

SUPREME COURT OF NIGERIA
23RD OF APRIL, 1996. SC. 107/1992
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE,
U. MOHAMMED, S. U. ONU, Y. O. ADIO, JJSC.

CHUDI AKUNYILI PLAINTIFF/APPELLANT
(substituted for himself and on behalf
of Akunyili family of Nkitaku, Agulu)
AND
IDEMILI EJIDIKE & 2 OTHERS DEFENDANTS
(For themselves and on behalf of Ogbata
Family of Okpu Village, Agulu)

APPEALS - Grounds of fact or mixed law and fact - Cannot be argued -
Without leave of Court.

EVIDENCE - Hostile witness Defence witness that gave evidence favourable
to the plaintiff- And was not treated as a hostile witness - Whether that
evidence supports plaintiff's case.

LAND LAW - Title - Traditional evidence - Where inconclusive - Whether
evidence of acts of ownership and possession - Are sufficient to entitle a
party to declaration of title.

LAND LAW- Title - Proof- Where there is conflicting traditional evidence
- Whether the lower court was right - In shutting out the evidence on the
other ways of proving title.

LAND LAW - Identity of the land in dispute - Where not in controversy -
Whether the respondents went beyond the land granted to them - By the
appellant.

LAND LAW- Trespass - Person in exclusive possession - Can bring action
for trespass against anybody - Save a person with a better title.

LANDLORD & TENANT - Challenge to Landlord's authority - By the
tenants - Makes the tenants trespassers.

FACTS

Before the High Court of Anambra State, the plaintiff/appellant

filed an action against the defendants/respondents claiming declaration title, damages for trespass and an injunction in respect of the land in dispute. The plaintiff relied on traditional history, recent acts of ownership and evidence of possession in proving his case. The trial court found in favour of the plaintiff and granted the reliefs claimed.

The defendants appealed to the Court of Appeal. The lower court dismissed the plaintiffs claim and allowed the defendants' appeal mainly on the ground that plaintiff's evidence of traditional history was inconclusive. The Court of Appeal refused to consider plaintiffs evidence on other ways of proving title. Being dissatisfied, the plaintiff has now appealed to the Supreme Court raising five issues.

ISSUES FOR DETERMINATION

(a)(i) Having found that the traditional evidence put forward by both parties (i.e. the appellant and the respondents) conflicted, were justices of the court of appeal wrong in failing to consider the parties acts of possession and ownership as a way of ascertaining which of the conflicting evidence was more probable? (Grounds 1 and 6).

(ii) In the circumstances of this case, did the appellant satisfy the principle in Owoade v. Omitola (1988) 2 N.W.L.R. (Part 77) 413 sufficient to sustain his case with regard to traditional evidence. (Grounds 2, 8 and 15). Etc., see p. 753

HELD (Unanimously allowing the appeal per lead judgment of **ONU JSC**) ***Title - Proof***

1. Thus, in the instant case where the court below rightly, in my view, held that the evidence of tradition adduced conflicted and that the traditional histories pleaded and put in evidence by both parties were inconclusive, albeit proceeded to shut out the two other ways of proving title to land which the appellant had pleaded and gave in evidence at the trial with his witnesses - evidence which the trial court that saw them give evidence as well as watched their demeanour evaluated and accepted as established, it was wrong. By that approach to the evidence, particularly of acts of ownership numerous and positive enough as well as exclusive possession of the land in dispute, which the learned trial Judge accepted as proved, the court below deprived the appellant of the only chance of a favourable consideration of his case and that led to a serious miscarriage of justice. (p. 757 A)

Traditional evidence - Where inconclusive

2. As his evidence of traditional history was rightly, in my view, found to be inconclusive, acts of ownership and exclusive possession if cogently proved

and satisfactorily established independently or together, are enough and capable of forming the basis for a declaration of title to a statutory or customary right of occupancy to the piece or parcel of land in dispute. This was what the appellant in fact did and was rightly given judgment. (p. 759 F)

Hostile witness

3. Thus, the respondents herein have been demonstrably shown to live on almost surrounded by the appellant's family land and there is abundant evidence that they came to live thereon with the permission of the appellant's family. Had the court below compared carefully the evidence of DW1, who was not treated by the respondents as a hostile witness vis-a-vis that of DW7 and DW8, it would have found for the appellant on the ground that the respondents' case thereby supported appellant's case and of which appellant could take advantage thereof. (p. 762 D)

Identity of the land in dispute

4. Finally, with regard to the identity of the land in dispute, which was not usually in dispute, since the court below held that: *"A matter not fully brought to the fore and which appears very important was whether the land in dispute belonged to Okpu Villagers of the defendants or the Nkitaku villagers of the plaintiff. This is obvious from the fact that the defendants testified that the land was in Okpu Village while the plaintiff with whom some of the defence witnesses agree testified that the land was at Nkitaku village"* it became apparent that the respondents whose land in Exhibit 'A' is virtually encircled by the appellant's family large tract of land, are indeed the tenants who were going beyond the land granted to them by the appellant's family, as landlords of Nkitaku land as opposed to Okpu land, which is their (respondents') land. My answer to issue (I)(i), (ii) and (iii) is accordingly rendered in the positive. (p.762 E)

Challenge to Landlord's authority

5. Hence, the respondent became trespassers the moment they challenged his (appellant's) authority, whereas they (respondents) are but his tenants or grantees of the separate piece of land on which they live south-east of the larger tract of land. It has been aptly held by this court in *Amakor v. Obiefuna* (supra) "that trespass to the land is actionable at the suit of the person in possession of the land. This is because the exclusive possession of the land to undisturbed enjoyment of it is against all wrongdoers except the person who could establish a better title." (p. 767 E)

Trespass - Person in exclusive possession

6. It is now well settled that every person in exclusive possession of land can bring an action for trespass against any person other than the true owner, or a person with a better title in respect of any interference with his possession. This is because exclusive possession gives the person in possession the right to remain in possession and to undisturbed enjoyment of it against every other person except a person who can establish better title. It is nonetheless a trespass and not a defence that the person in trespass appears to have acquired title from the wrong person. (p. 768 A)

Grounds of mixed law and fact

7. I am of the view that since the learned Senior Advocate for the respondents sought neither leave of the court below nor of this court to argue the grounds of cross-appeal which are grounds of fact or mixed law and fact, the grounds are incompetent and are accordingly struck out. The lone issue distilled from those grounds cannot therefore stand and it is accordingly struck out. (p. 770 C)

NOTABLE POINTS OF INTEREST

ONU JSC

1. Title - Plaintiff to succeed on the strength of his own case

In other words, it cannot be too often stressed that in a claim of declaration of title to land the plaintiff must succeed on the strength of his own and not on the weakness of the defence. However, the defendant's evidence may itself support the plaintiff's case and contain evidence on which the plaintiff is entitled to rely. In such a case, provided the evidence is credible and accepted by the Judge while engaged in his assessment and evaluation of the evidence adduced in his (plaintiffs) favour, is entitled to rely thereon to increase the strength of his (plaintiffs) case. (p. 756 C)

OGUNDARE JSC

2. Plaintiff's traditional history is not inconclusive

I have no reason to disturb them either. It will, therefore, not be right to hold, as did the court below, that the traditional history of the Plaintiff is inconclusive or not pleaded in the proper manner. I think Plaintiff's pleadings here suffice, having regard to the nature of the traditional history relied on. What pleadings will suffice depend on the peculiarities of each case and the nature of the history relied on. (p. 778 C)

3. When plaintiff's claim of ownership should fail

A. plaintiff may adopt one or more of the ways of proving ownership, for example, traditional evidence or by means of evidence of acts of ownership or possession. The two or one or the other of them may be sufficient to sustain the claim. It is only where a plaintiff fails to prove his case by means of traditional evidence and also fails to establish it by means of evidence of acts of ownership and possession, when those were the means pleaded and relied upon that the plaintiffs claim should be dismissed. (P.782 C)

REPRESENTATION

Kehinde Sofola, Esq. SAN with C. Nwannah Esq. and A. Idris Esq. for the appellant

G.R.I. Egonu, SAN with H.E. Nwachukwu Esq. for the Respondents

CASES REFERRED TO

Malogun v. Akanji (1988)1 NWLR (Part 70)30 1 at 323

Mogaji v. Cadbury (Nig.) Ltd (1985)2 N.W.L.R (part 7) 393

Okafor v. Idigo (1984) 1 S.C.N.L.R. 481 at 495

Chukwueke v. Nwankwo (1985)4 NWLR (Part 341)676 at 693

Anyanwu v. Mbara (1992)5 NWLR (Part 242) 386

Nwosu v. Udejaja (1990)1 NWLR (Part 125) 118

Adelaja v. Fanoiki (1990)2 NWLR (Part 131) 137 at 156

Abisi v. Ekwealor, (1993) 9 KLR 99

Ogoyi v. Umagba (1995) 10 KLR 1982

Tukur v. Government of Gongola State (1988) 1 N.W.L.R. (Part 68)39

Amakor v. Obiefuna (1974) 3 S.C.67 at 76

STATUTE REFERRED TO

Evidence Act Cap. 112 LFN 1990 s. 146

LEAD JUDGMENT BY ONU JSC

This is an appeal against the judgment of the Court of Appeal, Enugu Division dated the 23rd day of January, 1992. William Akunyili as plaintiff later upon his demise (substituted by Chudi Akunyili upon the latter's application) had on the 9th day of June, 1972 by his writ of summons, for himself and on behalf of Akunyili family, Nkitaku Agu in the High Court of Anambra State sued the defendants, herein respondents, for themselves and on behalf of Ogbata family of Okpu village, Agulu for:-

“(a) Declaration of title to all that piece/parcel of land the annual value of which is estimated at 10 pounds situate at Nkitaku village, Agulu in Njikoka division (now Ugo Agulu division known as and called “Nwagu be Asegheobebe”)

(b) 100 pounds damages for trespass in that sometime in 1968 within the period of the civil war and thereafter continuing, the defendants without leave and licence of the plaintiff broke and erected upon the said piece or parcel of land and thereby caused damage, and

(c) An injunction restraining the defendants, workmen and agents from entering upon the said piece or parcel of land and/or interfering with the plaintiff’s title, right or interest in and over the same.”

