was adduced in the lower court.

2. Whether the defendant (sic) (respondent (sic) herein) has (sic) adduced sufficient evidence to prove acts of long possession to justify the finding of facts made by the Court of Appeal to enable it 15
allow the appeal and to interfere with the findings of the lower court.

3. Whether the statute (sic) of limitation applied in this case.

4. Whether the long possession ascribed to the defendant (sic) without the knowledge of the plaintiff or his predecessor-in-title can 20
defeat the established title of the plaintiff.

5. Whether the law of Lagos State Limitation can defeat the title of a family without joining all the parties to the action.

The respondents on the other hand in their amended brief dated 16th December, 1991 also submitted three issues as arising in 25
this appeal, to wit:

0.1. Whether or nor the learned Justices of the Court of Appeal were right in not supporting the findings made by the trial Judge having regard to the pleadings and evidence adduced.

0.2. Whether or not, in the circumstances of this case, the Court 30
of Appeal was right in holding that the respondents have adduced sufficient evidence to prove acts of ownership and long possession by their predecessor-in-title superior to those of appellant.

0.3. Whether or not, as between the respondents and the ap- 35
pellant, the statute of limitation applied to extinguish the interest of any of the appellants (sic).

It is noteworthy that while the appellant originally submitted three issues for determination in his first brief, all distilled from four grounds contained in his Notice of Appeal dated 22nd August, 1986

(see pages 268-270 of the Record), in his second brief of argument filed on 24th May, 1991, he formulated two additional issues (5 and 6) which in form and substance are identical to issues 2 and 3 in the first (original) brief.

Now, in the first brief the appellant has elected to argue the
 5 grounds (he in fact has abandoned ground 1 thereof). This Court has held times without number that it is the issues and not the grounds that should be argued. This is founded in the established principle of law that it is on the basis of the issues, not the grounds that parties
 10 found their contention. See *Macaulay v. NAL Merchant Bank* (1990) 4 NWLR (Pt. 144) 283 at 321 and *Chinweze v. Masi* (1989) 1 NWLR (Pt. 97) 254, to mention but a few. In doing this, it must always be borne in mind that in the quest for good brief-writing, grounds of appeal upon which issues for determination are formulated must re-
 15 late 10 matters decided in the judgment from which the appeal springs. See *Egbe v. Alhaji* (1990) 1 NWLR (Pt. 128) 546 at 590. Since in the instant case, ground 1 which has been abandoned is not related to any of the issues proffered, it is accordingly struck out.

Having already observed that issue 2 and 3 in the first brief
 20 are identical with issues 5 and 6 in the second brief, both of which respectively overlap grounds 3 and 4, I will proceed to consider the three issues which are what in essence fall for determination, commencing with issue 1.

I will adopt the appellant's issues (even though it was the grounds
 25 that were wrongly argued) for my consideration of the appeal as follows:

ISSUE 1:

30 The main thrust of the appellant's complaint on this issue is that the Court below was wrong when it introduced extraneous matters into the respondent's case on which no evidence was adduced in the trial court. The attack is particularly directed at the extract at page
 35 240, lines 4-15 of the record wherein the court below found as follows:

"It is also noteworthy that the deed recited some conveyance and other contracts of sale which were more than twenty years old at the date the conveyance was executed in 1943. Examples were those

of 24th of October, 1913 and 23rd December, 1915. In view of the provision of section 129 of the Evidence Act, those recitals should, in so far as there is no evidence to show that they were inaccurate, be sufficient evidence of the truth of the facts so recited..... As it is so, the complaint of the appellants about the way the learned Judge treated Exhibit L or U is well founded:' 5

A careful scrutiny of the evidence adduced in the trial court and the argument subsequently proffered in the court below on appeal would seem to indicate that it is the trial court rather than the court below that by the above passage introduced extraneous matters into the case. The following are my reasons. 10

The 1st D.W. Victor Oladipo Fowler at page 105 of the record had inter alia this to say in respect of Exhibit "L".

"Exhibit 'L' is the certified true copy of the conveyance of my father that we took to the Land's Registry....." 15

In justifying how this piece of evidence became imperative from the mouth of 1st D.W, it is necessary to recall that upon a summons taken out by A.F.O. Kwentua, of counsel for the respondents; which summons was supported by a 6 paragraph affidavit. paragraphs 2 and 3 thereof read as follows: 20

"2. That after the court's sitting on the 30th of June, 1982, my solicitor..... informed me and I verily believe that it would be in the interest of justice for me to locate and make available to the court the original copy of the conveyance or a better certified copy of the conveyance of the land in dispute to enable the court to adjudicate on the facts of this case. 25

3. That consequent upon the advise of our counsel, I search (sic) the records and archives of my late father in Lagos and Abeokuta where I found the original of the conveyance." 30

Sequel to the above depositions. 5th D.W., Samuel Adesina Fowler, who incidentally is the 2nd respondent. was recalled to tender an instrument registered as 91/91/66 at the Lagos Lands Registry which without any opposition from the opposing counsel was received as Exhibit "U". At that point in time too, learned counsel for the respondents prayed the learned trial Judge to visit the locus. The learned trial Judge however deferred the visit which, in fact, never 35

took place.

It is pertinent to emphasise that no iota of evidence was led by both sides at the trial, and none of the counsel raised any issue as to the genuineness or otherwise of Exhibits "L" and "U" in their final addresses to the trial court; nor was any evidence of discrepancy led
5 between the two documents (Exhibits).

I therefore agree with learned counsel for respondents' submission that there exists no basis to ground the finding of the trial court that Exhibit "L" and "U" created doubt. There is no known law, statutory or otherwise, which forbids a hand-written copy of a typed
10 document such as Exhibit "L" from being tendered as a validly admissible evidence; especially where the copy was certified. Moreover, neither the parties nor the court quarrelled with the certification of the copy (Exhibit L). Accordingly, Section 113(1) of the Evidence
15 Act which provides that:- *"The Court shall presume every document purporting to be a certificate, a certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorised thereto to be genuine, provided that such*
20 *document is substantially in the form and purports to be executed in the manner directed by law in that behalf."* has sway here. Thus, in the absence of any evidence to the contrary, there is a presumption that things are rightly and properly done in accordance with the maxim
25 *Omnia Praesumuntur Rite esse Acta*. I.R.P. (Nig.) Ltd v. Oviawe (1992) 5 NWLR (Pt 243) 572 Magnusson v. Koiki (1991) 4 NWLR (Pt. 183) 119 C.A. See also *Re Randle, Nelson & Anor v. Akofiranmi* (1962) 1 SCNLR 252; (1962) All NLR 130. Granted that the addresses of counsel had centred on the genuineness or otherwise of Exhibits "L"
30 and "U". it is my respectful view that such addresses cannot attain the acceptability of the primary evidence forthcoming from witnesses to the proceedings. See *Oduola v. Coker* (1981) 5 S.C. 197. Moreover and significantly, Exhibit "L" was tendered by the appellant through P.W. 3 whereas the respondents tendered Exhibit "U" as the deed
35 they were relying upon.

Further, it is settled law that parties are bound by their pleadings. See *Atolagbe v. Shorun* (1985) 1 NWLR (Pt. 2) 360 and *African Continental Seaways Limited v. Nigeria Dredgings Roads and General Works Ltd.* (1977) 5 S.C. 235 at 247. The court is pre-

cluded from speculating or making a case for either party to the proceedings by suo motu formulating the weakness in the case (if any) and resolving same in favour of one of the parties. See Ibuluya v. Dikibo (1976) 6 S.C. 97 at 104 and Ihewuezi v. Ekeanya (1989) 1 NWLR (Pt. 96) 239. As rightly pointed out in the judgment of the court below: *"Most importantly, neither in the pleadings, nor in evidence, nor in the address was any contradiction or inconsistency shown to exist between the contents of the two documents."* Thus, in the case in hand, it is the learned trial Judge, as opposed to the court below, that introduced extraneous matters into the case and so erred in not using the facts of the case as presented before him. By his findings, the learned trial Judge misdirected himself. Thus, the court below was clearly therefore justified when it held, disturbing such findings of fact, as follows:

".....on the pleading and the evidence the parties brought to court the learned trial Judge had no business trying to pick holes between the two documents Exhibits 'L' and 'U'. In any case, there were no such holes to pick."

