

SUPREME COURT OF NIGERIA
9TH JULY, 1996. SC. 263/1991
CORAM:-S. M. A. BELGORE, A. B. WALI, E. O. OGWUEGBU,
S. U. ONU, A. I. IGUH, JJSC.

MADAM ETIBIO UKPAKARA & 2 ORS. PLAINTIFFS/
(For themselves and on behalf of the Ovie family RESPONDENTS
Of Otibio-Oweh in Isoko L.G.A.)

AND

OMINIKE EBEVUHE & 8 ORS. DEFENDANTS/
(For themselves and on behalf of the Eweke APPELLANTS
family of Ekreka-Owhe in Isoko L.G.A.)

APPEALS - Findings of trial court - Where unimpeachable - Whether Court of Appeal was justified - In upholding the findings.

APPEALS - Adverse findings - Concerning the issues of pledge of the land in dispute - Whether appealed against by the appellants.

EVIDENCE - Contradictions - Whether fatal in the present case.

EVIDENCE - Burden of proof - Land law - Where the parties agreed and the court found respondents were original owners - The onus is on the appellants to establish a change of ownership.

JUDGMENTS - Reasons for a finding - Where erroneous but the decision is correct - They can only amount to a misdirection - And will not lead to a reversal of the judgment.

LAND LAW- Possession - Where respondents show by credible traditional evidence that they are in possession - Trial court's finding to that effect - Will not be interfered with.

LAND LAW- Redemption -finding that the land in dispute was not pledged -Knocks off the allegation that the appellants redeemed the land.

LAND LAW - Possession - Prior proceedings before customary court - Whether properly treated as evidence of possession.

FACTS

Before the High Court of Justice Oleh in the defunct Bendel State of Nigeria now Delta State, the plaintiffs/respondents filed an action against the defendants/appellants. Respondents claimed declaration of title, damages for trespass and perpetual injunction in respect of the land in dispute. Both sides relied on traditional evidence acts of ownership and long possession. Appellants stated that the land in dispute was pledged at a point by their ancestor to the respondents. But that they redeemed it sometime in 1975 with N200.00. The respondents vehemently denied this allegation of pledge and redemption.

The trial court found that the land in dispute was never subjected to any pledge and then gave judgment in favour of the respondents. Appellants' appeal to the Court of Appeal was dismissed. They have further appealed to the Supreme Court raising 4 issues.

ISSUES FOR DETERMINATION

"1. Whether the decision of the lower court was right in holding that the wrong findings by the trial Judge in coming to the conclusion that there was no redemption of the disputed land was substantial enough to lead to a reversal of the decision of the trial court.

2. Whether the learned Justices of the Court of Appeal were right in holding that the Appellants did not appeal against the adverse findings concerning the issue of pledge of the land in dispute. Etc., see p. 1398.

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

Findings of trial court

1. The court below, in my considered view, was justified when it rightly refused to interfere with the findings of fact by the learned trial Judge that the land in dispute was not pledged; and that the Respondents are the owners thereof. The learned trial Judge painstakingly considered and weighed the evidence of both parties and their witnesses on an imaginary scale of justice as to the issue of pledge, traditional evidence and acts of possession and rightly, in my view as demonstrated hereunder, arrived at the unimpeachable conclusion that the land in dispute was not pledged; that the Respondents are the owners of the land in dispute - findings which the court below was justified in upholding. (p. 1400 D)

Evidence - Contradictions

2. The above are definitely conflicts - indeed, contradictions inherent in the Appellants case as put forward by them which are material and fatal to their

case, justifying the findings of fact by the trial court and the decision of the court below which upheld those findings of fact. (p. 1401 F)

Where respondents show that they are in possession

3. In the instant case, the Respondents who have shown by credible and consistent traditional evidence relating to their root of title that they are in possession of the land in dispute depicted. In Exhibit A, also demonstrated the existence of the 1961 proceedings in Suit No. 1OC/55/61 vide Exhibit B, to show the same acts of possession. The Court below was therefore, in my view, justified after a careful consideration of the findings of the learned trial Judge not to have interfered with those findings as the same were not shown to be perverse. (p. 1402 B)

Land law - Redemption

4. The Appellants alleged that in 1975 they redeemed the land in dispute with N200; the Respondents denied receiving either any money from them or anyone. The Respondents, in addition denied receiving any money from the Appellants and the learned trial Judge found, quite rightly in my view, that the land in dispute was not pledged. As redemption presupposes that there was a pledge and as in the case in hand the learned trial Judge had rightly found that the land in dispute was not pledged, there can be no redemption. (p. 1402 C)

