

**SUPREME COURT OF NIGERIA**  
20TH DECEMBER, 1996. SC. 136/1991  
**CORAM:- S.M.A. BELGORE, A.B. WALL, I.L. KUTIGI,**  
**M. E. OGUNDARE, S. U. ONU, JJSC.**

CHIEF S. A. LAWAL & ORS ..... PLAINTIFFS/APPELLANTS  
(For themselves and on behalf of  
IBJPE Community, Ago Iwoye)  
AND  
ALHAJI SALIU OLUFOWOBI & ORS. .... DEFENDANTS/RESPONDENTS

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***EVIDENCE*** - Documents - Land dispute - Whether treatment or non-treatment of documents of plaintiffs - Who fail to prove their root of title - Can advance their case.

***EVIDENCE*** - Proof- Communal ownership of the land in dispute - Whether proved by the plaintiffs.

***LAND LAW*** - Acts of ownership - Where root of title is not proved - It will not be necessary to consider acts of possession - Since such acts will become acts of trespass.

***LAND LAW*** - Title - Claiming ownership through same descendants as the defendants - Onus of proof rests on the plaintiffs.

**FACTS**

The plaintiffs (herein Appellants) commenced action in the High Court of Ogun State, Ijebu Igbo Division against the defendants (now respondents) claiming - a declaration of entitlement to the Customary Right of Occupancy to the land in dispute, N50,000.00 special and general damages for trespass and perpetual injunction restraining the respondents. At the trial, the case of the appellants was that the land in dispute was their (Ibipe) Community land from time immemorial while the respondents contended that the said land was their family property tracing their root to one Eyinde from Akingbade. The appellants made averment of being the descendants of the same Akingbade in their reply.

Upon evidence led by the parties and their pleadings, the trial judge dismissed appellants' claim in their entirety. Dissatisfied with the decision of the trial court, appellants appealed to the Court of Appeal, Ibadan Division, which affirmed the trial Court's decision and dismissed appellants' appeal.

Further aggrieved, the appellants have appealed to the Supreme Court raising 2 issues for determination. The apex Court considered one of the issues as the only one calling for determination and struck out the other

**ISSUE FOR DETERMINATION**

*1. Whether the learned trial Judge and the learned Justices of the Court of Appeal properly directed themselves as to where the onus of proof lay having regard to the nature of the issues placed before them in particular the Plaintiffs/Appellants and the Defendants/Respondents having agreed that they derived their radical title through Akingbade their common ancestor."*

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

***Communal ownership of the land in dispute***

1. The learned trial Judge amply considered the pleadings and evidence led before him and came to the conclusion that the plaintiffs had failed to prove that the land in dispute was Ibipe community land. The Court of Appeal agreed with him. I also agree with them. I think mere pleading as the Plaintiffs had done in this case, that they (Ibipe Community) were founded in 1425 A.D. and therefore had since owned and possessed the land in dispute, is not a sufficient pleading of tradition. In this regard the plaintiffs were bound to have pleaded who founded the land, how it was founded and particulars of the intervening owners through whom they claim. The lower courts therefore rightly came to the conclusion that the Plaintiffs failed to prove that the land in dispute is Ibipe Community land. (p. 2250 A)

***Title - Onus of proof rests on the plaintiffs***

2. It was not sufficient for the plaintiffs to have merely pleaded that they also are descendants of Akingbade like the Defendants. They ought to have pleaded particulars of intervening descendants or owners through whom they descend or claim. And the onus of doing that as well as proving their case rested on them. The Court of Appeal like the High Court before it, was therefore right when it observed as it did on page 306 of the record above. The Defendants on their part pleaded clearly and distinctly too their genealogy. They also led evidence to the effect that they are descendants of Adeosun otherwise called Eyindi, who was one of the four sons of Akingbade, the original founder of the land in dispute. They traced their ancestry to the said Adeosun Eyindi. The lower courts agreed with them. I think they were right. The Plaintiffs' case therefore properly failed. Consequently I resolve issue (2)

against the Plaintiffs/Appellants and hold that the lower courts properly directed themselves as to where the onus of proof lay in this case. (p. 2250 D)

