

SUPREME COURT OF NIGERIA
5TH MARCH, 1996. SC.130/1991
CORAM:- M. L. UWAISS CJN, U. MOHAMMED,
S. U. ONU, Y. O. ADIO, A. I. IGUH, JJSC.

D. O. RUNSEWE & 2 OTHERS DEFENDANTS/APPELLANTS
AND
ALHAJI JIMOH ODUTOLA PLAINTIFF/RESPONDENT

APPEALS - *Findings of facts - Where not supportable from the evidence - It will be reversed by the appellate court.*

LAND LAW - *Traditional history - Whether mere proof of it - Is enough to entitle plaintiff to declaration of title.*

LAND LAW - *Acts of ownership - Where a party has successfully traced his title - To a party whom both parties admitted as holding the original title - He is not required to prove any acts of ownership on the land.*

LAND LAW - *Possession - Whether appellant established exclusive possession - As would terminate the presumed possession of the respondent.*

FACTS

Before the Ijebu-Ode High Court, the Plaintiff/Respondent filed an action against the defendants/appellants claiming declaration of title, damages for trespass and injunction. Both parties traced their title to the same original title holder, relying on various evidence of traditional history.

The trial court accepted the traditional history proffered by the plaintiff and rejected that set up by the defendants. It however declined to grant declaration of title to the plaintiff on the ground that he did not prove recent acts of ownership. Plaintiff's appeal to the Court of Appeal was allowed. Being dissatisfied the defendants have now appealed to the Supreme Court raising three issues.

ISSUES FOR DETERMINATION

(a) *Whether mere proof of traditional history with regard to ownership was enough to entitle the plaintiff/respondent to judgment for a declaration of title, damages for trespass and an order for perpetual injunction.*

(b) *Whether the plaintiff/respondent is entitled to damages for*

trespass and perpetual injunction when there was no evidence of possession to sustain such a holding.

(c) Whether the Court of Appeal was right in reversing the decision of the learned trial judge by finding that the respondent was in exclusive possession of the land in dispute.

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

Traditional history

1. In the instant case both parties were claiming to be entitled to the land in dispute from the same source. However, since the traditional history proffered by the Respondent was accepted by the trial court and against which the Appellants did not cross-appeal in the court below, the question now raised before this court in the issue under consideration as to “whether mere proof of traditional history with regard to ownership was enough to entitle plaintiff to declaration of title.....” must perforce be answered in the affirmative, more so that the trial court indeed accepted and the court below affirmed the same as cogent. (p. 522 H)

Acts of ownership

2. As has happened in the instant case, where a party in a land dispute has successfully traced his title to a party whom both parties admitted as holding the original title (in this case Ashasa), he is entitled to be declared the owner of the land and he does not require to prove any “acts of ownership” (p. 524 H)

Whether appellant established exclusive possession

3. The Court below therefore rightly, in my view, held that the Appellants failed to establish exclusive possession such as would terminate the presumed possession of the Respondent’s family as established owners of the land in dispute. Furthermore, the Appellants had admitted by their pleadings that the descendants of Ashasa have always been in possession of the land in dispute, occupation arising from licence on their part, being in law, different from possession. (p. 525 G)

Findings of fact - Where not supportable

4. In the instant case, the court below, in my opinion, rightly held that upon the basis of the primary findings made by the trial Judge and in the light of the pleadings wherein the Appellants admitted that possession always lay with the descendants of Ashasa, the finding of the trial Judge inferring

exclusive possession by the Appellants was not supportable and must therefore be reversed. All the evidence relied upon by the Appellants related to actions on their part which were consistent with the Respondent's traditional history which the learned trial judge accepted at the trial and not adverse. When however the Appellants started to act adversely, the Respondent's family resisted and took action against them. (p. 526 B)

NOTABLE POINTS OF INTEREST

ONU JSC

1. Proof of ownership of land by traditional evidence

As a matter of law, traditional evidence if accepted by the trial court stands on the same footing as any other type of evidence e.g. documentary and is capable of forming and indeed, is sufficient to form the basis for the grant of declaration of title. In proving his case based on traditional evidence, it is settled that there is no onus on the plaintiff who successfully established his title by such evidence, to prove further acts of ownership numerous and positive enough to warrant the inference that he is the exclusive owner. What in effect this proposition means is that when a plaintiff has proved his title directly by traditional evidence, there will be no need again for an inference to establish that which had already been directly proved. (p. 521 G)

