

SUPREME COURT OF NIGERIA
7TH APRIL, 1995. SC. 232/1991
CORAM:- M. BELLO CJN, I.L.KUTIGI,
M.E. OGUNDARE, Y.O. ADIO, A.I. IGUH, JJSC.

IYIOLA OGUNJUMO & OTHERS

(For and on Behalf of

Obegun Family)

.....APPELLANTS

AND

MURITALA ADEMOLU & OTHERS

(For themselves and on behalf

of Otitoju Trading Society of Ibadan)

.....RESPONDENTS

APPEALS - Concurrent findings - Where supported by evidence -And not shorn to be perverse - Whether to be upheld.

APPEALS - Issue - That is incompetent for not being covered by any ground - Is to be struck out.

EVIDENCE - Standard of proof in civil cases - Uncontested land case - Whether plaintiffs established their case by minimum proof

LAND LAW- Registrable instruments - Where not registered - Are admissible in proof of payment of purchase price -And to prove equitable interest.

LAND LAW - Title - Traditional history and acts of possession by plaintiff - When evidence thereto is found scanty and unreliable.

LAND LAW-Uncontroverted claim - As 4th defendant did not contest the claim- Whether plaintiffs are entitled to succeed. Against him.

LAND LAW - Family land - Finding that it was conveyed by the family head - with the approval of the entire family members - Whether supported by evidence.

FACTS

Before the High Court Ibadan, the plaintiffs/appellants sued the defendants/respondents claiming among other reliefs entitlement to right of

occupation and of certificate of occupancy in respect of the land in dispute. Plaintiffs relied on traditional history, various acts of ownership and possession. Their claim was in respect of three portions against the three sets defendants. Notice of presence of signboards and unauthorized structures the land compelled the plaintiffs to file this action. The 4th defendant though served, neither entered appearance nor took part in the trial.

The trial court found that the plaintiffs did not prove their claim against any of the three sets of defendants. Plaintiffs' evidence of traditional history and acts of possession were found to be scanty and unreliable. Their case was therefore dismissed. Plaintiffs' appeal to the Court of Appeal was also dismissed. Being dissatisfied, the plaintiffs have further appealed to the Supreme Court to determine inter alia, whether they are entitled to succeed in their claim against the 4th defendant who did not contest the case.

HELD (Unanimously dismissing the appeal per lead judgment of **KUTIGI JSC**)

Concurrent findings

1 .The above findings which have been confirmed by the Court of Appeal have not been shown to be perverse. In fact these findings are amply supported by evidence led by the defendants. There was the further evidence that Otitoju Trading Society through 5th and 6th defendants bought the land from the children of LAYINKA as per their deed of conveyance (Exhibit J), and that the 1st, 2nd & 3rd defendants bought same from Otitoju Trading Society (represented by the 5th & 6th defendants) I think the lower courts were right in their conclusions. (p. 822 G)

Family Land - Standard of proof in civil cases - Uncontroverted case

2. It is trite law that a civil case is decided on a preponderance of probability and that the onus of adducing further evidence is on the person who would fail if such evidence were not produced (see section 136 (old 135) of Evidence Act. But even then the nature of proof in a given case must be dictated by the particular circumstances of the available evidence. Thus in an uncontested case a plaintiff may establish his case by minimum proof while a contested case may be established by a balance of probability. I agree with the courts below that "scanty and insufficient evidence adduced at the trial did not amount to minimum proof which would have entitled the plaintiffs to judgment against the 4th defendant. (P823 B)

Registrable instruments

3. I must point out that in fact both Exhibits F & H are not registrable instruments under the Land Instruments Registration Law because they are ordinary letters to and from the District Officer Ibadan Division and do not grant any interest in land. Exhibits E & G however are clearly registrable instruments. To put it simply the law is that registrable instruments which are not registered are if pleaded admissible in evidence to prove not only payment of purchase money or rent but also to prove equitable interest where the purchaser or lessee is in possession. (p. 823 E)

Issue - That is incompetent

4. Clearly the issue (4) does not flow from ground 5, While ground 5 complains about refusal to consider laches, acquiescence and standing by, the issue talks of refusal of appellants' case on the same ground. So, whichever way one looks at it, issue (4) is incompetent not having been covered by ground 5 or any ground at all, while ground 5 itself would be deemed to have been abandoned not being covered by any of the issues. Issue (4) will accordingly be struck-out and it is hereby struck-out. (p. 824 A)