Burden of proof

5. In the instant case, as the parties agreed and the learned trial Judge found as a fact that the Respondents were the original owners of the land in dispute, the onus is on the Appellants to establish a change of ownership by sale. There is indeed no onus on the Respondents to establish a pledge. So held this Court in the identical case of *George Onobruhere & anor. v. Ivwromoebo Esegine & anor.* (1986) 1 NWLR (Part 19) 799, wherein the principle was established that since the onus is on the defendants, in this case the Appellants, it is their duty to begin to adduce evidence, for it is they who would lose if no more evidence is adduced having regard to the state of the pleadings. (p. 1402 E)

Reasons for a finding

6. Since the learned trial Judge had found rightly, in my view, that the land in dispute was not pledged, there can be no redemption. Indeed, he assigned his reasons to back his stance for so holding. The court below was therefore right to have held that the reasons can only amount to a misdirection which did not

lead the learned trial Judge to reach a wrong decision; such a decision not being based on a wrong principle of law as to lead to a reversal of the judgment of the trial court. The court below was therefore perfectly right when it held, *“It seems to me however that what this Court has decided is whether the decision of the judge was right, not whether his reasons were. It is only if the misdirection caused him to come to a wrong decision that it would be material.”* (p. 1403 H)

Appeals - Adverse findings

7. In the light of all I have stated above as well as hereinbefore in Issue 1, the Justices of the Court below were, in my view, right in holding that the Appellants did not appeal against the adverse findings concerning the issue of pledge of the land in dispute. This is because the main focus of attack by the Appellants being in relation to redemption which presupposes the existence of a pledge, once the carpet was removed from under the Appellants’ feet that no pledge through their pleading of traditional evidence as to their root of title as well as evidence adduced at the trial in support thereof were established, their case as to pledge which therefore collapsed, provided no basis for an appeal against any such adverse findings. (p. 1406 H)

E Prior proceedings before customary court

8. The Respondents being members of Ovie family have interest in Erawha land and they are, as earlier concluded, in possession of the land in dispute. The court below was accordingly right to have held that the learned trial Judge was justified in treating Exhibit “B” as evidence of possession on the part of the Respondents. (p. 1410 A)

NOTABLE POINTS OF INTEREST

ONUJSC

1. Declaration of title - Burden of proof

It is trite law that the burden of proof in a claim for declaration of title to land lies on the plaintiff; the general rule being that a plaintiff must succeed on the strength of his own case and not on the weakness of the defendant’s case; However, there are recognised exceptions, one of which is enunciated in the case of Onobruhere v. Esegine (supra). (p. 1405 F)

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IGUHLJSC

2. Methods of proving title

In the first place, it is well settled that each of the five methods of proving title to land set out by this court in Idundun and others v. Okumagba and others

(1976) 9-10 S.C. 237 will suffice independently of the others, to establish title. One of these recognised five methods is proof of ownership of land by traditional evidence. The respondents' version of how the land in dispute was founded by their ancestor, Ovie was found credible and conclusive and was therefore accepted by the trial court. (p. 1414 A)

B

REPRESENTATION

Dr. Mudiaga Odje SAN with A. Akpomudje and A. M. Odje for the Appellants
B. O. Olokor for the Respondents

C

CASES REFERRED TO

Shell B. P. Petroleum Development of Nigeria Ltd v. Pere-Cole (1978) 3 SC 183 at page 194-196
Dike v. Nzeka (1986) 4 NWLR (Part 34) 144 at 146
African Continental Seaways Ltd v. Nigerian Dredging Road & General Works Ltd. (1977) 5 S.C. 235 at 250
Nwangwu v. Okonkwo (1987) 3 NWLR (Part 60) 314
Ezeudu v. Obiagwu (1986) 2 NWLR (Part 21) 208 at 213 (1986) 3 S.C. 1 at 4
Melifonwu v. Egbuji (1982) 9 S.C. 145 at 168 E
Adegboyega v. Igbinosun (1969) 1 All NLR 1
Atta v. Amoah 1 W.A.C.A. 15 at 40
Abaye v. Ofili (1986) 1 S.C. 231 at 321
Ukejianya v. Uchendu 13 W.A.C.A. 46
Ajuwon v. Akanni (1994) 1 KLR 129
Kodilinye v. Odu (1935) 2 W.A.C.A. 336
Ibodo v. Enarofia (1980) 5-7 S.C. 42 at 58
Idundun v. Okumagba (1976) 9-10 S.C. 237
Enang v. Adu (1981) 11-12 S.C. 25 at 42