IGUH JSC

2. When proof of traditional history will be enough

Evidence of traditional history, if cogent, satisfactorily established and accepted by the court is enough and capable of forming the basis for a grant of declaration of title to a statutory or customary right of occupancy to a piece or parcel of land in dispute. It is only where evidence of tradition is inconclusive that the case must rest on the question of other facts pleaded and relied on at the trial. (p. 527 G)

3. When recourse should be had to recent acts of ownership

The trial court having positively held that the plaintiff had successfully traced and established his descendancy from the admitted original owner of the land in dispute, to wit, Ashasa, was in serious error of law by requiring the plaintiff in addition to prove recent acts of possession and ownership before he could succeed in his claim for title to the land. I agree with the Court of Appeal that it is only when the evidence on traditional history is conflicting and inconclusive that the trial court will have recourse to recent acts of ownership of the parties in order to resolve such conflict. (p. 529 A)

4. When proof of acts of ownership should arise

I should perhaps stress that the onus on the plaintiffs in a declaration of title to land suit to prove acts of possession and/or ownership, numerous and positive enough to warrant the inference that they are the exclusive owners of the land only applies where the plaintiffs root of title is acts of possession but does not apply where the root of title pleaded is otherwise.
B (p. 529 D)

REPRESENTATION

L. O. Fegbemi, Esq., with O. O. Olowolafe, Esq. for the Appellants
C N O. O. Oke, Esq., for the Respondent.

CASES REFERRED TO

Onyido v. Ajemba (1991)4 NWLR (Part. 184) 203
Oje v. Babalola (1991)4 NWLR (Part. 185) 267 at 285
Stool of Abinabina v. Enyimadu (1938) A.C. 207 at 211
D Aikhonbare v. Omoregie (1976)12 S.C. 11 at 27
Balogun v. Akanji (1938)1 NWLR (Part 70) 301 at 314
Adeleke v. Akanji (1994)4 NWLR (Part 341)715 at 727
Amakor v. Obiefuna (1974) NMLR 331
Okafor v. Idigo (1984) 1 SCNLR 481 at 483
E Thomas v. Holder 12 W.A.C.A. 78 at 80
Sanni v. Oki (1971) 1 ANLR 116 at 119
Ekpo v. Ita 11 NLR 68
Onobruhere v. Esegine (1986) 1 NWLR (Part 19) 799
Idundun v. Okumagba (1976) 9 & 10 SC 227
F Kojo II v. Bonsie (1957) 1 WLR 1223

STATUTE REFERRED TO

Evidence Act Cap 112 LFN 1990 s. 149(b)

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LEAD JUDGMENT BY ONU JSC

In the High Court of Justice of the Ijebu-Ode Judicial Division sitting at Ijebu-Ode, Ogun State, the Plaintiff/Respondent instituted on behalf of himself and other members of the NAGA family, an action against the Defendants/Appellants claiming

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"1. Declaration of title according to Native Law and Custom to the landed property situate at Agbala Isasa, Porogun, Ijebu-Ode.

2. N20.00 being damages for continuing trespass committed on the said land by the defendants.

3. Injunction restraining the defendants, their servants, agents or

anyone claiming through them from further entry on the land."

After pleadings were ordered, filed and exchanged by the parties the case went to trial. The Plaintiff/Respondent's case went like this.

That his family's claim to the land in dispute was based on inheritance from his ancestor, Ashasa, its original settler/owner. He traced his lineage through Naga from Ashasha, claiming that Ashasha, his son Naga and descendant, were buried on the land in dispute. The Defendants/Appellants also founded their claim to the land on inheritance from Ashasa who they otherwise referred to as Lakoja. They in addition demonstrated that Lakoja had four children to wit: Olowosona, Durodoye Oke Eleko, Deinde Obaoke and Kakanfo Ojomade Nowoola and that apart from their four children who settled on the land in dispute with their respective families, Lakoja allowed four other families to settle on another portion of the land. Further, that Naga was an Ifa priest who came as a tenant of Deinde Obaoke from Okun-Owa.