Title - Traditional history

5. As regards the area verged Green covered by issue (5) the learned trial judge believed the evidence of the 1st defendant that the land originally belonged to Jenyotan Filenu/Oguntade family and that the land of the plaintiffs did not extend to the land verged green in Exhibit A. He equally found that section 45 of the Evidence Act cannot be of any assistance to the plaintiffs. In addition he said the evidence of traditional history and acts of possession led by the plaintiffs were "scanty and unreliable." The Court of Appeal agreed with him and I too agree. There is no reason to interfere. (P:824C)

NOTABLE POINTS OF INTEREST***IGUH JSC******1. Concurrent findings - Whether to be disturbed***

But the supreme Court will not disturb concurrent findings of fact by the High Court and the Court of Appeal unless a substantial error apparent the lace of the record of proceedings is established or where such of feet are found to be perverse or unsupported by the evidence trial court or where they were reached as a result of a wrong approach to the evidence or a

wrong application of the principles of substantive law or procedure.
(p. 827 A)

2. Discharge of onus of proof on a minimal proof

It is indisputable that where a defendant took no part in a proceeding or
B offered no evidence in his defence, the evidence before the court goes one
way and there would be nothing to put on the other side of the imaginary
scale of balance as against the evidence for the plaintiffs. The onus of
proof in such a case is therefore discharged on a minimal of proof. Two
observations, however, must be made in the claims against the 4th defend-
C ant. The first one is that a close study of the printed evidence on record of
the plaintiffs against the 4th defendant is clearly glaringly scanty as found
by the two courts below and, I should add, grossly unsatisfactory. The said
evidence is, in my view, much lower than the minimal proof usually re-
quired in uncontested case. Secondly, and more importantly, is the fact
D that the plaintiffs' main claim against the 4th defendant is declaratory. The
law is settled that the court does not gram declarations of right either in
default of defence or, indeed, on admissions without hearing evidence and
being satisfied by such evidence (p.827H)

E CASES REFERRED TO

- Obanor v. Obanor (1976) NMLR 39 at 43
- Okolo v. Uzoka (1978) 4 SC. 77 at 86
- Kodilinye v. Odu 2 WACA 336
- F Abike v. Adedokun (1986) 3 NWLR (pt. 30) 548 at 359
- Atunrase v. Sunmola (1985) NSCC Vol. 16 page 115
- Ramoni v. Akinwumi (1966) NSCC Vol. 4 page 197
- Nwosu v. Ubeaja (1990) 1 NWLR (pt. 125) 188 at 223 D - F
- Oke v. Alyedun (1986) 2 NWLR (pt. 23) 584
- G Ogunbambi v. Aba (1951) 13 WACA 222
- Oshode v. Imoru 3 WACA 93
- Ajao v. Owoseni (1986) 5 NWLR 578
- Hart v. Hart (1987) 4 NWLR (Pt. 63) 105
- Obasi v. Onwuka (1987) 3 NWLR (Pt 61) 364
- H Bankole v. Pelu (1991) 8 NWLR (pt. 211) 523
- Okoye v. Dumex (1985) 6 SC. 3
- Enang v. Adu (1981) 11-12 S.C. 25 at 42
- Nwadike v. Ibekwe (1987) 4 N.W.L.R (Part 67) 718
- Igwgo v. Ezeugo (1992) 6 N.W.L.R. (Part 249) 561 at 576

Woluchem v. Gudi (1981) 5 S. C. 29

Ike v. Ugboaja (1993) 6 N.W.L.R. (Part 301) 539 at 569

Williams v. Johnson (1937) 2 W.A.C.A. 253

Balogun v. Agboola (1974) 1 All N.L.R. (Part 2) 66

Oguma v. I.B.W.A. (1988) 1 N.W.L.R. (Part 73) 658

Wallersteiner v. Moir (1974) 3 All E.R. 217

Bello v. Eweka (1981) 1 S.C. 101

Motunwase v. Sorungbe (1988) 4 N.W.L.R. (Part 92) 90

B

LEAD JUDGMENT BY KUTIGI JSC

In the High Court of Oyo State at Ibadan the plaintiffs sued the defendants claiming the following reliefs -

“(1) Declaration of entitlement to right of occupation and grant of certificate of occupancy in respect of the parcel of land situate and being at Olomi Olojuoro Road, Ibadan.

