

SUPREME COURT OF NIGERIA
12TH FEBRUARY, 1993 SC. 315/1990

**CORAM:- S. KAWU, S. M. A. BELGORE, U. OMO,
M. E. OGUNDARE, S. U. MOHAMMED, JJSC**

DR. KWAZEME OFONDU APPELLANT

AND

S.E. NIWEIGHA RESPONDENT

APPEALS - When appellate court - will interfere with trial courts findings of fact

LAND LAW - Claim by both Plaintiff & defendant - for land situate at a junction bearing two different street names and numbers - wrongful allegation by defendant - that the numbers refer to two separate houses - how identity is resolved.

LAND LAW - Claim for title by two parties - party with better documents of title - and better possession - whether entitled to succeed or not.

FACTS

The Plaintiff/Appellant sued the Defendant/Respondent before the Rivers State High Court for a declaration that he was the lawful holder of a right of occupancy by virtue of a lease granted to him by the Abandoned property Authority. He also claimed damages for trespass, perpetual injunction restraining the Defendant from further trespass and account for rents collected. The land on which the building stands is variously referred to as No. 29 Ojoto Street or 56 Anozie Street, Diobu, Port-Harcourt.

In denying the claim, the defendant insisted that he was only interested in 29 Ojoto Street, claiming he acquired it by purchase and that he knew nothing about 56 Anozie Street. The identity of the land in dispute was, therefore, put to question, the trial Court dismissed the Plaintiff's claim, holding that there was no certainty as

2 OFONDU V. NIWEIGHA (1993) 2 KLR 1; (1993) 2 NWLR

to the identity of the property in dispute. On appeal, the Court of Appeal reversed the trial Court's decision without making the consequential orders sought by the Plaintiff.

Defendant appealed to the Supreme Court. The Plaintiff cross-appealed for the consequential orders to be made.

HELD (unanimously allowing the Appellant's Cross-appeal whilst dismissing the respondent's appeal)

1. The property in dispute, being at the junction formed by two roads can rightly be identified as 56 Anozie Street or 29 Ojoto Street if numbering order is followed on each Street. (p.5 L. 14)

2. The Court of Appeal was right in resolving the identity of the property in dispute as being one and the same property because the evidence to such resolution was before the trial Court. (p.5 L. 19)

3. Court of Appeal's abrupt judgment in favour of the Plaintiff/ Appellant being given without making consequential orders, could be taken as meaning that once defendant's victory at the trial Court was set aside, Plaintiff was given judgment for his claim. (p.5 L. 25)

4. It is not proper for the appellate Court to interfere with the trial Court's finding of fact save such finding is not supported by evidence, or it is perverse, or based on legally inadmissible evidence or it is fraught with error in law unto miscarriage of justice. (p.6 L. 18)

5. In the instant case the Plaintiff has proved a better title by virtue of documents of title tendered by him and Plaintiff's/Appellant's possession to the land in dispute is better. (p.6 L. 25)

6. Consequential orders sought by the Plaintiff, inadvertently left out by the Court of Appeal are hereby made by the Supreme Court. (p. 7 L. 3)

REPRESENTATION

E.T.O. Njoku -for the Appellant/Cross Respondent For the Appelants

T.D. Dick-Harry for the Respondent/Cross Appellant For the Respondents

CASES REFERRED TO

1. Nnajifor v. Ukonu (1986) 4 NWLR (Pt. 36) 505
2. Ibodo v. Enarofa (1908) 5 -7 S.C. 42
3. Lokoyi v. Olojo(1983)8SC. 61
4. Ogunbiyi v. Adewunmi (1988) 5 NWLR (Pt. 83) 215
5. Amakor v. Obiefuna (1974) 3 SC. 67
6. Akinola & Anor & Oluwo & ors (1962) 1 ALL NWLR 224
7. Kodilinye v. Odu 2 WALA 335.
8. Akinloye v. Eyiola (1968) NWLR 92
9. Balogun v. Agboola (1974) 10 SC. 111
10. Idundun v. Okumagba (1970) 9 -10 SC.

STATUTES & RULES

1. Court of Appeal Act S. 16.
2. Supreme Court Act 1960. S. 22
3. Supreme Court Rules Order 8 rule 12 (2)
4. Decree No. 42 of 1976.