The trial court (Coram Ademola Odunsi, J.) after considering all the evidence adduced, accepted the traditional history proffered by the Plaintiff/Respondent and rejected that set up by the Defendants/Appellant. The court then made, inter alia the following specific findings of facts, to wit:

(i) That Naga, the Plaintiff/Respondent's ancestor, was the descendant of Ashasa who the two sides admitted to be the original owner of the land.

(ii) That Nowoola and Olowosana, whom the Defendants/Appellants claimed to be the descendants of Ashasa were not the descendants of Ashasa and were not even related to Ashasa or the Naga family.

(iii) That the Plaintiff/Respondent's family as descendant of Naga was therefore entitled to the property of Ashasa.

Despite these findings, however, the trial court declined to grant the declaration of title or any of the ancillary reliefs sought by the Plaintiff/Respondent, holding inter alia, that the Plaintiff/Respondent did not prove "recent acts of ownership" and that the Defendants/Appellants had been for long "in possession" of the land in dispute. It accordingly dismissed the Plaintiff/Respondent's claim.

The Plaintiff/Respondent being aggrieved by this decision appealed to the court of Appeal (hereinafter called the court below) sitting in Ibadan. The Court below allowed the appeal and granted all the reliefs the Plaintiff/Respondent sought.

Being dissatisfied with the decision of the court below, the Defendants/Appellants (who shall hereinafter be referred to simply as Appellants) have appealed to this court premised on a Notice of Appeal containing

three grounds. The parties later exchanged briefs of arguments in accordance with the rules of court. The Appellants formulated three issues for our determination, namely:

(a) Whether mere proof of traditional history with regard to ownership was enough to entitle the plaintiff/respondent to judgment for a declaration of title, damages for trespass and an order for perpetual injunction.

(b) Whether the plaintiff/respondent is entitled to damages for trespass and perpetual injunction when there was no evidence of possession to sustain such a holding.

(c) Whether the Court of Appeal was right in reversing the decision of the learned trial judge by finding that the respondent was in exclusive possession of the land in dispute.

The plaintiff/Respondent (hereinafter in the rest of this judgment referred to as the Respondent) submitted two issues for the determination of this court. As these two issues, in my opinion, bear no relationship either to the three grounds of appeal or the three issues proffered by the Appellant, I shall in my consideration of the appeal rely on the Appellants' issues in my consideration of this appeal. Indeed, as only at page 5 *et seq* of the Respondent's brief under the heading COMMENTS ON ISSUES AS OUTLINED BY THE APPELLANTS can be considered strictly relevant in the argument of this appeal, the argument contained on page 1 to 5 just before the heading hereinbefore referred to, is accordingly discountenanced. Now to the issues.

ISSUE 1:

After referring us to the passage in the judgment of the court below wherein the learned Justices held that -

"The Respondents appear to have no real answer to this submission. (Traditional Evidence) they neither replied directly on the specific issue or the subject nor did they discuss the issue as generally raised by the appellant."

Learned counsel for the Appellants submitted that the Appellants in their brief did indeed reply to the Respondent on traditional history as could be gathered from the Appellants' submission reference to which the court below made in the following terms, to wit:

"In his amended Brief he 'conceded' that the learned trial judge admitted the traditional evidence of the appellant only with respect to the celebration of Agemo festival which is not the case. The evidence according to him was not in proof of the appellants' title. It was often this finding that he considered recent acts of ownership of the parties."

Learned counsel thereafter submitted that it is settled law that a

declaration of title will not be granted when long possession is established since it is not possible to decree title in the Respondent and at the same time grant the pleas of acquiescence raised by the Appellants. The Court of Appeal decision of Saidu Chiroma v. Markus Yeam Suwa (1986) 1 N.W.L.R. (Part 19) 751 was called in aid of the proposition, while this court's decision in Piaro v. Tenalo (1976) 12 S.C. 31 at page 42 for the rationale that

"The proper approach (in a case of declaration of title) is to consider the activities of the parties or the exercise of their rights and decide whether it accords with the evidence of traditional history."