(2) N2,000.00 (Two Thousand Naira) jointly and severally for general damages for continuing trespass committed by the defendants and or their agents on the said land, and

(3) Perpetual injunction to restrain the defendants and or their agents, servants and assigns from further entry on the land.”

See para. 19 of the Amended Statement of Claim.

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After the filing and exchange of pleadings the case proceeded to trial. The 4th defendant however though served neither entered appearance nor took part in the trial. At the hearing of the case, the 1st plaintiff and four other witnesses gave evidence on behalf of the plaintiffs. The 1st, 2nd, 3rd and 6th defendants gave evidence for themselves with the 1st defendant calling one other witness. Two witnesses testified on behalf on the 5th defendant. ..

The case for the plaintiffs was simply that one Obegun their ancestor, settled on the land in dispute which is verged red in their Survey Plan Exhibit A. The said Obegun exercised various acts of ownership on the land in his life time. After the death of the founder his children Ogunjumo Ogundeli and Ogunlana from whom the plaintiffs descended continued to exercise various acts of ownership and in particular putting caretaker farmers on the land who accounted to the plaintiff for products of the farms. The plaintiffs also averred that Obegun invited the ancestor of one Bello Adelabu to the vicinity of the land in dispute where he settled; and that they also granted part of the land to one E.A. Agboola. It was also averred that one Ayoade Akanji Ogunyemi now deceased, farmed on the land. When the plaintiffs discovered the presence of signboards and unauthorised

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structures on the land in 1979, they caused their solicitor to write to the defendants. That despite repeated warnings to the defendants they continued their building operation on the land in dispute until they sued them in court.

B It is convenient at this stage to explain the land in dispute which as I said is verged red in Exhibit A. It will be observed that the area verged red is sub-divided into three portions verged yellow, green and pink respectively. The disputants in each of these areas are as follows -

a. The area verged yellow

C The dispute is between the plaintiffs and the 1st, 2nd, 3rd, 5th & 6th defendants.

b. The area verged green

The dispute is between the plaintiffs and the 1st defendant only.

c. The area verged pink

D The dispute is between the plaintiffs and the 4th defendant only ..

Now, the defendants' case was that the 1st, 2nd and 3rd defendants bought the area verged yellow from Otitoju Trading Company/Society, Ibadan, represented by the 5th & 6th defendants herein. The Company/Society itself had bought from the children of one Layinka as per deed of conveyance (Exh. J) dated 20th May, 1977. Layinka himself had bought from Akande, a member of Obegun family on 6th April 1926 as per Exhibit B. On the other hand the 1st defendant claimed to have bought the area verged green from Jenyotan Filenu/Oguntade family of Agbongbon, Ibadan in 1976 vide his deed of conveyance dated 3rd February 1977 (Exhibit L). He said the Jenyotan Filenu/Oguntade family were the original settlers on the land. He pleaded that he exercised acts of ownership on the land including placing one Akanni, the brother of one Salami Layiwola on the land as caretaker. He said he later laid the land into plots and had sold out virtually all the plots to people some of whom had completed their houses on the land. As I said above, the 4th defendant was not at the trial.

In a well considered judgment, the learned trial Judge Aderoju Aderemi J., after carefully evaluating the evidence of the parties, put each set of facts on an imaginary scale, weighed one against the other and came to the following conclusion on page 166 of the record -

H *"The plaintiffs have failed to show that they were in exclusive possession of the area verged green and the area verged yellow on Exhibit A. It has been shown that the plaintiffs' family have divested themselves of a very large portion of the area verged yellow. They have not proved that they were ever in possession of the area verged green. The claim for tres-*

pass therefore fails.

As the claim for injunction follows a finding of liability for trespass. see Obanor v. Obanor(1976) 2 S.C. 1; (1976) NMLR 39 at 43), the plaintiffs are not entitled to one as they have failed to prove trespass.

The 4th defendant did not take part in the proceedings. The evidence led against the 4th defendant is so scanty and in my view not enough B to grant the prayers sought by the plaintiffs in a claim for a declaration of title to a statutory right of occupancy, trespass and injunction. The plaintiffs must prove their case against her, the fact that she was not present at the proceedings notwithstanding (See Christopher Okolo v. Eunice Uzoka (1978) 4 Sc. 77 at 86 and Kodilinye v. Mbanefo Odu (1935) 2 WACA 336. C

Finally I hold that the plaintiffs are not entitled to succeed in their claims which are all hereby dismissed."