LEAD JUDGMENT BY BELGORE JSC

The plaintiff Dr. Ofondu sued at the High Court of Rivers State sitting at Port Harcourt for a declaration that he was the lawful holder of a right of occupancy by virtue of a lease to him by the
 5 Abandoned Property Authority. N10,000.00 damages for trespass and perpetual injunction against the defendant, his agent etc, from further trespass on the land. He further asks for account of rents collected. The land, on which a building stands, is variously referred
 10 to as No. 29 Ojoto Street or 56 Anozie Street, Diobu Port-Hacourt. The defendant denied the claim but insisted that he was interested in 29 Ojoto Street, Diobu which he claimed he acquired by purchase and that he knew nothing about 56 Anozie Street, Diobu which according to him is different from his own building. After hearing evidence of the parties, learned trial Judge dismissed the plaintiff's claim
 15 holding that there was no certainty as to the identity of the property in dispute.

On appeal the Court of Appeal reversed the trial Court's decision and held that Exhibit E, the conveyance to the plaintiff and Exhibit D the surrender of the same to the plaintiff by the Abandoned Property Authority were sufficient proof that the plaintiff was the owner or holder of right of occupancy. The Court of Appeal,
 20 however, in reversing the decision of the trial Court failed to make consequential orders to wit:
 25

1. Declaration that the plaintiff is the person entitled to right of occupancy over the disputed land.
- 30 2. Damages for trespass against the defendant.
3. Injunction against the defendant, his agents and servants from further trespassing on the land in dispute.
- 35 4. The defendant to render account for the rents he received on the said property.

The defendant filed an appeal challenging the decision of the Court of Appeal and raised two issues in the Brief of Argument as follows:

1. *"Under this issue, it is the submission of the Appellant that the identity of the land and the property in dispute was not the main issue canvassed for in the Court of first instance i.e. the trial High Justices of the Court of Appeal.*
2. *Looking at the Writ of Summons, the pleadings and the evidence adduced at the trial show that the main issue on which both the appellant and the respondent joined issues was the title to the land and the property on it or the property in dispute. The identity of the property is only an ancillary to the main issue of title. It was also one of the means or ways the Respondent was to prove his case or title to the said property."*

Thus the main issue is the argument as to the identity of the land in dispute. There is on record clear evidence that the property can perfectly be said to belong to two streets. It is at the junction formed by the two roads- Ojoto Street and Anozie Street and it could be 56 Anozie Street or 29 Ojoto Street if numbering order is followed on each street. Thus the house No. 29 Ojoto Street is the same as 56 Anozie Street, Mile 2, Diobu, Port Harcourt. The Court of Appeal resolved this because the evidence was before the trial Court. The Court of Appeal in conformity with its powers under S.16 Court of Appeal Act ended its judgment abruptly as follows:

'In the circumstances, this appeal succeeds. The respondent shall pay N250.00 costs to the appellant.'

Thus the Court never adverted to the pleading of Plaintiff/Appellant before it as to the orders he asked for. Though it could easily be inferred that once the defendant's victory at the trial Court was set aside the plaintiff was given judgment for his claim. It is this ambiguity that led the Plaintiff to appeal and ask this Court to make consequential orders in respect of his claim. The main appellant who was defendant at trial Court, never objected, he in fact never filed a Respondent's Brief to cross-appeal.

However, on the cross appeal, the appellant never disputed the authenticity of Exhibit E and Exhibit D - conveyance of title in 1956 and Notice of Release respectively. The stand of the appellant has always been that the house No. 29 Ojoto Street is a different

property from the one called No. 56, Anozie Street. Thus the appellant's contention was on the identity of the house and plot in dispute. Learned trial Judge held there was confusion and that was the reason for his dismissal of the Plaintiff's case. Court of Appeal held that on the whole evidence the decision of trial Judge was wrong as the two numbers on the two streets refer to the same land and house on it.

In the appeal, the Plaintiff as appellant asks that this Court make the consequential orders which the Court of Appeal inadvertently left out of awarding him the judgment. The Defendant/Respondent never opposed this and this Court can make the order by virtue of S.22 of Supreme Court Act 1960 as amended by Decree No. 42 of 1976 and also under Order 8 Rule 12(2) Supreme Court Rules 1985.

The curious aspect of this appeal is that whilst the Defendant/Cross Appellant does not oppose the Plaintiff's appeal as to consequential orders he nonetheless filed an appeal contesting the main decision of the Court of Appeal. It is not right for the appellate court to interfere with the trial Court's finding of fact unless the finding is not supported by evidence, or it is perverse or is based on legally inadmissible evidence or is fraught with error in law whereby it could lead to a miscarriage of justice (*Nnajifor v. Ukonu* (1986) 4 N.W.L.R (Pt.36) 505; *Ibodo v. Enarofia* (1980) 5-7 S.C. 42; *Izokoyi v. Olojo* (1983) 8 S. C. 61 (1983) 2 S.C.N.L.R. 127 *Ogunbiyi v. Adewunmi* (1988) 5 N.W.L.R. (Pt. 93) 215, 216, 217. In the instant case the plaintiff has proved a better title by virtue of Exhibits D and E and his possession to the land in dispute is better *Amakor v. Obiefuna* (1974) 3 S.C.67. The defendant attempted to demolish the rights of the plaintiff by a purported conveyance merely two days older than Exhibit D, the Notice of Release to the plaintiff by the Abandoned Property Authority, whereas Exhibit E, a conveyance dating to 30th October 1956 exists in favour of the plaintiff in respect of the same land. There is no attempt by defendant to challenge the validity of Exhibit D, rather the defendant contends that it only referred to a different land.