After adverting our attention to certain extracts in the Record, particularly with regard to the evidence of 2nd P.W. and urging that the scale of justice thereby tilted so much in appellants' favour, the learned counsel further submitted that the court below placed so much reliance on that witness's evidence - the Appellants having pleaded their root of title from Lakoja (Ashasa) and led evidence to that effect, there could be no doubt that the original ownership of the land vested in Lakoja (the Ashasa). He maintained that from the evidence of the 2nd P.W. and the pleadings of the parties, they both traced their title to one person. Furthermore, learned counsel added, 2nd P.W. had asserted that eight families make up Ishasa and that Appellants were among the eight. Learned counsel then contended that since from the pleadings and the evidence led, evidence of the traditional history of the Respondent was controverted and contradicted, the court below ought not to rely on it. The position of the law, he argued is that where evidence of traditional history is not contradicted or controverted and is found to be cogent, such evidence can support a claim for declaration. He cited in support thereof the case of Onyido v. Ajemba (1991) 4 NWLR (Part. 184) 203, adding that it is settled that where parties to a land dispute base their cases on evidence of tradition, and such evidence as given by the parties conflicts, the best way to decide which of the conflicting versions is the more probable is to find out which of the parties has established acts of possession within living memory vide Oje v. Babalola (1991) 4 NWLR (Part. 185) 267 at 285. Learned counsel concluded by submitting that from the evidence adduced so far, the Appellants had established acts of possession within living memory.

In answer to this issue, it is pertinent firstly to point out that as a matter of law, traditional evidence if accepted by the trial court stands on the same footing as any other type of evidence e.g. documentary and is capable of forming and indeed, is sufficient to form the basis for the grant of declaration of title. See The Stool of Abinabina v. Enyimadu (1938) A.C. 207 at 211. Thus, the court held in Aikhonbare v. Omoregie (1976) 12

S.C. 11 at 27 that where evidence of traditional history is not contradicted or controverted and is found to be cogent, such evidence can support a claim for declaration of title. In proving his case based on traditional evidence, it is settled that there is no onus on the plaintiff who successfully established his title by such evidence, to prove further acts of ownership numerous and positive enough to warrant the inference that he is the exclusive owner. What in effect this proposition means is that when a plaintiff has proved his title directly by traditional evidence, there will be no need again for an inference to establish that which had already been directly proved. See Balgoun v. Akanji (1938)1 NWLR (Part 70) 301 at 314; Onyido v. Ajemba (supra) at 314 and Adeleke v. Akanji (1994)4 NWLR (Part 341) 715 at 727.

The above is subject to the following qualification, among others, to wit: that

(a) Trespass to land in law suggests an unlawful interference with an exclusive lawful possession. This court has held times without number that an owner of land, nay a person in lawful occupation of land, need claim only, for trespass and injunction and not for possession against a trespasser.

See S.A. Fujah v. Hector O. Adebajo Case No. S.C. 715/66 delivered on 6th June, 1969 (unreported); Aromire & Ors. v. Awoyemi (1972)1 All NLR.101 at 108 and Nzekwu v. Nzekwu (1989)2 N.W.L.R. (Part 104)373.

(b) Although a claim for trespass plus injunction postulates title, this is not always so. See Adani & Anor v. Igwe (1957)2 F.S.C. 87. Conversely, while a claim for title to land may succeed that for damages for trespass and injunction may not.

(c) As an injunction is a remedy of an equitable nature and since equity acts in personam, an injunction does not run with the land. It means that where the claim for trespass fails the claim for injunction fails with it. See Olowu v. Eniola (1967) NMLR.339 at 340. See also Okosun Epi & anor v. Johnny Aigbedion 1 All NLR (Part 2) 370 where it was however held that it need not necessary fail.

(d) If there is a challenge to possession and a claim in trespass is founded and damages awarded, then an order of injunction must follow to stop perpetration of the damage complained about. See Obanor v. Obanor (1976) NMLR Vol. 1 39 at 43; Etowa Enang & Ors. v. Fidelis Ikor Adu (1981)11-12 S.C. 25 at 48 and Okolo v. Eunice Uzoka (1978) 4 S.C. 77.

In the instant case both parties were claiming to be entitled to the land in dispute from the same source. However, since the traditional history proffered by the Respondent was accepted by the trial court and against which the Appellants did not cross-appeal in the court below, the question

now raised before this court in the issue under consideration as to “whether mere proof of traditional history with regard to ownership was enough to entitle plaintiff to declaration of title.....” must perforce be answered in the affirmative, more so that the trial court indeed accepted and the court below affirmed the same as cogent.

