

SUPREME COURT OF NIGERIA
3RD JUNE, 1994. SC. 113/1988
CORAM:- M. L. UWAI, O. OLATAWURA,
M. E. OGUNDARE, S. U. ONU, Y. O. ADIO, JJSC

LAMIDI LAWAL OBAWOLE & ANOTHER DEFENDANTS/
(For themselves and on behalf of other	APPELLANTS
members of Obawole Aina Arupe Family)	
AND	
OLUSOJI COKER PLAINTIFF/
(For himself and on behalf of other	RESPONDENT
members of Aina Coker Family;	

EVIDENCE - Declaration of ownership - Land Law- Title traced to plaintiff's mother - What the plaintiff must prove - In order to succeed.

EVIDENCE - Evidence of a witness in previous proceedings - Is generally not relevant in a later trial - Save for purposes of discrediting such witness on cross examination- Evidence of admissions against interest in a previous case - Whether relevant and admissible.

LAND LAW - Variation in description of land on two different documents relied upon by the plaintiff- As to the number of acres - whether the two lands are the same.

LAND LAW - Declaration of ownership - Based on long possession - Is to be proved by acts of ownership - But where plaintiff traces title to his mother - It is sufficient that he proves purchase from the original true owners.

LAND LAW - Claim of ownership - Based on alleged purchase by plaintiff's mother - Failure to establish the claim - Court of Appeal should not have found for the plaintiff.

LAND LAW - Admission by plaintiff - That the land in dispute originally belonged to the defendants - Save plaintiff can show that defendants family has divested itself of title - Defendants' counterclaim would be unimpeachable.

OBAWOLE V. COKER (1994) 10 KLR 1; (1994) 5 NWLR
LAND LAW - *Ownership - Failure to prove any grant by the original owners - Title still remains in the said original owners.*

FACTS

The Plaintiff/Respondent is the son of one Aina Coker - wife of J.K. Coker. The land in dispute originally belonged to the Defendants'/Appellants' family as admitted by the Plaintiff. The Defendant's family allegedly granted a large portion of their land including the one in dispute to J.K. Coker in 1890. Coker sold a portion of the said land in 1912 vide Exhibit A (purchase receipt) to his wife, Aina Coker, who went into possession and farmed thereon. On the death of Aina Coker in 1957, the Plaintiff and other members, of Aina's family succeeded to the land. Sometime in 1976, Defendants and members of their family came to disturb Plaintiff on the said land.

The Plaintiff filed an action before the Lagos High Court claiming declaration of title under Yoruba Native Law and Custom, N500.00 damages for trespass and an injunction relying on Exhibit C (Survey Plan). The Defendants on the other hand filed a counter claim and sought to establish that they are owners of the land and are still in possession. They denied the grant of the land in dispute to J.K. Coker and claimed he was their customary tenant in respect of another piece of land. The trial court found in favour of the Defendants and dismissed the Plaintiffs claim. On appeal by the Plaintiff to the Court of Appeal, the Defendants' claim was dismissed. Being dissatisfied, the Defendants have now appealed to the Supreme Court to determine inter alia, whether the Plaintiff/Respondent tendered sufficient credible evidence to be entitled to the declaration sought.

HELD (Unanimously allowing the appeal)

1. It is clearly beyond dispute that the land shown in Exhibit 'C' and in respect of which Plaintiff claimed title cannot be the same land as described in Exhibit 'A' and said to have been sold to Aina Coker, through whom Plaintiff claimed title to the land in Exhibit C in this case. Exhibit C shows an area of about 23 acres whereas Exhibit A specifically mentioned an area of 7 acres. Furthermore, the descriptions of the land in Exhibit A, both as to measurements and boundarymen just do not tally with the description given in Exhibit C of the land in dispute. (P. 113 L1)
2. The law is that where a plaintiff is claiming a declaration of ownership based upon long possession then it is incumbent upon him to

prove the nature of this possession in such a manner that the inference that he is exclusive owner may be drawn, but where, as in the present case, the Plaintiff traces his title to purchase by his mother, it is not necessary that he should prove such acts of ownership. It is sufficient that he proves the purchase of the land he claims from the true owner. Having failed to establish that the land in dispute is the land his mother purchased in 1912, the court below, if it had properly adverted its mind to the case before it, would not have found for the Plaintiff as it did. (P.14L34)

3. The land edged red in Exhibit C is the land in respect of which both parties lay conflicting claims of title. There is general agreement that the land originally belonged to the Defendants. With the Plaintiffs admission of this fact, unless he could show that Mr. Obawole Aina Arupe family had divested itself of title to the land in favour of J.K. Coker, the defendants' counter-claim would be unimpeachable. (P. 19 L28)

4. The general law is that evidence of a witness taken in earlier proceeding is not relevant in a later trial; except for the purpose of discrediting such witness on cross-examination, and for that purpose only. It is wrong to treat evidence in previous proceeding of an absent witness in later proceedings as one of truth. Admissions, however, against interest by persons from whom the parties to an action have derived their interest in the subject matter of the action are relevant and admissible evidence in the action. Equally so, admissions against proprietary interest made by a witness, now dead, in proceedings between third parties as in this case, are relevant and admissible evidence in an action involving such proprietary interest brought by or against his successors in interest. (P.20L21)

5. The inevitable conclusion is that Plaintiff failed woefully to prove that the Obawole Aina Arupe, the acknowledged original owners of the land in dispute at any time granted the land to J.K. Coker from whom Aina Coker was said to have derived title. There is evidence from PW5 that members of Obawole family live on the land in dispute. Title to the land, therefore, still remains in the Obawole Aina Arupe family. Plaintiff's claims were rightly dismissed. (P.24 L1)

NOTABLE POINTS OF INTEREST

OGUNDARE JSC

1. Purpose of tendering purchase receipt (Exh. A) clarified

“Mr. Ayanlaja, learned counsel for the Plaintiff has vigorously contended that Exhibit A was not tendered in evidence as basis of Plaintiffs root of title through Madam Aina Coker but rather as act of ownership by J.K. Coker, deceased. With respect to learned counsel, I cannot accept his argument. The purpose, in my respectful view, of the admission of Exhibit A in evidence was to prove the sale of the land in dispute to Aina Coker. Without the evidence of sale, I do not see how Plaintiff could have successfully established his mother’s title to the land in dispute.” (P. 13 L9)

2. Appellants’ lapse in failing to appeal in respect of counter-claim

“Mr. Ayanlaja has submitted that there is no appeal against the dismissal by the court below of Defendant’s counter-claim. He submitted both in Respondent’s Brief and in oral argument that there was no ground of appeal challenging the decision of the court below in respect of the counter-claim. I agree with learned counsel that there is no ground challenging the dismissal by the court below of defendants’ counterclaim. In view of this lapse I say nothing more on that point.” (P.24 L15)

ONU JSC

3. Customary tenants under Yoruba law

Exhibit H having shown that the respondent’s family had acknowledged his ancestor, J.K. Coker, at one time held some land ‘as customary tenant of appellants’ (Obawole) family, it is an established principle of law that land used by customary tenants under Yoruba Customary law will not ripen into ownership however long. In other words, title by prescription is unknown to that law. (P.27 L18)

4. Legal implications of failing to appeal against dismissed counter-claim

As matters stood, since the counter-claim which in essence is a cross-action, was dismissed and was not the subject of an appeal, the appellants got nothing. (P.29 L5)

REPRESENTATION:

Mr. K. Sofola SAN with A. Idrisu & Miss N.C. Nwosu for Appellants
Mr. O. Ayanlaja with R. Seriki, and O.A. Falae for the Respondent.