***Acts of ownership - Where root of title is not proved***

3. The lower courts found and I agree with them, that the Plaintiffs woefully failed to prove their root of title as already explained above. The law, I believe, is that it is only after a party's root of title as pleaded is first established, that any consequential act flowing therefrom can then properly qualify as act of ownership. Consequently, where the title pleaded is not proved, as in this case, it will be totally unnecessary to consider acts of possession or ownership because such acts are no longer acts of possession or ownership but acts of trespass. (p. 2250 H)

***Treatment of Documents***

4. In the circumstances therefore, I cannot see how the treatment or non-treatment of the various documents contained in issue (1) above by the courts below would have helped or advanced the case of the plaintiffs after they have failed to prove their pleaded root of title. The Plaintiffs having failed to prove their pleaded root of title, to me, that should have been the end of the matter because such acts of possession or ownership resulting on their part, are acts of trespass only. I will therefore strike out issue (1) as unnecessary and it is hereby struck out. (p. 2251 B)

**NOTABLE POINT OF INTEREST**

**BELGORE.JSC**

***1. When possession claimed will become illusory***

The root of title, in cases like the one now on appeal, once pleaded as *raison d'être* for the presence of the person pleading must be proved to the satisfaction of the court. Because if the root of title depended upon is defective or remains unproved, the possession claimed will be illusory and it may in the end be an act of trespass. The appellants failed to prove their root of title, their traditional history on the land having failed to hold any water. Thus if the pleaded root of title is not established by evidence as is the case here it is a futile exercise to go into the issue of possession or acts of ownership. (p. 2251 E)

**REPRESENTATION**

Chief Olu Dairo for Plaintiffs/Appellants.

Alhajj S. O. Bakare for Defendants/Respondents.

**CASES REFERRED TO**

- Adejumo v. Ayantegbe (1989) 3 NWLR (Pt. 110) 47  
Are v. Ipaye (1990) 2 NWLR (Pt. 132) 198.  
Onwujuba v. Obieniu (1991) 4 NWLR (Pt. 183) 1.  
Fashoro v. Beyioku (1988) 2 NWLR (Pt. 76) 263  
B Da Costa v. Ikomi (1968) 1 All NLR 394  
Olujinle v. Adeagbo (1988) 2 NWLR (Pt. 75) 238.  
Omoboriowo v. Ajasin (1984) 1 SC. NLR 108  
Odofoin v. Ayoola (1984) 11 SC. 72  
Mogaji v. Cadbury Nigeria Ltd. (1985) 2 NWLR (Pt. 7) 593.  
C Alade v. Awo (1975) 4 SC. 21.

**LEAD JUDGMENT BY KUTIGI JSC**

At the Ijebu Igbo High Court, the Plaintiffs sued the Defendants claiming as follows -

D “(a) A declaration that the Plaintiffs are entitled to a customary right of occupancy being customary absolute owners of a large tract of land situate, lying and being along Ijesha Road opposite the Ogun State University permanent site, Ago Iwoye.

(b) The sum of N50, 000.00 being special and general damages for E trespass committed on various dates between 1984 and 1985 when the defendants wrongfully and unlawfully entered the plaintiffs’ land along Ijesha Road, Ago Iwoye whilst the 11th and 12th defendants cleared and destroyed the plaintiff’s palm trees, kola trees and plantains growing on the land and continued to threaten the erection of the said building and other structures F thereon.

(c) A perpetual injunction restraining the defendants, their agents, servants and/or any other persons claiming through them or any of them from continuing the afore-mentioned acts of destruction of the plaintiffs’ crops.”

