

**SUPREME COURT OF NIGERIA**  
16TH JANUARY, 1996. SC. 285/1989  
**CORAM:- S. M. A. BELGORE, A. B. WALI, I. L. KUTIGI**  
**M. E. OGUNDARE, Y. O. ADIO, JJSC.**

HAMADU HUNARE ..... APPELLANT  
AND  
YAYA NANA & ANOR ..... RESPONDENTS

---

**EVIDENCE** - *Contradiction - Where appellant's evidence is contradictory - Court is bound to act on the more reliable evidence.*

**ISLAMIC LAW** - *Possession - Ten years peaceful possession of land - Is a bar to action against non blood related possessor.*

**ISLAMIC LAW** - *Ownership takes priority over undisturbed possession - Whether this principle is apposite - In the present case - Where appellant's evidence of ownership is contradictory.*

**ISLAMIC LAW** - *Possession - Doctrine of long and undisturbed possession of land - Whether applicable unto extinguishing appellant's claim of ownership.*

**FACTS**

The appellant as plaintiff filed an action against the defendants/respondents before the Area Court claiming the farmland in dispute as his property. Appellant claimed that the land was the property of his grandfather before it was inherited by appellant's father. Appellant's late father lent the farmland to one Shehu. Efforts by appellant to recover the land after his father's death proved abortive. Before Shehu died, he shared the disputed land between the respondents. The farmland since then had been in the respondents' undisputed and undisturbed possession without let or hindrance from any one.

The trial court found in the appellant's favour. Respondents' appeal to the Upper Area Court was allowed. Appellant appealed to the Sharia Court of Appeal which allowed his appeal. Respondents appealed to the Court of Appeal, Jos, which allowed their appeal. Being dissatisfied, appellant has now appealed to the Supreme Court raising 5 issues.

**ISSUES FOR DETERMINATION**

*"(i) What is the true meaning and import of the principle of Islamic law as*

contained in *Mulktasar khalil* Vol. 11 page 250, namely, “*Wabil Mulk Alal Hauzi li Annal Mulk A khassu Minal Hauzi*” applied (sic) in favour of the plaintiff/respondent by the Sharia Court of Appeal Bauchi?

(ii) Whether the Honourable Court of Appeal has properly directed itself to the true meaning and import of the said principle when it held that the Sharia Court of Appeal Bauchi State has misapplied the principle in this case. See p. 130

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

***Ownership takes priority principle - Contradiction in evidence***

1. The principle of Law relied upon by the Sharia Court of Appeal to wit “*Wabil Mulki Alal Hauzi Li annal Mulka Khassu Minal Hauzi*” meaning “evidence of ownership takes priority over that of undisturbed possession, because the former is stronger than the latter,” is not apposite as the positive evidence adduced by the respondents in support of their claim is more reliable than the contradictory evidence of the appellant. The Court is duty bound to act on the more reliable evidence in a situation like this one. (p. 133 G)

***Doctrine of long and undisturbed possession***

2. Apart from the authority (supra), this is a clear case where the doctrine of long and undisturbed possession will apply. For over 30 years the farm in dispute was claimed and used by the respondents’ father as his personal property. He even asserted his claim of ownership by dividing the disputed farmland between the respondents without any challenge from the appellant, and this is about 30 years ago. The appellant’s right, if any, to claim the farm has long been extinguished. (p. 134 A)

***Ten years peaceful possession of land***

3. Ten years peaceful enjoyment of possession of a landed property without let or hindrance bars all action against an un-blood - related possessor. The appeal fails and it is hereby dismissed. (p. 134 E)

**REPRESENTATION**

No appearance by the parties or their respective counsel

**CASES REFERRED TO**

Igwego v. Ezeugo (1992) 6 NWLR (Pt. 249) 561

Fadiora v. Gbadebo (1978) 3 SC 219

Sosan v. Ademuyiwa (1986) 3 NWLR (Pt. 27) 241

Esi v. Chief Secretary (1973) 11 SC 189

### ***LEAD JUDGMENT BY WALL JSC***

This is an appeal against the judgment of the Jos Division Court of Appeal by the appellant who was the plaintiff at the trial court.