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LEAD JUDGMENT BY ONU JSC

This is an appeal against the decision of the Court of Appeal sitting in Benin City, which on 7th December, 1990 dismissed in its entirety the Defendants/Appellants of appeal from the trial Court's decision wherein the Plaintiffs/Respondents had claimed in their Writ of Summons against the Defendants/Appellants in the following terms-

“(a) A declaration of title to all that piece or parcel of land known as and called ERAWHA lying and situate in Erawha Village Owhe Clan in Isoko Local Government Area, Bendel (now Delta) State of Nigeria within the

jurisdiction of the Honourable Court, the extent of the land in dispute being shown and verged Green and Red on Amended Survey Plan No. E.R. 1724 filed with this Amended Statement of Claim.

(b) *The sum of N300. 00 (Three hundred Naira) damages for trespass by the Defendants to the Plaintiffs' Erawha land aforesaid sometime in April, 1975 and,*

(c) *An order of perpetual injunction to restrain the Defendants, their servants and/or agents from further trespassing on the Plaintiffs' piece or parcel of land aforesaid.* “ (Parenthesis mine).

C After pleadings were ordered, filed, duly amended and exchanged, the case went to trial before Akpiroroh, J. sitting at Oleh, then in Bendel but now Delta State. After both parties had closed their cases, the learned trial Judge on 29th May, 1987 in a well considered judgment, granted the reliefs the Plaintiffs/ Respondents (hereinafter in this judgment referred to as the Respondents) had D claimed, save that he reduced the damages trespass of N300.00 to N200.

Being dissatisfied, the Defendants/Appellants (hereinafter referred to as Appellants) appealed to the Court of Appeal, Benin City which hereinbefore stated, dismissed their appeal on 7th December, 1990.

E For a clearer and better understanding of this case the following are the background facts as made out on behalf of the parties.

For the Respondents they are that the land in dispute is part of land founded by Ovie their ancestor which land subsequently devolved on them. Ovie, they recounted, was the grandson of Azagba, who with wife Owhe, founded Owhe Clan. Tracing their genealogy, they showed how Ovie had a F daughter called Itete and two sons - Ejeasa and Otuata. Itete, it was maintained, begat Atamaro who in turn begat Esekwe and other children. Esekwe, it was then stated, begat Ukpakara, Okoro, Ughu Agbarugo, Oguboru and other children. Ukpakara begat the 1st Respondent, Okoro; Okoro begat late Johnny, the 2nd and 3rd respondents. Ovie in his lifetime farmed on the land before he gave it G to his daughter Itete and her descendants to farm on. Both Ovie, Itete and her descendants, it is said, exercised maximum acts of ownership over the land in dispute. They also stated that they collected palm nuts, fished and hunted games on the land as well as owning rubber plantations and houses built by their tenants thereon.

H The Respondents demonstrated how sometimes in 1961 the Appellant and Emonido started to farm on the land, in consequence which, the 1st Respondent sued them to Oleh Customary Court and judgment; the case being Suit No. 1OC/55/61 vide Exhibit 'B'. That in 1975, when dispute erupted over the land, the Appellants summoned the Respondents before the Odion Ologbo

asserting ownership of the land and that after probing into the dispute, the Council gave judgment in Respondents' favour. Subsequently, the Appellants again trespassed on the land; whereupon the Respondents commenced the action giving rise to the case herein.

The Appellants for their part denied the Respondents' claim; they in addition denied that Ovie was a descendant of Azagba and Owhe and any knowledge of the Oleh Customary Court case of 1961 vide Suit No. 10C/55/61 as well as the Customary arbitration before the Odion in Council in 1975. In their claim to ownership of the land in dispute, they too relied on traditional evidence, acts of ownership and long possession. Their case is that the land in dispute called Otor-Uto was founded by Akpughe their ancestor from whom it devolved on them through Eweke. Their genealogy is to the effect that Azagba and his wife who founded Owhe begat Ogbu, Ovo and Uthata. Ovo begat Akpughe who founded Otor-Uto in Erawha land. Akpughe begat Edhegbe, Eweke and Ikperi. After the death of Akpughe, his three children shared Oto-Uto land among themselves. Eweke begat Ariakpo, Eka, Ojokor and Erhieha and after the death of Eweke, his four children shared the land among themselves. In the course of time, they maintained, Odjokor defaulted in joining to clear the path to Orise Owhe juju and his own portion of the land was seized and pledged to Esekwe, the ancestor of the Respondents for 80k (equivalent of twenty cowries). They asserted that when the land was in possession of the Respondents as a result of the pledge, they (Respondents) sued the 2nd Appellant in respect of the house he built on it and that the other Appellants were not a party to the action. The Appellants then asserted that sometime in 1975 they summoned the Respondents before D. W. 1 (George Iduku Orovwighose) in his house in order to redeem the land pledged to Esekwe their ancestor and after deliberation, the Appellants redeemed the land with the sum of N200 which they paid to the Respondents.