ISSUE 2

In arguing this issue, learned counsel for the appellants submitted that the statement of defence filed by the appellants in paragraphs 14, 15, 16, 17, 18, 19, 20 and 21 amounted to equitable defence to which the Respondent filed no reply. He then submitted that paragraph 21 of that statement of defence stated that the Respondent and his Senior brothers knew when the Appellants were developing the property. Evidence of this, he pointed out, was led at the trial and the trial judge in accepting evidence of recent acts of ownership said:-

The plaintiff gave no evidence of any recent acts or ownership I do not believe the Plaintiff's evidence that the defendants fenced the Agbala on the instructions of an unnamed member of Naga family. I believe the defendants fenced it on their own and padlocked it

Learned counsel further submitted that it is clear from the evidence that the Respondent, 2nd and 3rd Appellants as well as 3rd Appellant's father and his brother have their houses on the land in dispute as shown on Exhibit C but those houses, except that of the Respondent, are not shown in Exhibit B (which was prepared by the Respondent). The 3rd D.W. he maintained, also stated that the four families have district compounds within the land in dispute. He explained how the compounds are shown in the Appellants' Plan (Exhibit C) where the names of several owners of houses in the area are also indicated whereas these details are not shown on the Respondent's plan much as it would appear that the Respondent is the only member of his family who has a house recently built on the land shown in Exhibit 'B'. The Respondent's plan, he therefore argued, is incorrect and misleading. He called in aid the case of Hassa Saidi & anor. v. Nigerian Automobile Company Ltd & anor. (1956)1 FSC. 107 where the Federal Supreme Court held, inter alia, that in the exercise of its equitable jurisdiction, the court will not disturb long and undisturbed possession even in favour of the real owner by native law and custom. Learned counsel also referred us to the case of Alhaji A.W. Akibu v. Joseph Opaleye (1974)11 S.C. 198 for the proposition that the court will not normally exercise its discretionary powers of granting declaration of title in favour of a party not in possession. Learned counsel then submitted that since an action in trespass is based on exclusive possession of land vide Osho v. Foreign Fi

nance Corporation (1991) 4 NWLR (Part 184) 157 at 170; Ojomu v. Ajao (1983) 2 SCNLR 158 and Amakor v. Obiefun (1974) NMLR 331, a plaintiff suing in trespass in order to succeed, must show that he is the owner of the land or that he has exclusive possession of it. The court below, he therefore argued, was wrong to have found that the Respondent was at all material times in exclusive possession of the land in dispute in view of the following facts and findings by the learned trial judge, viz:

(a) The fencing of Agbala Agemo by the Appellants who also pad-locked it;

(b) The yearly clearance of the area from time immemorial by the Appellants;

(c) The receipt by the Appellants of Awujale's message by their four families on the annual Agemo festival; and

(e) Evidence of houses built by the Appellants on the land.

It was therefore learned counsel's submission that since the Appellants exercised overt acts of ownership for a long time and the Respondent was not provoked to assert his claim to ownership or exclusive possession, the trial court was right in dismissing the Respondent's claims. The case of Alhaji B.A. Suleman & Anor v. Hannibal Johnson 13 W.A.C.A. 213 was relied on.

The trial Judge in this case, he maintained, visited the locus in quo in search for truth in the testimonies of witnesses, adding that there, he saw with his own eyes the land in dispute and all the features which helped him to arrive at the decision in his judgment. He therefore submitted that where a court of trial unquestionably evaluates the evidence and appraises the facts, it is not the business of the Court of Appeal, to substitute its own views for the views of the trial court, citing in support thereof the cases of A. M.A. Akinloye & Anor v. Bello Ejiyola & Anor (1968) NMLR 92 at 93; G.Okafor & Ors. v. Eze Idigo (1984) 1 SCNLR 481 at 483.