The facts of the case in a nut shell are as follows:

The appellant was the plaintiff in a retrial suit before Kumo Area Court Judge, Bauchi State, presided over by a senior Area Court Judge. It was in respect of a claim of a farmland in possession of the respondents who were the defendants in the trial court. The appellant was claiming that the farmland in dispute originally belonged to his grandfather, Garba Taliyaje, on whose death the same was inherited by Buba and Umaru, the latter being the father of the appellant. When Buba died the farmland remained with Umaru. It was Umaru the appellant's father who lent the farmland to Shehu who was a friend to the appellant's father. Apparently, after the death of the appellant's father, he made abortive attempts to regain possession of the farmland. Before Shehu died he shared the disputed farmland between the respondents. Since then the farmland has been in undisputed and undisturbed possession of the respondents without let or hindrance from anyone.

In the trial court both parties called witnesses to prove their respective claims. The learned trial Senior Area Court Judge gave judgment for the appellant as plaintiff on the ground that-

*".....investigation clearly disclosed that the disputed farmland was originally cleared by his grand father (Garba Taliyaje) and after his death, Umaru, the plaintiffs father inherited the farm and accordingly lent it out to Alhaji Shehu who did not return it to the owner up to the time he died.*

*Therefore the plaintiff assumed the rightful person to stands owner (sic) of the purported land and I accordingly declared (sic) him so. This is in compliance with Ashal-Almadarik page seventy-one (71)."*

Dissatisfied with the trial court's judgment, the respondents (as appellants) appealed to the Upper Area Court, Kumo.

The Upper Area Court, after examining its jurisdiction under S. 59(2) of the Area Courts Edict, 1967 took additional evidence by recalling and re-examining the witnesses that testified before the trial court, and in allowing the appeal, it concluded as follows:-

*"And had the disputed farm land actually been the property of Buba and Umaru, they would have sued M. Shehu ever before he died, but that wasn't the case. The purported farm land even took thirty years in the custody of M. Shehu, and the plaintiff/respondent did not sue him neither sued his children*

before any court.

*I am satisfied with the evidence (sic) put forward by the appellant's witnesses, their corroborated evidence (sic) over-weighted. The parallel evidence (sic) of the plaintiff/respondent's witnesses. And even if the disputed farm was given to M. Shehu by the plaintiff/respondent by his father or by his uncle or otherwise by Jauro Yaya, it is now his property and his children inherited their father's farm land."*

The learned Upper Area Court Judge relied on Mayyara Vol. II in coming to his conclusion.

The appellant/plaintiff appealed to the Sharia Court of Appeal Bauchi, against the Upper Area Court's judgment. The Sharia Court of Appeal allowed the appeal and restored the trial Court's Judgment, reasoning as follows:-

*"We have reviewed the evidence given by the appellant witnesses who testified that the disputed farmland belong to the appellants grand father. They also confirmed to the court that the purported land was only lended out to Alh. Shehu. Their evidence sustained no objection during cross examination. It is in accordance with Sharia that evidence proving possession have supersation over that of manipulation period. Now in this case the evidence given by the appellants witnesses proved possessions and that of the respondents proved manipulation period."*

The Sharia Court of Appeal quoted and relied on Mulktasar Khalil Vol. II P. 250 in reaching its decision.