I find no merit in the cross-appeal and it is hereby dismissed with N1,000.00 costs to the respondent as costs in this Court and N500.00 as costs at the trial Court. The main-appeal succeeds as I make the following consequential orders that the Court of Appeal inadvertently left out:

1. Judgment is entered for the Plaintiff/Appellant as claimed that he is declared the rightful holder of right of occupancy over the land situate at 56 Anozie Street otherwise referred to as 29 Ojoto Street, Diobu, Port Harcourt. 5
2. N5,000.00 is awarded against the Defendant for trespass onto the same land. 10
3. Perpetual injunction against the Defendant, his agents or servants from further trespassing into the land in dispute as aforementioned. 15
4. The Defendant to render account of the rents he has been receiving in respect of the building on the said land in dispute; and in giving effect to this order the Defendant/Respondent shall within sixty days from today render account of all rents collected from the property from 1st day of August, 1975 to today and a copy of such account which will be served on Chief Registrar. High Court of Rivers State shall be served on the Plaintiff/Appellant. 20
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KAWU JSC

I have had a preview of the lead judgment of my learned brother, Belgore, J.S.C. which has just been delivered. I entirely agree with his conclusion that there is no merit in the cross-appeal. It is accordingly dismissed with N1,000.00 costs to the respondent. For the reasons set out in the lead judgment, I too will allow the main appeal. I abide by all the consequential orders made in the lead judgment. 30
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OMO JSC

5 The Claim of the appellant in the Rivers State High Court (Port Harcourt) against the respondent was for-

(a) Declaration that the property known as 56 Anozie Street, or 29 Ojoto Street, Mile 2, Diobu Port Harcourt is the property of the Plaintiff.

10 (b) N10,000.00 damages for trespass.

(c) Order of Court compelling defendant to account to the plaintiff or the rents received on the said property from August 1975 till judgment is given in this case.

(d) Perpetual injunction restraining the defendant, his agents and servants from further interference with the rights and interests and ownership of the property aforesaid.

20 After pleadings were duly filed, the court heard evidence of the parties and address of counsel on their behalf. In a reserved judgment it dismissed the appellant's claim solely on the ground that the identity of the property in dispute had not been established. Specifically, that
25 the appellant had not satisfied him that 56 Anozie Street is the same property as 29 Ojoto Street; the respondent having claimed he only knows about 29,Ojoto Street, which belongs to him.

30 On appeal to the Court of Appeal, the judgment of the High Court was set aside, the Justices of the Court below holding that the main issue before the Court is identity of the property in dispute which the appellant had, on the evidence, succeeded in establishing. It however failed to make any consequential orders with reference to
35 the plaintiffs claim. Both parties are therefore aggrieved with the judgment of the Court of Appeal, and have appealed to this court against same. The respondent has appealed against the whole judgment and the appellant against the failure to make necessary consequential orders.

I have been privileged to read in draft the lead judgment of my learned brother BELGORE, J.S.C and the supporting judgment of my learned brother OGUNDARE, J.S.C. All the issues raised in this appeal have been fully canvassed in these two judgments. I adopt the views therein expressed and the conclusions arrived at as mine.

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Accordingly I also dismiss the respondent's appeal and allow the appellant's appeal. The judgment of the court below is affirmed subject to the consequential orders in the lead judgment being added thereto. The appellant is entitled to the costs of this appeal and that of the trial High Court, which I assess at N1,000.00 and N500.00 respectively.

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OGUNDARE JSC

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By his amended statement of claim, the plaintiff (who is now appellant/cross-respondent.) averred as follows:-

"1. The plaintiff is the Director of Medical Services, Ministry of Health, Imo State of Nigeria and resides at Owerri, Imo State.

20

2. The Defendant who is a retired Police Officer lives and carries on business in Port Harcourt in the Judicial Division of this Court.