Aggrieved by the decision of the Court of Appeal (hereinafter *referred* to shortly as the court below) the Appellants have further appealed to this court upon five grounds contained in their Notice of Appeal.

The parties subsequently exchanged briefs in accordance with the rules of court. The Appellants in their brief submitted four issues as arising, for our determination, to wit:

"1. Whether the decision of the lower court was right in holding that the wrong findings by the trial Judge in coming to the conclusion that there was no redemption of the disputed land was substantial enough to lead to a reversal of the decision of the trial court.

2. *Whether the learned Justices of the Court of Appeal were right in holding that the Appellants did not appeal against the adverse findings concerning the issue of pledge of the land in dispute.*

3. *Whether the Court of Appeal was right in upholding the learned trial Judge's application of the onus of proof as enunciated in Onobruchere v. Esegine (1986) 1 NWLR (Part 19) 799 at pages 806-807, (1986) 2 SC 385 at pages 398-401.*

4. *Whether the Court of Appeal was right in upholding the decision of the learned trial Judge in accepting case No. 10C/55/61 Ukpakara v. Emonido & anor as an act of possession in favour of the Respondents in this C case.*

The Respondents for their part formulated three issues as arising for determination. They are –

1. *Whether the Court of Appeal was right in refusing to interfere with finding of facts by the learned trial Judge that the land in dispute was not D pledged; and that the Respondents are the owners of the land in dispute.*

2. *Whether the Court of Appeal was right in upholding the learned trial Judge's application of the principle of onus of proof enunciated in the case of Onobruchere v. Esegine (1986) 1 NWLR (Part 19) page 799 at 800.*

3. *Was the Court of Appeal right in upholding the learned trial E Judge's decision that Exhibit 'B' is evidence of act of possession on the part of the respondents.*

At the hearing of this appeal on the 23rd day of April, 1996, learned Counsel for the Appellants, Dr. Mudiage Odje, S.A.N. after relying on the brief filed on the appellants' behalf expatiated thereon, laying particular emphasis on F issues 1 and 3 respectively. I intend, however, to stick to the four issues formulated by the Appellants in my consideration of the appeal which I will deal with by taking issues 1 and 4 separately and issues 2 and 3 together hereunder as follows –

ISSUE 1-(GROUND 2)

G After setting out the learned trial Judge's reasons for disbelieving the evidence of D.W. 1, namely as to the non-issuance of a receipt for the redemption money; the failure of chiefs Okpobrisi and Avwenegbeku to testify that D.W. 1 declined to give evidence to the effect that he (D.W.1) gave no evidence that the meeting for the redemption neither took place in his house nor that he handed over the H money to the 1st plaintiff, extract of which the Court below also reproduced, argued that the issue is so fundamental in the case that a decision on it would have entitled the Appellants to judgment based on the unchallenged evidence of D.W.1. It is because the issue of redemption is very crucial to the determination of this case, it is contended, that D.W.I, the most senior Oletu of Otor-

Owhe was called to testify, adding that its importance stems from the fact that it was a recent act by both parties to this case, occurring as it did, in 1975 even though the traditional evidence of the root of title by both of them dates back beyond human memory. Hence, it is further argued, anybody could say whatever he liked in proof of such facts with much colouring as to win the sympathy of the court. Furthermore, it is maintained, the issue of pledge also B dates back to a period when none of the witnesses was born. The only recent and reliable fact supporting the Appellants against the Respondents in the matter of ownership of the land by the Appellants, it is contended, is the act of redemption. If, as contended by the Appellants, they redeemed part of the land in dispute in 1975 from the Respondents, it is further argued, it will amount to C conclusive proof by the Appellants that there was in fact a pledge by the Appellants' family of the land in dispute to the Respondents who had falsely denied this important fact.

It is further contended that there is proof of redemption of the disputed land from the evidence led in support of same through D.W.1, the question will D not be the controversy of who actually pledged the land to the Respondents but rather it will be presumed that the radical title to it is in the Appellants. Consequently, it is maintained, whoever pledged the land to the Respondents on behalf of the Appellants' family will be immaterial to the determination of the ownership of the disputed land. Furthermore, it is pointed out, the issue of E redemption being more recent act of possession by the Appellants against the Respondents, if established and proved as in this case, is conclusive proof that at one time or the other, there was a pledge of the disputed land to the Respondents who are thus estopped from ever denying this crucial fact.