CASES REFERRED TO

Omoni v. Biriya (1976) 6 SC. 49 5
Alade v. Borishade 5 FSC 167, 171
Enang v. Ekanem (1962) 1 All NLR 530
Ariku v. Ajiwogbo (1962) 1 All NLR 629, 631-632
Ojiege v. Okwaranyia (1962) 1 All NLR (Part 2) 598, 602-603
Akinloye v. Eyiola (1968) NMLR 92 at 93 10

LEAD JUDGMENT BY OGUNDARE JSC

By writ of summons issued in April, 1976 the plaintiff for himself and on behalf of other members of Aina Coker family sued the defendants for themselves and on behalf of other members of the Obawole Aina Arupe family, claiming N500.00 damages for trespass allegedly committed on a farmland situate, lying and being at Ijaiye Agege, Lagos State in March 1976 and an injunction. Pleadings having been ordered were filed and exchanged and with leave of court amended. By paragraph 21 of his amended statement of claim, the plaintiff (who is now the respondent before us) claimed as follows: 15 20

(i) *a declaration of title under Yoruba Native Law and Custom to all that parcel of land situate, lying and being at Ijaiye, Agege which is more particularly shown and edged Red on the Plan attached to the Statement of Claim.* 25

(ii) *N500.00 damages for trespass committed on the farmland situate, lying and being at Ijaiye Agege Lagos State by destroying cassava, cashew trees and other crops of the plaintiff thereon in March and April, 1976.*

(iii) *An injunction to restrain the defendants, their privies and servants from committing further acts of trespass on the said land.* 30

The defendants counter-claimed as hereunder:

(i) *A declaration that they as the persons entitled to Certificate of Occupancy are the absolute owners under Yoruba Native Law and Custom of all that piece or parcel of land situate lying and being at Abule Ijaiye in the Ikeja District of Lagos State and which is more particularly shown and edged in red on the plan attached to the Statement of Claim herein.* 35

(ii) *N100.00 special and general damages for trespass to the*

said land.

SPECIAL:

40 Cocoa trees cut and destroyed N40.00

27 Kolanut trees cut and destroyed N33.75

N73.75

5 *GENERAL:* N26.25

TOTAL N100.00

(iii) *A perpetual injunction restraining further acts of trespass by the plaintiff, his servants and/or agents."*

Evidence was led on both sides and after addresses by learned
 10 counsel appearing for the parties, the learned trial Judge, in a reserved judgment, dismissed plaintiff's claims and found for the defendants on their counter-claim declaring them the absolute owners under Yoruba Native Law and Custom of the land in dispute described on a Plan No. SEW/L/1234/11 and marked Exhibit C at the
 15 trial, N100.00 special and general damages for trespass and an injunction restraining the plaintiff, his servants and/or agents from further acts of trespass on the said land. Being dissatisfied with that judgment the plaintiff appealed to the Court of Appeal. That Court allowed the appeal, set aside the judgment of the trial court and entered judgment for the plaintiff in terms of his claims except the claim for trespass which was dismissed. The defendants' counter-claim was dismissed. In the concluding part of the lead judgment of Ademola J.C.A. the learned Justice of the Court of Appeal said: "*The outcome of this judgment is that the appeal succeeds. The claim for declaration of title in the court below by the appellant should and hereby, succeed. An order for declaration of title is hereby decreed in his favour on a plan No. SEW/L/1234/11 in Exh. 'C' drawn by a surveyor Mr. Seweje. The claim for trespass is dismissed. The injunction is hereby, granted. The declaration that the respondents are the persons entitled to Certificate of Occupancy as absolute owners of the land in Exhibit 'C' in the plan No. SEW/L/1234/11 in Exh. 'C' in this case granted by the lower court, is hereby set aside. So also, are the award of damages of a N100.00 made in favour of the respondents and the perpetual injunction granted against the appellant."*

35 It is against this judgment that defendants (who are now appellants before us) have appealed to this Court upon one original and three additional grounds of appeal. The original ground was abandoned at the hearing of the appeal and was accordingly struck out. Pursuant to the rules of this court the parties filed and exchanged

their respective briefs of argument. Learned counsel appearing for them proffered oral arguments at the hearing of the appeal. The defendants in their appellants' brief formulated three questions as calling for determination in the appeal. These are:

(a) Whether the respondent, as plaintiff at the trial Court, tendered sufficient credible evidence before that Court that would have 5 entitled him to the declaration sought.

(b) Whether the Court of Appeal was right to have made a declaration of title in favour of the respondent herein in respect of the land covered by Exh. 'C' in Plan No. SEW/L/1234/11.

(c) Whether the appellants were entitled to a declaration of 10 title to the land covered by the same Exhibit "C"

The plaintiff in his respondent's brief adopts the first two of the questions set out above and contends that the third question is not an issue in the appeal, there being no ground of appeal to support it. 15 More will be said later on this submission in the course of this judgment. Before I proceed to the consideration of the questions formulated before us, I think this is a convenient stage at which I need to state the facts how-be-it, briefly. The plaintiff is the son of one Aina Coker the wife of one J.K. Coker. The land in dispute shown on Plan marked Exhibit C at the proceedings originally belonged to the defendants' family. The defendants' family allegedly granted a large 20 portion of their land including the land in dispute to one J.K. Coker in 1890. In 1912, Coker sold a portion of his land to his wife Aina Coker who went into possession and farmed thereon. On the death of Aina in 1957, the plaintiff and other members of her family succeeded to the land. Sometime in 1976 the defendants and members of their family came to disturb the plaintiff on the said land, hence the action leading to this appeal. In order to better understand plaintiff's case, I will set out the relevant paragraphs of the plaintiff's amended 25 statement of claim. Plaintiff pleaded as follows: 30

"2. The plaintiff is the only surviving son of Madam Aina Coker (deceased) and takes this action for himself and on behalf of the grandchildren of the said late Madam Aina Coker.

3. The late Madam Aina Coker who died in July, 1957 begat 35 Mrs. Ebun Durosini Etti (deceased), Mrs. Modupe Bateye deceased and the plaintiff.

4. The late Ebun Durosini Etti who died in January 1941 was survived by Ore Durosini Etti, Ibikunle Olajide Durosini Etti, Olayinka Ajiwun Durosini Etti while Mrs. Modupe Bateye who died

in January, 1959 was survived by Dolu Bateye, Oluwalomoye Bateye and Mrs. Dr. Olutomi Onabolu.

5 *5. The surviving children of the said late Mrs. Ebum Durosinmi Etti and Mrs. Modupe Bateye and consequently the grandchildren of the late Madam Aina Coker support and have authorised the plaintiff to institute this action.*

10 *6. The land the subject matter of this action is situate behind Ijaiye Village along Isheri Ifako Road, Agege in Ikeja District of Lagos and the land which originally forms part of the vast acres of a farmland belonged to the Obawole Family absolutely under Yoruba Native Law and Customs.*

6A. In consideration of the friendship that existed between the late Jacob Kehinde Coker and the Obawole Family particular in consideration the finance help given by the said Jacob Kehinde Coker to the Obawole Family in effecting the roofing with corrugated Iron Sheets of the Obawole Family House at Otta, the Obawole Family granted a large parcel of land of which the land in dispute forms a portion to Jacob Kehinde Coker absolutely under Yoruba Native Law and Custom.

20 *6B. The said customary grant was made openly by the Obawole Family in the presence of witnesses and they blessed the grantee J .K. Coker aforesaid on the land with the gin, kolanuts, alligator pepper presented by the said J.K. Coker for the said purpose.*

25 *6C. The said grant was in accordance with Yoruba Customary Law and had the effect of transferring the absolute ownership of the land to J.K. Coker.*

6D. A recipient of absolute grant of land under Yoruba Customary Law does not and is not required to pay any rent or dues in respect of the land.