Nor do I consider the invocation of Section 129 of the Evidence Act by the Court below as irrelevant as appellant in his argument would have us to hold.

Section 129 of the Evidence Act referred to above provides:

"Recitals, statements, and descriptions of facts, matters and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions,"

With regard to Exhibit D (copies of previous judgments) also attacked as matters extraneous to the case in hand. I endorse the views of the court below when it succinctly held:

"As none of these judgments has been pleaded as res Judicata all that they amount to is evidence of relevant facts....."

See Omosanya v. Anifowoshe (1959) SCNLR 217: (1959) 4 FSC 94.

The contention of the appellant that the Court below introduced extraneous matters in the instant case therefore lacks substance. See Ajadi & 2 Ors v. Okenihun & 2 Ors. (1985) 1 NWLR (Pt. 3) 484

at 486.

Issue 1 is accordingly answered in the negative.

ISSUE 2:

The submission of learned counsel for the appellant in respect of this issue is that the Court of Appeal erroneously relied on evidence which has not established long possession as found when it held at page 245, lines 1-10 of the Record thus:

"The appellants in 1963, after the death of their father, made a statutory declaration (Exhibit M) of the ownership of the land in dispute. They also tendered the demand notices and receipts for payment of tenement rates on the house on the land in dispute (See Exhibits R and T).

On the other hand, the respondent appears to have shown no concrete act of possession of the land apart from the judgment referred to above and tendering Exhibits A, B, C, D and 1-12 all of which are comparatively much more recent than the appellants' established long possession by themselves and their predecessor-in-title."

It is pertinent here to state that in further support of the above findings, which the appellant impugns, the respondents for their defence had called three witnesses, apart from themselves who tendered various Exhibits including.

(a) Exhibits "L" and "U", the certified true copy (hand written) and original (type-written) of respondents' conveyance respectively.

(b) Exhibits S and S1 - writ of summons on the respondents in respect of the house on the land in dispute.

(c) Exhibit Q - Approved, building plans of 1945 and 1946 for the respondent's house.

(d) Exhibit R - Tenement rates from the Council served on respondents in respect of the house on the land in dispute.

(e) Exhibit T -Receipts for rates paid by the respondents in respect of the tenement rates on the house on the land.

(f) Exhibit M - Statutory declaration of the respondents right to the land in dispute.

As opposed to the tendering and receipt of the above exhibits, the appellant adduced oral evidence by himself and through his witnesses tendered the following Exhibits viz:

(a) Exhibit "A" - True copy of Certificate of Purchase dated 13/

6/38 registered as No. 24/24/452 in the Colony.

(b) Exhibit "B" - Certified true copy of the Order made on 13/3/69 in Suit No. M/40/69.

(c) Exhibit "C" - Certified true copy of letter of Administration of Janet Ebun Adesola

(d) Exhibit "D" - Certified true copy of the Supreme Court⁵ judgment in Suit No. Sc. 615/66 delivered on 6/6/69

(e) Exhibit "J" - J2 - Warning notices pasted on the land to keep off would be trespassers in 1960 and 1970 respectively. 10

In a situation such as precipitated before the trial Court, it was glaring that the two contending parties were in effect claiming to be in possession. It is settled law that where two parties claim to be in possession of land the law ascribes possession to the one with the better title. See *Jones v. Chapman* (1848) 2 Exch 803; *Convey Island Commissioner v. Preedy* (1922) 1 Ch. 179 both of which were 15 quoted by this Court in the case of *Mogaji & 2 Ors. v. Odofin & Ors.* (1978) 4 S.C. 91 AT 96. See also *Alhaji J. Aromire & 2 Ors. v. J. Awoyemi* (1972) 1 All NLR (Pt..1) 101 at 112 - 115.

Now, true it is that the learned trial Judge reviewed the evi- 20 dence of the parties on this issue of possession and made findings of facts at pages 149-150 of the Record and coming down heavily in favour of the appellant. The position of the Court below vis-a-vis the trial court, as I see it, is that stated and restated times without number 25 by this Court regarding disturbance of findings of fact by an Appeal Court. It is, as stated by this Court in *Kuforiji v. V. Y.B. Nigeria Ltd.* (1981) 6-7 S.C. 40 at 84:

"Appeal Courts do not normally disturb findings of facts arrived at by the Courts below especially facts found by the trial courts. 30 Indeed they are reluctant and slow to do so based upon the errors apparent from the printed record of proceedings. The Appeal Court will however rise to the call of duty in the interest of justice and disturb, alter, reverse or set aside the lower Court's findings of facts if' on the printed evidence such findings cannot be supported or are not 35 proper conclusions and inferences to be drawn from the evidence."

In *George Okafor v. Eze Idigo III & Ors* (1984) 1 SCNLR 481 ..(1984) N.S.C.C. 360 this Court had occasion to reiterate its stand in respect of interference with findings of fact in these words:

"Where there is unchallenged evidence of oral evidence the Court of Appeal should consider itself to be in as good a position as the trial Court in so far as the evaluation of such evidence is concerned"

See also Okpiri v. Jonah (1961) 1 SCNL 174; (1961) 1 All
 5 NLR (Pt.1) 107; Roland Omoregie & 3 Ors. v. Oviawonyi
 Idugiemwanye & Ors. (1985) 2 NWLR (Pt.5) 41; (1985) 6 S.C. 150
 at 161 (Per Eso, J.S.C.); Victor Woluchem & 2 Ors v. Chief Simon
 Gudi & Ors (1981) 5 S.C. 291 at 326 and Paul Omoregbe v. Ehigiator
 10 Edo (1971) 1 All NLR 282.

Now, at the hearing of the instant case in the trial Court, after
 the approved building plans of 1945 and 1946 (Exhibit "Q") had
 been tendered through 2nd defendant who testified thereat as D.W.
 5. that witness said inter-alia at pages 127 and 128 in examination in
 15 chief as follows:

*"(Witness continues) In 1946 my father put up a building on
 the land and the building is still in existence till this moment....."*
 And

*"my father died in December, 1962 with two of us surviving
 20 him the 1st and 2nd defendant (sic) respectively. I have been going
 on the land since 1950. On several occasions I went with my dad to
 collect rents and to effect repairs."*

Except that while subjected to cross-examination, this witness
 25 denied knowing anything about the land being owned by Emmanuel
 Seton or that Emmanuel Seton became a judgment debtor; his land
 was sold. Added to his final denial of knowing the Wilson family: that
 the land in dispute was owned by Mrs. Janet Egun Adesola Wilson
 and (hat there has been any case on the land in dispute. nothing else
 30 came out of the cross-examination to indicate that respondents were
 not the people in possession of the land in dispute. Hence, the piece
 of evidence led through this witness (D.W.5) constituted unchallenged
 evidence from which the trial court could have inferred possession in
 the respondents' favour. Also, the 1st respondent. Victor Oladipupo
 35 Fowler testifying as D.W.1 had the following to say in examination-in-
 chief about 20 Idera Street Mushin in the trial court at page 105 thus:

*"There are tenants staying in the concrete building. My brother
 and I collect rents every month from the tenants in respect of the
 building. One of the tenants is Chief Gbadabu Kosoko(s;c) another*

tenant is Mr Oghen who lives in the temporaring (sic) building..... My brother and lawn the property together after the death of our father (sic) we found documents relating to the property in dispute in the wardrobe. My brother and I are the only two surviving children of our late father C.K. Fowler. When we found the documents we took the conveyance executed in favour of our father and the other documents to the Land Registry, Lagos to process..... Exhibit 'L' is the certified true copy or the conveyance of my father that we took to the Lands Registry. I first went on the land in dispute in 1950 with my father and there was then the only concrete building on it."

Not only did the respondents call Chief Gbadabiu Kosoko (D.W.1) to corroborate their evidence that he was their late father's tenant at 20 Idera Street. Mushin until he left his one room apartment thereat in 1960 but other tenants such as D.W. J. Joseph Oluwole Olusanya and D.W. 4 Gabriel Oghen, the latter who said he was tenant at the property since 1965 and until then had never known the appellant. To add potency and strength to respondents' case, D.W.2. Chief Gbadabu Kosoko, dealt a final blow to appellant's case when he said in examination-in-chief at page 107 thus:

"I know Emmanuel Seton - I also know his mother Dorcas Seton. Dorcas sold land to me. Fowler also bought from Dorcas."