The issue whether mere proof of traditional history with regard to ownership was enough to entitle the Respondent to judgment for a declaration of title having been answered in the affirmative; which in effect means that the Respondent's family was the owner of the land in dispute, they are presumed to be in possession and that the Appellants had not proved that possession had ceased. The Appellants were allowed user of portions of the land in dispute. Such user is not inconsistent with or adverse to the Respondent's possession. See kuma v. Kuma 5 WACA 5; thus when the Appellants began to sell portions of the land, the Respondent's family resisted and eventually commenced the action giving rise to the appeal herein. As has happened in the instant case, where a party in a land dispute has

successfully traced his title to a party whom both parties admitted as holding the original title (in this case Ashasa), he is entitled to be declared the owner of the land and he does not require to prove any "acts of ownership" See Thomas v. Holder. 12 W.A.C.A. 78 at 80; Sanni v. Oki (1971) 1 ANLR 116 at 119; Ekpo v. Ita 11 NLR 68 and George Onobruhere v. Esegine B (1986) 1 NWLR (Part 19) 799 where Oputa, JSC at page 807 said -

When it is accepted by both sides and found as a fact by the court that the plaintiff's ancestor was the "original founder" of the land in dispute the presumption will be that the plaintiffs as his successors in title continued to be owner of the land in dispute until the contrary is proved." C See also section 148 (b) (now section 149(b) of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria 1990). As succinctly put by Aniagolu and Nnamani, JJ.S.C., at pages 809 and 810 respectively of the Report as contributions to the judgment of Oputa J.S.C:

"I agree that in the face of the defendants admission that the plaintiffs originally owned the land and their contention that the plaintiffs sold the land to them, the onus will lie on the, having regard to section 136(1) and (2) of the Evidence Act [now section 137(1) and (2) of the Evidence Act, Cap. 112 Laws of the Federation of Nigeria 1990] to prove that the plaintiffs have divested themselves of their title by a sale to them (the defendants) and having also regard to the presumption implicit in the plaintiffs' continued possession of the land in question, by reason of the provisions of section 145 of the Evidence Act [now section 146 of the Evidence of the Evidence Act, Cap. 112 (ibid)] that the plaintiffs have ceased to be owners of the land of which they are in possession" and D
"It seems clear to me, and I do not need to repeat the well set down reasons of my learned brother; that it is the respondents who contend that there has been a change of ownership who ought to establish it. See Bello Isiba & ors. v. Hanson & anor. (1967) 1 All NLR. 8; Thomas v. Holder (1946) 12 W.A.C.A. 78." [Parenthesis are mine.] E
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The Court below therefore rightly, in my view, held that the Appellants failed to establish exclusive possession such as would terminate the presumed possession of the Respondent's family as established owners of the land in dispute. Furthermore, the Appellants had admitted by their pleadings that the descendants of Ashasa have always been in possession of the land in dispute, occupation arising from licence on their part, being H in law, different from possession.

The issue is accordingly answered in the affirmative.

ISSUE 3:

The question this issue poses is "*whether the Court of Appeal was*

right in reversing the decision of the learned trial Judge by finding that the Respondent was in exclusive possession of the land in dispute."

I adopt all I have said in respect of Issue 2 above. It is enough to add thereto by saying that in relation to issues relating to what conclusion of inference to draw from primary finding, an Appeal Court is in as good a position as the trial Court. See J.E. Ehimare & anor. v. Okaka Emhonyon (1985)1 NWLR.177 following Metalimpex v. A.G. Leventis (Nig.) Limited (11976)2 S.C. 91 at 102; Nwabuoku v. Iwenjiwe (1978)2 S.C. 61 and Ebba v. Ogodo (1984)4 S.C. 84. In the instant case, the court below, in my opinion, rightly held that upon the basis of the primary findings made by the trial Judge and in the light of the pleadings wherein the Appellants admitted that possession always lay with the descendants of Ashasa, the finding of the trial Judge inferring exclusive possession by the Appellants was not supportable and must therefore be reversed. All the evidence relied upon by the Appellants related to actions on their part which were consistent with the Respondent's traditional history which the learned trial judge accepted at the trial and not adverse. When however the Appellants started to act adversely, the Respondent's family resisted and took action against them. See Joseph Bablola Oni & ors. v. Samuel Arimoro (1973)3 S.C. 163, and A.W.Akibu v. Jacob Opaleye & anor. (supra). In the case of Oduola & ors. v. Ibadan City Council & ors. (1978) L.R.N. 182; Akuru v. Olubadan in Council 14 W.A.C.A. 523 and Maji v. Shafi (19650 NMLR.33, it was held that the plaintiff's possession was adverse to the defendant's claim. Compare Pius Amakor v. Benedict Obiefuna (1974)3 S.C. 67 at 76 & 80; Suleman v. Johnson (supra); Atunrase v. Sunmola (1985)1 NWLR (Part 7)105 and Odubeko v. Fowler (1993)7 NWLR (Part 308)631 at 677. It is petinent to add in conclusion that there was no acquiescence by the Respondent in any adverse action of the Appellants whatsoever. See Akpan Awo v. Cookey Gam2 N.L.R. 100, Adeleke Mogaji v. Nuga5 FSC 107 at 109 and Alhaja Sabalemotu Kaiyaoja & Ors. v. Lasisi Egunla (1974) 12 S.C. 55 at 68-69.