Dissatisfied with the judgment of the Sharia Court of Appeal, the respondents/defendants appealed to the Court of Appeal, Jos, and in a considered and unanimous judgment of that Court the Appeal was allowed and the judgment of the Upper Area Court was restored. Delivering the leading judgment, Alkawa, J.C.A. opined thus:-

*"It is not in doubt that the said land was in the possession of the appellant. The respondent stated that it was given on loan by his father to one Mallam Shehu who held it for about twenty (20) years cultivating it annually until when the appellants grew up; he apportioned it and donated it as a gift to his two children (the appellants) who were annually cultivating it without any interference from any person for more than fifteen years. Therefore it is wrong to say that the land is in the possession of the respondent. The Islamic Law principles aforementioned has been wrongly applied. It should properly apply in favour of the appellants who have held the land in their possession for long. Furthermore, in a case of this nature, where the respondent claimed the land in possession of the appellant who asserted that he got it in possession by means of the gift from his father or any*

person, the court will pay attention to the appellants and direct them to prove their assertion. In the present case the appellants have called three unimpeachable witnesses who proved their assertion that the farm was given as a gift by their father Mallam Shehu. Under this procedure the appellants will be entitled to the farm in dispute.

B     In case I am wrong, the court can grant ownership of the farm to the appellants. Under the procedure of prescription, it is clear from the evidence of all the witnesses including the respondent that they held possession for a period of 15 years. Here again the appellants will also be regarded by Islamic Law as the rightful owners of the said farm on the authority of C the unreported case No. CA/J/73/85; Hajja Karu v. Hajja Jurama which was rightly cited by learned counsel for the appellants, namely that ten years (10) peaceable enjoyment of possession without its being called to question bars all action against the possessor *e.t.c.* who are the appellants in this case at hand."

D     The appellant has now appealed to this court challenging the Court of Appeal decision (*supra*)

Three grounds of appeal were filed which were supported by the appellant's brief in which the following issues were raised:-

E     "(i) What is the true meaning and import of the principle of Islamic law as contained in *Mulkasar Khalil Vol. II* page 250, namely, "*Wabil Mulki Alai Hauzi Li Annal Mulk A Khassu Minai Hauzi*" applied (*sic*) in favour of the plaintiff/respondent by the Sharia Court of Appeal Bauchi?

F     (ii) Whether the Honourable Court of Appeal has properly directed itself to the true meaning and import of the said principle when it held that the Sharia Court of Appeal Bauchi State has misapplied the principle in this case.

(iii) Whether the Islamic Doctrine of long possession otherwise known as *Hauzi* applied even to land which is a subject matter of loan or borrowing.

G     (iv) Whether the period of Islamic Doctrine of long possession is the same irrespective or whether the parties are related by blood.

(v) Whether the decision of the Court of Appeal can be supported having regard to the weight of evidence."

H     The respondents also filed a brief in which 7 issues were formulated, and these are:-

"1. Whether the true meaning and import of the Islamic Law as contained in *Muhkara Khalil vol. II* page 250 whether (*sic*) rightly or correctly interpreted by the Sharia Court of Appeal and Court of Appeal even (*sic*) was applicable in this case and what its true meaning is.

2. *Whether the meaning and import of the Islamic Muhkara( sic) Khalil vol. II page 250 even if correctly interpreted and applied as suggested would have made any difference to the final decision in this case.*

3. *Whether the Islamic doctrine of long possession (Hauzi) is applicable in this case if so whether it applies in favour of the respondents or appellants.* B

4. *Whether the question of the land being a loan or gift simpliciter was considered or not and whether the court found the plot of land to be a loan or a gift.*

5. *Whether there is evidence of blood relationship in this case.*

6. *Whether the Court of Appeal ought to evaluate the evidence C again where it is not shown that the Lower Court failed to evaluate the evidence and make primary findings of fact based on laid down law.*

7. *Whether a party who did not attack the records of proceedings at the Lower Court can complain of wrong translation at the Appeal Court and whether the fact that a party does not have a counsel can excuse such D a failure and whether a point not raised in the Lower Appeal Court can be raised on a further appeal without leave."*

Before embarking to consider the issues formulated by learned counsel for the appellant, it is pertinent to draw his attention to the law and practice in this court that an appeal is argued on the issues formulated and not on the grounds of appeal such issues are formulated from See Igwego & Ors. v. Ezeugo & Anor. (1992) 6 NWLR (Pt.249) 561; Fadiora & Anor. v. Gbadebo & Ors. (1978)3 S.C. 219; Sosan v. Ademuyiwa (1986) 3 NWLR (Pt.27) 241 and Esi v. Chief Secretary (1973) 2 S.C. 189. But since there was no appearance by either party on the date the appeal came up for F hearing, the provision of Order 6 rule 8 sub-rule 6 was applied and the appeal was deemed as properly argued on the briefs already filed by both parties, I shall relax the strict application of the law to wit: "that appeal is argued on the issues formulated", and will proceed to consider the appellant's arguments which were based on the grounds of appeal.