This piece of evidence corroborated what D.W.5. Samuel Adesina Fowler who was 2nd defendant said when he testified at pages 126-127 of the Record as B follows: *"20 Idera Street is a large tract of land which was sold by Ojomo Eyisha Family to one Larinde who in turn sold to Kadiri and from Kadiri to Dorcas Bukosi Seton. Dorcas Seton then caused the land to be laid out in plots. These plots were auctioned by Joseph Ogundipe and my late father bought plots 124 and 125... My late father also obtained a conveyance from Ogunbayode and Dorcas Seton. This is a certified true copy of the conveyance Exhibit 'L' "With the evidence of these witnesses, formidable as it is, the Court below, in my view, was justified to have interfered albeit not lightly with the findings of file where the trial court had failed to assess the evidence of witnesses, form impression about them and evaluate their evidence in the light of the impression so formed. Added to the foregoing is the conclusion arrived at by the court below in relation to Exhibit "L" or "U" regarding the recitals therein and the application of section 129 of the Evidence Act which*

made it to hold that there being no evidence that these recitals were inaccurate, the same constituted the truth or the facts so recited. Hence, the complaint of the respondents as appellants about the way the learned trial Judge treated Exhibit "L" or "U" was held by the court below to be well-founded. It has been amply demonstrated in
5 my view, that since at least 1943 the respondents and their predecessor-in-title have been in possession of the land in dispute and that Mrs. Janet Ebun Adesola Wilson who challenged that right to possession in 1945 failed in her bid. Where a registered conveyance such as
10 Exhibit "L" is a certified true copy (hand-written) but properly received as in the instant case, this will be sufficient for the proof of due execution of such Deed of Conveyance. See *Jules v. Ajani* (1980) 5 - 7 S.C. 96; *Cardoso v. Daniel* (1966) 1 All NLR 25 and *Adelaja v. Fanoiki* (1990) 2 NWLR (Pt.131) 131 at 154. Where the original
15 (typewritten) Deed of Conveyance as Exhibit U in the instant case, speaks for itself or stands unchallenged in evidence at a trial, on its basis alone a plaintiff is entitled to judgment. See *Lion Buildings Limited v. M. M. Shadipe* (1976) 12 S.C. 135 at 159. Consequently, the decision of the Court below that the respondents and not the appellant have a better title over the land in dispute, is in my view, unimpeachable; there having been proof by preponderance in respondents favour when set side by side with appellant's case. See *Okupe v. Ifemembi* (1974) 3 S.C. 97 at 103. In the result, my answer to
20 Issue 2 is in the positive. It now remains to consider, issue 3 which
25 indicts the decision or the trial court for holding that the action was statute-barred. I agree with the statement or the law as propounded by learned counsel for the appellant. Mr. Alokolaro, if I understand him well. that Limitation Law cannot be invoked against a person
30 who is not a party in an action. See *M.S. Atunrase & Ors. v. Alhaji Abdul Majid Sunmola & Ors.* (1985) 1 S.C. 349; (1985) 1 NWLR (Pt.1) 105. Mr Alokolaro said in respect of the said Limitation Law of Lagos State- to use his own words in his final submission to us - "it does not apply since you cannot use it to extinguish the title of the
35 owners or predecessors-in-title without joining them."

Now, in the instant case, the owners (infact the question of predecessors-in-title would no longer strictly arise as both parties acknowledge derivation of the land in dispute from Ojomo Eyisha Chieftaincy Family and the respondents' root of title stemming as it does.

from Exhibit "L" or Exhibit "U" as held) would either mean the appellant or the respondents and so action having been commenced by the appellant in the Trial court against the respondents for declaration in fee simple to the land in dispute, general damages for trespass and an injunction, it is clear that Limitation Law of Lagos State would apply and joinder of the parties thereof impeccable regarding who is owner or is entitled to the declaration sought. Be that as it may, the general rule is that a plaintiff may have a cause of action but loses the right to enforce that cause of action by judicial process because the period of time laid down by the limitation law for bringing such actions elapsed. See: Savannah Bank of Nigeria Ltd v. Pan Atlantic Shipping & Transport Agencies Ltd & Anor (1987) 1 NWLR (Pt.49) 212. It is the law too that it is the defendant, in the instant case the respondents, who should plead and prove that the action instituted against them by the appellant is statute-barred. In other words, the onus is on the defendant who relies on such a defence of limitation of action to establish when the cause of action accrued to the plaintiff. Furthermore, it is also an established principle founded on the Savannah Bank v. Pan Atlantic Case (supra) that it is not enough to plead a particular date in the statement of defence as the date the cause of action arose because if the date is not admitted by any reply of the plaintiff to the defendant's statement of defence, it will be impossible to compute the limitation period it being not permissible; indeed wrong for a court to compute time from the date pleaded. Appellant filed no such reply in this case.

Furthermore, in the instant case, it being that the pleadings of the parties and evidence made it abundantly clear that issues were joined and the date the cause of action arose was at least 1946 i.e. when the respondents' father came on to the land in dispute and built on it as evidenced by the approved plans (Exhibit Q), the statute of limitation applied to extinguish the interest of the appellant, (cf Omosanya v. Anifowoshe (supra)). The court below was therefore justified to upset the trial court's decision part of which at page 143 to 144 of the record states:

"I have read the relevant section 16(2)(a), 18 and 19 (of the Limitation Law). Applying these sections to this case, it is not clear from the testimony of the defence witnesses as to what time the late Mr. Fowler came on the land.

...It is my view that this defence cannot avail the defendants as there was not time lapse of about twelve years from the date on which the right of action accrued... As between the plaintiff and the defendants, the statute does not apply as they are within time"

(Italics mine for emphasis)

5 From the preponderance of evidence adduced before the trial Court it was evidently clear that:

(a) The late CK, Fowler caused a plan to be made for the house on the land in dispute in 1946.

10 (b) That in that same year aforesaid he built a house on the said land.

(c) That in 1950, the 2nd D.W .. a former tenant of late CK. Fowler, rented a room in the house on the land and only left in 1960.

15 (d) That since 1950, D.W.5 and D.W.1., who are the surviving sons of late CK. Fowler had accompanied their father to the land.

(e) That in 1953, when 3rd D.W. first came into the land late C.K. Fowler's building was already there.

20 (f) That each of the defence witnesses merely gave evidence as to when he first got to (the building or when he first saw the respondents' father thereon; not when the house was built.

The Court below in my view therefore arrived at the right decision when at page 244 of the Record it held thus:

25 *"It is also clear that the learned Judge was in error to have thought that D.W. 2 who stated that he rented an apartment in the building in 1950 and left in 1960 contradicted the date of erection of the building. Similar is the evidence of D.W. 3 that he first saw the appellant (sic) father on the land in dispute in 1958. Each of those*
 30 *witnesses was giving evidence of when he got to the building or when he first saw the appellant's father not when the house was built,"*

Section 16(2) of the Limitation Law of Lagos State provides as follows: *"The following Section shall apply to an action by a person to recover land.*

35 (a) *Subject to paragraph (b) of this sub-section no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or if it first accrued to some person through whom he claims to that person."*

In view of the foregoing provisions, I am of the view that the

trial court therefore fell into serious error when it held that:

"As between the plaintiff and the defendants the statute does not apply as they are within time,"

Between 1946 when the cause of action accrued and the time the appellant took out his Writ of Summons on 16th November, 1977. it was clearly thirty-one years of G inaction - call it acquies-
cence - when appellant did nothing to assert his rights. See *Atunrase v. Sunmola* (supra).

The effect of the law (Limitation Law, Lagos State) is in my view not only that the appellant could not sue at the time he went to court, but that by failure to abide by the provisions of section 21 of the same Law which provides that:

"21. On the expiration of the period fixed by this law for any person to bring an action to recover land, the title of that person to the land shall be extinguished,"

See *Sosan v. Dr. M. B. Ademuyiwa* S.C3/1984 of 16/5/86 (1986) 3 NWLR (Pt. 27) 241. The appellant was therefore suing the respondents in 1977, late in the day, to revive a dead claim. Appellant's action thereby became statute-barred. See *Fadare & Ors v. Attorney General of Oyo State* (1982) 4 S.C.1 at page 8.