C Pleadings were ordered, filed and exchanged with amendments made to the statement of claim and statement of defence respectively.

The case went to trial and after the addresses by counsel the learned trial Judge, P.C. Onyia, J. found in favour of the plaintiff/appellant in a well considered judgment dated the 29th day of July, 1988 by declaring D him entitled, inter alia, to the property known as and called “Nwagu be Asegheobebe” as shown in Exhibit ‘A’, N150.00 damages for trespass against the defendants/respondents, for 1st and 2nd defendants/respondents to provide a reasonable accommodation for the widow of the 3rd defendant/ E respondent and perpetual injunction against all the defendants/respondents, their servants, workmen and agents.

Being dissatisfied with the decision, the defendants/respondents appealed to the Court of Appeal sitting in Enugu (Coram: Kutigi, J.C.A. as he then was and Oguntade and Uwaifo, JJ.C.A. concurring) which on 23rd F June, 1992 allowed the defendants/respondents appeal mainly on the grounds that the plaintiff/appellant failed to prove by traditional evidence that the land in dispute was his family property and so evidence of exclusive possession and ownership did not avail him.

The plaintiff/appellant who cross-appealed against part of the said judgment had his cross-appeal dismissed.

G The plaintiff/appellant (who I shall in the rest of this judgment refer to simply as the appellant) sought and obtained leave of the court below to appeal to this court on 21st March, 1992 to file and argue seventeen grounds of appeal, consisting of grounds of law and facts.

The defendants/respondents (hereinafter referred to as respondents) H for their part, cross-appealed on one ground only.

Briefs of argument were filed and exchanged by the parties in accordance with the rules of court with the respondents amending their respondents as well as cross-appellants brief while the appellant amended his

appellant's reply as well as respondent's brief in the cross-appeal.

The appellant submitted five issues as arising in this appeal for our determination, to wit:-

(a)(i) Having found that the traditional evidence put forward by both parties (i.e. the appellant and the respondents) conflicted, were the justices of the court of appeal wrong in failing to consider the parties acts of possession and ownership as a way of ascertaining which of the conflicting evidence was more probable? (Grounds 1 and 6). B

(ii) In the circumstances of the case, did the appellant satisfy the principle in *Owoade v. Omitola* (1988) 2 NWLR (Pt.77) 413 sufficient to sustain his case with regard to traditional evidence. (Grounds 2, 8 and 15). C

(iii) In view of the appellant's pleading, and evidence adduced at the trial in the court of first instance, on various acts of ownership and on long enjoyment and exclusive possession which the trial court believed, were the justices of the Court of Appeal wrong in allowing the appeal and setting aside the judgment of the court of first instance on the ground that the traditional evidence of the appellant was inconclusive, without considering the acts of possession of the parties so as to determine therefrom on whose side the presumption in section 145 of the Evidence Act would operate? (Ground 3). D

(b) Is a plaintiff in a claim for title to land entitled to rely on more than one of the 5 methods of proving his case; and the court of appeal having not set aside the finding of fact by the trial court that the plaintiff in the exercise of his acts of exclusive possession and ownership had granted a portion of the land in dispute to the respondents to farm as tenants, was the appellant not entitled to succeed in his claim against the respondents for injunction and also rely on both traditional evidence and acts of possession and ownership to prove his title. (Grounds 5, 7, 12 and 14). E F

(c) The justices of the Court of Appeal having found as a fact that the respondents did not plead how their ancestor Eze Onyeokwu came to own the land in dispute; and that they (the respondents) did not state how they first came to the land in dispute, were they (the justices of the Court of Appeal) wrong in holding that the appellant had to succeed on the strength of his case and not on the weakness of the defence case, without averting their minds to the important exception to that rule of law; that the plaintiff can rely on certain elements and features in the defence case, which support the plaintiff's case; and should they (the justices of the court of appeal) have inferred that all the respondents evidence of acts of possession and ownership go to support the grant as contended by the appellant (Ground 11). G H

(d) On a fair consideration of the pleading and the evidence of the appellant at the trial in the High Court, were the justices of the court of appeal right in holding that the plaintiff (appellant) never succeeded in making out a prima facie case to which the defendants (respondents) could react; and should they have dismissed the appeal on a proper consideration and evaluation of the totality of the evidence adduced at the trial and allowed the cross appeal? (Grounds 4, 9, 10, 13 and 16).

(e) Was the High Court Awka (the court of first instance) right to have given judgment for the plaintiff/appellant on the evidence before him at the trial, and is the judgment of the court of appeal against the weight of evidence adduced at the high court trial of the case? (Ground 17).

The only issue formulated at the respondents instance for determination by this court is as follows:-

1. Was the Court of Appeal right having regard to the pleadings and the evidence in the case and the course of the trial, to have set aside the judgment of the trial court and to have dismissed the plaintiff/appellant's case?

In the cross-appeal, the lone issue submitted for our determination is as follows:-

1. Whether the Court of Appeal should not have made specific pronouncements on the subsidiary issues in the appeal before it?

At the hearing of this appeal on 29th January, 1996, learned Senior Advocate, Kehinde Sofola, Esq. for the appellant after adopting the appellant's brief dated 31st August, 1992 and filed on 5th October, 1992 as well as the Amended Appellant Reply Brief and the Amended Respondent's Brief in the Cross-Appeal dated the 22nd day of December, 1994 and filed on 23rd December, 1994, made an oral expatiation thereof. Arguing issue (a)(i), (ii) and (iii) which are related to Grounds 1,2,3,6 and 15, the learned Senior Counsel contended firstly that the Court of Appeal was wrong to have set aside the decision of the learned trial Judge who saw, and watched the demeanour of witnesses, came to the conclusion that the appellant ought to succeed. Learned Senior Advocate cited in support the case of Balogun v. Agboola (1974) 10 S.C. 111 at 116 and 119. He then submitted that in law there are limitations on powers of an appeal court in dealing with facts. He pointed out that the five ways of proving title to land are namely:-

(a) By traditional evidence

(b) By documents of title

(c) By various acts of ownership, numerous and positive and extending over a length of time as to warrant the inference of ownership.

(d) By acts of long enjoyment and exclusive possession of the land.

(e) By proof of possession of adjacent land in circumstances which render it probable that the owner of such adjacent land, would in addition be the owner of the disputed land.

He then contended that it is now settled law that a party may prove title to a piece of land by any of the above five ways, adding that in an appropriate case, a party to a land suit may plead and rely on a combination of a number of these ways to prove his title with traditional evidence being only one of them. It may be unnecessary for a plaintiff to plead and rely on a number of these methods where one only can avail him. He further argued, adding that it is not unlawful to do so while the fact of pleading and relying on more than one of the five ways cannot per se inhibit a trial court from considering the totality of the pleading and the evidence adduced by the plaintiff in support thereof. This court's decisions in *Atanda and Ors. v. Ajani & Ors.* (1989) 2 NWLR(Pt.111) 511 at 533 and *Idundun v. Okumagba* (1976) 9-10 S.C. 227 were called in aid. Evidence of maximum overt acts of ownership and possession over a long period, he maintained, is a relevant fact for consideration. We were referred to several passages in the record with special emphasis on paragraphs 4, 5, 6, and 13 of the Amended Statement of Claim vis-a-vis the traditional history of the respondents as given by 1st and 2nd respondents who testified as D.W.7 and D.W.8 respectively. It is possible and indeed usual as in the instant case on appeal, it is further contended, to plead traditional history and also acts of ownership as additional alternatives to proving title. If the trial court finds the traditional history pleaded conclusive, the plaintiff would succeed thereon and there would be no need to consider any other additional method of proving title pleaded and given in evidence. But if a court whether of first instance or appellate properly seised of a land matter and adjudicating on it, makes a finding of its own that the traditional history is inconclusive or insufficient, then that court has to consider any of the other ways of proving the title pleaded and given in evidence by the plaintiff, it is further pointed out. The case of *Balogun v. Agboola* (1974) 10 S.C. 111 at 116 and 119 was cited to buttress the proposition. It is further stressed that while the court of first instance accepted and upheld both the traditional evidence and the various overt acts of ownership and long enjoyment as well as exclusive possession of the land in dispute by the appellant as satisfactory and gave judgment in his favour, the Court of Appeal (hereinafter referred to as the court below) on the other hand, held that his (appellant's) traditional history was inconclusive but failed to consider the various acts of ownership numerous and positive over a long time to see if they warranted an inference that appellant was in fact the owner

contrary to the principle enunciated in a line of decided cases including Balogun v. Akanji (1988) 1 NWLR (Pt.70) 301 at 323.

I am of the firm view that the appellant's complaint is well founded. True, it is that the learned justices of the court below rightly, in my view, found the traditional evidence put forward by both parties conflicted and that as the respondents did not counterclaim, this being a claim for declaration of title to land, the onus is on the appellant (as plaintiff) to prove his title, and he had to do so without relying on the weakness of the respondents' (defendants') case which, however can only be used to strengthen the case of the appellant (plaintiff) if shown to be strong enough to stand on its own. In other words, it cannot be too often stressed that in a claim of declaration of title to land the plaintiff must succeed on the strength of his own case, and not on the weakness of the defence. However, the defendants' evidence may itself support the plaintiff's case and contain evidence on which the plaintiff is entitled to rely. In such a case, provided the evidence is credible and accepted by the Judge while engaged in his assessment and evaluation of the evidence adduced in his (plaintiff's) favour, is entitled to rely thereon to increase the strength of his (plaintiff's) case. See Mogaji & ors. v. Cadbury (Nig.) Ltd. & ors. (1985) 7 S.C. 59; (1985) 2 NWLR (Pt.7) 393. Thus, in Michael Atuanya v. Fabian Onyejekwe & anor. In re: Ofiaju Mbalekwe (1973) 3 S.C. 161 at 167, this court held that the onus never shifts and that this rule of law is now so firmly established that nothing can shake its foundation. See also Otuaha Akpapuna v. Obi Nzekwa II (1983) 7 S.C.1; (1983) 2 SCNLR 1; Josiah Akinola & Anor. v. Fatoyinbo Olowu (1962) 1 SCNLR 352; (1962) 1 All NLR 224; Sunday Piaro v. Chief Wopnu Tenalo & ors. (1976) 12 S.C. 31 at 37; Michael Ogo Ibeziako v. Akunwata Nwagbogu & Ors. (1973) NMLR 113 and Kodilinye v. Mbanefo Odu (1935) 2 WACA 336 at 337. The learned Justices of the court below having found on appeal that the traditional evidence put forward by both parties conflicted, however, failed and/or neglected to ascertain which of the other methods of proving title established at the trial was available to the appellant to see if, for instance, he proved acts of exclusive possession or ownership within living memory as enunciated in Kojo II v. Bonsie (1957) 1 WLR 1223 wherein Lord Denning, M.R. at 1126 said:-

"Where there is a conflict of traditional history, one side or the other must be mistaken, yet both may be honest in its belief. In such a case demeanor is little guide to the truth. The best way to test the traditional history is by reference to the facts in recent years as established by evidence and by seeing which of the two competing histories is more probable."