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The court below having held that the learned trial Judge was wrong in his evaluation of the evidence of D.W.1 with respect to the issue of redemption, it is further argued, it follows that the issue of redemption was never decided by the trial court. It being trite law that a court must make pronouncement or give a decision on every material issue that is before it, in a case it is G argued, the trial court relied on wrong premises in giving that decision. Citing the case of *Shell B.P. Petroleum Development of Nigeria Ltd v. Pere-Cole & ors.* (1978) 3 SC 183 at pages 194-196, it is submitted that the court below was in the position of the trial court to make correct findings on the evidence of D.W.1 and give full weight and effect to it, particularly as the Respondents and their H witnesses admitted in their evidence, that by Owhe Custom, a pledge is perpetually redeemable. The worst that would have happened because of the importance of this issue, it is argued, was for the Court of Appeal to remit the

case for retrial. Because the learned trial Judge had so made up his mind against the case of the Appellants, it is further submitted, he did not give effect to the clear evidence in favour of the Appellants with respect to the issue of redemption; and this influenced him in coming to the conclusion that there was no pledge. If the learned trial Judge had given full weight and effect to the case of the Appellants in relation to the issue of redemption, it is maintained, he would not have come to the same conclusion he reached when he said there was no pledge and he thereby rejected the evidence of redemption given by the Appellants.

It is finally submitted that the court below was wrong in treating the trial Judge's findings on evaluation of the evidence of D.W.1 on redemption as a mere misdirection which will not lead to reversal of the judgment. On the contrary, it is argued, the misdirection is substantial enough to lead to a reversal of the entire judgment in that the decision that there was a redemption as recent as in 1975 was crucial in the determination of the ownership of the disputed land, irrespective of any defect or contradiction in the evidence of the Appellants at the trial court.

The court below, in my considered view, was justified, when it rightly refused to interfere with the findings of fact by the learned trial judge that the land in dispute was not pledged; and that the Respondents are the owners thereof. The learned trial Judge painstakingly considered and weighed the evidence of both parties and their witnesses on an imaginary scale of justice as to the issue of pledge, traditional evidence and acts of possession and rightly, in my view as demonstrated hereunder, arrived at the unimpeachable conclusion that the land in dispute was not pledged; that the Respondents are the owners of the land in dispute-findings which the court below was justified in upholding.

The Appellants in paragraph 9 of their Further Amended Statement of Defence materially contradicted their evidence and the evidence their witnesses when they later testified at the trial in relation to the alleged pledge. In the said paragraph 9 (ibid), the Appellants averred thus –

“Ekweke, the grandfather of the 1st, 3rd, 4th, 5th, 6th, 7th, 8th, and 9th defendants had four children, namely Eka, Ariakpor, Erieha and Odiokor. When Ekweke died, the four children divided their Erahwa portion of Otor out into four parts.

In the course of time, Odiokor defaulted in joining to clear the path of Orise-Owho Juju which was at that time compulsory on all able-bodied into four parts.

Consequently, he was fined the sum of money known as Udhe in

cowries the equivalent of 80k; when he could not pay it on the spot, he was obliged to pledge his portion of Erahwa land aforesaid for 80k to one Esekwe, plaintiff's ancestor, it was as a result of this pledge that the said Esekwe and later the plaintiffs came into possession of only this small portion. The said portion is marked RED in the defendant's plan filed in support of the further statement of defence.

B

(Underlining above is mine for emphasis and comments).

The Appellants in their averment above stated inter alia that Odjokor pledged the land in dispute to Esekwe the ancestor of the Respondents. But the Appellant in his testimony in the trial court said among other things that it was Oneroha, the Oletu-Ologbo at the time, who seized the land in dispute from Odjokor and pledged it to Esekwe. In Exhibit 'B', the 1961 proceeding No. 10C/55/61 transferred from the Ugheli High Court to the trial Court, one Emalerata Eka said in evidence that the land in dispute belongs to his father which was seized by Owhe people who sold it to Esekwe. The Appellants further pleaded in paragraph 9 (ibid) that only a small portion verged red in Exhibit C (the Appellants' Survey plan) was pledged. Also in paragraph 9 (ibid) the Appellants asserted that Eweke begot Eka, Ariakpor Erieha and Odjokor but the Appellants' 3rd witness, Jacob Ajigho, in his testimony told the trial court that Odjokor begat Akpughe and Akpughe begat Eweka. Further still, in paragraph 9 (ibid) the Appellants stated that Odjokor defaulted in joining to clear the path leading to Orise - Owheluju and he was fine 80k. That because he could not pay the 80k fine on the spot, he pledged his Erawha land to Eseke for 80k. However, in his evidence Appellants' 3rd witness stated that in the olden days when Akpughe failed to clear his portion of land, Oneroha seized it from him and pledged it to Esekwe. The above are definitely conflicts indeed contradictions inherent in the Appellants case as put forward by them which are material and fatal to their case, justifying the findings of fact by the trial court and the decision of the court below which upheld those findings of fact.