30 *6E. Neither the present members of the Aina Coker Family nor the late Aina Coker nor the late J.K. Coker before them has paid any tribute or rent to the members of the Obawole Family from the time of the said grant until the date hereof but have occupied and enjoyed same openly for these past eighty plus years as absolute owners.*

7. The Obawole Family put the late Jacob Kehinde Coker into possession of the said land and he planted firstly Cocoa trees on and later Kolanut trees and other crops, cash and economic crops on the said land which he used mainly as a farmland.

8. *The land originally granted to Jacob Kehinde Coker was bounded by the land of Cole and the land of Hughes across the Abewe-Illa stream and the land of Alfa Sumola and the land of one Lawani.*

9. *The late Jacob Kehinde Coker continued to exercise open and unhindered acts of ownership and possession on the land granted to him as aforesaid by selling portions of the land and farming on the rest and in particular:*

(i) *sold a portion of the land to Aina Coker and put her in possession in May, 1912;*

(ii) *sold another portion to the children of Dosunmu by Madam Sade and put them in possession in May, 1912;*

(iii) *sold and conveyed another portion of the land to Samuel Ajayi by Deed of Conveyance dated the 12th of February, 1927 and put him in possession thereof.*

10. *The land in dispute here is that portion of land originally granted to Jacob Kehinde Coker absolutely which was sold by Jacob Kehinde Coker to Madam Aina Coker as aforesaid and is now shown on the plan filed herein is now bounded by Yaya Abatan Street. Alfa Sunmola's land, the Rev. David Hughes land beyond the Dosunmu children's land the aforementioned.*

11. *The late Madam Aina Coker exercised ownership on the land, planting and cultivating more food crops on the land in addition to the existing Cocoa and Kolanut trees bought along with the land.*

12. *In 1940 the late Madam Aina Coker let part of the said land to one Mathew Olufemi who remained there with his wife Mrs. Janet Tinuola Olufemi, until his death in 1951 and since which time the said Mrs. Janet Tinuola Olufemi had remained in possession thereof with her daughter - Morenike Olufemi until the date hereof.*

13. *That the said farmland had been re-let out to the said Mrs. Janet Tinuola Olufemi after the death of her husband to enable her educate their only child of the marriage i.e. the said Morenike Olufemi.*

14. *In 1973 the plaintiff cleared about two acres of the land in front along Isheri Road planting cassava and other food crops on the land with the consent of the tenant Mrs. Janet Tinuola Olufemi and because this formed part of her holding, the plaintiff reduced her rent by twenty five per cent (25%).*

15. *That the plaintiff continued to exercise ownership on the land without disturbance either from the tenant or anybody until*

27th March, 1976 when the said Mrs. Janet Tinuola Olufemi and her sub-tenant Mr. Mustapha Oloyede - alias Yellow came to inform the plaintiff that the defendants with the aid of Hausa Labourers had entered upon the land in dispute and destroyed the plaintiff's cassava plants and other economic crops on the land in dispute.

5 16. The plaintiff avers that during the course of deal with their other lands in the area of the land in dispute, the defendants had always known of and recognised the ownership of the land claimed on behalf of Jacob Kehinde Coker herein and the plaintiff will rely on the Deed of Conveyance dated the 13th day of April, 1911 and
10 registered as No. 98 at page 342 in Volume 70 of the Registry of Deeds at Lagos and will contend that the defendants are stopped from denying the ownership and possession of the land in dispute by Jacob Kehinde Coker and his successors-in-title. The plaintiff will also
15 rely on a composite Plan No. SEWL/1234/11 A drawn on Herbert Macaulay's Plan showing the land recognised by the defendants as belonging to Jacob Kehinde Coker together with the land in dispute and the adjoining lands.

17. In the alternative the plaintiff will plead laches, acquiescence and stale claim.

20 18. On the 26th of March, 1976 the defendants by themselves and their servants broke and entered upon the land in dispute and with great show of force cut cassava plants, groundnuts, cocoyams and other crops on the land."

25 Going by the averments above, plaintiff relied for Aina's title on the sale of the land in dispute by J.K. Coker (his father) to Aina Coker (his mother) in 1912.

The defendants' case is based primarily on the following paragraphs of his final pleadings:-

30 3. The defendants aver that the land the subject matter of this case forms portions of land the absolute property from time immemorial according to Yoruba Native Law and Customs of the Obawole-Aina Arupe Family (otherwise known and called the Dada Adedipe Family).

35 4. The original owner of the land was one Dada Adedipe a hunter who hailed from Ile-Ife and who was the first person to settle on a large area of land (including the land edged in yellow on the plan attached by the plaintiff to his statement of claim and filed therewith) about 300 years ago.

5. Dada Adedipe exercised diverse acts of ownership and pos-

session over his vast area of land until his death survived by his two children, Olaiti (f) and Aina Rupe (f).

6. *Olaiti begat two issues, Obawole (M) and Ilupokiki (f).*

7. *Obawole had five children, namely (i) Falola (m) (ii) Sunmonu Ojelade (m), (iii) Ajayi Atan (f), sister Ilupokiki had no issue.* 5

8. *Falola begat Taniwomo (f), Omobose (f) Kehinde (f), Seidu (m), Ebo (f) and Rasaki (m); Sunmonu Ojelade begat Raimi and Selia; Ajayi Atan begat Musiratu Abeje, Rukayatu and Jeminotu; Dada Oro begat Lawani and Raji; Bankole begat Sikiratu and Rasaki.*

9. *The 1st defendant is the son of Lawani aforesaid and is the representative of the Obawole Branch of the family.* 10

10. *Aina Arupe was married to one Osugbemi, a native of Egbado and begat a single child, Ibirinde (f).*

11. *Ibirinde begat Yekini Saliu Adisa (the 2nd defendant herein and Miniratu.* 15

12. *The 2nd defendant is the representative of the Aina Arupe Branch of the Family.*

13. *The Dada Adedipe family has in the past seventy years been popularly known and referred to as the Obawole-Aina Arupe family as it was in the time of Obawole who was a powerful man in his days and who had no male relation that the family crystallised.* 20

14. *Dada Adedipe and his descendants have always been in full and effective possession of their family land including the land subject matter of this action either by themselves or by their tenants.*

15. *Such acts of possession exercised by the family include:* 25

(i) *Farming and reaping of palm fruits and tapping of palm wine.*

(ii) *Putting tenants on the land and collecting rent and tenurial dues and tributes from them and appropriating same without let or hindrance from any quarters.* 30

(iii) *Having shrines on the land and worshipping same.*

(iv) *Building of houses on their land by themselves and their grantees.*

16. *The defendants are members of and the heads and accredited representatives of the Obawole-Aina Arupe family in this action and they claim a right to go and have gone on the land subject matter of this action and assert a right to continue to go there by reason of their membership of the Obawole-Aina Arupe family, who are the true owners of the said land.* 35

17. *Obawole Aina Arupe land is bounded by the land of Owodina family, Eregbu, Ikorodu road, Majidun, Ogun river, Iyanru family, Railway line, Ogunji people and Ogba.*

18. *With reference to paragraph 6 of the Statement of Claim, the defendants aver that the late Chief Jacob Kehinde Coker was squatter on Obawole Aina Arupe family land as he could not trace his title to a grant by the family.*

18A. *Contrary to the facts averred in para. 6B, 6C & 6E of the plaintiff's amended statement of claim the defendants state that at no time whatsoever was any absolute grant of the land in dispute made to the said J.K. Coker during his lifetime and neither was any such grant of land made to his succeeding generation.*

18B. *Further to the facts averred in para. 18A herein above the defendants state that no such ceremonies as canvassed in paras. 6B-6E of the amended Statement of Claim were performed by the progenitor of the aforesaid J.K. Coker family nor indeed by his progeny.*

18C. *The defendants in answer to the averment stated in paragraph 16 of the plaintiff's further Amended Statement of Claim state that they did not by any express or implied act or deed recognise the Claim of ownership by Jacob Kehinde Coker over and in respect of the land now in dispute or any other land thereabout.*

18D. *The defendants admit the possessory right of the said Jacob Kehinde Coker as a customary tenant to the defendants in respect of some neighbouring parcel of land a fact that is well borne out by the evidence of admission to that effect given in a judicial proceeding at the then Supreme Court Lagos by the said Jacob Kehinde Coker in 1896 before the then Chief Justice of Nigeria, Mr. I.G. Rayner, Certified True Copy of that piece of evidence will be relied upon at the trial.*

18E. *Further to the facts stated herein above the defendants say that it was the advantage of customary tenancy occupation formerly enjoyed by the plaintiff's father over a neighbouring parcel of land that afforded the said plaintiff's people to clandestinely jump on the parcel of land now in dispute without the knowledge or consent of the defendants family."*

They denied the grant of the land in dispute to Coker and claimed he was a customary tenant of theirs in respect of another piece of land.