See also Alade v. Awo (1975) 4 S.C. 215 at 228; Akpapuna v. Obi Nzekwa

II (supra) 10; Okafor v. Idigo (1984) 1 SCNLR 481 at 495; Chukwueke v. Nwankwo (1985) 2 NWLR (Pt.6) 195 and Ogbuokwelu v. Umeanafunkwa (1994) NWLR (Pt.341) 676 at 693. Thus, in the instant case where the court below rightly, in my view, held that the evidence of tradition adduced conflicted and that the traditional histories pleaded and put in evidence by both parties were inconclusive, it albeit proceeded to shut out the two other ways of proving title to land which the appellant had pleaded and gave in evidence at the trial with his witnesses evidence which the trial court that saw them give evidence as well as watched their demeanour evaluated and accepted as established, it was wrong. By that approach to the evidence, particularly of acts of ownership numerous and positive enough as well as exclusive possession of the land in dispute, which the learned trial Judge accepted as proved, the court below deprived the appellant of the only chance of a favourable consideration of his case and that led to a serious miscarriage of justice.

In order to exemplify my conclusion above, I desire to refer to part of the pleadings especially with particular reference to paragraphs 4, 5, 6, 7, 8 and 13 of appellant's Amended Statement of Claim vis-a-vis the respondents' evidence through D.W.1 and D.W.7 and the ultimate conclusion arrived at by the learned trial Judge.

In paragraphs 4, 5, 6, 7, 8 and 13 of the Amended Statement of Claim, the appellant pleaded inter alia thus:-

"4. The said land in dispute is a piece of land contiguous (sic) with the plaintiff's family compound wherein the plaintiff lives, and is valued N10.00 per annum.

5. All the people living nearest the land are from Nkitaku village except Ogwata Ezisi who hails from Okpu village, the circumstances of whose occupation are hereinafter explained.

6. The plaintiff's family and their ancestor before them have from time immemorial been in possession of the said piece or parcel of land and as owners in possession have always exercised maximum acts of ownership in and over the same by farming thereon, planting of palm trees and other economic trees and letting part thereof to tenants for farming, without let or hindrance from the defendants or anyone else.

7. Although the defendants now reside in Nkitaku village, they hail from Okpu village from where their grandfather Ogbata-Obiekwe migrated to Nkitaku village and was offered a place of abode in the heart of Nkitaku village remote from the land in dispute by the then head of the plaintiff's extended family, that is to say, the Umuojionu family of Nkitaku village.

8. Later the said Ogbata Obiekwe with the leave and licence of the said plaintiffs Umuojionu family moved to the present residence of the defendants in Nkitaku village where he begat Ezisi Ogbata and Ejidike Ogbata

(the latter being the father of the defendants).

13. The defendants father, Ejidike Ogbata was on good terms with the plaintiff and his family and in fact it was the plaintiff and his late brother Ukoh Akunyili who gave him a portion of land verged yellow on the plaintiff's plan to farm, rent-free, and he farmed thereon until his death thereafter the defendants continued to farm thereon as tenants at sufferance of the plaintiff's."

In his short but crucial evidence-in-chief, albeit devastating or damning to the case of the respondents, Ozulike Obiano (D.W.1), said:-

"The land in dispute does not belong to Umuokpoko, it belongs to the defendants.
Our family of Umuogbo of Umuokpoko gave the plaintiffs where they live I had lived in Nkitaku Agulu all the time, I know the land in dispute very well. The land in dispute is in Nkitaku. Cross-Examination by Nwana: no question. Re-examined by Mr. Egonu?..."

Earlier on in examination-in-chief this witness said inter alia as follows:-

"... The defendants live in the land of the Ejidike. They live in their land and that their land is in Nkitaku. Nkitaku is a village in Agulu, I am from Umunkpolo and Umunkpolo is in Nkitaku village, Agulu. The village of the defendants is Okpu in Agulu. The compound they live now is the compound of their father Ejidike. Ejidike is from Okpu village, Agulu. Okpu is in Agulu. Coming from Amawbia on the way to Adazi at a point called Nwagu. I know the way that led to Adazi." (Underlining is for emphasis) .

It is therefore not correct to say as the learned Senior Advocate for the respondent's has stated in paragraph 3, 1.2 of the Amended Respondents Brief that appellant based his case mainly on paragraphs 6, 14, 15, 16, 17 and 18 of the Amended Statement of Claim. Rather, the appellant based his case on all the paragraphs in his pleading and on all his evidence at the trial. After evaluating and appraising the evidence adduced by the appellant and his witnesses as well as that of the respondents and their witnesses, particularly D.W.7 and D.W.8, the learned trial Judge held inter alia that:-

"Here the defendant claiming to be Okpu and the land in dispute to be Okpu could not establish this evidence when the revine (sic) adjoined Amantutu with Nkitaku and the Ekpe wall on D.W.4's testimony is the boundary line between D.W.4 and the plaintiff's land where he cut the Ububa tree and had been farming to the D.W.4 practical experience. The defendants have denied the plaintiff's testimony that having inherited the

area of Nkitaku which their grandfather was granted as Nwadiana and was allowed a portion of "Nwagu Nwasighobe" land to farm as in Exh. 'A' hence their contact with adjoining lands

Material contradictions in evidence of D.W.1 who maintained that the defendants live in Nkitaku as opposed to testimonies of D.W.7 and D.W.8 who say that they live in Okpu and that the land in dispute is at Okpu. They did not treat the D.W.1 as hostile witness and the contradiction is fatal to the defence's case."

The appellant in the instant case having pleaded and given evidence of the origin of his possession of the land in dispute notwithstanding what the court below said was his failure to establish by credible evidence the traditional history of his acquisition thereof, the principle stated by this court in *Saka Owoade & Ors. v. John Abodunrin Omitola & Ors.* (1988) 5 S.C. 1 at pp. 2 and 10; (1988) 2 NWLR (Pt.77) 413 at 425, following *Kodilinye v. Mbanefo Odu* (1935) 2 WACA 336 at 337, was sufficiently satisfied, in my firm view, not with regard to traditional evidence as I have pointed out but enough to sustain the appellant's case based on the statement of the law enshrined in the latter case to the effect that:-

"The onus lies on the plaintiff to satisfy the court that he is entitled on the evidence brought by him to a declaration of title. The plaintiff in this case must rely on the strength of his own case and not on the weakness of the defendant's case. If this onus is not discharged, the weakness of the defendant's case will not help him and the proper judgment is for the defendant."

See: also *Mogaji v. Odofin* (1978) 4 S.C. 91. The appellant in the instant case founded his case on traditional evidence, acts of ownership and exclusive possession, three of the five recognised methods of establishing or proving ownership of a piece or parcel of land in dispute. See *Idundun v. Okumagba* (supra); *Atanda v. Ajani* (supra) and *Anyanwu v. Mbara* (1992) 5 NWLR (Pt.242) 386. As his evidence of traditional history was rightly, in my view, found to be inconclusive, acts of ownership and exclusive possession if cogently proved and satisfactorily established independently or together, are enough and are capable of forming the basis for a declaration of title to a statutory or customary right of occupancy to the piece or parcel of land in dispute. See *Stool of Abinabina v. Enyimadu* 12 WACA 171 at 179; *Onyido v. Ajemba* (1991) 4 NWLR (Pt.184) 203 at 232; *Abdulai v. Manue* 10 WACA 172 and *Nwosu v. Udejaja* (1990) 1 NWLR (Pt.125) 188. This was what the appellant in fact did and was rightly given judgment. See also Section 146 of the Evidence Act, Laws of the Federation of Nigeria, 1990, Cap. 112. In other words, as the appellant

had been shown through his pleading and evidence to be in peaceable undisturbed possession as well as exercising acts of ownership on the land in dispute, a grant of part of which his larger family of Umuojionu made to the respondent's ancestor Eze Onyeokwu, this depicted the respondents as strangers where they now live (vide evidence of D.W.1) at Nkitaku instead of in Okpu village which is their own village, notwithstanding that a prominent member of their family, Ogbata Ezisi (3rd defendant) was buried on the land where they live when he died. As the respondents cannot and in fact did not rebut the presumption invoked by section 146 of the Evidence Act, Cap. 112 (ibid), they woefully failed to plead or adduce evidence of how they got on the disputed land (Nkitaku) - the only explanation as to how they got there being in relation to the grant pleaded by the appellant and substantiated by him in evidence (supra); unless it was tortuous on the part of the respondents by way of trespass.