The result of all I have been saying is that Issue 3 is also answered in the affirmative. The appeal accordingly fails and it is dismissed with costs assessed at N1,000 only in favour of the respondents.

KARIBI-WHYTE JSC

I have read the judgment of my learned brother Onu, J.S.C. in this appeal. I agree with the reasoning and conclusion that this appeal should be dismissed. I only wish to make my contribution to the effect of the defence of the Limitation Law of Lagos State on the action of the plaintiff. In my view a successful defence based on the provisions of sections 16(2)(a) 19(1) and 21 of the Limitation Law determines the action in favour of the defendant/respondent.

This appeal is against the judgment of the Court of Appeal Lagos State Division, which on the 17th June, 1986 allowed the appeal against the judgment of W. Ajao Oshodi J. of the High Court of Lagos State delivered on the 8th day of October, 1982.

THE FACTS

Plaintiff in a writ of summons dated 16th Nov., 1977, brought an action against the defendants claiming a declaration of title to a piece or parcel of land situate, lying and being at No. 20 Idera Street, Palm grove, Mushin West, Lagos State. There was a claim for N200
5 general damages for trespass and an injunction restraining the defendants, etc. from committing further acts of trespass on the said land. The action was tried on pleadings.

In their pleading and oral evidence before the court at the
10 trial, it was common ground that the land in dispute originally was part of a very large piece of land belonging to the Ojomo Eyisha Family.

Plaintiff traced his title to the Ojomo Eyisha family, through Larinde Agba, who in 1910 had bought a piece of land measuring
15 about 41,786 acres including the land in dispute. In 1912 Larinde Agba sold this land to Emmanuel Seton. In March, 1936 the land was sold by Public Auction to Messrs J. O. Adewunmi and J. A. Adebiyi pursuant to an Order of Court to satisfy judgment debt incurred by Emmanuel A. Seton in Suit No. 169/1932 - Bello Larinde v.
20 Emmanuel Seton. In 1938 a certificate of purchase was issued to Adewunmi and Debiyi and in whose names the land was duly registered.

In 1944, Adewunmi and Adebiyi sold the land to Mrs. Janet
25 Egun Adesola Wilson. On the death of Mrs. Wilson and her husband Ezekiel John Adeyinka Wilson, letters of administration were taken out by their blood relations, that is Thomas Abisola Olayide Wilson, Mrs. Elizabeth Kofoworola Adewunmi, Nathaniel Akinbowale Williams, and Alhaja Aminatu Alake Idris. The administrators of the Es-
30 tate who took possession of the land, sold part of it to the plaintiff in 1970 when in 1977 plaintiff wanted to erect a building on the land sold to him, he was obstructed by the defendants. He then brought this action.

On their part, defendants, as plaintiff have also traced their
35 root of title to the same Ojomo Eyisha Family, in 1913. Their claim is that in 1913, one Larinde Jaguniwon (probably the same as plaintiffs Larinde Agba) bought from the Ojomo Eyisha Family under customary law, a large piece of land, of which the land in dispute is a part. In 1915 Larinde Jaguniwon sold the land to one Abudu Kadiri. Kadiri

later transferred the land to Dorcas Bukosi Seton, the mother of Emmanuel Seton, through who plaintiff claims. Dorcas Seton caused the land to be laid out into plots and sold through her agent, Mr. J. O. Ogundipe.

In 1939. Cornelius Kolade Fowler, father of the defendants bought plots 124 & 125 measuring 50' x 100' each. He was put in possession of the two plots. He later built on the land. He completed the house he built on the land in 1945 and let the rooms to tenants. On the death intestate of Cornelius Kolade Fowler, the defendants succeeded him under customary law.

As I am concerned in this judgment only with the defence of limitation, I shall confine myself essentially to the pleadings raising the defence, and the evidence in support of the pleadings.

In the amended statement of defence, it was pleaded as follows:

"5. The said Larinde sold the same to one Abudu Kadiri in fee simple sometime on 23/12/1915 and later the same was transferred to one Dorcas Bukosi Seton and was put in possession thereof.

6. The said Dorcas Bukosi Seton caused the hereditaments to be laid out into plots and caused the same to be sold by auction by one Mr. J. O. Ogundipe whereby the defendant's father became the purchaser of Plots No. 124 and 125 measuring 50' x 100' each and a receipt No. 44 of 24th August, 1939 was issued to the said purchaser who was put in possession of the same. The defendants will rely on this receipt.

7. After the defendants' father had been in possession for some time and in 1943 caused a conveyance of the same to be prepared and was registered as No. 91 at page 91 in Volume 661 of the Lands Registry in the office at Lagos.

8. That the said Late C.K. Fowler erected a residential building on a portion of the land with an approved building plan in 1945 plan No.B.A. 126/45. The defendants will rely on this plan.

9. Since the completion of the building in 1945 the defendants' predecessor in title has been in undisturbed possession of the land including the portion built upon.

10. The defendants' predecessor had been letting the house to tenants and amongst the tenants was one Kosoko Gbadebiyu who owned No. 27 Idera Street, Odiolowo, a contiguous property. The

defendants will rely on suit No.ID/24n4 between T.A.G. Wilson and E. K. Adewunmi (Adm. of Mr. & Mrs. Wilson) v. Kosoko Ghadebiyu.

11. The defendants aver that the land in dispute belong to one Madam Dorcas Bukosi Seton on her right by purchase for value and she was in possession for a long period before parting the same to the defendants' father in 1939 as per the purchase receipt pleaded in paragraph 6 above.

17. The defendants will also rely on long possession, Limitation Law, Laches and all equitable defences etc."

10 These averments remained unanswered by the plaintiff in his amended pleadings. At the trial defendants led evidence in support of the averments. It is important and relevant to the defence raised to refer to the evidence of D.W.1, D.W. 2 and D.W.5.

In examination-in-chief, Victor Oladipupo Fowler testifying as D.W.1 said,

"There are tenants staying in the concrete building. My brother and I collect rents every month from the tenants in respect of the building. One of the tenants is Chief Gbadabiu Kosoko (sic) another tenant is Mr. Oghen, who lives in the temporary (sic) building.

20 *My brother and I own the property together after the death of our father (sic) we found documents relating to the property in dispute in the wardrobe. My brother and I are the only two surviving children of our late father C. K. Fowler. When we found the documents we took the conveyance executed in favour of our father and the other documents to the Lands Registry, Lagos, to process... I first went on the land in dispute in 1950 with my father and there was then the only concrete building."*

D.W. 2, Chief Gbadabiu Kosoko corroborating the evidence of the defendants said:

"I know Emmanuel Seton. I also know his mother Dorcas Seton. Dorcas sold land to me. Fowler also bought from Dorcas."

D.W. 5 had testified as follows:

35 *"20 Idera Street is a large tract of land which was sold by Ojomo Eyisha Family to one Larinde who in turn sold to Kadiri and from Kadiri to Dorcas Bukosi Seton. Dorcas Seton then caused the land to be laid out in plots. These plots were auctioned by Joseph Ogundipe and my late father bought plots 124 and 125... My late father also obtained a conveyance from Ogunbayode and Dorcas Seton. This is*

a certified true copy of the conveyance, Exhibit 'L'.

In 1946 my father put up a building on the land and the building is still in existence till this moment.... my father died in December, 1962 with two of us surviving him, the 1st and 2nd defendant (sic) respectively. I have been going on the land since 1950. On several occasions I went with my dad to collect rents and to effect repairs." 5

The learned trial Judge rejecting the defence that the Limitation Law applied, observed:

"It is also admitted in paragraph 20 of the amended statement of defence as follows -that the plaintiffs' purported predecessor - in title, Mrs. Egun Adesola (deceased) in her life time made enquiry from the defendants' predecessor-in-title as to his right to possession and title over the land in dispute. This act in my view shows a claim to possession. There is no evidence led by the defendants to establish that the claim was ever restored in favour of their late father." 10 15

Subsequent thereto, and referring to conveyances in favour of the defendants, the learned Judge added.