This issue is accordingly answered in the affirmative.

The sum total of all I have said above is that all the issues are resolved against the appellants. The appeal accordingly fails and it is accordingly dismissed by me with costs assessed at N1,000 to the Respondent.

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by

my learned brother Onu, J.S.C. I agree that the appeal has no merit and that it should be dismissed.

Accordingly I too hereby dismiss the appeal with N1,000.00 costs to the Respondent.

B

MOHAMMED JSC

I have had the privilege of reading the judgment, just read by my learned brother, Onu JSC, and I agree with him that this appeal ought to be dismissed for the reasons my Lord Onu has ably given. I hereby adopt those reasons as mine and dismiss the appeal accordingly. I abide by the order made in the lead judgment on costs.

ADIO JSC

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

D

IGUH JSC

I have read, in draft, the judgment just delivered by my learned brother, Onu, J.S.C. and I agree entirely that this appeal is without merit and ought to be dismissed.

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It is clear from a close study of the pleadings that the plaintiff/appellant did not found his case on long possession of the land in dispute but no traditional evidence which is one of the five recognised methods of establishing or proving ownership of a piece or parcel of land in dispute. *See D. O. Idundun and others v. Okumagba* (1976) 9 & 10 S.C. 227 at pages 246-250. *Atanda v. Ajani* (1989) 3 N.W.L.R. (Part 111) 511. *Anyanwu v. Mbara* (1992) 5 N.W.L.R. (Part 242) 386. Evidence of traditional history, if cogent, satisfactorily established and accepted by the court is enough and capable of forming the basis for a grant of declaration of title to a statutory or customary right of occupancy to a piece or parcel of land in dispute. *See Stool of Abinabina v. Enyimadu* 12 W.A.C.A. 171 at 179, *Onyido v. Ajemba* (1991) 4 N.W.L.R. (Part 184) 203 at 223 and *Idundun v. Okumagba*, *supra*. It is only where evidence of tradition is inconclusive that the case must rest on the question of other facts pleaded and relied on at the trial. *See Ekpo v. Ita* 11 N.L.R. 68, *Balogun and others v. Akanji and Another* (1988) 19 IN.S.C.C. 180 and *Nelson Onwugbufor and others*

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v. Herbert Okoye and others (1996) 1 n.w.l.r. (PART 424) 252 at 281.

In the present case, the plaintiff pleaded and relied for proof of his title to the land on inheritance from his ancestor, Ashasa, who was the original founder and owner of the land in dispute. He traced his descendancy through Naga, the son of Ashasa, and stated that the said Naga and the other descendants of Ashasa cultivated the land, built thereupon and set apart various portions for specific purposes. He testified that Ashasa Naga and his other descendants were buried on the land in dispute.

The defendants, on the other hand, based their ownership of the land in dispute on inheritance from their ancestor Lakoja, otherwise also called Ashasa who was the founder and first settler on the land. They however claimed that Naga was not a descendant of Ashasa and that the deceased members of Lakoja (the Ashasa) were buried on the land in dispute. They admitted that the land in dispute had been in the possession and under the control of Ashasa and his descendants but that the said Naga was only a tenant of Deinde Oba-Oke, a descendant of Lakoha.