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3. By a deed of Conveyance dated 30th October, 1956 and registered as No 38 at page 38 in Volume 103 of the Lands Registry at Enugu now in Port Harcourt the plaintiff acquired a freehold interest of a piece or parcel of land situate at Mile 2 Diobu Port Harcourt more particularly described and delineated in a survey plan No. Ban/ 20/55 of the 8th day of March, 1955 annexed to the said deed of conveyance at the trial.

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4. The original copy of the deed of Conveyance referred to in paragraph 3 of the Statement of Claim was lodged with the then Eastern Nigeria Housing Corporation for purposes of securing a loan for the erection of the building known as No. 56 Anozie Street Diobu Port Harcourt.

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5 *5. When the said piece or parcel of land was acquired the area was not planned and did not fall under the Port Harcourt Planning Authority. But following subsequent planning by the Port Harcourt Planning Authority the said piece or parcel of land became*
known first as 56, 58 and 60 Ojike Street and later as 56, 58 and 60 Anozie Street, Mile 2 Diobu, Port Harcourt.

10 *6. The plaintiff later developed Nos. 56 and 60 Anozie Street of the said piece of land by erecting buildings on them. 58 Anozie Street B had not been developed when the Nigerian Civil War broke out in 1967. The property at 56 Anozie Street is situate at a junction of Anozie/Ojoto Streets and was later renumbered as 29 Ojoto Street. 56 Anozie Street and 29 Ojoto Street are therefore one and the same*
 15 *property and will hereinafter be referred to as 56 Anozie Street.*

20 *7. 56 Anozie Street, the subject matter of this action is a story building comprising a flat at the ground floor made up of three bedrooms, a sitting room cum dining, two toilets, a bath, a kitchen, a pantry, a store and a garage; and a flat at the first floor made up of three bedrooms, a sitting room cum dining, two toilets, two baths, a kitchen, a pantry, a store and a terrace.*

25 *8. The plaintiff will rely on the building plan prepared by Mr. N. O. Meheux and approved by the Municipal Council. By an agreement dated 28/10/65 and made between the plaintiff on the one hand and one Jacob Njoku on the other hand the said Jacob Njoku*
 30 *undertook to build the house now standing at No. 56 Anozie Street for the plaintiff. The plaintiff will rely on the agreement at the trial.*

35 *9. Before the Nigerian Civil War both the ground and first floors of the said building had almost been completed except that the conduit wiring at the walls had not been covered up; louver glasses and septic tanks had not been fitted even though they were available in the house, and they had also not been painted.*

10. *At the request of the plaintiff the then Eastern Nigeria Housing Corporation approved a loan of 3,000.00 pounds (N6,000.00) in respect of the construction of the said house at No. 56, Anozie Street. The plaintiff will rely on a letter of approval dated 2nd November, 1966 from the Housing Corporation to the plaintiff.* 5

11. *At the end of the Civil War 56 Anozie Street came under the management and custody of the Abandoned Property Authority by virtue of the Abandoned Property (Custody and Management Edict 1969) of Rivers State of Nigeria; some tenants of the Abandoned Property Authority occupied the premises.* 10

12. *The said property at 56 Anozie Street, was later released to the plaintiff by the Abandoned Property Authority vide Rivers State of Nigeria Official Gazette No. 26 Volume 7 of 3rd July, 1975.* 15

13. *On or about the month of August, 1975 the defendant by himself, his agent and servants without plaintiff's consent and authorization broke and entered the plaintiff's premises at the said 56 Anozie Street and constructed some temporary huts, let in tenants of his own choice and ejected some tenants already occupying the rooms and has been collecting rents from the tenants.* 20

14. *The plaintiff made several approaches to the defendant including letters from plaintiff's Solicitors to persuade the defendant to desist from committing acts of trespass to the plaintiff's property and interference with plaintiff's rights and interests in the said property but the defendant has failed to heed to the plaintiff and has continued his acts, of trespass and interference.* 25 30

15. *Wherefore the plaintiff claims from the defendant:*

(a) *Declaration that the property known as 56 Anozie Street or 29 Ojoto Street Mile 2 Diobu, Port Harcourt is the property of the plaintiff* 35

(b) *N10,000.00*

(c) Order of Court compelling defendant to account to the plaintiff for the rents he received on the said property from August 1975 till judgment is given in this case.

5 *(d) Perpetual injunction restraining the defendant, his agents and servants from further interference with the rights and interests and ownership of the property aforesaid.*

10 The defendant (now respondent/cross-appellant) in his reply to the above averments, pleaded as hereunder:

"1. The defendant is not in a position to deny or admit paragraph 1 of the Statement of Claim.