There are Exhibit 'L' and 'U' which I have dealt with and I could not accept that the defendant's predecessor-in-title had anything since 1944. but from the evidence led assuring that defendants' predecessor was on the land in 1944, they (the defendants) in their amended statement of defence in paragraph 20 admitted that the right of their father was challenged by Mrs. Egun Adesola who died in 1948. obviously the right of their father had been challenged ever since he thought he became possessed of the land" 20 25

The learned trial Judge finally concluded.

"Applying the facts in this case to the law as is set out above, it is my view that the facts do not amount to estoppel by conduct on the part of the plaintiff. The plaintiff and his predecessor-in-title did all within their power to apprise the defendants and their predecessors of his claim to the property, but in spite of that knowledge they embarked on the erection of the building. From the evidence or the 1st, 2nd and 5th D.W. it is clear that the building was put up around 1950 and that will be nearly two years after the death of Mrs. Egun Adesola Wilson who died in 1948. It is also my view that the money was expended with knowledge of the real state of the title and I am reinforced in this belief by the urge of the defendants in preparing Exhibit M instead of going to Court for declaration of title. The de- 30 35

defendants had actual and constructive notices of the plaintiffs' title, hence they will be precluded from raising the defence of an estoppel."

It is clear from the conclusion of the learned Judge that he was concerned only with the defence of estoppel. He did not properly
 5 advert to the issue of limitation of time raised in paragraph 20 of the amended statement of defence. The learned trial Judge was right in his conclusion that the claim of the plaintiffs' predecessor-in-title to the land in dispute was not resolved. He was however wrong in his
 10 view that the feeble confrontation which was not even sustained was any challenge to the assertion of the possession by C.K. Fowler, the defendants' father. It is this defence available to the defendants on the evidence before the learned Judge which the Court of Appeal relied upon in reversing the decision of the learned Judge. Nnaemeka-
 15 Agu, J.C.A. (as he then was), reading the judgment of the Court correctly observed:

*"But by far the most glaring error of the learned Judge is in the way he handled the limitation of action pleaded and relied upon by the appellants. He simply considered possession by the appellants
 20 alone, and not that of their father and held that the action was not barred by statute. In my view he should have considered that by their father and their predecessors-in-title also. As I have said, appellants' father had been in continuous possession at least since 1946 when he built a house on the land. But this action was filed on the
 25 16th November, 1977, that is after a period of 31 years. Evidence of the 1st, 2nd, 3rd and 5th defence witnesses as well as Exhs. Q,R,J. and M. put it beyond question that he and his successors-in-title (appellants) have been in continuous possession of the land in dispute
 30 since then, Their possession is clearly adverse to the respondents and his predecessor-in-title. Ebun Adesola Wilson did not institute any action against the appellants' father till she died in 1948. There is evidence that she knew of appellants' father's presence on the land. All that her executors could boast of was that they issued warning
 35 notices. Exhs. J-12 in 1960; 1969; 1970; but clearly these do not amount to instituting a suit.....It is clear from the evidence outlined above that the appellants and their predecessors-in-title have been in adverse possession of the land in dispute since at least 1946, that is at least 31 years before the institution of this suit."*

The Court of Appeal then pointed out that the answer to the effect of the above facts will be found in the provisions of section 16(2)(a), 19(1) and 21 of the Limitation Law Cap. 70 Laws of Lagos State 1973. After setting out the above sections, the Court went on to observe, in part, as follows:

"It is clear from the facts outlined above that the respondents' suit is caught by the statute. The effect is not only that he cannot sue at the time he went to court, but that by the provision of section 21 of the Law, his title had been extinguished. See on this Mrs. GAR. Sosan & Ors v. Dr. M.B. Ademuyiwa (supra)."

The Court accentuated the difference between the effect of section 21 of the Limitation Law Cap. 70 of Lagos State which extinguishes a pre-existing right and many other similar laws including the Public Officers Protection Act, 1958, Cap 168, which merely destroys the remedy and not the right by providing that "no action shall be brought" or that "no proceedings shall lie" and concluded as follows:

"It follows, therefore that at the time the respondents, as plaintiffs, went to Court, if he had any title to the land in dispute it had been extinguished."

Learned counsel to the appellant has challenged this conclusion of the court below of the application of the Limitation Law. It was submitted that the Court below failed to ascertain the punctus temporis of the accrual of the right of action of the plaintiff or his predecessors-in-title. It was also submitted that there was no evidence on the record that plaintiff or his predecessor-in-title in possession of the land in 1946 failed to take action against the defendants. Referring to the evidence of the plaintiff and his witnesses, learned counsel to the appellant submitted that on the evidence before the trial Court, the right of action could not have accrued to the plaintiff until 1977. This was when plaintiff was disturbed by the defendants. It was submitted that there was no evidence to support the finding by the Court of Appeal, that Egun Adesola Wilson, predecessor-in-title of the plaintiff who knew of the presence on the land of the defendants' father in 1946 could have instituted action against the defendants' father before she died in 1948.

Learned counsel relying on *Atunrase & Anor v. Sunmola & Anor* (1989) 1 NWLR (Pt.1) 105, finally submitted that the Limitation Law cannot be invoked against the predecessors-in-title of the

plaintiff, who are not parties to the action. In his own submission, learned counsel to the respondent observed that the learned trial Judge did not find as a fact the date on which the right of action accrued to the plaintiff. He referred to the unchallenged and uncontradicted evidence of D.W.1, D.W.2 and D.W. 3, that defendants' father had been on the land in dispute since 1946 when he built on the land as evidenced by Exhibit Q, the approved building plan. D.W.3's evidence was to the effect that in 1953 when he bought his own land, the building of the defendants' father was already there.

The findings of fact of the trial Judge is not to be lightly interfered with, unless where it is shown to be perverse, or does not follow from the evidence before the Court. See *Orji v. Zaria Industries Ltd.* (1992) 1 NWLR (Pt.216) 124 S.C. It is the law that where the trial Judge has failed to evaluate the facts before him, or has not drawn the proper conclusions or inferences, the appellate court is entitled to draw the proper conclusions. See *Okunzua v. Amosu* (1992) 6 NWLR (Pt. 248) 416. I have already referred to the judgment of the Court below. I am satisfied the Court was entitled in the circumstances of this case and on the facts before title learned trial Judge, and the fact that he failed to properly assess the evidence of the witnesses and come to the proper conclusion which he could have reached, to come to the conclusion it did.

The Court below also referred to Exhibit "L" or "U" and the recitals therein. It also relied on Section 129 of the Evidence Act, that where there is no evidence that the recitals are inaccurate, they constitute the truth of the facts so recited. I think the Court below was right in its criticism of the manner in which the learned trial Judge treated Exhibit 'L'. This is because, based on the evidence before him, that at least since, 1943, defendants and their predecessors-in-title have been in possession of the land in dispute. There is also evidence that Mrs. Janet Ebun Wilson, who challenged their right in 1945 failed in her bid. There was no other evidence of another challenge before she died in 1948. He ought to have held that defendants have been in possession from 1943.

It is appropriate at this point to interpret the provisions of Sections 16, 19 and 21 of the Limitation Law of Lagos State relied upon by the appellants. These provisions relate to actions For the recovery of land.

Section 16(1)

"Subject to the provisions of subsections (2) and (3) of this section, no action shall be brought by a State Authority to recover any land after the expiration of twenty years from the date on which the right of action accrued to the State authority or if it first accrued to some person through whom the State authority claims, to that person."

(2) the following provisions shall apply to an action by a person to recover land:

(a) subject to paragraph (b) of this subsection, no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or if it first accrued to some person through whom he claims, to that person.

(b) if the right of action first accrued to a State authority, the action may be brought at any time before the expiration of the period during which the action could have been brought by the State authority, or of twelve years from the date on which the right of action accrued to some person other than the State authority, whichever period first expires.

(3) X X Not applicable X

"19(1) No right of action to recover land shall be deemed to accrue unless available to the plaintiff was extinguished by section 21 of the Limitation Law in 1958. i.e. twelve years after C.K. Fowler entered on the land and Mrs. Ebun Adesola Wilson, failed to exercise her right of action for a declaration of title to the land."

I entirely agree with the interpretation of the provisions of sections 16, 19 and 21 of the Limitation Law of Lagos State and their application to the facts of this case. The submission of learned counsel to the appellants before us that the cause of action accrued only in 1977 when the plaintiff was disturbed by the defendants would appear to me to have ignored the established facts staring the Judge unwaveringly straight at the face.