Questions (a) & (b):

I will deal with these two questions together as they dovetail into each other. As stated earlier in this judgment, plaintiff relied for his title on the sale to his mother of the land in dispute in 1912. At the trial he tendered the receipt issued by J.K. Coker to Aina Coker. Because of the importance of this receipt to the case before us. I will set it out in extenso. The receipt Exhibit A reads as follows: 5

“Received from Aina the wife of the late James Osolu Coker and the sum of twenty-one pounds sterling (21) being the full payment of the sale of a seven acres of land situate beside the farms of Sand Hughes and Ijaye people and lying by Sunmola’s farm at Iseri road and measuring about 300 feet by Sunmola’s farm and part of my remaining land and 1020 feet of the land of Dosunmu’s children by Sade. Date May 7, 1912 (Sgd.) Jacob Coker” 10

It is clearly beyond dispute that the land shown in Exhibit ‘C’ and in respect of which plaintiff claimed title cannot be the same land as described in Exhibit ‘A’ and said to have been sold to Aina Coker, through whom plaintiff claimed title to the land in Exhibit C in this case. Exhibit C shows an area of about 23 acres whereas Exhibit A specifically mentioned an area of 7 acres. Furthermore, the descriptions of the land in Exhibit A, both as to measurements and boundarymen just do not tally with the descriptions given in Exhibit C of the land in dispute. 15 20

Mr. Ayanlaja, learned counsel for the plaintiff has vigorously contended that Exhibit A was not tendered in evidence as basis of plaintiff’s root of title through Madam Aina Coker but rather as act of ownership by J .K. Coker deceased. With respect to learned counsel, I cannot accept his argument. In tendering Exhibit A, the plaintiff had testified as follows:- *“I know the land in dispute. It is situated behind Ijaiye village Isheri/Ifako road. The land belongs to my late mother Madam Aina Coker. Originally the land was owned by my father Jacob Kehinde Coker. My father is dead. He died in January 1945. My father was a Chief Lisa of Igbore Abeokuta. My father sold the land to my mother on 7th of May. 1912.”* 25 30

I grew up to find (sic) kolanut trees, cocoa trees, orange trees, breadfruit trees. palmnut trees.

The land sold to my mother by my father formed part of the farmland owned by my father. 35

My late father Chief Jacob Kehinde Coker issued a purchase receipt to my mother for the sale of the part of the farmland. After the death of my mother I found the purchase receipt amongst the

goods and ever since it has been in my possession. This is the purchase receipt. I seek to tender Mr. Lardner has no objection. Admitted and marked Exhibit' A"

Plaintiff's half brother, Ekundayo Olusegun Coker testified as PW5. In his evidence he deposed inter alia thus:

5 *"In 1912 my father gave the land in dispute to the plaintiff's mother whilst he gave land to his other wives and he had eight wives. I see Exhibit A which is a document in respect of the sale of the land in dispute to Madam Aina Coker."*

The purpose, in my respective view, of the admission of Exhibit A in 10 evidence was to prove the sale of the land in dispute to Aina Coker. Without the evidence of sale, I do not see how plaintiff could have successfully established his mother's title to the land in dispute.

It is equally for the above reason that I hold the view, with profound respect to the justices of the court below, that they were in serious error 15 when they held, as per Ademola J.C.A. that:-

It is wrong to compare the receipt Exh. 'A' and what was stated in it with the plan Exh. 'C' as being of the same footing and using the so-called discrepancies in the two documents against the appellant. Exh. 'A' is a receipt which is evidence of a transaction between J.K. Coker and the 20 appellant's mother. What is stated therein binds J.K. Coker and not appellants mother or the appellant. The receipt is not on the same footing as the plan Exh. 'C' which the appellant commissioned, and which could be regarded as his own document. The two documents are not comparable. Therefore, and using it Exh. 'A' against the interest of the appellant is 25 untenable in law. In so far as the area depicted in Exh. 'C' is ascertainable and the boundaries of which are well defined. Exh. 'A' and what it says pales into insignificance. Exh. 'A' must be put into the context of the case itself. The respondent denied any grant of the land in dispute to J.K. Coker and by the fact of that denial, the subsidiary question whether J.K. Coker 30 sold part of the land granted to anybody or the existence of such land if sold by him becomes a non issue. I do not see why it has become so important as the learned judge had tried to make it in this judgment.

In my view, Exh. 'C' and the area in it is the land in dispute."

That Exh. C depicts the land in dispute is beside the point. The 35 hurdle plaintiff had to clear was to show that the land shown on Exhibit C is the land J.K. Coker sold to his mother in 1912. And this is where Exhibit 'A' becomes very important and relevant rather than "pales into insignificance." Exhibit A shows a detailed description and extent of the land J.K. Coker sold to Aina Coker and as the description and extent of the land

shown on Exhibit C are at variance with the description and extent of the land sold in Exhibit A, the land in dispute could not have been the land plaintiff alleged his mother Aina purchased in 1912 and which he inherited on the demise of his mother in 1957. On this ground alone, the learned trial Judge rightly, in my view, dismissed the plaintiff's claims. Plaintiff has not claimed title through any means other than the sale of land to Aina Coker. 5 Therefore, her alleged acts of ownership could only have helped to bolster her alleged purchase of land in 1912. They could not have established her title to the land. The law as I understand it is that where a plaintiff is claiming a declaration of ownership based upon long possession then it is incumbent upon him to prove the nature of this possession in such a manner that the inference that he is exclusive owner may be drawn, but where, 10 as in the present case, the plaintiff traces his title to purchase by his mother, it is not necessary that he should prove such acts of ownership. It is sufficient that he proves the purchase of the land he claims from the true owner. Having failed to establish that the land in dispute is the land his mother 15 purchased in 1912, the Court below, if it had properly adverted its mind to the case before it, would not have found for the plaintiff as it did.

There is yet another angle to plaintiff's case. It is admitted by him that the defendants were the original owners of the land in dispute. With this admission, the onus shifted to the plaintiff to prove that they (the 20 defendants) have divested themselves of their ownership of the land by passing title to J.K. Coker - see *Omoni v. Biriyah* (1976) 6 S.C. 49. This takes me to an examination of J.K. Coker's title.

The plaintiff's case on the pleadings is that the defendants who were the original owners of a vast area of land including the land in dispute, 25 granted part of their land which part included the land in dispute to J.K. Coker in consideration of the financial help given by the said J.K. Coker to the Obawole family in effecting the roofing of their family house at Otta with corrugated iron sheets. The defendants denied this and pleaded that J.K. Coker was only a tenant of theirs in respect of some neighbouring 30 parcel of land: he was a squatter on the land in dispute.

The only witness called to prove the grant to J.K. Coker was PW 5. E.O. Coker (Plaintiff's half brother). He testified thus:

"My father told me that he got the land from Obawole family of Ota for good deed he did to them for he rebuilt the house of grandfather of the Obawole. For he came to Lagos to buy corrugated iron sheets to rebuild the house. My father had been on the land around 1880."