G The parties in accordance with the rules of court filed and exchanged their pleadings and the case went to trial. The plaintiffs’ case is that the land in dispute which is verged red in their Survey Plan “Exhibit A”, belonged to Ibiye Community and which community was founded about the year 1425 A.D. and had existed since then, That the community consists of a number of quarters H which together make the town now called AgoIwoye. Members of the Ibiye Community are only granted land for fanning purposes with the proceeds of the virgin land being paid into the account of the Ibiye Community for common use and that no individual member or family could own the land or alienate any part of the land given them for farming purposes only as the land

remains perpetually the property of the Ibipe Community.

The defendants on the other hand contended that the land in dispute was originally the property of their ancestor and founder, AKINGBADE, and never the property of Ibipe Community which consisted of various people of various races. They contended that the land in dispute was the property of Adesosun Eyindi family to which they belong. They said that Eyinde was one of the children of Akingbade and that it was the latter who settled Eyindi on the land in dispute while other children (of Akingbade) were settled on other different lands. That from time immemorial members of Adesosun Eyindi family have been farming and performing other acts of ownership on the land in dispute without any disturbance from anybody. They relied on the traditional evidence set out in their pleadings in detail. Needless to say that the Defendants pleaded and traced their genealogy to the said Akingbade. It is quite significant at this stage too to state that the plaintiffs themselves in their Reply to the Defendants' Statement of Defence admitted that Akingbade was the original settler and founder of the land in dispute but contended that they, the Plaintiffs, also are descendants of the same Akingbade. I shall have more to say on this later.

The learned trial judge after a careful review and consideration of the totality of the evidence of the parties led before him dismissed the Plaintiffs' claims in their entirety when he concluded his judgment on page 199 of the record thus -

*"In conclusion, I find the three reliefs claimed by the plaintiffs not proved, their claim is dismissed in its entirety accordingly."*

Dissatisfied with the judgment of the High Court, the Plaintiffs appealed to the Court of Appeal, Ibadan. They filed 13 grounds of appeal. The Court of Appeal compressed the issues for determination into four as follows -

*"(a) Whether the Appellants have established their claim to the ownership of the land in dispute by the traditional evidence which they pleaded and therefore entitled to judgment.*

*(b) Whether, as a supplementary issue, the land in dispute verged red as in Exhibits A and B (the Appellants' and Respondents' plans respectively) was and is a communal land as claimed or property of the Respondents' family.*

*(c) Whether the Appellants' acts of ownership if any or acts of possession are such (apart from question (a) above) was to entitle the Appellants to the claim as per their writ of summons, pleadings and evidence.*

*(d) Supplementary issues also flow from the grounds of appeal on*

*the respondents' plan Exhibit H and the identity of the land in dispute, admissibility or inadmissibility of certain documents, and on damages and costs."*

The Court of Appeal in a unanimous judgment resolved all the issues against the plaintiffs and accordingly dismissed the appeal with costs  
 B Aggrieved by the decisions of the Court of Appeal, the plaintiffs have now further appealed to this court.

In compliance with the Rules of Court, the parties filed and exchanged briefs of argument. These were adopted and relied upon at the hearing. It is clear to me from the briefs filed by the parties that only two issues arise for  
 C determination in this appeal. They are -

"1. *Whether the Ijebu-Igbo High Court and the Court of Appeal were right in their treatment of Exhibit 1 Rejected (the Daily Sketch of 3rd January, 1986), Exhibit C - C6 (Lease Agreements between the plaintiffs and their tenants), Exhibit E (purchase receipt for a piece of land), Exhibit  
 D F (Bank Signature Card); Exhibit G - G3 (Bank Saving Withdrawal Forms) and Exhibit K (photocopy of Exhibit E).*

2. *Whether the learned trial Judge and the learned Justices of the Court of Appeal properly directed themselves as to where the onus of proof lay having regard to the nature of the issues placed before them in particular the Plaintiffs/Appellants and the Defendants/Respondents having agreed that they derived their radical title through Akingbade their common ancestor."*  
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In view of the importance I attach to issue (2) above, I shall treat it first and then proceed to consider issue (1) if necessary.