The Court of Appeal was also criticised for its finding that Mrs. Ebun Adesola Wilson, the predecessor-in-title of the plaintiff who was aware of the presence, on the land in dispute of the defendants' father, Mr. C.K. Fowler, never instituted any action, was wrong, there being no evidence on which the Court based such a finding. There is

no doubt, there is abundant evidence on the record from which the inference could be drawn. The Court below was right in drawing the inference.

The decision of this Court in *Atunrase & Anor v. Sunmola & Anor* (1985) 1 NWLR (Pt. 1) 105 relied upon by appellant is different both on the facts and in the principle relied upon. Besides only Oputa, J.S.C. of the five Justices, dealt with this issue. Kawu, J.S.C., who read the leading judgment did not consider the issue. Concisely, stated the title involved in *Atunrase's* case is that of the *Oyero* family, which is not a party to the litigation. On the other hand, in the instant case, the plaintiff has acquired all the interest of *Madam Egun Adesola Wilson* and relies on her title. Plaintiff is a party to the case.

Section 16(1) specifically provides that the twelve years to bring the action "accrues to {he person bringing it or, if it first accrued to some person through whom he claims, to that person." Hence in this case the right of action accrued first to *Mrs. Egun Adesola Wilson*, the predecessor-in-title of the plaintiff in 1946, and the period would be reckoned from that date. *Mrs. Wilson's* title was extinguished in 1958. Learned counsel has cited my learned brother Oputa, J.S.C.'s well reasoned statement out of context. Although the issues of joinder was discussed and the dictum credited to Oputa, J.S.C. was made. The more relevant and pertinent dictum appears at p. 120, when he said:

"Acquiescence, when available should relate to and be personal to the parties to the action or to those who derived title from those parties - their privies and not contra mundum."

He went on to say. at p. 120.

"In the present case on appeal no one pleaded any acquiescence against the two defendants. The Oyero family was not joined and neither acquiescence nor limitation could have been pleaded against them and yet the courts below are now depriving them of their rights to sell or lease their land without as much as giving them a hearing, let alone a fair hearing under section 33(1) of the 1979 Constitution."

In effect the dictum was based on the fact that neither acquiescence nor Limitation Law was pleaded. It therefore cannot govern the instant case where the Limitation Law was pleaded and relied upon.

Plaintiff claims to have derived title from the administrators of the Estate of Mrs. Wilson in 1970. This was after her title had been extinguished. The Administrators of the Estate of Mrs. Wilson can only convey to the plaintiff whatever title they had at the time. Nemo dot quod nail habet. It is clear on the law that in 1970 when plaintiff bought from the Administrators of Mrs. Wilson, her right of action in respect of the land in dispute had been extinguished by section 21 of the Limitation Law. Plaintiff had no title in respect of the land in dispute, and the action should have failed in limine. 5

In view of my conclusion above, and for the fuller reasons given in the judgment of Onu, J.S.C., to which I agree, I hereby dismiss this appeal. Appellants shall pay N1,000.00 as costs to the respondents. 10

15

WALI JSC

I have read in advance the lead judgment of my learned brother, Onu, J.S.C. and with which I agree.

For those reasons stated in the judgment, I agree with the conclusion that the Court of Appeal was right in interfering with the trial court's judgment since the learned trial judge had failed to properly evaluate and assess the evidence adduced. 20

The plaintiff's case was not only statute barred but the title he was claiming was extinguished by section 21 of Limitation Law, Cap. 70, Laws of Lagos State, 1973. 25

The appeal lacks merit and same is dismissed with N1,000.00 costs to the defendants. The judgment and order of the Court of Appeal are hereby affirmed. 30

OLATAWURA JSC

I had a preview of the judgment of my learned brother Onu, J.S.C. just delivered. My learned brother has stated in details the facts and the law applicable. I therefore agree with his reasoning and conclusion. I will also dismiss the appeal. I will also award the sum of N1,000.00 in favour of the respondents. 35

OGUNDARE JSC

The plaintiff by a writ of summons sued the defendants claiming declarations of title to a piece or parcel of land situate, lying and being at No.20 Idera Street, Palmgrove, Mushin West, Lagos State, N200.00 general damages for trespass and an injunction restraining the defendant etc. from committing further acts of trespass on the said land. Pleadings having been ordered, were duly filed and exchanged and with leave of court amended. The action proceeded to trial on the amended pleadings. After hearing evidence and addresses of learned counsel for the parties, the learned trial Judge in a reserved judgment found in favour of the plaintiff and entered judgment for him in terms of his claims. Being dissatisfied with that judgment, the defendants appealed to the Court of Appeal and the latter Court in a well considered judgment allowed the appeal, set aside the judgment of the trial court and dismissed plaintiff's claims. It is against that judgment that the plaintiff has now appealed to this Court upon four original and one additional grounds of appeal.

In his brief of argument filed on 18/5/88 and the supplementary brief filed on 15/11/91 the following issues are set out as calling for determination in this appeal:

"1. Whether the Court of Appeal has the right to introduce extraneous matter into the respondent's case on which no evidence was adduced in the lower court.

2. Whether the defendant (respondent herein) has adduced sufficient evidence to prove acts of long possession to justify the findings of fact made by the Court of Appeal to enable it allow the appeal, and to interfere with the findings of the lower court.

3. Whether the statute of Limitation applies in this case.

4. Whether the long possession ascribed to the defendant without the knowledge of the plaintiff or his predecessor-in-title can defeat the established title of the plaintiff.

5. Whether the law of limitation can defeat the title of a family without joining the party to the action."

Issue (4) above does not arise any longer as this Court refused leave to the plaintiff to argue the ground of appeal encompassing it:

The defendants for their part set out the following three issues in their amended brief of argument filed on 16/12/91:

"1. Whether or not the learned Justices of the Court of Appeal

were right in not supporting the findings made by the trial Judge having regard to the pleadings and evidence on record.

2. Whether or not, in the circumstances of this case the Court of Appeal was right in holding that the respondents have adduced sufficient evidence to prove acts of ownership and long possession by their predecessor-in-title superior to those of appellant. 5

3. Whether or not, as between the respondents and the appellant, the statute of limitation applied to extinguish the interest of any of the appellants."

Before I go further I need to set out the facts rather briefly: 10

Both parties agree that the land in dispute forms part of a larger piece of land originally belonging to the Ojomo Eyisha Family. According to plaintiff, the larger piece "measuring about 41.786 acres including the land in dispute" was sold to one Larinde Agba in 1910. The latter sold the land to one Emmanuel Adekunle Seton in 1912. 15 In March, 1936 the land was sold to Messrs. Joseph Obayemi Adewunmi and Joseph Adebowale Adebiyi by public auction pursuant to an order of court to defray judgment debt incurred by Emmanuel Adekunle Seton in Suit No. 169/1932, Bello Larinde v. Emmanuel Seton. A certificate of purchase was issued in favour of 20 Adewunmi and Adebiyi and duly registered. In 1944, Adewunmi and Adebiyi sold the land to one Mrs. Janet Egun Adesola Wilson. Following the death of both Mrs Wilson and her husband Ezekiel John Olayinka Wilson intestate, their blood relations, that is Thomas 25 Abisola Olajide Wilson (P.W.2), Mrs. Elizabeth Kofoworola Adewunmi, Nathaniel Akinbowale Williams and Alhaja Aminatu Alake Idris, obtained letters of administration to administer the estate of the late Mrs. Janet Egun Adesola Wilson. The said administrators took possession of the land bought by Mrs. Wilson and later sold a part of it to 30 the plaintiff. It is this part that is now in dispute. Following the sale to him, plaintiff wanted to erect a building on the land in 1977 but was obstructed by the defendants. Hence this action.

Defendants on the other hand traced their root of title to Ojomo Eyisha Family. They claim that in 1913 Ojomo Eyisha Family sold 35 under customary law a large piece of land (of which the land in dispute formed part) to one Larinde Jaguniwon (presumably the same person as Larinde Agba mentioned by plaintiff) who in turn sold the land in 1915, to one Abudu Kadiri. Kadiri later transferred the land to

Dorcas Bukosi Seton (agreed by both sides to be the mother of Emmanuel Adekunle Seton, through whom plaintiff claimed title.) Madam Dorcas Seton caused the land to be laid into plots and sold the plots through her agent. Mr. J.O. Ogundipe. In 1939 defendant's father. Cornelius Kolade Fowler bought Plots 124 & 125 measuring
 5 50 feet by 100 feet each. Mr Fowler was put in possession of the two plots and later built on the land. He completed the house he built on the land in 1945 and let the rooms in the house out to tenants. On his death intestate in 1962 the defendants succeeded him under customary law.