Testifying further he added: *"In the final handling over of the grant of the land to my father by the Obawole family my father at a ceremony*

gave gin, kolanuts, bitternuts to the family which was enjoyed with him and they later blessed my father and pray him for the usage of the land perpetually.

Ever since then my father never paid tribute or rents to the Obawole family. The grant was absolute."

5 Cross-examined, the witness made this startling revelation. He said: *"To my knowledge some members of Obawole's family are living on portions of the land in dispute."*

10 True enough there are structures shown on Exhibit C but plaintiff did not explain how these structures came on the land nor their owners. If anything, the revelation made by the witness shows that the plaintiff is not in exclusive possession of the land in dispute. Although the witness said his father had lands at Ifako he however admitted under cross-examination that- *"I do not know how my father came about the ownership of the land at Ifako."*

15 How can one reconcile this piece of evidence with his earlier evidence in chief as to what his father told him about the grant from the Obawole family? The answer, perhaps, lies in the evidence of the witness that- *"I have read the amended statement of claim in this case."*

Plaintiff also called PW3 and PW4 to testify in support of this case.

20 PW3. Babalola Hughes testified thus: *"I was born at the Hughes Estate over 60 years ago. My father late David Ayodele Hughes owned the Hughes Estate originally and the Estate still remain in the family up till today. My father was Rev. David Ayodele Hughes. I have a house where I live in the Estate which is 1, Babalola Hughes Avenue, Hughes Estate, Ifako, Agege.*
 25 *I know the plaintiff. He is my neighbour villager. We have known each other from youth. The Hughes Estate is in between Coker's village which is the plaintiff's father's village and plaintiff's witness (sic) farm. There is a common boundary between our Estates and the plaintiff's mother's farm. There is a stream in a gorge in between. The mother of the plaintiff had been on*
 30 *her farm since I know her as a child. The plaintiff's mother was farming on her land. She had kolanuts, cassava, yam, cocoa-yam, cocoa etc. on her farm. Plaintiff's mother is dead. Since the death of the plaintiff's mother the son the plaintiff herein has been looking after the farm. There are some buildings on the land today. About 50 buildings on the farm land now. The*
 35 *other boundarymen are late Dosunmu, Yaya Abatan, Isheri road. Yaya Abatan's family is also referred to as Alfa Sunmola alias Baba Oniwaya. There are Cole families. Yaya Abatan and other families around the same area."*

Cross-examined, he deposed: *"I am a direct son of late Rev. David*

Hughes. I was about 18 years old when my father died. My father bought his estate from Obawole family of Otta. The Obawole family was originally the owner of all the pieces of land at Ifako. I do not know the defendants. I do not know the name Obawole Aina Arupe. Obawole Aina Arupe was the overall landlord of all the parcels of land at Ifako. My father bought his land from the Obawole family around 1885. I do not know how much my father paid for the land.” 5

The evidence of this witness confirmed the radical ownership of Obawole family (defendants’ family) to all the land in Ifako. That is not all, it also contradicted the evidence of PW2. Mrs. Olufemi who claimed that she and her husband and their sub-tenant had been farming on the land many years since 1940. Plaintiff, according to his evidence, did not come onto the land to farm until 1973. Thus the evidence of PW3 was at variance with also that of the plaintiff on this point of farming on the land since the death of Aina Coker. 10

PW4, Olajide Dosunmu testified that his father’s land which he inherited was bought by his father from J.K. Coker. He also disclosed that he had been sued by the Obawole family in respect of the land. Like the plaintiff, he too did not know how J.K. Coker got on the land part of which was sold to his (witness’s) father. 15

The families of Hughes and Dosunmu are shown in Exhibit C as boundarymen to the land in dispute. 20

The last witness for the plaintiff (PW 6) is the licensed surveyor commissioned by the plaintiff to survey the land in dispute. Mr. Seweje tendered in evidence Exhibit C. He testified about Exhibit B, a deed of conveyance executed on 13/4/1911 by the Obawole family in favour of one J. Adeogun. Relating the plan attached to Exhibit B to the land of J.K. Coker, the witness testified:- 25

“I have seen the plan attached to Exhibit B before. There are two places on the plan attached to Exhibit B designated J.K. Coker. Exhibit B is a conveyance in favour of one Jeremiah Adeogun.” 30

The plaintiff instructed me to relate the plans of lands for J.K. Coker, J. Adeogun and some others on a larger plan which I did and I produce a composite plan. On the plan attached to Exhibit B there are two parcels of land designated J.K. Coker.

Exhibit C will correspond to the parcel of land designated J.K. Coker which occurs on the East side of the plan attached to Exhibit B. I know this because I checked all available plans given to me by the plaintiff and I produce a composite plan which confirmed my previous statement that the land verged red on Exhibit C corresponds with the area designated J.K. 35

Coker on the plan attached to Exhibit B on the East side.

Court: Witness please show on the plan attached to Exhibit B the area that corresponds with the area verged red in Exhibit C.

Witness: The area I now mark red is the area I referred to in the plan attached to Exhibit B."

5 The witness prepared a composite plan which was admitted in evidence and marked Exhibit E. On it he showed land said to belong to some people in the area of the land in dispute. I shall say more on this plan later in this judgment. 2nd defendant gave evidence as DW 1. He is the head of the Obawole Aina Arupe family, the original owners of the land at Ifako of
10 which the land in dispute formed a part. He gave traditional history of how his family came to own the land.

He testified that: *"Jacob Kehinde Coker is our customary tenant in respect of other lands besides the land in dispute."*

He tendered Exhibit H in proof of this. I shall refer to this later in the
15 course of this judgment. Testifying on the land in dispute, the witness said:
*"We first saw the plaintiff on the land in dispute in 1976. We did not lease or sell the land to anyone. The distance between the land granted to J.K. Coker for farming as customary tenant and the land in dispute is under 1 kilometre. The plaintiff had destroyed our cocoa trees, kolanut trees. They
20 destroyed 40 cocoa trees and 27 kolanut trees. One cocoa tree costs N1.00 and kolanut tree N1.20. I am claiming as per our counter-claim."*

Cross-examined, DW1 testified thus: *"I remember when David Hughes 3rd PW. gave evidence in this matter. The Hughes family land is not close to the land in dispute. The Hughes family land does not adjoin
25 the land in dispute. David Hughes land is close to my house and nowhere near the land in dispute. We have been on the land all the time.*

*The plaintiff's father and mother were never on the land as owners. Neither the plaintiff's father nor his mother was ever on the land in dispute it was only the plaintiff who came to molest us on the land. Plaintiff first
30 came on the land in 1976 the year he instituted this action.*

I never saw the 2nd PW. Janet Olufemi before she gave evidence in court. I never heard of the husband. They were never on the land in dispute.

The 4th PW. Olajide Dosunmu never spoke the truth in his evidence. I do not know the father of Olajide Dosunmu. There is no Dosunmu who is a boundary owner with the land in dispute but there is one Olu Dosunmu who is in another matter in court over portion of our land."

D.W.2, Amusan Sanni testified as follows: *"I know the two defendants as the people who gave my father land at Aguda Isheri. I know the*

plaintiff when I started coming to court in this matter. Both parties are before the court on land matter and I know the land in dispute. The land in dispute is between Aguda and Ifako. The land is opposite Ijaiye. Obawole Aina Arupe owns the land. The land is about 5 plots away from ours Obawole Aina Arupe gave my grandfather the land. We are customary tenants on the land. There are other customary tenants of the Obawole Aina Arupe on the land. Four of them are Alli Eweobaja Mosahiu. I was born in Aguda in Isheri village. I am over 60 years old. To my knowledge I have never heard that the Obawole Aina Arupe ever made an absolute gift of land to anyone. I have never heard nor know one Jacob Kehinde Coker."