It is in the light of the above that the learned justices of the court below, with due respect, misconstrued the pleadings and evidence of the appellant in holding that the appellant's acts of ownership and of long enjoyment as well as exclusive possession were "fully riveted on the traditional evidence" thereby implying that these acts are incapable of any separate or independent consideration as ways of acquisition of title to the land in dispute. An explanation is desirable in relation to what the court below said was the putting forward by the two parties in their pleadings of conflicting traditional histories with the appellant claiming that the first settler on the land in dispute was 'Asegheobebe' while the respondents on the other hand said it was their ancestor Eze Onyeokwu to whom Ogbata Obiekwe was a descendant that originally owned the land. The court below rightly explained that it was in proof of the ownership by the appellant of the land in dispute which ownership derived from Asegheobebe, that he testified that he had in 1940 a boundary dispute in respect of the land on which he had his compound, with one Jeremiah Agbalum. That it was also in further proof of the said ownership that the respondent's ancestor came from Okpu village and was granted land to live on by the appellant's Umuojionu family. Clearly, it was demonstrated by the appellant that respondent's father or grandfather, Ogbata Obiekwe had no interest in the land in dispute (a portion of which was in dispute in the Jeremiah Agbalum case) or else Ogbata Obiekwe would have been a party to that case. As indeed transpired, no member of the respondent's family was involved in that case because they had no interest in the land. The fact of the proof of the Jeremiah Agbalum case and the fact that the appellant's family made a grant of part of their land to Ogbata Obiekwe, were clearly proof of acts

of possession and/or ownership. The case of *Balogun v. Akanji* (1988) 1 NWLR (Pt.700) 301 at 323 (per Oputa, J.S.C.) was called in aid by the learned justices of the Court of Appeal to exemplify, inter alia, that when a plaintiff has proved his title directly by Traditional Evidence there will be no need again for an inference to that which had been already directly proved. See *Amajideogu v. Ononaku* (1988) 2 NWLR (Pt.78) 614. Acts of ownership become material only where the traditional evidence is inconclusive as the lower court has rightly held in the present case. In *Balogun v. Akanji* case (supra) where the trial court held that the traditional evidence led was conclusive, this court held on appeal that there was no need whatsoever to require further proof. In the instant case where the plaintiff had adduced evidence in line with his pleading (traditional evidence excepted) acts of exclusive possession and ownership as well as enjoyment of the land in dispute to the exclusion of the respondents who are his grantees of another portion of the land, the decision of the court below upsetting the decision of the trial court, in my view, amounts to a grave miscarriage of justice. See *Nnajifor v. Ukonu* (1986) 4 NWLR (Pt.36) 505 at 517 and *A. U. Amadi v. Thomas Aplin & Co. Ltd.* (1972) 4 S.C. P. 228. The respondent's story denying that they live in Nkitaku and that they live in Okpu, their own village as transpired, was eventually punctured by their star witness, D.W.1 Ozulike Obiano, who contradicted them on these very important issues in controversy between them and the appellant. Thus, the fact that D.W.1 said under cross-examination "I know the land in dispute very well. The land in dispute is in Nkitaku" clearly demonstrates that the court below was wrong to set aside the judgment of the trial court. This is because from the totality of the evidence adduced at the trial court, the appellant, no matter the "inconclusiveness" of his traditional evidence, had proved a better title. He had adduced enough evidence in support of his case on acts of ownership, positive and numerous enough as well as exclusive possession of the land in dispute all of which the trial court, rightly in my view, also accepted as proved. Besides, the appellant clearly established the nexus between Asegheobele, Umejionu extended family through which and on whose behalf he claims. The two plans tendered at the trial (Exhibits 'A' and 'B') are identical except for a few differences. For instance, in respect of their similarities, the land of Alfred Okonkwo is to the far south of the land in dispute in both Exhibits 'A' and B; the land of Jeremiah Agbalum (supra) is to the west of the land in dispute both in Exhs. A & B while Agulu Girls' Secondary School (former St. Anthony's T.T.C.) which appellant granted to the Catholic Mission, is to the North. There was, however, a dispute as to where the Nigerian Army camped after the civil war as well as the exact

location of appellant's farm and indeed the land trespassed upon. The case of the appellant in the instant appeal is, in this wise, not too dissimilar to this court's decision in *YA. Lawal v. Chief Yakubu & anor.* (1972) 8-9 S.C. 83 wherein it was held, inter alia, at pages 121- 122 that:- “

B *“In a case of declaration of title to land, the onus is on the plaintiff to prove by traditional evidence or actual acts of possession or both that he is the owner of the land in dispute. If the evidence of tradition failed and indeed if it is proposed to test the probability of such traditional evidence recourse must be had to the evidence of actual user and possession of the land in dispute.”* See also *Jude Ezeoke v. Moses Nwangbo* (1988) 1 NWLR (Pt.72) 616 at 621.

C Save only to say that in the instant case where exclusive possession and acts of ownership were pleaded as some of the ways to acquire title to land, it was no longer necessary to infer actual user and possession in proof thereof once evidence regarding these methods had been led and accepted by the trial court. Thus, the respondents herein have been demonstrably shown
D to live on land almost surrounded by the appellant's family land and there is abundant evidence that they came to live thereon with the permission of the appellant's family. Had the court below compared carefully the evidence of D.W.1, who was not treated by the respondents as a hostile witness vis-a-vis that of D.W.7 and D.W.8, it would have found for the appellant on the ground that the
E respondents' case thereby supported appellant's case and of which appellant could take advantage thereof. See *Akinola v. Oluwo* (supra) *Piaro v. Tenalo* (supra) and *Aja v. Okoro* (1991) 4-10 SCNJ 1 at 23; (1991) 7 NWLR (Pt.203) 260.

Finally, with regard to the identity of the land in dispute, which was not actually in dispute, since the court below held that:-

F *“A matter not fully brought to the fore and which appears very important was whether the land in dispute belonged to Okpu villagers of the defendants or the Nkitaku villagers of the plaintiff. This is obvious from the fact that the defendants testified that the land was in Okpu village while the plaintiff with whom some of the defence witnesses agree testified that the land was at Nkitaku village.”*

G It became apparent that the respondents whose land in Exhibit' A' is virtually encircled by the appellant's family large tract of land, are indeed the tenants who were going beyond the land granted to them by the appellant's family, as landlords of Nkitaku land as opposed to Okpu land, which is their (respondent's) land. My answer to issue (a)(i), (ii) and (iii) is
H accordingly rendered in the positive.

My consideration of issue (a)(i), (ii) and (iii) above, in my judgment, more than amply dispose of issues (b) and (c) which I also have no hesitation in answering in the positive.

Issue (d) (Grounds 4, 9, 10,13 and 16).

This issue complains against the finding of the court below to the effect that the appellant never succeeded in making out a prima facie case to which the respondents could react. My reply to this grouse is that upon a fair and proper consideration of the pleading and evidence adduced before the trial court, the appellant, in my firm view, made out the following formidable points to be entitled to judgment, viz:

(a) There was the pleading and evidence by the appellant that the land in dispute is situate in his Nkitaku village and not in Okpu village of the respondents as respondents pleaded. The trial court after a careful appraisal of the evidence adduced acts of exclusive possession and ownership within living memory. See *Kojo II v. Bonsie* (1957) 1 WLR 1223 at 1226; *Alade v. Awo* (1975) 4 S.C. 215 at 228; *Akpauna & Ors. v. Nzeka & Ors.* (1983) 7 S.C. 1. The Court of Appeal failed and or neglected to do any of these things. The Court of Appeal simply held that the evidence of tradition adduced by the parties conflicted; and that the traditional history pleaded and put in evidence by the appellant was inconclusive and then shut out other ways of proving title to land which the appellant had pleaded and given in evidence at the trial, and which the trial court of first instance who (sic) saw the parties and their witnesses testify, and watched their demeanour, had accepted as established. By the above approach to the evidence of tradition, acts of ownership and of long enjoyment and exclusive possession of the land in dispute which had been accepted as proved by the learned trial Judge, the Court of Appeal deprived the appellant of the chance of a favourable consideration of his case; and that led to a serious miscarriage of justice."

Page 6 of the appellant's amended reply brief:-

"6. In reply to paragraph 3.1.6 of the Amended Respondents Brief, it is submitted that the Court of Appeal having re-heard the case and found that the traditional histories adduced by both parties conflicted, and that the evidence of tradition given by the plaintiff was inconclusive, that court should have invoked the rule in *Ekpo v. Ita*. Every judgment should be based on the whole evidence adduced at the trial. See *Tonazzi v. Brunetti* 14 WACA 403 at 405. The judgment in this case on appeal was based only on traditional history and so, ought to be set aside. See also *S. N. Okonkwo v. Okolo* (1988) 2 NWLR (Pt. 79) 632 at page 658 letters F & G." As in the last quoted passage the appellant was in effect invoking the principle in *Ekpo v. Ita*, a rule I wish to distinguish as inapplicable to the case in hand, in as much as acts of ownership, and exclusive possession of the disputed

land were pleaded, proved on the balance of probabilities and accepted by

the learned trial Judge but not left to inference. Thus, the setting aside of the trial court's judgment by the court below based only on traditional history while disregarding the other two methods of proving title to the land in dispute, was wrongful and unjustified. The judgment of the court below ought to have been based on all the pleadings and on all the evidence adduced at the trial.

It is in the light of the foregoing that from the extract culled out above from the appellant's amended reply brief, wherein he would seem to concede that with or without traditional history, his case had been proved, made the restoration of the decision of the trial court and a fortiori allowing his cross-appeal, inescapable. Issue (d) (Grounds 4, 9, 10, 13 and 16).