In my view, the issues formulated by both the appellant and the respondents complain of one and same thing. G

For this reason, I shall adopt the issues formulated by the appellant in his brief for resolving this appeal.

Issues (I) and (II) are covered by ground I of the appellant's grounds of appeal. H

It was the submission of learned counsel for the appellant that evidence proving ownership of a property is stronger than evidence of undisturbed possession and where the two types are raised and proved by con

tending parties, that of ownership is given priority over that of undisturbed possession. He contended that since the appellant had called witnesses in proof of ownership of the disputed farmland by his grandfather which was subsequently inherited by his father, the Court of Appeal was wrong in reversing the decision of the Bauchi Sharia Court of Appeal which applied the correct Law and gave judgment in his favour. He submitted that the Court of Appeal misdirected itself in applying the doctrine of undisturbed possession as reason for interfering with the Sharia Court of Appeal judgment.

On issues (III) and (IV) which are covered by grounds 2 and 3 of the grounds of appeal, learned counsel submits that the doctrine of long possession is not a blanket principle that applies in all cases where long adverse possession is proved. He listed the following exceptions to the rule:

- (a) Where the person in long possession is in permissive occupancy only;
- (b) Where the parties contesting ownership and possession are blood relations, the applicable period is 40 years of undisturbed possession

He submitted that there is evidence that Alhaji Shehu, the father of the respondents is an uncle to the appellant and the period during which the respondents have been in possession is less than 40 years. Apart from that, Alhaji Shehu, the father of the respondents was only in permissive occupancy, that is the farmland was gratuitously lent to him by the appellant's father for farming purposes.

In reply to the submissions of learned counsel for the appellant, learned counsel for the respondents submits that the evidence adduced by the appellant to prove his claim is inconsistent for, while the appellant maintained before the Upper Area Court that it was him that gave the disputed farm land to Alhaji Shehu, his two other witnesses, PW.2 and PW.3 testified that it was the appellant's father that did so. These go to show the inconsistency and the contradiction in the evidence of the appellants' witnesses which led the Upper Area Court to prefer the evidence adduced by the respondents which was uncontradicted, as both parties are claiming ownership of the same farm land from different sources.

On the doctrine of adverse possession, learned counsel for the respondents submits that the fact that the appellant stood by and did nothing when Mallam Shehu in his life time divided the farmland between the respondents is a strong evidence against him. He urges the court to dismiss the appeal.

In the trial court both witnesses called by the appellant gave evidence that the disputed farm land was in possession of Mallam Shehu. During the life time of Mallam Shehu, the appellant made a move to recover possession but to no avail. The appellant admitted before the Upper

Area Court that

even before Alhaji Shehu died, the latter had shared the farmland between the respondents.

Before the Upper Area Court, after the learned appellate Judge had recalled and re-examined the witnesses, the following facts became clear and settled:-

1. That there is no blood relationship between Umaru, (The appellant's father) and Shehu, (the respondent's father);
2. That the appellant admitted that Shehu (the respondent's father) shared the land in dispute between the respondents before his death;
3. That the sharing of the farmland to the respondents by Shehu C was to his knowledge and he did nothing;
4. That the appellant's evidence as regards the lending of the farm is contradictory and therefore unreliable.