Cross-examined, he testified further that:- "I do not know that one J.K. Coker had been living on the land in dispute for so many years. I have never heard of the name of J.K. Coker in that area. I do not know that J.K. Coker had other lands in the area. I know about the land in Ijaiye area for I was born at Aguda. I do not know that one Coker had cocoa plantation in the area.

My parents are customary tenants of the defendants on the land where I live. I have not come to tell story to support my landlord. I do not know Evangelist Coker alias Baba Aladura.

I know African Church, Ifako. I do not know the Baba Aladura in charge of the church. I do not know anything about the church nor that the Coker had been on the land for over 80 years. I am over 60 years and I have known the Church since I was a child. To my knowledge no land was given away absolutely by the Obawole family. I also do not know whether the Obawole family were (sic) sold any land absolutely.

It is significant to note that on the plan attached to Exhibit G, J.K. Coker's conveyance to Samuel Ajayi, is shown land belonging to Eweobaja mentioned by DW2 as one of the customary tenants of Obawole in the area. Eweobaja also features on Exhibit E, the composite plan.

DW3, Mr. Adeoti is defendant's surveyor who carried out some survey jobs for the defendants and tendered plans Exhibits J, K & L.

The land edged red in Exhibit C is the land in respect of which both parties lay conflicting claim of title. There is general agreement that the land originally belonged to the defendants. With the plaintiff's admission of this fact, unless he could show that Mr. Obawole Aina Arupe family had divested itself of title to the land in favour of J.K. Coker, the defendants' counter-claim would be unimpeachable. This is more so that plaintiff admitted coming on the land and laying it out into plots and had, infact, leased the plots out to third parties. Did plaintiff discharge the burden on him?

I have set out the evidence relied on by the plaintiff in proof of Coker's title. The defendants relied on Exhibit H to disprove plaintiff's claim of a grant to Coker. In 1896, in the Supreme Court of Colony of Lagos before Hon. Thomas Crossley Rayner, Chief Justice, Jacob Kanyinde (Kehinde) Coker testified in consolidated suits: *Ashade v. Brimah Bashorun* 5 & Anor; *Osho v. Olu Ijebu* and *Osho v. Shomefun*. His evidence, Exhibit H reads: "*Jacob Kanyinde Coker: Sworn*

I live at Lagos, and am a trader. I have land at Ifako. I have been there. It was given to me by Obawole about 1890. The boundary was described to me by Obawole. He did not go to the land. I have planted 10 *there since 1890. It adjoins defendant Shomefun's land. There is a tree in the road, which marks the boundary between us. No one has ever claimed the land. I know Mabogunje; he is dead. He was on a farm near, all on the same land. I paid rent to Obawole, corn and pepper. I never paid to Mabogunje, nor did he ever ask me for any. He sent me to Obawole.*

15 *Cross-examined: I know Ifako. I don't know the boundaries. I don't know which is Ifako village. I don't know Peter Davies. I don't know where his farm is.*

Re-examined: There are villages in the road before I got to my farm from Ogba." 20 (italicising is mine)

Exhibit H was tendered in evidence to show that J.K. Coker had admitted many years ago that he was tenant to Obawole.

The general law is that evidence of a witness taken in earlier proceedings is not relevant in a later trial; except for the purpose of discrediting 25 such witness on cross-examination, and for that purpose only. It is wrong to treat evidence in previous proceeding of an absent witness in later proceedings as one of truth- See: *Alade v. Aborishade* (1960) SCNLR 398; (1960) 5 FSC 167, 171; *Asuiquo Udo Enang & Anor v. Edem Udo Ekanem & Ors* (1962) 1 All NLR 530; *Ariku v. Ajiwogbo* (1962) 2 SCNLR 369; (1962) 1 30 All NLR 629, 631-632. Admissions, however, against interest by persons from whom the parties to an action have derived their interest in the subject matter of the action are relevant and admissible evidence in the action. Equally so, admissions against proprietary interest made by a witness, now dead, in proceedings between third parties as in this case, are relevant and 35 admissible evidence in an action involving such proprietary interest brought by or against his successors in interest - See: *Ojiegbe & Ors. v. Okwanranya & Ors.* (1962) 2 SCNLR 358; (1962) 1 All NLR (Pt.2) 598, 602-603 (re-print) where Brett. F.J. delivering the judgment of this Court observed:

".....he also took into consideration the evidence given in the arbi-

tration proceedings in 1932 by two persons, now dead, who at that time were the heads of the families of the first and second appellants. One of them, Okwara Uzuegbu, said 'The land on both sides of Ikwa stream belong to Abukwa people. My people and I farm on this land by their permission. ' The other, Onuohu Ndukwe, said 'They (Abukwa Umuobom) own the land over the Okwa stream opposite Umuoshi and our people from 5 time immemorial..... Abukwa people own a large area of land on our own side of the Okwa stream. Our boundary with them is at the stream Iyioma up to its junction with Oriabia. The land on both sides of the Oriabia stream belongs to Abukwa.'

The evidence given by these two witnesses was relevant in the present 10 proceedings either under S.20(3)(b) of the Evidence Act, as admissions by persons from whom the parties to the suit have derived their interest in the subject matter of the suit, or under S.33(c) as statements against proprietary interest made by persons now dead. Section 26 of the Act provides that admissions are not conclusive proof of the matters admitted, but may 15 operate as estoppel. It cannot be suggested that the present admissions operate as estoppels, but I do not consider that the trial Judge treated them either as conclusive proof or as estoppels; what he said was that the arbitration was of great importance and that two members of the Okohia stated categorically before any trouble arose between them and the Abukwa that 20 land which is a substantial part of the land in dispute belonged to the Abukwa, and I can see nothing to criticize in that. I also agree with the judge in being satisfied that the witnesses gave their evidence with the full knowledge and consent of the Okohia people; it is inconceivable that the head of the family could give evidence disclaiming ownership of part of the 25 family land without the facts becoming known at once and arousing the most vigorous protests. There is nothing in the submission that since the appellants' families were not parties to the arbitration what the witnesses said cannot be used as an admission against their families, and I see no ground for holding that the Judge used the evidence of these witnesses in 30 such a way as to vitiate his finding that the respondents owned land to the South of the Okwa stream."

The learned trial Judge reviewed and evaluated the evidence of PW5 and held it unreliable. In respect of Exhibit H he observed thus:

"5th plaintiff witness also stated that when the Obawole was handing over the land to his father they shared gin, kola and bitternuts at the ceremony and his father was blessed. No doubt this piece of evidence has been shattered by Exhibit 'H' which contained the evidence of his father on oath in his dealing with the Obawole family land. His father admitted

paying rents to the Obawole who gave him land."

On the counter-claim, he said:

"Let me now consider the counter-claim. For this the defendants counter-claims are asking for declaration in respect of the land as shown in Exhibit 'C'. Plan No. SEW/L/1234/11. As to the identity of the land this
5 *has been satisfactorily established by the 1st D. W. and the 3rd D.W., all the witnesses for the prosecution (sic) the 1st P.W. and 2nd D.W. all admitted that the Obawole Aina Arupe family had been the original owner of the land at Ifako, Ijaiye. 1st P.W. has failed to establish any claim to a portion of the land as shown by the 3rd D.W. 3rd plaintiff witness's evidence that*
10 *Obawole is overall landlord of all the parcels on and at Ifako is supported by the evidence of J.K. Coker in Exhibit 'H'. 3rd P.W. said his father bought in 1885 and Adeogun bought in 1911 all from Obawole Aina Arupe family."*

Commenting on Exhibit H, the court below. per Ademola, J .CA.
15 had this to say:

"Another issue which I need to comment upon is the use made of Exh. 'H' by the learned Judge in this case. As far as the learned Judge is concerned, Exh. 'H' is the respondent's answer to the claim of the appellant and it is upon this Exh. 'H' that the counterclaim of respondent seemed
20 *to have been successful. For he said in part of the judgment as follows:-*

'In this case, J.K. Coker the ancestor of the plaintiff admitted paying rent, pepper etc to the Obawole, the ancestor of the defendant then on the authority of Adeleke's case (supra) title must be declared in the defendant.'