This issue complains against the finding of the court below to the effect that the appellant never succeeded in making out a prima facie case to which the respondents could react. My reply to this grouse is that upon a fair and proper consideration of the pleading and evidence adduced before the trial court the appellant, in my firm view, made out the following formidable points to be entitled to judgment, viz:

(a) There was the pleading and evidence by the appellant that the land in dispute is situate in his Nkitaku village and not in Okpu village of the respondents as respondents pleaded. The trial court after a careful appraisal of the evidence adduced arrived at the conclusion that the land in dispute is at Nkitaku and not in Okpu. Had the land been found to be in Okpu village by the evidence adduced at the trial, the onus naturally would have been on the appellant to explain how he came by the land in another village. This point was totally lost on the court below which, with due respect, erroneously held that appellant failed to make out a prima facie case to which respondents could react. While it is conceded that any Nigerian can own land anywhere in Nigeria, such a claimant must show whether he purchased it or was made a grant of same. But where he says he has been in exclusive possession or owner of it from time immemorial, he invariably is asserting that he is an indigene thereof and where as here, two sets of indigenes claim ownership of the same village, exclusive possession and ownership must be ascribed to them who prove better title. See *Kareem v. Ogunde* (1972) 1SC 182 and *Ajani v. Ladepo* (1986) 3 NWLR (Pt.28) 276. Be it noted that as against the appellant who proved exclusive possession, enjoyment of the land in dispute and ownership thereof, the respondents who did not counterclaim in the trial court capitulated by the damning admissions of their witnesses that they were mere grantees of the piece of land on which they live and additionally have no right to be on the

portion of Nkitaku they have trespassed. The court below therefore fell into

a serious error in setting aside the judgment of the trial court.

(b) Evidence was adduced by the appellant and confirmed by D.W.1 that the respondents live in Nkitaku village of the appellant. This is very damnifying to the respondent's case because the issue of where they live having been resolved, it is for them to explain how they came to live permanently in Nkitaku village instead of their own village Okpu. Their (respondents) inability to offer any explanation goes to confirm the appellant pleading and evidence that the respondents grandfather or father Ogbata Obiekwe took refuge in Nkitaku village in the olden days and that his descendants have lived there ever since. This weakness in the respondents case helps to strengthen the appellant's case against the respondents. B

(c) There was pleading and evidence by the appellant that he and his family exercised acts of ownership on the disputed land. The respondents by their pleading and evidence denied this but in his evidence in support of the respondents case D.W.4, Frederick Okonkwo, gave cogent evidence showing appellant and his daughter exercising acts of ownership of the land the respondents trespassed. While the respondents denied the grant to them which enabled them to maintain some presence on the disputed land and of which the court below held was their exercise of acts of possession and acts of ownership, it is now settled law that there can be no concurrent possession of a piece of land by two parties claiming adversely against each other. See *Amakor v. Obiefuna* (1974) 3 S.C. 67 at 76; *Odi v. Osafie* (1987) 2 NWLR (Pt. 57) 510 at 512 and *Balogun v. Labiran* (1988) 3 NWLR (Pt. 80) 66. C D E

(d) The respondents could not offer any explanation as to how he (appellant) came to fell a tree on the said land and carried away same as firewood without anyone challenging him. Had the court below on appeal fully evaluated the evidence proffered before the trial court they would not have set aside that court's judgment, the more so that the ascription of probative value to evidence adduced at the trial is best left to the court of first instance which saw the witnesses testify and watched their demeanour vide *Balogun v. Agboola* (supra) at pages 116 and 119 and *Akinloye v. Eyiola* (1968) NMLR 92 at 93. F G

(e) The pleading and evidence adduced by the appellant is that the land in dispute was uninhabited and Asoghobebe, a member of the appellant's extended family of Umuojionu, was the first person to settle thereon. That upon his death without an issue, the land vested in Umuojionu family (themselves members of Umuojionu extended family) as exclusive owners of the same. The appellant showed the origin of his family's posses H

sion/ownership of the land in dispute unlike the respondents who neither

pleaded nor gave evidence on how they came on to the land. The court below even though it found against the appellant said that much.

(f) One of the vital issues in this appeal is that the appellant had pleaded and proved to the satisfaction of the learned trial Judge that the respondents were his tenants on the land in dispute. The learned trial Judge found as a fact that the respondents were in fact granted a portion of the land in dispute (verged yellow) to live on and it is material too that Court of Appeal did not set aside that finding of fact as to do so would be to “strike around for any tenuous twig of technicality” (per Nnaemeka-Agu, J.S.C. in *Okaroh v. The State* (1990) 1 NWLR (Pt.125) 128 at 129 in order to snatch the land in dispute from ‘the appellant who’ had been their (respondents) landlord. To allow such act to occur would be contrary to the principles of law, equity and good conscience.

(g) In the normal run of cases in which a plaintiff relies on traditional history to establish his case (the instant case stands in a class of its own where two other methods of acquiring title were pleaded and founded upon) once the traditional history pleaded and given in evidence is found to be inconclusive by the court (whether court of first instance or appellate) the rule (or test) in *Ekpo v. Ita* 11 NLR . 68 and in *Kojo II v. Bonsie* (supra) would apply. The rule in the former case as stated by Webber, J. is that “..... if the evidence of tradition is inconclusive, the case must rest on question of fact” See also *Alade v. Awo* (supra). Indeed, in the case of *Abdulai v. Ramotu Manne* (supra), the West African Court of Appeal held (as I had occasion to do earlier on in this case) that a plaintiff, could still succeed in an action for declaration of title on acts of exclusive possession and of ownership even where traditional history was entirely lacking. The inescapable question of fact decided by the trial court in the instant case is that the appellant was in exclusive possession of the disputed land and that in the exercise of his acts of ownership, he had allowed the respondents to farm on a portion of the land; not the one trespassed. So, *Ekpo v. Ita* (supra) is not relevant here.

(h) It is also pertinent to point out that when Julius Akunyili abandoned his block moulding preparatory to build a house on the land in dispute, he did so not because he was challenged but only left the site for another because that other place was a better site by the road. There could be no calling of tenants to testify about the disputed land when the respondents were shown themselves to be tenants.

(i) On Exhibit A, it is incorrect to say that it was made in 1976. Rather, it was made in 1972 and was only amended in 1976 to incorporate

the compounds of Idemili Ejidike (1st respondent) and Okafor Ezeudu. See

Plan No. OKE/D69/72 whereupon the features were unaltered clearly in the original survey plan No. OKE/D69/72 until later superseded by the Amended Plan No. FCO/D.11/76. No issue about the respondent's farms was raised either in the trial court or in the court below. Thus, the respondents cannot now be heard to claim in the Supreme Court that their farms on the land in dispute were wrongly described by the appellant as those of Nigerian soldiers when in their own plan No. EC.312/72 (Exhibit B) they showed only two farms in 1972 viz - one for cassava and the other for yam viz-a-viz the millet farm shown on Exhibit 'A'. Indeed, on the whole, the appellant showed four farms by Nigerian Soldiers on the disputed land namely:-

- (i) Cassava farm towards the Eastern part of the disputed land.
- (ii) Vegetable garden towards south central area of the disputed land.
- (iii) Scattered farms in the western part of the disputed land; and
- (iv) Millet farm in the northern part of the disputed land.

(j) The respondent's suggestion that because D.W.1 was subjected to rigorous cross-examination and so made fatal admissions which amounted only to slips in his description of the situs of the land in dispute is, in my view, untenable.

The appellant pleaded and gave evidence that the respondents came on the land in dispute - Nwagu be Aseghobele, a piece of land verged Red on Exhibit 'A' and used by the appellant for farming purposes, without his knowledge and permission. Hence, the respondent became trespassers the moment they challenged his (appellant's) authority, whereas they (respondents) are but his tenants or grantees of the separate piece of land on which they live south-east of the larger tract of land. It has been aptly held by this court in *Amakor v. Obiefuna* (supra) "that trespass to land is actionable at the suit of the person in possession of the land. This is because the exclusive possession of the land to undisturbed enjoyment of it is against all wrongdoers except the person who could establish a better title." See also *Ekpan v. Agunu Uyo* (1986) 3 NWLR (Pt.26) 63; *Ogungbemi v. Asamu* (1986) 3 NWLR (Pt.27) 161 at 162 and *Ayinla v. Sijuwola* (1984) 5 S.C. 44; (1984) 1 SCNLR 410. Possession is said to be 9/10 (nine tenths) of the law and this principle of law was referred to in *Amakor v. Obiefuna* (supra) by this court wherein it cited with approval *Asher v. Whitlock* (1885) 1 C.B.P. 1 (per Cockburn, C.J.) who stated at page 5 thereof that:-

"But I take it clearly established that possession is good against all the world except the person who can show a good title; and it would be

mischievous to change this established doctrine."

It is now well settled that every person in exclusive possession of land can bring an action for trespass against any person other than the true owner, or a person with a better title in respect of any interference with his possession. This is because exclusive possession gives the person in possession the right to remain in possession and to undisturbed enjoyment of it against every other person except a person who can establish better title. It is nonetheless a trespass and not a defence that the person in trespass appears to have acquired title from the wrong person. See *Solanke v. Abed* (1962) 1 SCNLR 371; (1962) NNLR 92; *Amakor v. Obiefuna* (supra) and *Adelaja v. Fanoiki* (1990) 2 NWLR (Pt.131) 137 at 156. When it is said that the slightest possession would suffice to support an action for trespass, exclusive possession is implied. See *Amakor v. Obiefuna* (supra) and *Ogbechie v. Onochie* (1988) 1 NWLR (Pt.70) 370. The court below was therefore in error, in my opinion, in holding that the appellant had not succeeded in making out a prima facie case to which the respondents could re-act and that led to a serious miscarriage of justice.

My answer to this issue is accordingly rendered in the negative and thus resolved in appellant's favour.

Issue (e). (Ground 17).

This issue is a double-barreled issue, the first of which attacks the decision of the trial High Court from which statutorily, no appeal lies to this court while the second constitutes a complaint against the decisions of the trial High Court and the court below (both encapsulated into one) which, in my humble view, a misnomer and so unarguable. See *Oodo Ogoyi v. Emmanuel Umagba & anor.* (1995) 9 NWLR (Pt.419) 283 at 297. Besides, the admixture or mixed-grill of an issue as herein formulated being completely unrelated to the ground which is the general or omnibus ground of appeal, is not only vague but incompetent. See *Western Steel Works Ltd. v. Iron and Steel Workers Union of Nigeria* (1987) 1 NWLR (Pt.49) 284; *Tukur v. Government of Gongola State* (1988) 1NWLR (Pt.68) 39; *Osinupebi v. Saibu* (1982) 7 S.C. 104 and *Idika v. Erisi* (1988) 2 NWLR (Pt.78) 563. This issue is accordingly struck out.