10 There have been some litigations over parts of the land originally sold by the Ojomo Eyisha Family and which devolved in succession to various people. The main question in those cases as well as in the present action was as to whom between Madam Dorcas Seton
 15 and her son Emmanuel Adekunle Selon, the land at one time devolved. The trial High Court accepted the history of devolution as put forward by the plaintiff the Court of Appeal, found there was no proper evaluation of the evidence by the trial Judge and on are-evaluation exercise carried out by it, it found for the defendants. The
 20 plaintiff has attacked in the appeal before us the findings of the Court or Appeal. In view, however, of the effect of whatever title one may find in the plaintiff or his predecessor-in-title of questions (3) and (6) raised in his Brief (which form question (3) in defendant's brief) if
 25 successful. I will first concern myself in this judgment with the issue raised by those questions. This is so, because if it is found that the title of plaintiff's predecessor-in-title had been extinguished by operation of law, as found by the Court of Appeal, that would be the end of his claim. I now proceed to consider that issue.

30 The defendants had in their amended statement of defence pleaded inter alia as follows:

"5. The said Larinde sold the same to one Abudu Kadiri in fee simple sometime on 23/12/1915 and later the same was transferred
 35 to one Dorcas Bukosi Seton who was put in possession thereof.

6. The said Dorcas Bukosi Seton caused the hereditaments to be laid out into plots and caused the same to be sold by one J.O. Ogundipe whereby the defendants' father became the purchaser of plots No. 124 and 125 measuring 50' x 100' each and a receipt No.

44 of 24th August 1939, was issued to the said purchaser who was put in possession of the same. The defendants will rely on this receipt.

87. After the defendants' father had been in possession for some time, in 1943, he caused a conveyance of the same to be prepared and it was registered as No. 91 at page 91 in volume 661 of the Land Registry in the office at Lagos. 5

8. That the late C.K. Fowler erected a residential building *nee vi nec clam nec precario* on a portion of the land with an approved building plan No. E.A. 125/45 registered as IKJ/181 at the divisional office at Ikeja. The defendants will rely on this plan. 10

9. Since the completion of the building in 1945, and until his death in 1962, the defendants predecessor in title had always been in undisturbed possession of the whole land including the portion built upon. 15

10. The defendants' predecessor in title had been letting the house to tenants and amongst the tenants was one Kosoko Gbadebiyu who owned No. 27, Idera Street, Odiolowo a contiguous property. The defendants will rely on suit No. ID/24/74 between T.A.O. Wilson and E.K. Adewunmi (Adm. of Mr. and Mrs. Wilson) v. Kosoko Gbadebiyu. 20

(a) The defendants had been going on the land with their predecessor in title, in his life time to collect rent, effect repairs etc. and since his demise have been doing the same as owners exercising in various ways act of ownership without disturbance and are still very much in possession of the land till today. 25

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20. The defendants aver that the plaintiff's purported predecessor in title Mrs. Ebun Adesola (deceased) in her life time made enquiry from the defendants' predecessor in title as to his right to possession and title over the land in dispute, the defendants' late father Mr. C. K. Fowler, proved his title to the satisfaction of the late Mrs. Ebun Adesola and it was resolved that C.K. Fowler (deceased) had an unassailable title to the land in dispute. 35

(i) The defendants aver that the plaintiff is estopped from bringing this suit by the conduct of Mrs. Ebun Adesola (deceased) and her vendors Messrs Adewunmi and Adebiyi who all saw Mr. C.K. Fowler (deceased) effectively occupying the land in dispute, and acquiesced

in it up to the date including the date of the death of Mrs. Ebun Adesola (deceased in 1953, and the death of C.K. Fowler in 1962.

(ii) The defendants further aver that their predecessor in title was neither the tenant of any description of either Adewunmi and Adebisi nor that of Mrs. Ebun Adesola (deceased) but occupied the
5 land in dispute by virtue of his purchase from Madam Dorcas Bukosi Seton pleaded in paragraph 11 above."

The plaintiff did not file a rely to these averments. Evidence was however led at the trial in support of the averments by the defendants. The learned trial Judge in his judgment observed as follows:
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*"It is also admitted in paragraph 20 of the amended statement of defence as follows that the plaintiff's purported predecessor-in-title Mrs. Ebun Adesola (deceased) in her life time made enquiry from
15 the defendant's predecessor-in-title as to his right to possession and title over the land in dispute. This act in my view shows a claim to possession. There is no evidence led by the defendants to establish that the claim was ever resolved in favour of their late father."*

Later he added:
20 *"There are Exhibit 'L' and 'U' which I have dealt with and I could not accept that the defendant's predecessor-in-title had anything since 1944. But from the evidence led assuming that the defendant's predecessor was on the land in 1944, they (the defendants) in their amended statement of defence in paragraph 20
25 admitted that the right of their father was challenged by Mrs. Ebun Adesola who died in 1948. Obviously, the right of their father had been challenged ever since he thought he became possessed of tile land."*

30 Finally, the learned trial Judge found:

Applying the facts in this case to the law as set out above, it is my view that the facts do not amount to estoppel by conduct on the part of the plaintiff. The plaintiff and his predecessor-in-title did all within their power to apprise the defendant and their predecessors of
35 his claim to the property in spite of that knowledge they embarked on the erection of the building. From the evidence of the 1st, 2nd And 5th D.W., it is clear that the building was put up around 1950 and that will be nearly two years after the death of Mrs. Ebun Adesola Wilson who died in 1948. It is also my view that the money was

expended with knowledge of the real state of the title and I am reinforced in this belief by the urge of the defendants in preparing Exhibit 'M' instead of going to Court for Declaration of Title. The defendants had actual and constructive notices of the plaintiff's title hence they will be precluded from raising the defence of an estoppel."

The Court of Appeal in its own judgment per Nnaemeka-Agu, 5 J.C.A. (as he then was) held the following view:

"But by far the most glaring error of the learned Judge is in the way he handled limitation of action pleaded and relied upon by the appellants. He simply considered possession by the appellants alone, 10 and not that by their father and held that the action was not barred by statute. In my view, he should have considered that by their father and their predecessor-in-title also. As I have said, evidence shows that the appellants' father had been in continuous possession at least 15 since 1946 when he built a house on the land. But this action was filed on the 16th of November, 1977, that is after a period of 31 years. Evidence of the 1st, 2nd, 3rd and 5th defence witnesses as well as Exhs, Q, R, T and M put it beyond question that he and his successors-it-title (appellants) have been in continuous possession of 20 the land in dispute since then. Their possession is clearly adverse to the respondents and his predecessor-in-title. Ebum Adesola Wilson did not institute any action against appellant's father till she died in 1948. There is evidence that she knew of appellants' father's presence on the land. All that her executors could boast of was that they 25 issued warning notices, Exhs. J-12 in 1960, 1969, and 1970: but clearly these do not amount to instituting a suit. When confronted with the above facts, the answer of the learned counsel for the respondent is that before the period of limitation could be held to have 30 started to run, there must be persons who could sue on behalf of the respondent; and that there were none. He relied for this submission on the case of *Lasisi Fadare & Ors. v. Attorney General of Oyo State* (1982) 4 S.C. 1, at p. 25. In my view, this cannot be true because respondent's predecessor-in-title, Ebum Adesola Wilson was alive in 35 1946 when the appellants' father built on the land, she only died in 1948. There have been administrators to her estate who sold the land to the respondent in 1970. He had the land conveyed to him by Exh. F dated 5th day of July. 1972; but he did not institute this action till over five years later. Two judgments Exhs. D and E were

tendered by the respondent to, as pleaded in paragraph 18 of the amended Statement of claim 'fortify his title.' It was not averred that the appellants were parties or privies to the parties in those cases nor were any facts pleaded upon which the judgment could be held binding on them. As Oputa J.S.C. pointed out in the recent case of Mrs.
 5 G.A.R. Soson & Ors. v. Dr. M.B. Ademuyiwa; S. C. 3/1984 of the 16th day of May, 1986 now reported in (1986) 3 NWLR (Pt. 27) 241.