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It is trite law that a party is bound by his pleadings - See Ikenve Dike & 2 ors. v. Obi Nzeka II & 3 ors (1986) 4 NWLR (Part 34) 144 at 146; Chukwueke v. Nwankwo & Ors. (1985) 2 NWLR (Part 6) 195 at 196 and A. G. Anambra State v. Onuselogu Enterprises Ltd. (1987) 4 NWLR (Part 66) 547.

G

The Supreme Court (per Irikefe, JSC as he then was) held as follows in African Continental Seaways Ltd. v. Nigeria Dredging Road & General Works Ltd. (1977) 5 SC 235 at 250:

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"A court itself is as much bound by the pleadings of the parties as they are themselves. It is no part of the duty or function of the court to enter upon

any inquiry into the case before it other than to adjudicate upon the

specific matters in dispute which the parties themselves have raised by their pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce upon any claim or defence not made by the parties”.

In the instant case, the Respondents who were shown by credible and
 B consistent traditional evidence relating to their root of title that they are in
 possession of the land in dispute depicted in Exhibit ‘A’, also demonstrated
 the existence of the 1961 proceedings in Suit No. 1OC/55/61 vide Exhibit
 ‘B’, to show the same acts of possession. The Court below was therefore,
 C in my view, justified after a careful consideration of the findings of the
 learned trial Judge not to have interfered with those findings as the same
 were not shown to be perverse. The Appellants alleged that in 1975 they
 redeemed the land in dispute with N200; the Respondents denied receiving
 either any money from them or anyone. The Respondents, in addition denied
 D receiving any money from the Appellants and the learned trial Judge found,
 quite rightly in my view, that the land in dispute was not pledged. As redemption
 presupposes that there was a pledge and as in the case in hand the learned trial
 Judge had rightly found that the land in dispute was not pledged, there can be
 no redemption. See Nwangwu v. Okonkwo (1987) 3 NWLR (Part 60) 314. In the
 E instant case, as the parties agreed and the learned trial Judge found as a fact
 that the Respondents were the original owners of the land in dispute, the onus
 is on the Appellants to establish a change of ownership by sale. There is indeed
 no onus on the Respondents to establish a pledge. So held this Court in the
 identical case of George Onobruchere & anor. v. Ivwromoebo Esegine & anor.
 F (1986) 1 NWLR (Part 19) 799, wherein the principle was established that since
 the onus is on the defendants, in this case the Appellants, it is their duty to begin
 to adduce evidence, for it is they who would lose if no more evidence is adduced
 having regard to the state of the pleadings. See also Nwobodo Ezeudu & Ors.
v. Isaac Obiagwu (1986) 2 NWLR (Part 21) 208 at 213; (1986) 3 SC 1 at 4, and
 G Mustapha Lawal v. Abdul Gbadamosi Ijale (1967) NMLR 155 at 157.

On the onus that lies on the appellants to prove that land was pledged
 to them is by the production of evidence or through decided cases, failure to
 do so will result in the non-discharge of that burden. See Melifonwu v. Egbuji
 (1982) 9 SC 145 at 168; Taiwo v. Dosunmu (1965) 1 All NM 399 and Adegboyega
 H v. Igbinosun (1969) 1 All NLR 1. The latter principle of law is founded on the
 basis that once a pledge always a pledge Stephen Ikeanyi & anor. v. Ogbonna

Adigbogu (1957) 2 ENLR 38. Where an issue as to redemption is made or raised,
 as in the instant case, it is no trite that the trial court must take a decision thereon.