Dissatisfied with the judgment of the High Court, the plaintiffs appealed to the Court of Appeal, Ibadan Division. Various issues under the three sub-divided portions of the land in dispute above were submitted for resolution. The Court of Appeal carefully considered all the issues and dismissed plaintiffs' appeal when it held on page 248 of the lead judgment thus-

"The result is that the appeal fails and it is hereby dismissed by me. The judgment of Aderemi J. dated 10.11.86 is hereby affirmed. There E will be costs against the appellants which i assess at N300.00 (Three hundred Naira)."

Further aggrieved by the decision of the Court of Appeal. the plaintiffs have appealed to this Court.

Counsel on both sides filed and exchanged briefs of argument F which were adopted at the hearing. Mr. Awosode learned counsel for the plaintiff has on page 2 of his brief submitted five issues for determination in this appeal as follows -

"1. Whether when no evidence of sale to the defendant/respondent in court by the plaintiffs/appellants' family the Court of Appeal can G uphold the decision of the High Court that the land verged Yellow in Exhibit A was validly transferred to the 5th and 6th defendants/respondents.

2. Whether where the appellants case remained uncontroverted, the lower court can refuse to grant a claim in respect of the area verged H Pink in Exhibit A.

3. Can a party rely on inadmissible documents coupled with act of possession in an action for declaration of title when the act of possession was seriously disputed during the trial.

4. Whether the lower court was right in refusing the appellants' case on the ground of laches, acquiescence and standing by when from the evidence before the court, the appellants did not stand by or acquiesce.

5. Did the appellants not prove their case in respect of ownership and possession of the area verged Green in Exhibit A?"

Mr Abiodun learned counsel for the defendants (except the 4th defendant) on the other hand thinks that there is only one question for determination in this appeal and that is whether or not the Court of Appeal was right to have affirmed the judgment of the High Court on all grounds. This is probably a summary of the five issues combined.

On issue (1) Mr. Awosode submitted that title to the land verged Yellow in Exhibit A was not validly transferred to the 5th & 6th defendants and that the transfer was void. He said the defendant failed to prove that Akande who sold the land to Layinka was the head of Obegun family. Any purported sale or conveyance to the 5th & 6th defendants was therefore void. It was further submitted that there was no evidence that Akande sold the family land to Layinka with the consent of all the principal members and head of Obegun family. Exhibits E & G were only evidence of payment and not of any consent from the family. It follows therefore that the land was only sold by one branch of the family and not by the entire family, and the sale was therefore void. He referred to the cases of Abike & Ors. Adedokun (1986) 3 NWLR (Pt. 30) 548 at 559. Atunrase v. Sunmola (1985) 1 NWLR (Pt. 1) 105; (1985) NSCC Vol. 16 Page 115 Ramoni v. Akinwumi & Ors. (1966) NSCC Vol. 4 Page 197 Nwosu v. Udejaja (1990) 1 NWLR (Pt. 125) 188 at 223 D - F.

On issue (2) learned counsel submitted that the evidence adduced by the plaintiffs in respect of the area verged Pink was enough to give ownership to plaintiffs especially when their evidence remained uncontradicted. He said the 4th defendant in the absence of an appearance and pleadings must be taken to have admitted plaintiffs' claim and judgment ought to have been given to them accordingly. He referred to the cases of Oke v. Aiyedun (1986) 2 NWLR (Pt. 23) 548. Nwokoro v. Onuma (1990) 3 NWLR (Pt. 136) 22; Okoye v. Nwalu (1988) 2 NWLR (Pt. 26) 359.

Arguing issue (3) counsel submitted that Exhibits E, F, G & H cannot transfer any valid title to the 5th & 6th defendants of the land verged yellow because they are registerable instruments and that they were not so registered. They are therefore also inadmissible in evidence. He cited in support *Ogunmbambi v. Abowab* (1951) 13 WACA 222. It was also

submitted that Exhs. E, F, G & H can only confer equitable interest in the land if defendants' possession of the land was not challenged and the sale to them was not void ab initio.