The learned Upper Area Court Judge finally put the following question to the appellant:-

*"If at all what you have told this court might be right, that you were the person who lent the purported land to M. Shehu, then why didn't you sue Alhaji Shehu since during his life time for all this lengthy period of about thirty years in order to get your farmland, after all you were in the same village and you are a sound person and Alhaji Shehu isn't your in-law, nor an Emir whom you may fear or respect?;"*

The appellant replied:

*"Yes I didn't but that was because of the strong friendly relationship he has had with my father and I did not sue his sons the 1st and 2nd appellants until this season."*

Looking at the appellants reply above, it became abundantly clear that he was aware through the lengthy period of about 30 years that M. Shehu had been claiming the disputed farm as his property and put a seal to this claim when he divided the disputed farmland between the respondents. The appellant did nothing to challenge Shehu's action.

The principle of law relied upon by the Sharia Court of Appeal to wit "Wabil Mulki Alal Hauzi li Annal Mulka A Khassu Minal Hauzi" meaning "evidence of ownership takes priority over that of undisturbed possession, because the former is stronger than the latter," is not apposite as the positive evidence adduced by the respondents in support of their claim is more reliable than the contradictory evidence of the appellant. The court is duty bound to act on the more reliable evidence in a situation like this one. See Ashalul Madarik vol. 3 P. 228 wherein the law is stated thus:-

*"Where each of the contending parties is laying claim over property as belonging to him and each calls evidence in support of his claim, the*



*Judge*

*shall rely on and prefer the more reliable evidence in taking his decision."*

Apart from the authority (*supra*), this is a clear case where the doctrine of long and undisturbed possession will apply. For over 30 years the farm in dispute was claimed and used by the respondents' father as his personal property. He even asserted his claim of ownership by dividing the disputed farmland between the respondents without any challenge from the appellant, and this is about 30 years ago. The appellant's right, if any, to claim the farm has long been extinguished. See *Ashalul Madarik* vol III P. 236 where the law is thus stated:-

*"He who oversees another person laying and claiming ownership of his property and also exercising acts of ownership over the same for a long period with no impediment for challenging the claimant, his complaint will not be entertained thereafter."*

See also *Ihkamul - Ahkam* P. 260 - chapter on adverse possession and *Dasuki* Vol. IV P. 233 - 34 (Commentary on *Mulktasat el Khalil*) which put the period at 10 years where the parties are not blood - related.

The position was neatly summed up in the concurring judgment of *Maidama J.C.A.*, where he said:-

*"The facts of this case showed clearly that the respondent (sic) was quite aware of the adverse possession. He knew that the appellant's (sic) father Mallam Shehu had divided the farmland to the appellants (sic) and they have been exercising acts of ownership over the farmland without any let or hinderance. He has therefore forfeited his right to gain possession."*

Ten years peaceful enjoyment of possession of a landed property without let or hinderance bars all action against an un-blood-related possessor.

The appeal fails and it is hereby dismissed. The judgment of the Court of Appeal is affirmed with N1,000.00 costs to the respondents.

## G **BELGORE JSC**

I agree entirely with the well elucidated judgment of my learned brother, Wali, J.S.C. wherein this appeal has been dismissed. I have nothing more to add as I adopt the same judgment as mine in dismissing this appeal with N1,000.00 costs to the respondents.

## H \_\_\_\_\_

## **KUTIGI JSC**

I read in advance the judgment just delivered by my learned brother Wali, J.S.C. I agree with it and dismiss the appeal with N1,000.00 costs against

the appellant.

---

**OGUNDARE JSC**

I read in draft the judgment of my learned brother Wali, J.S.C. just read. I agree with him that this appeal be dismissed. I adopt as mine his reasonings leading to that conclusion. I have nothing more to add. B

I too dismiss the appeal with costs as assessed by Wali, J.S.C.

---

**ADIO JSC**

I have had the opportunity of reading, in draft, the judgment just read by my learned brother, Wali, J.S.C., and I agree with his reasoning and conclusion. The appeal fails and I too dismiss it. I affirm the judgment of the court below and abide by the order for costs. D

E

F

G

H