'Decisions between parties as a plea operate as a bar and as
 10 evidence they are conclusive: Duchess of Kingston's Case (1776) 2 Smith L.C. (13th Edn) 644. But it must be decisions interpartes, strictly between parties, or their privies. Strictly speaking none of the parties to the present case was a party in Onosanya v. Anifowoshe (supra).'

See also Odunsi v. Boulos (1959) SCNLR 291: (1959) F.S.C.
 15 234, per Brett F.J. at P. 237. In the instant case the appellants are not claiming through the defendant who lost in Exhs. D or E. As far as the plea of limitation of action in this, case goes, Exhs. D and E are useless. The respondent's counsel probably realised this while drafting his pleading; this was why he was content to use them to 'support his title.

20 It is clear from the evidence outlined above that the appellants and their predecessor-in-title have been in adverse possession of land in dispute since at least 1946, that is at least 31 years before the institution of this suit. What then is the effect of this? The answer is to be found in the provisions of sections 16(2)(a), 19(1) and 21 of Limitation Law, Cap. 70,
 25 Laws of Lagos State 1973, which provide as follows:

16(2) The following provisions shall apply to an action by a person to recover land -

(a) subject to paragraph (b) of this subsection, no such action shall be brought after the expiration of twelve years from the date on which the
 30 right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person;

"19(1) No right of action to recover land shall be deemed to accrue unless the land is in the possession (in this section referred to as adverse possession) of some person in whose favour the period of limitation can
 35 run.

"21 On the expiration of the period fixed by this Law for any person to bring an action to recover land, the title of that person to the land shall be extinguished."

It is clear from the facts outlined above that the respondent's suit is

caught by the statute. The effect is not only that he could not sue at the time he went to court, but that by the provision of section 21 of the Law, his title had been extinguished. See on this Mrs. G.A.R. Sosan & Ors v. Dr. M. B. Ademuyiwa (supra). It is important to note the difference between the effect of the provision of section 21 of the Limitation Law of Lagos State and that in many other statutes of limitation. Many statutes of limitation including the Public Officers Protection Act (Cap. 168) of 1958 merely provide that after the expiration of the period, 'no action shall be brought' or that 'no proceedings shall lie.' They merely destroy the remedy and not the right. But section 21 of the Limitation Law of Lagos State and section 20 of the Limitation Decree 1966 destroy the title of the plaintiff. See also in *Re Allison: Johnson v. Mounsey* (1879) 11 Ch. D 284, at p. 296. It follows, therefore, that at the time the respondents, as plaintiff, went to court, if he had any title to the land in dispute it had been extinguished."

The appellant, in his supplementary brief, argued that the Court of Appeal was wrong in the view expressed in the passage above and that that Court wrongly invoked the Limitation Law of Lagos State. It is submitted as follows:

"I humbly submit that the Court of Appeal before coming to this conclusion failed to ascertain the time the right of plaintiff or plaintiffs predecessor-in-title to take action against defendant accrued. There is no evidence on record that the plaintiff or his predecessors-in-title in possession of the land in 1946 failed to take action against the defendants."

After reference has been made in the brief to portions of the evidence of the plaintiff and that of his witness (PW. 2) who sold land to the plaintiff, it is then submitted:

"I humbly submit with respect that if the Court of Appeal has carefully considered the evidence of the parties it should have found that the right of action did not accrue until 1977 when the plaintiff was disturbed by the defendant. I further submit that the Court of Appeal came to a wrong conclusion when it found at page 245 lines 30 - 32:

'Ebun Adesola Wilson did not institute any action against applicant's father till she died 1948. There is evidence that she knew of applicant's father's presence on the land.'

I humbly submit that there was no such evidence on which the Court of Appeal based the above findings during trial.

Furthermore, the limitation law cannot be invoked against the predecessors-in title of the plaintiff who were not parties to this action and before title of the family can be extinguished the predecessors-in-title of the plaintiff must be joined. I rely on the case of *I.M.B. Atunrase & Anor V.*

Alhaji Abdul Mojid Sunmola & Anor. (1985) 1 NWLR (Pt. 1)105 at 123.

Title cannot be declared in the owner in proceedings to which they are not panics. Similarly the real owners cannot be divested of their title in such proceedings.

I finally submit that the limitation law does not apply in this suit."

5 I find no substance whatsoever in the above submissions. There is unchallenged evidence of D.W.2 to show that the defendants' father. Mr Fowler had been on the land from at least 1946, built on it and let the house to tenants who occupied same. Madam Ebun Adesola Wilson, through whom plaintiff claimed, was-alive at the time and although she inquired
10 from Mr. Fowler how he came on the land, she did not sue him for recovery of possession until she died. Her personal representatives did not do so either until they sold to the plaintiff who did not sue the defendants until 1977, that is some thirty-one years at least after Mr. Fowler had occupied the land by building on it. Although plaintiff and his witness (P.W. 2) claimed
15 that the land was vacant when it was sold to the former and that there were no permanent structures on it six months before plaintiff testified at the hearing of this action on 12/3/81, his surveyor, John Ayodele Adegboye (P.W. 3) testified under cross-examination thus:

20 *"I drew the plan attached to Exhibit F (that is, plaintiff's deed of conveyance) in 1971. Within the area verged brown in the plan attached to (the) Exhibit I indicated some structures, 3 of them made with planks and the one facing Idera Street, is made of concrete."*

(Brackets are supplied by me)

Earlier he had testified:

25 *"The land in dispute is the area verged green in Exhibit 'K' and falls within the area edged brown in the plan attached to Exhibit F which land is said to belong to the plaintiff."*

It is clear from the evidence of this witness that at the time he surveyed, in 1971, the land claimed by the plaintiff there was a concrete
30 structure on it facing Idera Street and some other structures. Plaintiff and his vendor (P.W. 2) could, therefore, not be speaking the truth when they deposed that the land was vacant when it was sold to the plaintiff in 1970.

It is the case of the defendants that that building was built by late Mr. Fowler before 1946 and when Madam Ebun Adesola Wilson was alive.
35 That was the time that any cause of action Madam Wilson had, arose and not 1977 as erroneously submitted in plaintiff's supplementary brief. I agree entirely with the Court of Appeal's interpretation of sections 16, 19 and 21 of the Limitation Law, Cap. 70 Laws of Lagos State and its application to the facts of this case. Whatever interest Madam Ebun Adesola

Wilson and her predecessors-in-title might have in the land in dispute extinguished since at least 1958, they having failed to institute action against late Mr. Fowler in respect of his adverse possession of the land.

The Case of Atunrase v. Sunmola (supra) relied upon by the plaintiff is of no assistance to him. I say this because it was the plaintiff who claimed title and not the defendants whose defence is that plaintiff's predecessor-in-title's interest had been extinguished by operation of law since at least 1958, they, and their father before them, having been in possession of the land in dispute since at least 1946 adverse to the title of Madam Wilson and her successors-in-title. The defendants re not claiming any prescriptive title. Nor did the administrators of the estate of Madam Wilson claim to still have any interest in the land in dispute. The plaintiff's case is that the totality of their interest in the land had been sold and conveyed to him. Hence the statement of law contained in the passage in the judgment of Oputa, J.S.C. in Atunrase v. Sunmola (supra) at p.123, to the effect:

"Title cannot be declared in the real owners in proceedings to which they are not parties. Similarly, the real owners cannot be divested of their title in such proceedings."

would not apply to the facts of this case. Madam Wilson's title having been extinguished by operation of law since at least 1958 - See section 21 of the Limitation Law of Lagos State - her administrators had no title to pass on to the plaintiff in 1970 and the latter's claim to a declaration of title must, therefore, fail.

In view of the conclusion I have now reached. it is unnecessary for me to consider the other issues raised in plaintiff's appeal.

For the reasons given above. I agree with the conclusion reached by my learned brother Onu, J.S.C. that this appeal be dismissed. I too dismiss it and award N1,000.00 (One thousand naira) costs in favour of the defendants.

Appeal dismissed.

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