Under the 4th issue it was submitted that there was no evidence before the court that the plaintiffs stood by or acquiesced. That the defence of laches and acquiescence and standing by cannot be available to the defendants because there was no evidence that the plaintiffs knew about the use of their land until 1979 when they discovered the sign-board thereon. He said the disputed land was bought by Otitoju Trading Society in 1977 and the defendants were challenged in 1979 and went to court in 1980. There was therefore no delay before the plaintiffs challenged the defendants. He referred to *Oshode v. Imoru* 3 WACA 93. *Oshodo v. Balogun* (1936)4WACA1; *Ajao & Anor. v. Owoseni & Anor.* (1986)5NWL(R Pt. 43) 578.

On issue (5) it was submitted that the plaintiffs have from their pleadings and evidence proved their ownership of area verged Green in Exhibit A. Counsel said the fact that the plaintiffs are the owners of the areas verged Yellow and Pink is proof of possession of connected or adjacent land and that the circumstances here render it more probable that the plaintiffs are the owners of the portion verged Green. He referred to the case of *Idundun v. Okumagba* (1976) 9-10 S.C. 227; (1976) 1 NMLR 200. He said the vendors of the 1st defendant did not adduce evidence of ownership of other portions of land in the area apart from the one they claimed to have sold to the 1st defendant showing that the vendors - *Jenyotan Filenu/Oguntade family* - did not own the land.

Replying generally, Mr. Abiodun for the defendants submitted that the 4th issue relating to laches, acquiescence and standing-by, should be discountenanced as it is not tied to any ground of appeal. He said ground 5 of the Grounds of Appeal is not covered by issue 4 either and the ground should be deemed to have been abandoned. He referred to *Hart v. Hart* (1987) 4 NWLR (Pt. 63) 105 and *Obasi v. Onwuka* (1987) 3 NWLR (Pt. 61) 364.

On the remaining issues counsel said that this Court is being called upon to upset concurrent findings of facts by the High Court and the Court of Appeal. He said the plaintiffs can only succeed if they can show that the findings of facts are not supported by evidence and that the error in arriving at such findings has occasioned a miscarriage of justice. In other words, such findings must be perverse. It was then submitted that the findings of fact in this case are amply supported by evidence. He referred us to the case of *Bankole v. Pelu* (1991) 8 NWLR (Pt. 211) 523.

Counsel also referred to pages 245 - 246 of the record where the

Court of Appeal agreed with the conclusions reached by the trial High Court regarding the sale of the portion edged Yellow by Akande as head of Obegun family and on behalf of the family. He said, the Court of Appeal rightly came to the conclusion that the trial court properly evaluated the evidence before it. About the area verged Green in Exhibit A counsel said
 B the lower courts were right when they held that the plaintiffs failed to prove they were ever in possession of that area of land. The lower courts were equally right to have described the plaintiffs' evidence as scanty in that regard.

It was also submitted that we should not disturb the lower courts
 C finding on Exhibits E, F, G & H which validly transferred title to the 5th & 6th defendants in respect of the land verged yellow.

I will now endeavour to resolve the issues one by one" On whether the area of land verged Yellow was validly transferred to the 5th & 6th defendants, the learned trial Judge on page 157 of the record stated thus -
 D *"From all the available evidence before me, I have no doubt that Akande, a member of the Obegun family, sold the land described in Exhibit B to Layinka on the 6th of April 1926. The boundaries of the land correspond with the description of the land in Exhibit B. There is no reliable evidence from the plaintiffs-to contradict the sale."*

Further down on page 158 he continued thus-
 E *"It is clear in the face of Exhibits E, F, & H that Layinka bought the land from Akande. It is also clear that Akande sold the land on behalf of the entire Obegun family. This was clearly stated in the document Exhibit B. I am certain that the entire Obegun family knew about the sale and*
 F *they consented to it."*

Also on page 161 he said -
"Upon the totality of the evidence before me, I find as a fact that Akande was the head of Obegun family at the time of the sale of the land in dispute to Layinka. I also find as a fact that at the time of the sale the
 G *said Akande sold with the consent, knowledge, and approval of the entire Obegun family."*

The above findings which have been confirmed by the Court of Appeal have not been shown to be perverse. In fact these findings are amply supported by evidence led by the defendants. There was the further
 H evidence that the Otitoju Trading Society through 5th and 6th defendants bought the land from the children of Layinka as per their deed of conveyance (Exhibit J.) and that the 1st, 2nd & 3rd defendants bought same from Otitoju Trading Society (represented by the 5th & 6th defendants). I think the lower courts were right in their conclusions.