This is a misdirection of a serious nature. I did say earlier on in this judgment about paragraph 18 of the amended statement of defence where the respondent made it clear that J.K. Coker is not a customary tenant on the land in dispute but he is in respect of other lands belonging to their family. Looking at the words underlined in that extract from the learned
30 *trial Judge's judgment, the impression one gets is that J .K. Coker gave evidence in the present suit before the learned Judge, of course, that is not the case. Exh. 'H' is evidence of what Coker said in a different case from the present one. When Exh. 'H' was being tendered in the court below, the learned counsel appearing for the appellant objected to its admissibility. He*
35 *was over-ruled by the learned Judge. I believe, and I hold that the Judge was wrong in admitting Exh. 'H' into the proceedings.*

The Supreme Court had laid down in Alade v. Aborishade (1960) SCNLR 398; 5 FSC 1960 pg. 167 at p. 173 the circumstances in which evidence given at a previous proceedings would be accepted as evidence by

a court trying a latter case and the purpose for which such evidence if accepted in a latter case could be used. It has never been used to support a claim as is being done here by the learned trial Judge. It is not a judgment of a court, and therefore, even if it is a judgment of a court, it must satisfy some conditions which are well known in order to be used to bind parties in the present proceedings.

Viewed thus, the use made of Exb. 'H' by the learned Judge to defeat the appellant's claim and to support the respondent's claim for declaration of title is to say the least, not only wrong but improper. The case of Adeleke v. Adewusi (1961) All NLR p. 37 is a misapplication by the learned Judge in the circumstance of this case."

With the greatest respect to their Lordships of the court below, they are wrong to hold that Exhibit H was inadmissible. The impression given by the evidence of PW5 is that his father, J.K. Coker had land in various places in Ifako, Iju etc. In Exhibit H. J.K. Coker admitted being a tenant in Obawole's land at Ifako adjacent to Shomefun's land. Exhibit E, the composite plan tendered by PW6 was the plan used in the case where J .K. Coker testified in Exhibit H. The area marked "J.K. Coker" on Exhibit E is some distance to the land in dispute and it was in respect of that land, adjoining Shomefun's that Coker testified he was a tenant to Obawole. Significantly the area of the land in dispute on Exhibit E was marked "Odu-ljebu," a defendant in the 1896 action. Exhibit E has further debunked plaintiff's case as regards the grant to J.K. Coker. The alleged grant was said to have been made in 1880 or 1890. But in 1896 the area was marked "Odu-ljebu".

If the story of the grant were true, one would expect J.K. Coker to protest at that time. He did not. Rather he gave the evidence in Exhibit H. For various reasons given by the learned trial Judge he rejected the traditional evidence of the only witness on the grant - PW5. It was only one of the reasons given by the learned trial Judge in rejecting the evidence of PW5. I am not prepared to say that the view of the learned trial Judge on PW5 was perverse.

Exhibit 'G' was tendered by plaintiff's witness as a deed of conveyance whereby J.K. Coker sold land to Samuel Ajayi. The plan attached to this deed has not in any way supported plaintiff's case that J.K. Coker owned the land adjacent to the one sold to Ajayi. If the plan is carefully examined, it will be observed that none of the adjoining land owners was Aina Coker or J.K. Coker, contrary to the impression created in Exhibit C and the composite plan Exhibit E.

From all I have been saying above, the inevitable conclusion I have

reached is that plaintiff failed woefully to prove that the Obawole Aina Arupe, the acknowledged original owners of the land in dispute at any time granted the land to J.K. Coker from whom Aina Coker was said to have derived title. There is evidence from PW5 that members of Obawole family live on the land in dispute. Some building are shown on Exhibit C but
 5 neither in his pleadings nor in his evidence did plaintiff explain how the buildings came to be on the land and whose buildings they are. If, therefore, a grant of the land in dispute had been made to J.K. Coker by the Obawole family, how did members of that family come to build on the land without protests from J.K. Coker or his successors in title? The answer
 10 must be that no grant of the land was ever made by Obawole family to J.K. Coker. Title to the land, therefore, still remains in the Obawole Aina Arupe family. Plaintiff's claims were rightly dismissed.

Mr. Ayanlaja has submitted that there is no appeal against the dismissal by the court below of defendant's counter-claim. He submitted both
 15 in respondent's brief and in oral argument that there was no ground of appeal challenging the decision of the court below in respect of the counter-claim. I agree with learned counsel that there is no ground challenging the dismissal by the court below of defendants' counter-claim. In view of this lapse I say nothing more on that point.

20 In conclusion, I allow this appeal, set aside the judgment of the court below as it relates to plaintiffs' claim and hereby restore the judgment of the trial High Court dismissing plaintiff's claims.

I award to the defendants N1,000.00 costs of this appeal and set aside the order for costs made in the court below.

25

UWAIS JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Ogundare, J.S.C. I entirely agree with the judgment, I do not, therefore, desire to add anything. Accordingly, the appeal is al-
 30 lowed, the decision of the Court of Appeal on the plaintiff's claim is hereby set aside. The decision of the Court of Appeal in respect of the appellants' counter-claim is undisturbed since there has been no appeal against it in this Court. Costs assessed at N1,000.00 are awarded to the appellant against the respondent.

35

UWAIS JSC (PRONOUNCEMENT)

The Honourable Justice Olajide Olatawura who sat with us to hear this appeal on the 7th day of March, 1994 retired on the 3rd day of May, 1994. He took part in the conferences which we held on the case on the

16th day of March, 1994 and the 2nd day of May, 1994 respectively. He was of the opinion that the appeal should be allowed but that the order to be made should be that of non-suit and not dismissal and that the order by the Court of Appeal on the appellants' counter-claim should stand since there is no appeal against it.

In accordance with the provisions of the proviso to section 258 sub-section (2) of the Constitution of the Federation of Nigeria, 1979, I hereby pronounce the opinion of Honourable Justice Olatawura that the appeal be allowed and an order of non-suit be entered against the plaintiff's claim.

ONU JSC

I have been privileged to read in draft the judgment of my learned brother Ogundare, J.S.C. and I agree with his reasoning and conclusions.

I only wish to comment briefly by way of emphasis in as much as the lead judgment, in my view, has covered exhaustively all points of law and facts raised therein.

On Issue 1 which enquires whether the respondent, as plaintiff at the trial court, tendered sufficient credible evidence before that court that would have entitled him to the declaration sought, my answer is unequivocally in the negative. The following are my reasons.

In paragraphs 6, 6A, 6B, 9 and 16 of his Amended Statement of Claim the respondent pleaded thus:-

"6. The land the subject matter of this action is situate behind Ijaiye village along Isheri Ifako road, Agege in Ikeja District of Lagos and the land which originally forms part of the vast acres of a farmland belonged to the Obawole family absolutely under Yoruba Native Law and Customs.