Cross-Appeal

The ground of cross-appeal dated the 21st day of April, 1992 upon which the lone issue is predicated along with its particulars states:-

(1) The Court of Appeal erred in law in failing to determine or pronounce on all the issues raised by the defendants/appellants in the appeal before it, to wit:-

(i) Should the defendants/appellants' family have joined as parties

in the Ugwu Okpu Agulu Native Court Suit No. 55/40 and the appeals

therefrom and were they affected by those proceedings.

(ii) Was the land of Ogbata Obiekwe, the defendants/appellants' ancestor, shown in Exhibit 'A', the plaintiff/respondent's plan, and the burial of the 3rd defendant on that land not fatal to the plaintiffs/respondent's case?

(iii) Were the defendants/appellants not entitled to re-examine D.W.1? B

(iv) What effect had Exhibit 'A' and the land of the defendants/appellants family north-west of the land in dispute to this case?

(v) Was the trial court right in determining the issues as to the nature and state of the physical objects without an inspection of the locus in quo?

(vi) Was the evidence of P.W.1, 2, 3, 4 and 5 of any probative value C in the case?

(vii) Was the trial court right in relying on the evidence as to the family of the mother of Ogbata Obuekwe when that issue was not pleaded?

Particulars of Error

(a) That the Court of Appeal was in law bound to determine or pronounce on all the issues raised by the defendants/appellants in the appeal before it. D

It is noteworthy, that with regards to the "*relief sought from the Supreme Court of Nigeria*" following closely the particulars of error stated above, the learned Senior Advocate for the respondents/cross-appellants supplicated as follows:- E

"That the judgment of the Court of Appeal confirmed and fortified by a resolution of the issues set out in grounds of appeal."

When the learned Senior Advocate's attention was then drawn to the issues - (a), (b)(i), (ii) and (iii), (c)(i) and (ii) and (d) respectively which he had formulated for the decision of the court below at page 308 of the Record and asked if his view was that they be decided in his favour by remitting the case back to the court below to be further looked into, his reply was in the affirmative. When, however, another question was put to him as to whether he had sought leave to argue the grounds of fact rolled into the one at pages 471-472 of the Record, he admitted he did not. F
Going back to page 308 where he was reminded he was raising new issues, learned counsel was asked if any of his grounds at pages 471-472 are covered by any of the issues, all he urged upon us was for us to allow the cross-appeal. G

As can be seen, the lone issue formulated is neither concomitant with the grounds filed nor does it emanate therefrom. Rather, what we have H

is a conglomeration of confused and somersaulting as well as unrelated

self-defeating points, in which attempts are made to argue an appeal (not cross-appeal) in the case in hand as if the respondents were not the winners but the losers of the case in the court below. To exemplify the futility and hopelessness of the cross-appellant's attack, ground 1 (vii) ask: Was the trial court right in relying on the evidence as to the family of the mother of Ogbata Obiekwe when that issue was not pleaded? As this court does not hear an appeal directly from the High Court as by the Constitution sanctioned, such a ground like many others on which the cross-appellants' grouse is founded, is incompetent. See *Saude v. Abdullahi* (1989) 4 NWLR (Pt.116) 387.

I am of the view that since the learned Senior Advocate for the respondents sought neither leave of the court below nor of this court to argue the grounds of cross-appeal which are grounds of fact or mixed law and fact, the grounds are incompetent and are accordingly struck out. The lone issue distilled from those grounds cannot therefore stand and it is accordingly struck out.

In the result, the main appeal succeeds and I accordingly allow it. The cross-appeal lacks merit and it is accordingly dismissed. The decision of the trial court is accordingly restored.

The respondents shall pay cost assessed at N1,000 to the appellant.

E

BELGORE JSC

I have had the privilege of reading in advance the judgment of my learned brother, Onu, J.S.C. with which I am in full agreement. I agree this appeal has merit and ought to be allowed. I also allow the appeal for the reasons advanced in the said judgment and make the same consequential orders.

OGUNDARE JSC

By a writ of summons issued out in June 1972 William Akunyili, for himself and on behalf of Akunyili family of Nkitaku village, Agulu in Njikoka Division claimed from Idemili Ejidike and Hyancinth Ejidike declaration of title to a piece or parcel of land situate at the said Nkitaku village, 3100 pounds damages for trespass and an injunction. One Ogbata Ezesi was subsequently joined as third defendant in the action. This third defendant however, died in 1982 during the pendency of the action in the trial High Court leaving the original two defendants to defend the action.

The three defendants had also obtained leave of court to defend the action

for themselves and on behalf of Ogbata family of Okpu village Agulu.

Pleadings were ordered, filed and exchanged and subsequently amended. The action was tried on the amended statement of claim of the plaintiff, William Akunyili and the amended statement of defence of the defendants. At the trial, evidence was called on both sides and after addresses by learned counsel for the parties, the learned trial Judge Onyia J., in a reserved judgment, found the plaintiff's claims proved and entered judgment in his favour as hereunder:-

"(1) That the plaintiffs are entitled to the property known as and called 'Nwagu be Aseghobe' as shown in Exh. 'A'; and wrongly called 'Nwagu Ogbata' in Exh. 'B' but excluding the area earlier allocated to the defendants for farming purposes as depicted in Exh. 'A'.

(2) The plaintiffs are entitled to N150.00 damages for trespass against the defendants.

(3) 1st and 2nd defendants are ordered to provide a reasonable accommodation for the widow of the 3rd defendant. And they all and their servants workmen and agents are restrained from entering upon the said piece or parcel of land and/or interfering with the plaintiffs title, right or interest in the said piece of land."

He awarded to the plaintiffs as costs of the trial a sum of N1,000.00

Dissatisfied with the judgment, the defendants appealed to the Court of Appeal. The appeal was allowed and the judgment of the trial High Court was set aside. Plaintiff's claims was also dismissed as well as the cross-appeal lodged by the plaintiff. It is against this judgment that the plaintiff has appealed to this court seeking to have the judgment of the High Court Awka restored subject to the part of it complained of in the plaintiff's cross-appeal to the Court of Appeal being deleted. The defendants have also cross-appealed seeking also to "confirm" and "fortify" the judgment of the Court of Appeal in their favour.

During the pendency of this appeal the plaintiff, William Akunyili died and was, by order of this court, substituted by CHUDI AKUNYILI.

This appeal (as indeed also the appeal before the lower court) revolves mainly on facts. Although a number of issues are set out in the plaintiff's brief as calling for determination in this appeal- 5 in all, to be precise - they all amount to this single question: whether the plaintiff sufficiently pleaded the traditional history he relied on to sustain his action.

The plaintiff had pleaded -

"2. The 1st defendant is a farmer and the 2nd defendant a civil servant both of whom reside in Nkitaku village, Agulu.

3. The land in dispute known as and called 'Nwagu be Asighobe' is situate in Nkitaku village, Agulu in Njikoka Division (now Udo-Agulu Division) and is shown verged pink on Amended Plan No. FCO/D11/76

filed by the plaintiff and which said plan also depicts all the adjoining land owners.

4. The said land in dispute is a piece of land contiguous with the plaintiff's family compound wherein the plaintiff lives, and is valued N20.00 per annum.

B 5. All the people living nearest the land are from Nkitaku village except Ogwata Ezisi who hails from Okpu village, the circumstances of whose occupation are hereinafter explained.

C 6. The plaintiff's family and their ancestors before them have from time immemorial been in possession of the said piece or parcel of land and as owners in possession have always exercised maximum acts of ownership in and over the same by farming thereon, planting of palm trees and other economic trees and letting part thereof to tenants for farming, without threat or hindrance from the defendants or anyone else.

D 7. Although the defendants now reside in Nkitaku village, they hailed from Okpu village from where their grandfather Ogbata Obi-ekwe migrated to Nkitaku village and was offered a place of abode in the heart of Nkitaku village remote from the land in dispute by the then head of the plaintiff's extended family, that is to say; the Umuojionu family of Nkitaku village.

E 8. Later the said Ogbata Obiekwe with the leave and licence of the said plaintiff's Umuojionu family moved to the present residence of the defendants in Nkitaku village where he begat Ezisi Ogbata and Ejidike Ogbata (the latter being the father of the defendants).

F 9. Ezisi Ogbata, brother of Ejidike begat Ogbata Ezisi, who after having lived in the defendants' present abode for some 'time was also permitted by the same plaintiff's Umuojionu family to build on Nkitaku land adjacent to the land of the plaintiff.' (Underlinings are mine)

On his root of title, he pleaded as follows:-

"14. The land in dispute derives its name from Asegheobele who was the first member of the plaintiff's wider or extended family of Umuojionu to settle thereon.

G 15. Having died without an issue the land reverted to the Umuojionu extended family, the title vesting thereby on the extended family head.

H 16. By the custom of the plaintiff's village, when a person who has attained manhood wants to build a new home in a hitherto unoccupied vacant land ('Agu') he informs the members of his family, whose younger and strong ones would render him assistance with regard to the construc

tion of 'Ekpe' and compound walls in return for voluntary refreshments for

the helpers.

17. In keeping with this custom, the plaintiff and his late brother John Akunyili having obtained the leave of the head and the concurrence of the members of Umuojionu family employed the services of the said family to construct the mud and 'Akpa' walls around the area shown verged green on the plaintiff's plan.

18. The plaintiff and his family by the foregoing process appropriated the land in dispute according to Agulu Native Laws and Custom.

19. After the appropriation of the land in dispute, the various sectional heads of Akunyili family farmed on the land all the years over various customary farming seasons without any interruption by or from anybody including the defendants.

The defendants, on the other hand, pleaded thus:-

"3. The defendants admit paragraph 2 of the statement of claim but deny that they live in Nkitaku village. The defendants live in their village, Okpu, on the boundary between Umunkpoko, Amatutu and Umuhiala.

4. That defendants deny paragraph 3 of the statement of claim and say that the land in dispute is known as and called 'Nwagu be Ogbata' and is clearly shown and delineated Pink in plan No. EC/312/72 filed with this statement of defence.