On the complaint in issue (2), the learned trial Judge had held that the evidence led by the plaintiffs on the portion of land verged Pink was so “*scanty and insufficient*” to grant the declaration sought. That they failed to prove their case against the 4th defendant who was absent throughout the trial. It is trite law that a civil case is decided on a preponderance of probabilities and that the onus of adducing further evidence is on the person who would fail if such evidence were not produced (See section 136 (old 135) of the Evidence Act). But even then the nature of proof in a given case must be dictated by the particular circumstances of the available evidence. Thus in an uncontested case a plaintiff may establish his case by minimum ‘proof while a contested case may be established by a balance of probabilities. I agree with the courts below that “*scanty and insufficient evidence*” adduced at the trial did not amount to minimum proof which would have entitled the plaintiffs to judgment against the 4th defendant.

Issue (3) deals with the registrable instruments Exhs. E, F, G & H. The Court of Appeal on page 247 of the record stated thus:-

“It is true that Exhibits E, F, & G are registrable instruments but armed with Exh. E. and the taking of immediate possession coupled with acts of possession, the registrable instruments are therefore admissible to prove an equitable interest which was conveyed to Layinka. See Registered Trustees of Apostolic Faith Mission v. James (1987) 3 NWLR (Pt. 61) 556 and Obijuru v. Ozims (1985) 2 NWLR (Pt. 6) 167.”.

I agree, But I must point out that in fact both Exhibits F. & H are not registrable instruments under the Land instruments Registration Law because they are ordinary letters to and from the District officer Ibadan Division and do not grant any interest in land. Exhibits E & G however are clearly registrable instruments. To put it simply the law is that registrable instruments which are not registered are if pleaded admissible in evidence to prove not only payment of purchase money or rent but also to prove equitable interest where the purchaser or lessee is in possession (See Okoye G v. Dumez (1985) 1 NWLR (Pt. 4) 783; (1985) 6SC. 3.

Ground 5 of the Grounds of Appeal on page 253 of the record reads -

(5) The Court of Appeal erred in law by refusing to consider the ground of appeal on laches, acquiescence and standing by when the, said ground was argued by both *plaintiffs/appellants and-defendants/respondents.*” . H

Issue (4) on the other hand reads -

“Whether the lower court was right in refusing, the appellants case on the grounds of laches, acquiescence and standing by when from, the evidence. before the court the appellants did not stand-by or’ acquiesce.” ..

So clearly the issue (4) does not flow from ground 5. While ground 5 complains about refusal to consider laches, acquiescence and standing by, the issue talks of refusal of appellants' case on the same ground.

The Court of Appeal apparently did not consider the issue of laches, acquiescence and standing by when it said on page 248 of the record that

B “*The issue of laches, acquiescence and standing by has become a non-issue having regard to the findings and conclusions of the learned trial Judge on other issues raised with which I agree*”

So, whichever way one looks at it, issue (4) is incompetent not having being covered by ground 5 or any ground at all, while ground 5 itself C would be deemed to have been abandoned not being covered by any of the issues. Issue (4) will accordingly be struck-out and it is hereby struck-out:

As regards the area verged Green covered by issue (5) the learned trial Judge believed the evidence of the 1st defendant that the land originally belonged to Jenyotan Filenu/Oguntade family and that the land of D the plaintiffs did not extend to the land verged green in Exhibit A. He equally found that section 45 of the Evidence Act cannot be of any assistance to the plaintiffs. In addition he said the evidence of traditional history and acts of possession led by the plaintiffs were “*scanty and unreliable*”. The Court of Appeal agreed with him and I too agree.

E There is no reason to interfere.

The result is that this appeal fails all the issues having been resolved against the plaintiffs. The appeal is accordingly dismissed. The judgments of the lower courts are hereby confirmed. There will be costs against the plaintiff assessed at one thousand Naira (N 1,000.00) only.

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BELLO CJN

I have had a preview of the judgment of my learned brother Kutigi. J.S.C. I entirely agree with his reasonings and conclusion. I agree that the Appeal should be dismissed, the judgment of the Court of Appeal confirmed and N1,000.00 be awarded as costs.