The learned trial Judge after a through consideration on all the evidence before the court accepted the traditional history proffered by the plaintiff as more probable than that set up by the defendants. In particular, the trial court found as follows:-

(a) That Naga, the plaintiff's ancestor was the descendant of Ashasa and was entitled to succeed to what was originally Ashasa's property.

(b) That Nowoola and Olowosana, whom the defendants claimed to be the descendants of Ashasa were infact neither related to Ashasa nor the Naga families.

(c) That the plaintiff's family as descendants of Ashasa and Naga was entitled to the property of Ashasa which included the land in dispute. Inspite of the above findings the learned trial Judge found himself unable to grant the claim for declaration of title claimed, holding that the plaintiff failed to prove recent acts of ownership in respect of the land in dispute. He accordingly dismissed the plaintiff's claims.

On appeal, the court below held that since the trial court accepted the traditional history proffered by the plaintiff, the said plaintiff was entitled to judgment.

It seems to me plain that the Court of Appeal was entirely right in allowing the appeal before it in the face of the cogency, satisfactory establishment and acceptance by the trial court of the traditional evidence led by the plaintiff in proof of his title to the land in dispute. See too Balogun v. Akanji (1988) 1 N.W.L.R. (Part 70) 301. It must be noted in this regard that the learned trial Judge from the record, clearly considered the tradi

tional evidence of both parties and found, rightly in my view, the plaintiff's traditional history more probable. The trial court having positively held that the plaintiff had successfully traced and established his descendancy from the admitted original owner of the land in dispute, to wit, Ashasa, was in serious error of law by requiring the plaintiff in addition to prove recent acts of possession and ownership before he could succeed in his claim for title to the land. B

The findings of the learned trial Judge were clearly conclusive on the title of the plaintiff and, it was no longer open to him to consider any recent acts of ownership or possession of the defendants. I agree with the Court of Appeal that it is only when the evidence on traditional history is conflicting and inconclusive that the trial court will have recourse to recent acts of ownership of the parties in order to resolve such conflict. See Kojo 11 v. Bonsie (2957) 1 W.L.R. 1223 at 1227 and Awoyale v. Ogunbiyi (1986) 2 N.W.L.R. (Part 24) 826. Having rightly accepted the traditional history of the plaintiff, I can find no legal justification for the learned trial Judge to have insisted that the said plaintiff, to succeed in his claim for title to the land in dispute, must additionally establish acts of exclusive ownership and possession thereof. C D

I should perhaps stress that the onus on the plaintiffs in a declaration of title to land suit to prove acts of possession and/or ownership, numerous and positive enough to warrant the inference that they are the exclusive owners of the land only applies where the plaintiffs root of title is acts of possession but does not apply where the root of title pleaded is otherwise. E

So, in Balogun v. Akanji (1988) 1 N.W.L.R. (Part 70) 301 at 303-304, Oputa, J.S.C. succinctly put the matter as follows:- F

"I repeat once more that the opinion held by many of our trial courts that in every land case where title is in issue the dictum of the full Court per Webber, J. in Ekpo v. Ita supra (that the onus is on the plaintiffs claiming a decree of declaration of title to land to prove acts of possession and/or ownership, numerous and positive enough to warrant the inference that the plaintiffs were exclusive owners) applies, is erroneous. That dictum will only apply where the Plaintiff's root of title is Act of Possession. It will not apply where the root of title pleaded is Sale and Conveyance nor will it apply where the root of title pleaded and relied upon is Traditional Evidence (as in this case. In either case acts of possession may be exercised subsequently and consequentially to the primary root of title relied upon. In such cases, once and where, the primary root of title had been successfully established, the Plaintiff wins and there will be no further G H

need to probe his acts of possession. One does not loose title to land which he bought and which was properly conveyed to him because he had not shown numerous and positive acts of possession in addition. No. That is not the law: Mumuhi Abudulai v. Ramotu Manue (1945) 10 W.A.C.A. 172 and Mosalewa Thomas v. Preston Holder (1946) 12 W.A.C.A. 78."

B I agree entirely with the above observations of Oputa, J.S.C., and fully endorse the same. It is my view, therefore, that on this single issue alone, this appeal is bound to fail.

 It is for the above and the more elaborate reasons contained in the lead judgment of my learned brother, Onu, J.S.C. that I, too, dismiss this
C appeal. I abide by the order for costs contained in the said judgment.

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