15 *2. The defendant admits paragraph 2 of the Statement of Claim.*

20 *3. The defendant is not in a position to deny or admit paragraphs 3, 4, and 5 of the Statement of Claim but will put the plaintiff to a strict proof of the averments therein, particularly in paragraph 4 of the Statement of Claim.*

25 *4. The defendant denies paragraphs 6 of the Statement of Claim. In further answer to the said paragraph the defendant avers that No 56 Anozie Street, Diobu and No. 29 Ojoto Street, Diobu are not one and the same property and there is no time No. 56 Anozie Street has been renumbered as No. 29 Ojoto Street.*

30 *5. The defendant is not in a position to deny or admit paragraphs 7, 8, 9, 10, 11 and 12 of the Statement of Claim and will put the plaintiff to a strict proof of each and every averment contained in the said paragraphs.*

35 *6. The defendant denies paragraphs 13 and 14 of the Statement of Claim. In further answer to the said paragraphs the defendant says that he is not interested in No. 56 Anozie Street, Diobu and did not of himself or by his agent commit any acts of trespass on No. 56 Anozie Street, Diobu.*

7. *In further answer to the plaintiffs Statement of Claim the defendant avers as follows:*

(a) *The defendant is the owner in possession of the property known as No. 29 Ojoto Street, Mile 2, Diobu, Port Harcourt. The defendant purchased the aforesaid property (an uncompleted building) from its original owner Messrs. Samuel Chinda and Collins Chinda. The said property and building were properly conveyed to the defendant in a Deed of Conveyance dated 1st July, 1975 and registered as No. 84 in Volume 31 on the land Registry at Port Harcourt. The said Deed of Conveyance shall be founded during the trial.*

(b) *The vendors of the said property being natives of Diobu, Port Harcourt the defendant before the purchaser carried out investigations and they (the vendors) were confirmed by several persons including Chief Isaiah Wobo, the Paramount Chief of Diobu, as the owners. The defendant carried out further searches in both the Port Harcourt Municipal Council offices and the Lands Registry, Ministry of Lands and Survey was satisfied that the property was in no way encumbered.*

(c) *The defendant applied and approval was given to him (in respect of the) said No. 29 Ojoto Street, Diobu. On the strength of the approval, the defendant has carried out substantial work but not completed yet. The said letter of approval dated 15th October, 1975 will be founded at the trial.*

(d) *Because of certain assertions made by the plaintiff as averred in paragraph 14 of the Statement of Claim, the defendant again made further search in Port Harcourt Municipal Council offices and his ownership of the aforesaid property was confirmed. Letters of Confirmation from the said office will be founded at the trial.*

(e) *The defendant has been paying rates on the said property to the Port Harcourt Municipal Council on demand from the said Council. Demand notices and payment receipts will be founded during the trial.*

8. *The defendant denies that the plaintiff is entitled to any of the remedies asked for in paragraph 15 of the Statement of Claim.*

At the trial, in the Port-Harcourt Judicial Division of the High Court of Rivers State where the action was instituted, plaintiff gave
 5 evidence and called 3 witnesses in support of the averments in his amended Statement of Claim. Defendant too gave evidence and called two witnesses in support of the case put forward in his pleadings. After addresses by learned counsel for the parties, the learned
 10 trial Judge (Okara, J), in a reserved judgment, found against the plaintiff and dismissed his claims. In the said Judgment, the learned trial judge, after a review of the evidence on both sides, observed, and quite rightly in my view, that

15 *"The cruz (sic) of this matter therefore is as to the correct identity of this land and as to whether both plaintiff and the defendant are referring to the same land."*

After holding, rather erroneously, in my respectful view, that:
 20 *"The standard of proof required of the plaintiff in an action for declaration of title is higher than in other civil matters.* The learned judge concluded thus:

25 *"The plaintiff here has not satisfactorily discharged the onus of proof lying on him. In summary, he has failed to identify the land clearly as it is today by Survey Plans: he has adduced no reliable evidence to show that 56 Anozie street and 29 Ojoto street are one
 30 and the same piece of land and he has also failed to even call evidence to show that the vendor, John R. A. Echue who sold the piece of land to him derived his title from the original owners of the land. He is therefore not entitled to the declaration sought and the subsidiary claims in this suit and I therefore dismiss his claim,"*

35 The plaintiff being dissatisfied with that judgment, appealed to the Court of Appeal, which court, in a unanimous decision (con-
 ram: Nnaemeka-Agu, J. C. A. (as he then was), Ogundere and Macaulay, J.J.C.A) allowed the appeal with costs but made no con-

sequential orders, Ogundere J.C.A. in his lead judgment, with which the other Justices agreed, observed, and quite rightly too, in my judgment that

"At the trial as well as in this appeal, the main issue is the identity of the property in dispute.