F Issue (2) undoubtedly arose from page 306 of the lead judgment of Omololu-Thomas, O.F.R. JCA where he said -

"The appellants (meaning plaintiffs) frankly admitted the root of title of the respondents (meaning defendants) predicated their case. On the same source, that is Akingbade. The learned trial Judge alluded to these  
 G submissions. If Akingbade was the original owner of the land in dispute, the onus is on the appellants to prove by positive evidence how indeed the land became Ibiye Community land which consisted of different indigenous family groups and strangers (vide SAMUEL ADENLE vs. OYEGBADE (1967) NMLR 136 at 137, OCHONMA v. UNOSI (1965) NMLR 321, 322; DOSUNMU  
 H v. JOTO (1987) 4 NWLR (Pt. 65) 297, 298 and THOMAS v. HOWER (supra) cited by the respondents). The learned trial judge could not find that the appellants discharged the onus of proof and I am of the some opinion after having carefully read the whole proceedings. The pieces of evidence did not trace their title to the radical owner, Akingbade nor did they establish acts

*of ownership from time immemorial of long possession of the land.”*

The learned trial judge had in his judgment on page 198 of the record also observed thus -

*“I think if the totality of competing claims should be put on an imaginary scale and having regard to the fact that plaintiffs pleaded and testified that they are descendants of Akingbade but did not trace their family tree clearly to him, that scale would tilt in favour of defendants who have established better title and long possession than plaintiffs in this case.”*

The plaintiffs’ complaint now is that having admitted that they are together with the Defendants, descendants of Akingbade, the onus was on the Defendants to show that Akingbade’s land or the land in dispute had ceased to be communal land. In other words, the onus was on the Defendants to establish how they became exclusive owners of the land in dispute to the exclusion of the other children of the Akingbade by his other wives. They contended that the lower courts were therefore wrong to have put the onus on them. Reliance was placed on the following cases -

ADENLE v. OYEGBADE (*supra*)

CHUKWUEKE v. NWANKWO & ORS (1985) 6 SC 189 at 194 - 195.

ONOBURCHERE v. ESEGINE (1986) 1 NWLR (Pt. 19) 799 at 807. E

The Defendants on the other hand submitted that the lower courts were correct when after a claim review and proper appraisal and evaluation of evidence on both sides they concluded that the plaintiffs did not discharge the onus placed on them to prove that Ibipe Community owned the land in dispute. It was stressed that the Plaintiffs having admitted that the Defendants derived their title through Akingbade the original owner of the land in dispute, the onus shifted on the plaintiffs to prove how the land in dispute became Ibipe Community land or how they descended from Akingbade as they claimed. A number of cases were cited in support including BPN LTD. v. IBRAHIM (1987) 4 NWLR 65; G

ADENLE v. OYEGBADE (*supra*)

DOSUNMU v. JATO (1987) 4 NWLR (Pt. 65) 297

KODILINYE v. ODU 2 WACA 336 and

F.C.D.A. v. NOIBI (1990) 3 NWLR (Pt. 138) 270.

Now, the plaintiffs in their Statement of Claim pleaded in paragraphs 7, 8, 9 & 12 thereof as follows:-

*“7. The Plaintiffs aver that the Ibipe Community was founded on or about the year 1425 A.D. (about 561 years ago) and it has been in existence since that year.*

8. *The plaintiffs aver that the Ibipe Community, Isamuro community, Idode Community, Odosinusi Community, Igan Community, Imosu Community and Imere Community which are also known and called Quarters, together make the town now called Ago-Iwoye.*

9. *The plaintiffs also aver that each of the aforementioned communities in Ago-Iwoye also has its own community land in various villages outside Ago-Iwoye township.....*