See Nana Sir Ofori Atta v. Amoah 1 WACA 15 at 40 and Kano State Urban Development Board v. Fanz Ltd. (1986) 5 NWLR (Part 39) 74 at pages 88-89. This is because a pledge naturally precedes its redemption; if there is no pledge there can be no redemption. To exemplify that there was no pledge - a phenomenon rendered inevitable by the apparent contradictions in the Appellants' case. I need refer once more to what D.W.1 said in examination-in-chief vis-a-vis their pleading in paragraph 9 of the Further Amended Statement of Defence. Said D.W.1 –

“ ... I know the Plaintiff as well as the Defendants. I know the Land in dispute, It is called Eweke land,

Eweke land was pledged to one Osakwe by the “iletus“ of Owhe because one Adjokor, the owner of the Land failed to clear it when the community announced the clearing of “Idhede”. The iletus then seized the land and pledged it to Osakwe...

In paragraph 9 of the Further Amended Statement of Defence (ibid) they averred inter alia –

“In the course of time Odjokor defaulted if joining to clear the path of Orise-Owhe Juju which was at that time compulsory on all able-bodied adult men. Consequently, he was fined the sum of money known as Udhe in cowries the equivalent of 80k; when he could not pay it on the spot, he was obliged to pledge his portion of Erahwa land aforesaid for 80k to one Esekwe, plaintiffs' ancestor...

“By paragraph 9 of the further amended Statement of defence, the defendants say that Odijokor pledged the land to Esekwe and still retained his radical title and in paragraph 13 of their amended statement of defence they pleaded that they redeemed the land from the plaintiffs. The plaintiffs on the other hand said that the land was never pledged and that it was founded by the ancestor. The defendants having admitted in paragraph 8 of the further amended statement of defence that at one time the radical title was in Esekwe, the ancestor of the plaintiffs, the onus is on them (Defendants) to prove that the radical title had been extinguished by the alleged redemption pleaded by them in paragraph 13 of their statement of defence...”

Since the learned trial Judge had found rightly, in my view, that the land in dispute was not pledged, there can be no redemption. Indeed, he assigned his reasons to back his stand for so holding. The court below was therefore right to have held that the reasons can only amount to a misdirection which did not

lead the learned trial Judge to reach a wrong decision; such a decision not

being based on a wrong principle of law as to lead to a reversal of the judgment of the trial court. The court below was therefore perfectly right when it held, relying on the case of Attorney-General of Bendel State v. Attorney-General of the Federation and ors. (1981) 10 SC 1 at pp. 62, 83 (per Idigbe, JSC) that –

B *“It seems to me however that only if the misdirection caused him to come to a wrong decision that it would be material. “*

In P.A. Abaye v. Ikem Uche Ofili & anor. (1986) 1 SC 231 at 321, Karibi-Whyte, JSC had this to say –

C *“It is well settled in our jurisprudence that where the judgment of the court is right and only the reasons for the judgment are wrong, the appellate Court will not interfere with the judgment merely because of the wrong reasons “*

See also Ukejianya v. Uchendu 13 WACA 46. This case, in my opinion, is not that described by the learned Senior Advocate for the Appellants as one in which the learned trial Judge tragically made wrong findings which were not based on evidence on the printed record. Nor is it a case where such findings sought to be impugned amount to putting the wrong onus of proof on the Appellants. Thus, the passages relied on in the cases of Ugbodume v. Rev. Abiegbe (1991) 8 NWLR (Part 209) 261 at pages 274 A-F, 277-278 H-B and Usikaro & ors. v. Itsekiri Communal Land Trustees (1991) 2 NWLR (Part 172) 150 at pages 168H: 809F and E and 810F are, in my respectful view, not directly in point albeit that they were forcefully called in aid. On the contrary, there has been no serious misdirection as to determine the case. The decision of the trial court which the lower court affirmed therefore did not, in my view, amount to the placement of the wrong person or on wrong persons (the Appellants) as to amount to serious errors or the adoption of a wrong procedure which culminated in a miscarriage of justice. In this wise, the cases of Owoade v. Omitola (1988) 2 NWLR (part 77) 413 at 421-422 and 428 as well as Ajuwon v. Akanni (1993) 9 NW (Part 316) 182 at 220-201 cited to buttress learned S.A.N’s submission, are in my respectful view, of no avail. It would have been a perverse judgment if, as the learned trial Judge had found that the land in dispute belongs to the Respondents to have later turned round to make a contrary finding fact that the land in dispute was pledged to the Respondents and that then after the land was redeemed by the Appellants from the Respondents. Kimdey & ors. v. The Military Governor of Gongola State & ors. (1988) SCNJ 28 and The Registered Trustees of Apostolic Faith Mission & anor v. Uma Bassey James & anor. (1987)

7 SCNJ 167. When the learned the Judge therefore held inter alia that-

"It is my view that if the defendants really redeemed the land from the Plaintiffs in 1975, they could have been issued with a receipt. It is also my view that if in fact they redeemed the land they could have called Chief Okpobrisi and Chief Avwenageku who are the spokesmen and the most senior Oletu in Owhe respectively to testify for them in the case..."