"The learned Justice of appeal after setting out findings of the learned trial Judge and part of the evidence of PW4 relevant to the issue in controversy between the parties went on to observe;

"I have set out PW4's evidence in extenso because the learned trial Judge failed to consider this relevant and crucial evidence. Besides, as PW4's evidence was not destroyed by cross examination, his evidence was uncontradicted and the learned trial Judge should have drawn appropriate conclusions from them namely that it is the same property that was number 29 Ojoto street along Ojoto Street, and 56 Anozie Street, along Anozie Street. The defendant in the court below did not deny that he had dealings with PW4 in respect of the property or refute PW4's charges that it was when he PW4 refused to recognise the defendant as landlord that the defendant/ respondent threatened him with eviction.

In this regard where there are admitted facts or uncontradicted facts on the record, in respect of which a trial court failed to draw a conclusion, a Court of Appeal is at liberty to draw its own conclusions from such facts. See Akinola & anor v. Oluwo & Ors (1962) 1 ALL NLR 224 at 227. It could also draw proper conclusions different from those made by the trial court, See Kodilinye v. Odu (1935) 2 WACA 336; Akinloye v. Eyilola (1968) NMLR 92, 95; Balogun v. Agboola (1974) 10 SC. 111 at 117-119.

The plaintiff tendered Exh. E, a Conveyance dated 30th October, 1956 and Exh. D the instrument by which the Rivers State Abandoned Property Authority surrendered the said property to him. Those two instruments are positive proof of the plaintiff's title to the land and property known as No. 56 Anozie Street. As to the identity of 56 Anozie Street viz-a-viz 29 Ojoto Street, the uncontradicted evidence of PW4 resolved the riddle, namely that it is the same property at the junction of Anozie and Ojoto Streets."

It is against this judgment of the Court of Appeal that the defendant has now appealed to this court. His first notice of appeal contained four grounds of appeal but a subsequent notice of appeal contained the following two grounds of appeal, to wit:

5 (1) *The learned Justices of the Court of Appeal erred in law when they held that the only issue that was joined between the parties at the trial Court and in the Court of Appeal was the Identity of the Property in dispute.*

10 PARTICULARS OF ERROR

(a) On the pleadings and on the evidence there were three areas of dispute namely:

15 (i) *Dispute on the title to the property in dispute.*

(ii) *Dispute as to whether trespass was committed or not.*

20 (iii) *Dispute on the identity of the property in issue.*

(b) *The dispute over the identity of the property was ancillary to the main issue of title.*

25 (c) *The Court of appeal concentrated only on the dispute on the identity of the property without seriously considering the way the learned trial Judge resolved the dispute on title.*

30 (2) *The learned Justices of the Court of Appeal erred in law when they held that Exhibits' D' and 'E' were positive proof of the Respondents' title to the land or property known as No. 56 Anozie Street, or No. 29, Ojoto Street, Mile 2 Diobu, Port Harcourt.*

35 PARTICULARS OF ERROR

(a) *Exhibit 'E' is a conveyance dated 30th October, 1956 by which the Respondent claimed he purchased the land in dispute from John R.A. Echue, Exhibit 'D' is an Instrument of Transfer issued to Respondent by the Abandoned Property Authority.*

(b) In coming to this conclusion the learned Justices of the Court of Appeal did not consider the finding of fact made by the trial Judge on Exhibit 'E' to wit. That it did not show the root of title of the Respondent's vendor."

It would appear from his brief that it is the second notice of appeal that he relies on. The plaintiff too was unhappy that the Court of Appeal failed to make consequential orders in his favour, after allowing his appeal. He, too, lodged an appeal upon one ground of appeal which reads:

"(1) ERROR IN LAW

The learned Justices of the Court of Appeal erred in law when they failed to exercise their powers of re-hearing to make, consequential orders having allowed the appellant's appeal.

PARTICULARS OF ERROR

The Court below having heard the appeal and allowed it ought to have made consequential orders on the relief sought by the plaintiff/appellant from the Court of first instance."

The plaintiff's appeal is treated as the main appeal while the defendant's appeal is treated as the cross- appeal.

In accordance with the rules of this Court both parties filed and exchanged their respective written briefs of argument in respect of the cross appeal. The plaintiff, through his counsel, filed and served an appellant's brief in respect of the main appeal but the defendant did not file a respondent's brief in answer thereto. At the oral hearing before us, however, learned counsel for the defendant conceded it that if the cross appeal fails, the main appeal must succeed.