OGUNDARE JSC

I have had the advantage of a preview of the judgment of my H learned brother Kutigi J.S.C. just delivered. I agree with him that this appeal is lacking in merit. I too dismiss it and abide by the order for costs made by him.

ADIO JSC

I have had the advantage of reading, in draft, the judgment just read by my learned brother Kutigi. J.S.C. and I agree that this appeal fails. B I too dismiss it and abide by the order for costs.

IGUH JSC

I have had a preview of the lead judgment just delivered by my learned brother, Kutigi. J.S.C and I agree that this appeal lacks merit and ought to be dismissed. C

The facts of the case as well as the issues for determination are well set out in the said judgment and it is unnecessary to recount them in detail all over again. It suffices to say that the plaintiffs, who are the appellants herein. for themselves and on behalf of the Obegun family of Ibadan had instituted an action against the respondents, as defendants, for themselves and as representing the Otitolaju Trading Society, Ibadan claiming as follows:- D

“1. Declaration of entitlement to right of occupation and grant of certificate of occupancy in respect of the parcel of land situate and being at Olomi Olojuoro Road, Ibadan. E

2. N2,000.00 (Two Thousand Naira) jointly and severally for general damages for continuing trespass committed by the defendants and/ or their agents on the said land and F

3. Perpetual injunction to restrain the defendants and/or their agents, servants and assigns from further entry on the land.”

Pleadings were duly ordered, settled and exchanged. The 4th defendant who was duly served with all the court processes in respect of the suit neither entered appearances nor took part in the proceedings. G

The land in dispute between the parties is verged red in the plaintiffs' Survey Plan. Exhibit A. This land is sub-divided into three contiguous pieces or parcels of land verged yellow, green and pink respectively. The plaintiffs claimed all three pieces of land. As against the 1st, 2nd, 3rd, 5th or 6th defendants, the plaintiffs claimed the area verged yellow. As against the 1st defendant, of the one part and, the 4th defendant of the other part, the plaintiffs claimed the areas verged green and pink respectively. H

The parties are ad idem that the area verged yellow on Exhibit A originally belonged to the Obegun family from which the plaintiffs come.

The only issue between the parties was whether the said land was sold to one Layinka in 1926 by the then head of Obegun family, Layinka. It is the defendants' contention that Layinka's children resold the land to the 5th and 6th defendants after the land had devolved on them consequent on Layinka's death. They maintained that 1st, 2nd and 3rd defendants derived title to their respective holdings within the area verged yellow through the 5th and 6th defendants as representatives of the Otitoloju Society.

With respect to the area verged green, the plaintiffs' claim was based on traditional history. The 1st defendant on the other hand, claimed to have derived his title over the land from DW1, Layiwola Ayinla Oguntade through Exhibit L. It was his case that the said land originally belonged to the Jenyotan Filenu/Oguntade family and not the plaintiffs' family.

On the area verged pink, the plaintiffs also claimed ownership and possession thereof. As I have already observed, the 4th defendant against whom this claim was made did not defend the action and took no part in the proceedings.

The trial court in a well considered judgment disbelieved the plaintiffs' acts of ownership and possession over the land verged yellow in Exhibit A. The Court found for the defendants and dismissed the plaintiffs' claims in their entirety. The learned trial Judge found that Akande was at all material times the head of the plaintiffs' family and that he validly sold the land verged yellow on Exhibit A to Layiwola in 1926 on behalf of the appellants' family. He also found that the land verged green was not the property of the plaintiffs. In his view, the plaintiffs' claims thereto which were based on traditional history were not established. The court found that the 1st defendant validly bought the land verged green from the original owners thereof. With regard to the area verged pink, the trial court was satisfied that the evidence led against the 4th defendant was so scanty and insufficient to ground the declaration of title to a statutory right of occupancy sought by the plaintiffs. The plaintiffs must prove their claims against her, the fact that she was not present in court to defend the proceedings notwithstanding.

Dissatisfied with this judgment of the trial Court, the plaintiffs appealed to the Court of Appeal which on the 26th July, 1990 dismissed their appeal and upheld the findings of the trial court. The plaintiffs, hereinafter called the appellants, have further appealed to this court against the said judgment of this Court of Appeal.