5. The defendants deny paragraph 4 of the statement of claim. In further answer to this paragraph the defendants say that they have boundary with Umu Nkpoko on the land in dispute and the plaintiff's family are tenants of Umu Nkpoko. The land in dispute is a continuous piece of land with where the defendant's grandfather Ogbata lived and died and which is now occupied by Ogbata Ezisi.

6. The defendants deny paragraphs 5 to 15 of the statement of claim and shall put the plaintiff to very strict proof of the same. In further answer to the said paragraphs the defendants aver that their grandfather Ogbata lived and died in the defendants ancestral home 'Obi'. The defendants have no other ancestral home except where Ogbata lived and died. The plaintiff's categorical assertions are only to becloud the real issues. The Chief Priest of Idenmili juju is always from the family of the defendants and any initiation into the shrine must be approved by the family of the defendants.

x x x x

12. The defendants deny paragraph 23 of the statement of claim and further say that the land was given to the Roman Catholic Mission by Ogbata Ezisi, the head of the Ogbata family.

13. The defendants deny paragraphs 24 and 25 of the statement of claim.

In further answer to the said paragraphs the defendants aver that the land given to the Roman Catholic Mission for the building of school which is contiguous to the land in dispute was given by Okpu, Amatutu and Umuabiala villages and the plaintiffs were not parties to it. The document executed on the 16th of November, 1959 between Okpu, Amatutu and Umuabiala with Roman Catholic Mission of the vicarage apostolic of Onitsha Owerri is hereby pleaded and will be founded upon at the trial.” (Underlining is mine).

On their root of title, they pleaded -

“20. In answer to paragraph 32 of the statement of claim the defendants say that they removed the palm fronds unlawfully cut down by the plaintiff in their (defendants’) lawful exercise of their right over the land and the trees standing thereon.

21. The defendants deny paragraphs 33 and 34 of the statement of claim and in further answer to paragraph 34 aver that John Uko was one of the elders who in 1972 arbitrated between the plaintiffs and the defendants over the land found the land in dispute belonged to the defendants family. The decision will be founded upon at the trial.

22. The defendants deny paragraph 35 of the statement of claim and will put the plaintiff to strict proof of the same.

23. The defendants are not in a position to admit or deny paragraph 36 of the statement of claim.

24. The defendants deny that the plaintiff is entitled as claimed in paragraph 37 of his statement of claim and shall put the plaintiff to the strictest proof of every arm of his claim.

25. In further answer to the foregoing the defendants aver that the land in dispute originally belonged to Eze Onyeokwu of whom Ogbata was a descendant.

26. Ogbata the descendant of Eze Onyeokwu lived and died on a part of the land in dispute and his compound was inherited by Ogbata Ezisi who up till now is living in the compound which is the ancestral home of the defendants family.

27. As owners in possession, the defendants have exercised acts of ownership numerous and positive over the land in dispute without any let or hindrance except in 1940 when the plaintiff trespassed on the land in dispute to cut Araba tree and was beaten by the defendants father who was subsequently charged and acquitted in suit No. 60/40 of 7/8/40. Thereafter the defendants family continued to enjoy the land without interference until 1968 when the plaintiff’s family again trespassed on the land and were repulsed. The defendants family reported the matter to the coun-

cillors who warned the plaintiff against further incursions on the land.”

The learned trial Judge after a review of the evidence led on both sides and an evaluation of same, rejected the evidence of some of the defence witnesses, particularly D.W.2 and D.W.4. He accepted the evidence of the plaintiff and his witnesses, fortified, as it was, in a particular respect, by the evidence of D.W.1 and found that *“the defendants live in Nkitaku and the land in dispute is in Nkitaku”*. B

This finding is very crucial to this case. The court below appreciated this point. For Oguntade, JCA. in his lead judgment, observed:-

“A matter not fully brought to the fore and which appears important was whether the land in dispute belonged to villagers of the defendants or the Nkitaku villagers of plaintiff. This is obvious from the fact that the defendants testified that the land was in Okpu village while the plaintiff with whom some of the defence witnesses agreed testified that the land was at Nkitaku village.” C

Strangely enough, however, the learned justices of the court below failed to give effect to the resolution by the trial court of this very important matter. In my respectful view, this is a very serious lapse in the judgment of the court below. D

The learned trial Judge also found:-

1. That when Ogbata Ezisi died, he was buried in his premises and not on the land in dispute. E

2. *“...that plaintiff’s extended family daughter Achonwa Anwuanwu married to Okpu begat Ogbata Obuekwe who on having difficulties in his paternal home took refuge in his grandfather’s house (Anwuanwu’s house) in Umuojionu in Nkitaku and when he could not find solution to differences with his paternal home and had reached maturity he was given land next to where the plaintiffs immediate family had land by Umuojionu of Nkitaku as members of their family and not as native of Okpu and was allowed lands to farm-on.”* F

3. *“.... that while the families resided in the Obuno the very first person who went to the ‘Agu’ i.e. outside the dwelling area of the town to settle was ‘Aseghobe’ part of which area had been in dispute.”* G

4. *“..... that plaintiff’s family had been on the land from time immemorial farming and harvesting on the disputed land.”*

5. *“..... that plaintiff is well established on his land which he and his family or Akunyili inherited i.e. ‘Nwagu be Aseghobe’ as shown in Exh. ‘A’ and in B the whole land in dispute with the exception of that portion granted to the defendants for farming purposes wherein they planted the* H

Ifiajioku juju shrine.”

By these findings, the learned trial Judge accepted the case for the plaintiff, particularly his traditional history and rejected that for the defence.

It is the acceptance of plaintiff's traditional history that is the pith of the judgment of the court below. Oguntade, J.C.A. observed:-

B *"The second issue for determination relates to the evaluation of evidence by the lower court. As I pointed out earlier in this judgment, the two parties had in their pleadings set up conflicting traditional histories. The plaintiff claimed that the first settler on the land in dispute was 'Asegheobele'. The defendants on the other hand said it was their ancestor*
 C *Eze Onyeokwu to whom Ogbata was a descendant who originally owned the land. It was in proof of the ownership of the plaintiff of the land in dispute which ownership derived from Asegheobele that the plaintiff testified that he had in 1940 had a boundary dispute in respect of the land on which he had his compound with Jeremiah Agbalum. It was also in further*
 D *proof of the said ownership that the plaintiff led evidence to show that the defendants ancestor came from Okpu village and was granted land to live on by the plaintiff's Umuojionu family.*

In other words the plaintiff's claim of title was fully riveted on the traditional evidence that his ancestor Asegheobele first settled on the land. The further averment and evidence of a previous boundary dispute with
 E *Jeremiah Agbalum and the granting of land by Umuojionu family to the defendant's ancestor Ogbata Obiekwe were no more than proof of acts of possession and of ownership .. If the plaintiff's evidence of traditional history as against the defendants was conclusive, this would be enough to enable the plaintiff get the declaration he sought from the court."*

F On defendants' case, the learned justice of appeal also observed:-
"The defendants also called evidence to show that they had been cultivating the land for many years. It was also given in evidence that they had several juju shrines on the land in dispute. The evidence led in this connection was to show the acts of possession and/or ownership of the
 G *land in dispute by the defendants."*

He then set out a passage in the judgment of the trial court in which findings (1) above were made and observed:

"It seems to me that the lower court was wrong to have accepted the vague and inconclusive evidence called by the plaintiff in proof of his root of title. The plaintiff as I pointed out earlier did not plead the genealogy of Umuojionu family and his link with that family, and neither did he plead how that family came into existence and how the land has descended in the family from time immemorial. Now in Owoade v. Omitola (1988) 2 NWLR (Pt. 77) 413 at 425, the Supreme Court per Nnaemeka-Agu, J.S.C.
 H

said:-

'When, as in this case, a plaintiff's case depends on tradition it is of utmost importance that the traditional evidence tendered must not only make a consistent sense but also that it affirmatively links the plaintiff with the traditional history he relies upon.'

I think it is a debasement of evidence of tradition for a trial Judge to accept in proof of a title rooted in traditional history evidence which is clearly vague and disjointed. In what way does the evidence called in this case show how the plaintiff became a member of Umuojionu family? What is the historical link between the person alleged to be the first settler on the land in dispute - Asegheobebe and the Umuojionu family? Even if it is conceded that the first settler upon the land in dispute was Asegheobebe, so what happened to the land when Asegheobebe died without issue? If Umuojionu family was in existence when Asegheobebe died who were the component members of that family and what was their blood relationship with Asegheobebe so as to make them the rightful inheritors of Asegheobebe's land? Clearly therefore, the plaintiff failed to plead and prove a title derived from Asegheobebe."

Uwaifo, J.C.A. also observed:-

"Not a single name of the plaintiff's ancestors, apart from Asegheobebe, was pleaded. The name of the head of the family of Umuojionu in whom the title in the land allegedly vested was not pleaded; nor were the names of subsequent heads of that family pleaded. In other words, the plaintiffs have not linked the history of the land in sequence and a consistent sense to themselves by pleading and proving the names and histories of the several ancestors whom they claimed to have owned the land from time immemorial. The plaintiffs could not therefore lead evidence of the traditional history of the land."

The learned Justice of Appeal added:-

"The truth is that the plaintiffs having failed to plead the traditional history in the proper manner and since they rested their title to the land on that, their case collapsed. There was nothing else for the learned trial Judge to consider. There was no evidence of traditional history. The cases of Akinloye v. Eyiola (1968) NMLR 92 and Owoade v. Omitola (1988) 2 NWLR (Pt. 77) 413 at 424-425 per Nnaemeka-Agu, J.S.C. clearly establish this. In essence, where a plaintiff relies on traditional history, he must plead and prove the history of devolution of the land in dispute. In order to do so, the names and histories of the several ancestors must be pleaded. If not pleaded no evidence can be led on them without an amendment of the

pleadings. The names and histories of those ancestors are material facts

which serve as the link between the plaintiff and the land in dispute and the other party is entitled to be put on notice of them and not to be taken by surprise. See also Inyang v. Eshiet (1990) 5 NWLR (Pt.149) 178 at 182."