I have gone through the submissions of learned counsel for the plaintiff/appellant in his brief which he adopted at the oral hearing and I entirely agree with him that having allowed plaintiff's appeal, it behoved the court below pursuant to its powers under section 16 of the Court of Appeal Act to make such consequential orders that it might deem fit having regard to the claims and evidence

led. To this extent, therefore, I have no hesitation whatsoever in allowing the main appeal. In considering the appropriate consequential orders that I should make pursuant to the powers conferred on this Court by section 22 of the Supreme Court Act and Order 8 rule 12(2) Supreme Court Rules, 1985. I will like first to determine the
 5 cross appeal. For it that one succeeds, the success of the main appeal becomes a pyrrhic victory.

The defendant/cross-appellant in his written brief posed the
 10 following four questions as calling for determination in the main appeal, that is to say:

*"(a) Whether having regard to the facts of this case deposed to, in the Plaintiff/Respondent's writ of Summons, statement of claim
 15 and the evidence adduced on oath at the trial in the High Court Port Harcourt, is it proper for the learned Justices of the Court of Appeal to hold the view that the main issue in dispute was the identity of the property in dispute?"*

20 *(b) Whether the Plaintiff/Respondent led sufficient evidence to establish or prove his root of title to the property in dispute?*

*(c) Whether in the circumstances of this case the learned Justices of the Court of Appeal were right in relying on the testimony of
 25 PW4, Mr. Ekutubon Ezekiel Etukobo as proof of the identity of the land or property in dispute?*

*(d) Are Exhibits 'E' Deed of Conveyance dated 30th October, 1956, and Exhibit 'D' Notice of Release of property from the Abandoned Property Authority, positive proof of Respondent's title
 30 to the land or property known as No. 56 Anozie Street OR to property No. 29 Ojoto Street, Mile 2 Diobu, Port Harcourt."*

I must say as submitted in the cross-respondent's brief, that questions (b) and (c) do not arise out of the grounds of appeal and
 35 will not therefore be countenanced in the determination of this appeal. As the three issues set out in the plaintiff/cross respondent's brief are not too dissimilar to questions (a) and (d) in the defendant/cross-appellant's brief, I need not set them out in this judgment, I shall, however, adopt defendant's issues (a) and (d) in my consideration of

the appeal.

QUESTION (a)

It is not correct as postulated in ground 1 of the grounds of appeal and in issue (a) that the court below held that the only issue that was joined between the parties both at the trial and on appeal was the identity of the property in dispute. What that court, per Ogundare, JCA, said is

"At the trial as well as in this appeal, the main issue is the identity of the property in dispute."

There is clearly a difference between main and only. Indeed, in the lead judgment of Ogundere J.C.A, not only did he consider the main issue as set out above by him, he also considered the plaintiff's root of title and discussed the case of Idundun v. Okumagba (1976) 9-10 SC 227 which laid down the four ways of proving ownership to land. It is only in the concurring judgment of Nnaemeka-Agu, J.C.A, that he spoke of the "only issue in this appeal:"

Learned counsel for the defendant had argued in his brief -

Looking at the writ of Summons, the pleadings and the evidence adduced at the trial show that the main issue which both the appellant and the respondent joined issues was the title to the land and the property on it or the property in dispute. The identity of the said property is only an ancillary to the main issue of title. It was also one of the means or ways the Respondent was to prove his case or title to the said property.'

With profound respect to him, I do agree with his submission. Having regard to the state of the pleadings it cannot be disputed that the real issue between the parties is as to whether or not No. 56 Anozie Street and No. 29 Ojoto Street refer to one and the same property. For ease of reference I shall set out once again paragraph 6 of the Statement of claim. It reads."

"The property at 56 Anozie Street is situate at a junction of Anozie/Ojoto Streets and was later renumbered as 29 Ojoto Street. 56 Anozie Street and 29 Ojoto Street are therefore one and the same property and will hereinafter be referred to as 56 Anozie Street."

The defendant's answer to the above averment is contained

in paragraph 4 of the statement of defence which reads:

*"The defendant denies paragraph 6 of the Statement of Claim. In further answer to the said paragraph the defendant avers that No. 56 Anozie Street, Diobu and No. 29 Ojoto Street, Diobu are not one
5 and the same property and there is no time No. 56 Anozie Street has been renumbered as No. 29 Ojoto Street."*

In paragraph 6, the defendant went on to plead:

10 *"The defendant denies paragraphs 13 and 14 of the Statement of Claim. In further answer to the said paragraphs the defendant says that he is not interested in No. 56 Anozie Street. Diobu and did not of himself or by his agent commit any acts of trespass on No.
15 56 Anozie Street, Diobu."*

In his evidence, he deposed:

20 *"During my searches I never come across anything to show that this 29 Ojoto Street was ever known as 56 Anozie Street. It is not even so marked on the building that it was 56 Anozie Street. I have nothing to do with 56 Anozie Street at all"*

25 Thus from his statement of defence and evidence at the trial, the defendant did not dispute plaintiffs ownership of the property situate at 56. Anozie Street. His case all along was that he owned 29 Ojoto Street which property was not the same as 56 Anozie Street. If, therefore, evidence shows that 56 Anozie Street is one and, the same
30 property as 29 Ojoto Street, plaintiff must be entitled to judgment.