Upon a careful consideration of all the issues that arise for resolution in this appeal together with the arguments of learned counsel thereupon, it is obvious that this court is being called upon to upset the concur-

rent findings of fact of both the trial High Court and the Court of Appeal. But the Supreme Court will not disturb concurrent findings of fact by the High Court and the Court of Appeal unless a substantial error apparent on the face of the record of proceedings is established or where such findings of fact are found to be perverse or unsupported by the evidence before the trial court or where they were reached as a result of a wrong approach to the evidence or a wrong application of the principles of substantive law or procedure, See Enang v Adu (1981) 11-12SC. 25 at 42, Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718, Igwego v. Ezeugo (1992) 6 NWLR (Pt. 249) 561 at 576, Lamai v. Orbih (1980) 5.7 SC. 28, Woluchem v. Gudi (1981) 5 SC. 291 at 326, Ike v. Ugboaja (1993) 6 NWLR (Pt. 301) 539 at 569, Chinwendu v. Mbamali (1980) 3-4 S.C. 31 etc. The Supreme Court approaches the issues of concurrent findings of fact by two lower courts from the premise that as the making of findings of fact is a matter pre-eminently within the province of the trial court which has the opportunity of seeing, hearing and observing the witnesses testify, the trial court's conclusions of the facts are presumed to be right. The onus is on the person seeking to upset the judgment on the facts to displace this presumption. Where, in addition, appellate court has confirmed such conclusion or findings, the 'presumption becomes even stronger and may only be reversed upon special circumstances shown. See Williams v. Johnson (1937) 2 WACA E 253; Balogun v. Agboola (1974) 1 All NLR (Pt. 2) 66; (1974) 10 S.C. 111; Ibodo v. Enarofia (1980) 5-7 SC, 42 AT 55-58, Eholor v. Osayande (1992) 6 NWLR (Pt. 249) 524 at 548 etc.

I have given a close study to the findings and conclusions reached by both the trial court and the court below in this appeal and must state that I have found them to be amply supported by evidence and entirely without fault. In these circumstances, I find myself unable to disturb or upset them.

The second issue concerns the dismissal by both courts, below of the plaintiffs' claims for declaration of title to a statutory right of occupancy, trespass and injunction against the 4th defendant who did not take part in the proceedings. The trial court in doing this described the evidence led against the 4th defendant by the plaintiffs as -

"So scanty and in my view not enough to grant the prayers sought The plaintiffs must prove their case against her, the fact that she was not present at the proceedings notwithstanding. See Christopher Okolo v. Eunice Uzoka (1978) 4 SC. 77 at 86"

It is indisputable that where a defendant took no part in a proceedings or offered no evidence, in his defence, the evidence before the

court goes one way and there would be nothing to put on the other side of the imaginary scale or balance as against the evidence for the plaintiffs. The onus of proof in such a close is therefore discharged on a minimal of proof See *Nwabuoku v. Ottih* (1961) 2 SCNLR -232; (1961) 1 All NLR 487 at 490, *Oguma v. I.B.W:A* (1988) 1 NWLR (Pt. 73 658 at 682 and *Balogun B v. U.BA. Ltd.* (1992) 6 NWLR (Pt. 247) 336 at 354.

Two observations, however, must be made in the claims against the 4th defendant. The first one is that a close study of the printed evidence on record of the plaintiffs' against the 4th defendant is clearly glaringly scanty as found by two courts below and I should add, grossly unsatisfactory. The said evidence is, in my view, much lower than the minimal proof usually required in uncontested case. Secondly, and more importantly, is the fact that the plaintiff's main claim against the 4th defendant is declaratory. The law is settled that the court does not grant declarations of right either in default of defence or, indeed, on admissions without hearing evidence and being satisfied by such evidence. See *Wallersteiner v. Moir* (1974) 3 All E.R. 217, *Vincent Bello v. Magnus Eweka* (1981) 1 Sc. 101 and *Motunwase v. Sorungbe* (1988) 5 NWLR (Pt. 92) 90. Evidence against the 4th defendant was heard by the trial court which found the same unsatisfactory and insufficient. In -these circumstances, I think the courts below E were right to dismiss the plaintiffs' action against the defendant.

It is for the above and the more detailed reasons' contained in the lead judgment of my learned brother that I agree that this appeal lacks merit and ought to be dismissed.

Accordingly, this appeal fails and it is dismissed. I also award F N1,000.00 costs in favour of the respondents.

G

H