With profound respect to the learned justices of the court below, I think they misconceived the traditional history relied on by the plaintiff. My understanding of his history is this: Asegheobebe was a member of the Umuojionu family. He set out and settled on the land in dispute. On his death without an issue, the land devolved on his family Umuojionu. By the custom of Nkitaku, William Akunyili and his brother John Akunyili, with the leave of the Umuojionu family (to which they belonged) went on the land in dispute and thereby appropriated it under Agulu native law and custom. Evidence was led in support of this history and copious findings of fact were made by the learned trial Judge, accepting it. These findings of fact were not disturbed by the court below. I have no reason to disturb them either. It will, therefore, not be right to hold, as did the court below, that the traditional history of the plaintiff is inconclusive or not pleaded in the proper manner. I think plaintiff's pleadings here suffice, having regard to the nature of the traditional history relied on. What pleadings will suffice depend on the peculiarities of each case and the nature of the history relied on. In the instant case, we are told of the person who first settled on the land and its devolution on the death, without issues, of the founder. It is pleaded that Asegheobebe the founder was of Umuojionu family and that the land devolved on that family on his death without issue. The family to whom Akunyili brothers belonged later granted the brothers permission to settle on the land, thereby by custom, conferring on them title to the land. They have been there since then exercising rights of ownership thereon. That the plaintiff was of Umuojionu family was not disputed by the defence and confirmed by D.W.1, D.W.2, Patrick Chibeze and D.W.3. I think the pleadings and the evidence meet the standard set by this court, per Nnaemeka-Agu, J.S.C. in *Owoade v. Omitola* (supra) in that, in my respectful view, the history pleaded not only makes a "consistent sense but also (that it) affirmatively, links the plaintiff with the history through the Umuojionu family.

There was abundant evidence, accepted by the learned trial Judge, of the user of the land by the Akunyili brothers and the defence of their ownership of it against their neighbours. With all the evidence and findings of fact particularly the clear finding that the land in dispute is in Nkitaku village which finding remains intact, I would not say that plaintiff had not established a prima facie case that the defendants could react to. The finding that the land is in Nkitaku village is amply supported by the evi

dence for the plaintiff and, importantly, the evidence of D.W.1, Ozulike Obiano who also said in evidence that the defendants lived in Nkitaku village. It was for the defendants to show how they of Okpu village came to own land in Nkitaku other than as pleaded by the plaintiff.

I agree with the court below that the case of the plaintiff (as well as that of the defendants) is predicated only on the traditional history pleaded by him. This method of proof of ownership having, however succeeded, judgment was rightly entered in plaintiff's favour by the trial court; see: Balogun v. Akanji (1988) 1 NWLR (Pt. 70) 301, 323. The court below is in error to set aside that judgment.

The learned trial Judge had excluded the area allocated to the defendants for farming purposes as depicted in Exh. 'A' from the area in respect of which he declared the plaintiff to be entitled. This area is edged 'yellow' on Exh. A and falls within the land in dispute. The plaintiff was unhappy with this part of the judgment of the trial court and appealed against it to the court below. As regards the cross-appeal, Oguntade, J.C.A. observed:-

"It was not part of the defendants' case that their father and they had in succession been tenants to the plaintiff in respect of the area verged yellow within the land in dispute. Rather the defendants claimed to be the owner of the land in dispute. It was therefore a case of 'winner takes all'."

In his judgment the trial Judge found that the land in dispute belonged to the plaintiff. That land included the area verged yellow. The plaintiff never conceded that he made an absolute grant of the portion verged yellow to the defendants. Rather he said that it was an on and off tenancy depending on whether or not the father of the defendants wished to do farming on the land in a particular year. There was therefore no incident of a permanent grant of tenancy involved. There was also no reason whatsoever to allow the defendants to keep the area of land verged yellow in Exh. 'A' if the trial Judge had been right in his conclusion that the land belonged to the plaintiff."

He concluded:-

"I must say that the cross-appeal would have succeeded had I been able to hold that the trial Judge correctly decided that title to the land in dispute was in the plaintiff."

There has been no appeal against the finding of the court below on plaintiff's cross-appeal. And in his notice of appeal to this court he prays that the cross-appeal be allowed.

I am in full agreement with the views expressed by the court below, Per Oguntade, J.C.A., on plaintiff's cross-appeal to that court. In view

of the conclusion I have now reached that plaintiff's case was proved, it follows, subject to my decision on defendants cross-appeal, that I must, and I do hereby, allow his cross-appeal as well.

I now turn to the defendants cross-appeal to this court. Their main grouse is that the court below failed to determine or pronounce on all the issues raised by them in their appeal before that court. They listed about seven items in their ground of appeal which are issues they claimed they placed before the court below but which that court, according to them, did not consider nor pronounce upon. I have carefully considered the arguments proffered by the learned leading counsel for the defendants both in the cross-appellants brief and at the oral hearing of the appeal. With profound respect to the learned senior counsel, the defendants cross-appeal is completely devoid of any merit. I read through the briefs filed in the lower court and the judgments of that court and I am satisfied that the learned justices painstakingly considered all issues placed before them that needed the attention of any reasonable tribunal. The grounds of appeal offend in most part the rules and I am rather surprised that most of them were not struck out. Indeed, as rightly observed by Uwaifo, J.C.A. most of the grounds of appeal *"are a complete waste of effort"*. The brief of the defendants was, again to use Uwaifo, J.C.A.'s expression, *"directionless in most parts"*. The pain the defendants put the court below into in considering their appeal before that court can best be described in the words of Uwaifo, J.C.A. which I, too, subscribe to. The learned justice observed:-

"The defendants/appellants attacked the review of the evidence of P.W.1 on traditional history by the learned Judge in ground 3(d) of the grounds of appeal. The remaining 30 grounds of appeal are a complete waste of effort. So is the directionless appellant's brief of argument in most parts. The only issue which accidentally makes it possible to consider the issue of the traditional history and its proof is issue b(iii) which reads:-

'Did the plaintiff/respondent prove his case?'

The arguments relevant on the issue is also again; accidentally and uninspiringly stated at page 9 of the appellant's brief"

It appears the defendants are still befogged by the muddle that has plagued their case from the trial to this stage. Suffice it to say that I unhesitatingly dismiss their cross-appeal.

Finally, for the reasons I have given above, I allow plaintiff's appeal, set aside the judgment of the court below and restore, subject to the amendment I hereby make, the judgment of the trial High Court. Relief (i) granted by that court is amended to read:-

"That the plaintiffs are entitled to the property known as and called

'Nwagu Aseghebele as shown in Exh. 'A' and wrongly called 'Nwagu Ogbata' in Exh. 'B'."

The defendants have not complained against the order contained in the opening sentence of Relief (3). I will, therefore, not say much on its competence. I must, however, observe that I consider this order rather strange and I have my doubts as to the efficacy of it, that is, whether it is binding to confer any right on the widow of the 3rd defendant who was not a party to the proceedings before the trial court nor made any claim. B

I abide by the order for costs made in the judgment of my learned brother, Onu, J.S.C., the preview of whose judgment I had before now.

MOHAMMED JSC

I have had the privilege of reading the judgment of my learned brother, Onu, J.S.C., and I agree with his opinion and conclusions. The appellant had established through cogent evidence acts of ownership and exclusive possession of the land in dispute. This I agree is enough to obtain a declaration that the appellant is entitled to a statutory or customary right of occupancy. The evidence of a grant of part of the land in dispute which was made by the appellant's family to the ancestor of the respondents, one Eze Onyeokwu, is a further proof that the appellant had established that his family own and were in possession of the land in dispute. D

I agree also with my learned brother that the cross-appeal is without merit and ought to be dismissed. Consequently, I hereby allow the appeal and restore the judgment of the trial High Court. The cross-appeal is dismissed. I also award N1,000.00 in favour of the appellant. E

ADIO JSC

I have had the opportunity of reading in draft the judgment just read by my learned brother, Onu, J.S.C., and I agree that the main appeal succeeds and I allow it. The cross-appeal has no merit and I dismiss it. F

The appellant's claim was, inter alia, for a declaration of title to the land in dispute. In the circumstance, the burden was on him to satisfy the court that he was entitled, on the evidence led by him, to the declaration which he has sought. He had to rely on the strength of his case and not on the weakness of the defendant's case. If the burden was not discharged his case should be dismissed. See *Kodilinye v. Odu* 2 WACA 336 and *Abisi v. Ekwealor* (1993) 6 NWLR (Pt.302) 643. G

In this case, the crucial issue was whether the appellant was able to H

prove his case by means of the traditional history on which he relied. If he did, then judgment could be entered for him on the basis of the traditional evidence alone if the evidence of traditional history was uncontradicted or in conflict and found by the court to be cogent. See *Ogbeide Aikhionbare etc., & Ors. v. Oyiekpen Omorogie Enogie of Evbuoba-Oken village & Ors.*

B (1976) 12 S.C. 11 at p. 27. However, if evidence of traditional history is not conclusive, then evidence, if any, on record of acts of ownership or possession should be considered. See *Kojo v. Bonsie* (1957) 1 WLR 1223; and *Motunwase v. Sorungbe* (1988) 4 NWLR (Pt.92) 90. The legal position, was not, as the court below thought, that prove of a claim for a declaration of title by means of traditional evidence was mutually exclusive with other means of proving the claim. A plaintiff may adopt one or more of the ways of proving ownership, for example, traditional evidence or by means of evidence of acts of ownership or possession. The two or one or the other of them may be sufficient to sustain the claim. It is only where a plaintiff fails to prove his case by means of traditional evidence and also fails to establish it by means of evidence of acts of ownership and possession, when those were the means pleaded and relied upon that the plaintiff's claim should be dismissed. That was not what happened in this case. The plaintiff/appellant succeeded in proving his claim through the method alleged.

E It is because of the foregoing reasons and the fuller reasons given in the lead judgment of my learned brother Onu, J.S.C., that I agree that the main appeal succeeds and I allow it and that there is no merit in the cross-appeal and I dismiss it. I abide by the consequential orders, including the order for costs.

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