Plaintiff called PW4. E.E. Etukubon who once lived at 56 Anozie Street. He testified as to how that property came to be renumbered 29 Ojoto Street. He deposed thus:

35 *"I live at Ikot Esop, Abak Local Government Area. I am a Customary Court Judge. Before I went back home I was living at 29 Ojoto Street Diobu Port Harcourt. The house is at the junction of Anozie and Ojoto. Its number along Anozie is '56'. I started living in the house in 1969. By then we paid rents to the Abandoned Prop-*

erty Authority through one Mr. Ikiriko. By that I mean Mr. Ikiriko was the rent collector. I finally left the house in May 1976."

Cross-examined, he testified -

"The number written on the house is '29 Ojoto'. It was in 1972 when plaintiff came to the house and showed me the plan of the house that I saw the number and knew it to be '56 Anozie Street'. The plaintiff did not show me any instrument of transfer by the A.P.A. to him."

The learned trial judge did not consider the evidence of this witness in evaluating the case for the parties and making his findings of fact. That the witness lived in the house in dispute is buttressed by the evidence of the defendant himself wherein he testified:

"The very building where PW3 was living is the property plaintiff is claiming. The property is situate at a junction facing Ojoto Street. By the side of it is Anozie Street."

It is clear on the record that the person defendant referred to in this piece of evidence as PW3 was PW4 who was the 3rd witness called after the plaintiff had testified. The court below, on appeal, re-evaluated the evidence, and quite rightly too, and found on the evidence of PW4 that 56 Anozie Street is the same as 29 Ojoto Street. There has been no appeal against this finding and I must consider it. For the purpose of this appeal, as being correct.

In conclusion, I answer Question (a) in the affirmative and hold that Ground 1 fails.

QUESTION (d)

Plaintiff, in proof of his title, tendered the conveyance in his favour Exhibit E and the gazette publication (Exhibit D) by which the Abandoned Property Authority released 56 Anozie Street to him. Production of documents of title, is of course, one of the four ways of proving title to land - *Idundun v. Okumagba* (supra). This apart, the defendant did not join issue with the plaintiff on his

claim to title to 56 Anozie Street. This fact is reiterated once again in defendant's brief wherein it is argued thus:

"In the first place Exhibit 'D' is not an instrument within the provisions of Section 2 of Cap. 72, Laws of Eastern Nigeria as adopted in the Rivers State but a mere notification that the property situate at
5 *and called No. 56 Anozie Street, Mile 2 Diobu belong to Dr. Kwazeme Ofondu or the Respondent. See page 251 of Exhibit D'.*

In such circumstance minimal evidence is all that is required of the plaintiff to prove his undisputed title to 56 Anozie Street. He did
10 more than this in this case by producing in evidence his deed of conveyance (Exh. E) which was over 20 years old at the time of the trial of the action. He also produced Exh. D. The court below was right, in my respectful view, that those two instruments are positive
15 proof of the plaintiffs title to the land and property known as "No. 56 Anozie Street." I find no substance in the submissions in the defendant's brief to the contrary. I do not consider it necessary to comment in detail on the case put forward by the defendant in support of his claim to ownership of No. 29 Ojoto Street. It is sufficient to say that much of the evidence proffered by him did not accord with
20 his pleadings and, therefore, went to no issue.

The Court of Appeal having held, and rightly too in my view, that No. 56 Anozie Street is one and the same as No. 29 Ojoto Street. I must answer Question (d) also in the affirmative. Ground 2, therefore, also fails.
25

It is for the reasons given above that I agree with my learned brother Belgore JSC that the cross appeal fails. I too dismiss it. I also agree with him that the main appeal succeeds and I allow it. I set aside the judgment of the trial High Court dismissing plaintiffs claim
30 and in its stead I enter judgment for him in terms as contained in the lead judgment of my learned brother. Belgore, J.S.C. I award to the Plaintiff N1,000.00 costs of this appeal and N500.00 costs of the trial in the High Court. The costs of N250.00 awarded by the court below as costs of the appeal in that court is affirmed.