12. *The Plaintiffs also aver that the Ibipe Community Land which is situated along Ijesha Road, Ago-Iwoye, including the land in disputes, comprises of many villages four of which are (a) Ojuolota (b) Mewusi Ajegunle (c) Igorogi and (d) Aba Meyungbe where members of Ibipe community had settled hundreds of years ago for farming purposes.....*

D The Defendants on the other hand, pleaded in paras 2,3, 8, 9 and 15 - 26 of their Statement of Defence thus -

*"2. The Defendants are descendants of Akingbade, the 1st Ebumawe of Ibipe Quarters now known today as Ago-Iwoye.*

3. *The Defendants deny paragraphs 1, 3, 5, 6 and 12 of the Statement of Claim.*

8. *The Defendants admit paragraphs 7 and 8 of the Statement of Claim but add that each quarter had indigenous family groups and for example Ibipe Quarters has 7 indigenous Family groups such as - (a) Eyindi (b) Banikidi (c) Ipakodo (d) Iyango (e) Egbere (f) Oke Oduwa and (g) Ifedore. Each of these has ancestral site and Igboro grove which are the attributes of a complete town.*

9. *That while the Defendants admit paragraph 9 of the Statement of Claim, they refused to admit the portion which contains the boundary of the land in dispute as canvassed in this paragraph but aver that the land in dispute is bounded in the North by Ipakodo Family Land, in the West by Ako Family Land, in the East by Oju-Olota Family Land and Ita Omo Fanulv Land and in the South by Ogun State University, Ago-Iwoye.*

15. *That the first original settler on land in dispute as well as other land of Ibipe is one Akingbade, the first Ebumawe of Ibipe who died many H years ago.*

16. *The said Akingbade migrated from Idoko in Ondo to settle at Eyindi Wojaiye now known and called Ibipe in Ago-Iwoye, and became the first Ebumawe of Ibipe quarters now called Ebumawe of Ago-Iwoye*



17. That while Akingbade was alive he settled his children in different locations at Ago-Iwoye before he died.

18. That Akigbade came with his wife, and when they settled at Eyindi Wojaiye now called Ibipe Quarters they begat a son called Adeosun who engaged in farming on the land now in dispute and was planting crops to sustain a living. B

19. That later Akingbade left Eyindi Wojaiyefor Orile Ibipe, and at Orile Ibipe, he got married to other wives who begat among others Okole, Paripete, Adan-biida.

20. That Akingbade settled Okole at the land called Oko Gbanikidi, while Paripete settled at the land called Ipakodo. Adanibiide has his own C land settled upon at Iyango at Ibipe and many others were settled at different locations by Akingbade.

21. That Adeosun who was granted absolutely the land at Eyindi and who exercised complete control over the land with various acts of ownership being performed on the land now in dispute begat the following D children, Adeotyi, Aderile, Awobolu, Dote, Esinoye etc. all deceased.

22. That Adebisi begat Keku and Sogbiye all deceased, Keku begat Odugboise (deceased) who begat George Odugboise, 2nd Defendant.

23. That Sogbiye begat Solaja (deceased) who begat Bakare and Bakare (deceased) begat Alhaji Y.S. Bokare 10th Defendant. 24. That E Adesile begat Dele and Sannu. Dele begat Odumade while Odumade begat Sunday and Olutade. Awobolu begat Tiya miyu while Dote begat Adenaike and Olufowobi (deceased) Olufowobi begat Alhaji Saliu Olufowobi.

25. That after the death of Adeosun, his children inherited the said land under native law and custom, and while the children were alive, they F too were cultivating and farming on the land.

26. That after the death of all the children of Adeosun, the Defendants and all other descendants of Adeosun were planting crops such as coconut, palm trees kolanut trees as well as food crops on the said land. They are also performing other acts of ownership ranging from granting G lands to all and sundry."

The plaintiffs filed a Reply to the defendants' Statement of Defence above. In it they admitted paras 2, 15, 16 and 19 of the Statement of Defence.