6A. In consideration of the friendship that existed between the late Jacob Kehinde Coker and the Obawole family particular (sic) in consideration (sic) the finance help given by the said Jacob Kehinde Coker to the Obawole family in affection (sic) the roofing with corrugated Iron sheets of the Obawole family House at Otta, the Obawole family granted a large parcel of land of which the land in dispute forms a portion to Jacob Kehinde Coker absolutely under Yoruba Native Law and Custom"

6B The said customary grant was made openly by the Obawole family in the presence of witnesses and they blessed the grantee J.K. Coker aforesaid on the land with the gin, kolanut alligator pepper presented by the said J.K. Coker for the said purpose

9. The said Jacob Kehinde Coker continued to exercise open and unhindered acts of ownership and possession on the land granted to him as aforesaid by selling portions of the land and farming on the rest and in

particular:

(i) Sold a portion of the land to Aina Coker and put her in possession in May 1912:

(ii) Sold another portion to the children of Dosunmu by Madam Sade and put them in possession in May, 1912:

5 (iii) Sold and conveyed another portion of the land to Samuel Ajayi by Deed of Conveyance dated the 12th day of February, 1927 and put him in possession thereof.

10. The land in dispute herein is that portion of land originally granted to Jacob Kehinde Coker absolutely which was sold by Jacob Kehinde Coker
10 to Madam Aina Coker as aforesaid and is now shown on the plan filed herein as now bounded by Yaya Abatan Street. Alfa Sunmola's land, the Rev. David Hughes' land beyond the Dosunmu children's land the aforementioned.

16. The plaintiff avers that during the course of deal with their other
15 lands in the area of the land in dispute, the defendants had always known of and recognised the ownership of the land claimed on behalf of Jacob Kehinde Coker herein and the defendants will rely on the Deed of Conveyance dated the 13th day of April, 1911 and registered as No. 98 at page 342 in Volume 70 of the Register Deeds at Lagos and will contend that the
20 defendants are estopped from denying the ownership and possession of the land in dispute by Jacob Kehinde Coker and his successors-in-title."

The respondent then sought as per his paragraph 21 of the Amended Statement of Claim the following reliefs:-

"Whereupon the plaintiff claims;

25 (i) *a declaration of title under Yoruba Native Law and Customs to all that parcel of land situate, lying and being at Ijaiye Agege which is more particularly shown and edged red on the Statement of Claim;*

30 (ii) *N500.00 damages for trespass committed on the farmland situate, lying and being at Ijaiye Agege, Lagos State by destroying cassava, cashew trees and other crops of the plaintiff therein in March and April, 1976;*

(iii) *An injunction to restrain the defendants, their privies and servants from committing further acts of trespass on the said land."*

At the trial, respondent led evidence for the most part in keeping
35 with his pleading except for the deficiency in the testimony of his half brother, P.W.5. He tendered as proof of his title a purchase receipt (Exhibit A) said to be the receipt his father issued to his mother when the former sold a piece of land measuring 7 acres to her; Exhibit B as a conveyance of 1911 the appellant's progenitor (Obawole) made in favour of respondent's father

and Exhibit 'C containing 2223 acres of land. Finding that the respondent did not prove his case on the balance of probabilities, the trial court wholly dismissed his claims. His appeal to the Court of Appeal sitting in Lagos was allowed. Hence, the appellants' appeal to this Court.

Now, the respondent had acknowledged the over-lordship of the appellant's family to the larger piece of land. Irrespective of the fact that he tendered at the trial Exhibit C and the composite plan (of adjoining lands) Exhibit 'E', he, by his production of Exhibit A evidencing the sale of the piece of land by his father to his mother, was unable to demonstrate what relevance Exhibit C vis-a-vis Exhibit A bore to the land to which he laid claim and where exactly on Exhibit E. his piece or parcel of land can be identified. Hence, a claim to a piece of land measuring 7 acres which cannot be equated to one measuring 22-23 acres, would in my opinion, constitute an amorphous claim. Learned counsel for respondent's submission before us that Exhibit A pales into insignificance with evidence of other transactions relating to the land in dispute, is neither here nor there. This is because one cannot wish away the piece of land depicted on Exhibit 'C measuring between 22 and 23 acres by way of a declaration while Exhibit A is being dangled also as evidence of the respondent's other root of title in the quaint hope that the two combined or each separately construed, would sustain his claim. Nor can it be said that the traditional evidence relied on by the respondent in support of his claim of title to the land in dispute was established by him on the balance of probabilities. Exhibit H having shown that the respondent's family had acknowledged his ancestor, J.K. Coker, at one time held some land as customary tenant of appellants' (Obawole) family, it is an established principle of law that land used by customary tenants under Yoruba Customary Law will not ripen into ownership however long. In other words, title by prescription is unknown to that law. See *Akinloye v. Eyiola* (1968) NMLR 92 at 93. It ought to be born in mind that a declaration of title will only be made when the court is fully assured firstly, as to the precise nature of the title in respect of which a declaration is sought and secondly, that there is evidence by which the court is satisfied that a title of the nature claimed has been established.

Since in the instant case the respondent was unable to demonstrate from Exhibit E - the composite plan, the extent and delimitation of his ill-defined parcel or parcels of land, either on Exhibit 'A' or 'C', the appropriate order to make in the circumstances as indeed the trial court made, was a dismissal of his suit. In the light of what I have said above, I hold that the respondent had failed to tender sufficient evidence as would have entitled him to the declaration he sought and his claims were rightly dismissed. The

court below was therefore wrong to have set aside the decision of the trial court.

My answer to Issue 2 in view of my holding above would therefore be in terms as my answer to Issue 1 above in so far as it is a logical offshoot of Issue 1 and co-terminus therewith.

5 In respect of Issue 3 which poses the question as to whether the appellants were entitled to the land covered by the same Exhibit 'C', it is pertinent firstly, to set out the appellants' counter-claim from which such a claim arose. Now, in their counter-claim contained in the Amended Statement of Defence, the appellants pleaded:-

10 “COUNTER-CLAIM

The defendants repeat the defence and by way of counter-claim against the plaintiff claim:

(i) A declaration that they as the persons entitled to Certificate of Occupancy are the absolute owners under Yoruba Native Law and Custom of all that piece or parcel of land situate lying and being at Abule Ijaiye in the Ikeja District of Lagos State and which is more particularly shown and edged in red on the plan attached to the Statement of Claim herein.

(ii) *N100.00 special and general damages for trespass to the said land.*

20 *SPECIAL:*

40 Cocoa tress cut and destroyed N40.00

27 Kolanut trees cut and destroyed N33.75

N73.75

GENERAL: N26.25

25	TOTAL	N100.00
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(iii) A perpetual injunction restraining further acts of trespass by the plaintiff, his servants and/or agents.”

While the trial court found for the appellants on their counter-claim the court below which allowed the respondents appeal to it founded on Exhibit 'C', set aside the order of counter-claim although dismissing the claim for trespass but granting an injunction to them (appellants). The appellants as later transpired, have appealed against the decision of the court below to this Court on the claim for declaration, etc. but none against the counter-claim as no grounds of appeal were filed attacking that aspect (counter-claim) of the case. Not having done so I take it that appellants intended to be bound by the decision of the court below wherein that court held:-

“Finally, it does appeal to me on what I have been saying that the granting of a declaration on the counter-claim cannot stand. I agree with

the submission in the appellants' brief that the evidence led by the respondent in favour of the declaration is vague not cogent enough to enable them to succeed."

The result of all I have been saying is that in so far as the counter-claim is concerned, the parties having joined issues that the land claimed is that on Exhibit 'C' no more will be said regarding it in as much as no 5 grounds of appeal were filed against that part of the judgment of the court below. The original grounds of appeal were struck out while the appeal was argued on the general ground only. As matters stood since, the counter-claim which in essence is a cross-action, was dismissed and was not the subject of an appeal, the appellants got nothing . 10

For these and the fuller reasons set out in the lead judgment of my learned brother Ogundare, J.S.C. with which I had expressed my full agreement. I abide by the consequential orders inclusive of those as to costs herein contained.

ADIO JSC

I have read, in draft, the judgment just delivered by my learned brother, Ogundare, J.S.C. I agree with his reasoning and conclusion for allowing the appeal. Accordingly, I hereby allow the appeal and abide by the consequential orders, including the order for costs. 20

Appeal allowed.

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