It is clear from the pleadings above that the single main issue for H determination was whether from time immemorial the land in dispute formed part of communal land owned by plaintiffs' Ibipe Community or whether the said land is family property of the Defendants. It is doubtless that both sides

relied on traditional history. The learned trial Judge amply considered the pleadings and evidence led before him and came to the conclusion that the plaintiffs had failed to prove that the land in dispute was Ibipe community land. The Court of Appeal agreed with him. I also agree with them. I think mere pleading as the Plaintiffs had done in this case that they (Ibipe Community) were founded in 1425 A.D. and therefore had since owned and possessed the land in dispute, is not a sufficient pleading of tradition. In this regard the plaintiffs were bound to have pleaded who founded the land, how it was founded and particulars of the intervening owners through whom they claim. (see AKINLOYE & ANOR. v. EYIYIOLA (1968) NMLR 92 ADEJUMO v. AY ANTEGBE (1989) 3 NWLR (Pt. 110) 47. OLUJINLE v. ADEAGBO (1988) 2 NWLR (Pt. 75) 238). The lower courts therefore rightly came to the conclusion that the Plaintiffs failed to prove that the land in dispute is Ibipe Community land.

In the same vein I think the lower courts were also correct when they held that the Plaintiffs also failed to prove not only how they descended from Akingbade, but also how Akingbade's land became Ibipe Community Land. Here once again, it was not sufficient for the plaintiffs to have merely pleaded that they also are descendants of Akingbade like the Defendants. They ought to have pleaded particulars of intervening descendants or owners through whom they descend or claim. And the onus of doing that as well as proving their case rested on them. The Court of Appeal like the High Court before it was therefore right when it observed as it did on page 306 of the record above.

The Defendants on their part pleaded clearly and distinctly too their genealogy. They also led evidence to the effect that they are descendants of Adeosun otherwise called Eyini, who was one of the four sons of Akingbade, the original founder of the land in dispute. They traced their ancestry to the said Adeosun Eyindi. The lower courts agreed with them. I think they were right. The Plaintiffs' case therefore properly failed. Consequently I resolve issue (2) against the Plaintiffs/Appellants and hold that the lower courts properly directed themselves as to where the onus of proof lay in this case.

Issue (1) is clearly to do with certain documents relied upon by the plaintiffs as evidence of exercise of acts of ownership or possession by them on the land in dispute at one time or another. It has been shown above that the plaintiffs' root of title as pleaded is settlement. The lower courts found and I agree with them, that the Plaintiffs woefully failed to prove their root of title as already explained above. The law, I believe, is that it is only after a party's

root of title as pleaded is first established, that any consequential act flowing therefrom can then properly qualify as act of ownership. Consequently, where the title pleaded is not proved, as in this case, it will be totally unnecessary to consider acts of possession or ownership because such acts are no longer acts of possession or ownership but acts of trespass. (see FASHORO & ANOR v. BEYIOKU & ORS. (1988) 2 NWLR (Pt.76) 263; BALOGUN v. AKANJI (1988) 1 NWLR (Pt. 70) 301; DACOSTA v. IKOMI (1968) LAB NLR 394)

**In the circumstances therefore, I cannot see how the treatment or non-treatment of the various documents contained in issue (1) above by the courts below would have helped or advanced the case of the c plaintiffs after they have failed to prove their pleaded root of title. The Plaintiffs having failed to prove their pleaded root of title, to me, that should have been the end of the matter because such acts of possession or ownership resulting on their part, are acts of trespass only. I will therefore strike out issue (1) as unnecessary and it is hereby struck out.**

This appeal therefore fails. It is accordingly dismissed with N1,000.00 (One thousand naira only) costs to the Defendants/Respondents.

### BELGORE JSC

The root of title, in cases like the one now on appeal, once pleaded as *raison d'etre* for the presence of the person pleading must be proved to the satisfaction of the court. Because if the root of title depended upon is defective 'or remains unproved, the possession claimed will be illusory and it may in the end be an act of trespass. The appellants failed to prove their root of title, their traditional history on the land having failed to hold any water. Thus if the pleaded root of title is not established by evidence as is the case here it is a futile exercise to go into the issue of possession or acts of ownership. [Are v. Ipaye(1990) 2 NWLR (Pt. 132) 298, 301; Fashoro v. Beyioku (1988) 2 NWLR (Pt. 76) 263; Balogun v. Akanii (1988) 1 NWLR (Pt. 70) 301; Idundun v. Okumagba (1976) 9 and 10 SC 227 (1985) 2 NWLR (Pt. 7) 397].

I therefore agree with the judgment of my learned brother Kutigi, JSC., that this appeal totally lacks any merit and ought to be dismissed. I also for the reason clearly adumbrated by Kutigi JSC. dismiss this appeal with N1,000.0 costs to the respondents.

**WALI JSC**

I have had the privilege of reading in draft, the lead judgment of my learned brother Kutigi JSC and I agree with its reasoning and conclusion.

The concurrent findings of fact by the lower court and the court below are amply supported and justified by the evidence evaluated and accepted in this case. I see no valid reason to disturb them. See Omoboriowo v. Ajasin (1984) 1 SC. NLR 108; Ibodo v. Eharofia (1980) 5 -7 SC. 42 and Onwujuba v. Obieniu (1991) 4 NWLR (Pt. 183) 1.

For some reasons advanced in the lead judgment, I also hereby dismiss the appeal and adopt the consequential orders, including that of costs, contained therein.

**OGUNDARE JSC**

I have had the advantage of a preview of the judgment of my learned brother, Kutigi JSC just delivered. For the reasons given by him, which reasons I adopt as mine, I too dismiss this appeal with costs to the Defendants as assessed in the lead judgment.

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**ONU JSC**

I had the privilege to read in draft the judgment of my learned brother Kutigi, JSC just delivered. I am in complete agreement with him that the appeal lacks merit and it accordingly fails.

It has been established from the pleadings that the single issue for determination was whether from time immemorial the land in dispute formed Part of the communal land owned by the plaintiffs' Ibipe Community or whether the said land is family property of the defendants.

As nowhere in their statement of claim or in their reply to the defendants' statement of defence did the plaintiffs plead or led evidence of communal ownership of the land in dispute, the traditional evidence through which they sought to cling in proof of their root of title in contention and rivalry to that of the defendants, who meticulously pleaded and established their root of title through Akingbade, made their (plaintiffs') own traditional history by way of settlement (albeit that they acknowledged Akingbade as their forebear) to hang in the air and as going to no issue. See Odofin v Ayoola (1984) 11 SC. 72; Mogaji v. Cadbury Nigeria Ltd. (1985) 2 NWLR (Pt. 7) 593; Alade v. Awo (1975) 4 SC. 21; Piaro v. Tenalo (1976) 12 se 31 and Kalio v. Woluchem (1985) 1 NWLR (Pt. 4) 610). The case of the appellants was in that respect not

established ab initio. This is the moreso when it is borne in mind that they accepted through their pleading and evidence, the radical or superior title of the defendants through Akingbade while at the same time being unable to set out their own unbroken genealogical tree of derivation and devolution to the land by way of communal ownership.

B

Besides, by their failure to show that the Legbere chieftaincy title went beyond 1945 when it was indeed demonstrated to have been established and the first holder of that title installed, clearly shows the improbability of the time immemorial plea they set up as regards the origin of their land acquisition.

C

As the decision of the Court of Appeal vis-a-vis the trial court's decision was the culmination of concurrent findings of fact and nothing substantial has been said or demonstrated by the appellants to show that that decision is perverse or otherwise erroneous in law or that wrong procedure was adopted in arriving thereat, I am not prepared to interfere therewith.

D

It is for the above reasons and those elaborately contained in the judgment of my learned brother Kutigi, JSC, and that I too dismiss this appeal. I make similar consequential orders inclusive of costs as made therein.

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