This misdirection would not, in my opinion amount to a serious misdirection or want of fair hearing to enable this court over turn the judgment of the court below which affirmed the same. Nor is the submission of learned Senior Advocate for the Appellants that the learned trial Judge held that D.W.1 did not give evidence at all a correct statement of fact.

Put in its proper perspective the following is the finding of fact by the learned trial Judge on the matter.

"... I do not believe the evidence of D.W.1 that the defendants redeemed the land from the Plaintiffs in his house. There was no evidence from D.W.1 that the meeting took place in his house. Equally, there was no evidence from him that the sum of N200.00 was handed over to him and he in turn handed it over to the 1st Plaintiff. D.W.1 said that the money was handed to one John Ukpakara."

My answer to Issue One is accordingly in the positive.

ISSUES 2 and 3.

These issues ask whether the learned Justices of the Court of Appeal were right in holding that the Appellants did not appeal against the adverse findings concerning the Issue of pledge of the land in dispute and whether the Court of Appeal was wrong in upholding the application of the learned trial Judge concerning the principle enunciated in the case of Onobruchere v. Esigine (1986) 1 NWLR (Part 19) 799 at pp. 806, 807.

It is trite law that the burden of proof in a claim for declaration of title to land lies on the plaintiff; the general rule being that a plaintiff must succeed on the strength of his own case and not on the weakness of the defendant's case. See Kodilinye v. Mbanefo Odu (1935) 2 WACA 336; Nwankwo Udegbe & ors. v. Anachuna Nwaokafor & ors. (1963) 1 All NLR 417 at 418; Woluchem v. Gudi (1981) 5 SC 291 at 309 and Sunday Piaro v. Chief Wopnu Tenalo & anor. (1976) 12 SC 31 at 37. However, there are recognised exceptions, one of which is enunciated in the case of Onobruchere v. Esigine (supra).

In Onobruchere's Case (supra), the issue was where the land in dispute was pledged to the defendants as asserted by the Plaintiffs or sold out-

right to them as contended by the defendants. This court held that having

acknowledged the plaintiffs' radical title to the land, the burden of proving that the plaintiffs had been divested of their radical title rested on the defendants. In the instant case herein on appeal, the Appellants conceded that the Respondents are in possession of the land in dispute by means of an alleged pledge which the Respondents stoutly denied. The Appellants having raised the issue of the alleged pledge, the learned trial Judge relying on the case of Onohruchere v. Esegine (supra), placed the burden of proof on them. The Court below agreed with the application of the law as stated by the learned trial Judge, to wit: that the two cases are on all fours. I think the court below was right for the following reasons-

C Firstly, before and at the commencement of this action, the land dispute has been and still is, in the possession of the Respondents as can be seen in Exhibits 'A' and 'B'.

Secondly, the Respondents had prosecuted trespassers on the land in dispute before the alleged redemption in 1975. In Exhibit 'B' the 1st Respondent had successfully prosecuted in Suit No. 1OC/55/61 at the Grade 'B' Isoko-Oleh Customary Court the 2nd Appellant for a declaration of title, damages for trespass and injunction.

Thirdly, when the said suit was tried at the Grade 'B' Customary Court, Isoko-Oleh, no issue was therein raised on alleged pledge and redemption.

E Fourthly, as argued in Issue 1 above, once the trial court had found as a fact that the land in dispute was not pledged, the issue of redemption will not arise. See Nwangwu v. Okonkwo (supra). Indeed, where a defendant admits that a plaintiff is in possession of a land in dispute although a pledge, a pledge which the plaintiff strongly denies, the onus shifts on the defendant to prove the F pledge. See Ochonma v. Unosi (1965) NMLR 321 and Oke v. Atoloye (1986) 1 NMLR (Part 15) 241 at 244. And if they fail to do so, then the presumption by virtue of Section 45 (now Section 46) of the Evidence Act Cap. 112 Laws of the Federation of Nigeria, 1990, would that the Plaintiff is the owner of the land of which he is in possession. See Ezeudu & ors. v. Isaac Obiagwu (supra). The G court below was therefore justified in upholding the application of the principle enunciated in Onohruchere's Case which was rightly applied by the learned trial Judge. See Salawu Ajide v. Kadiri Kelani (1985) 3 NWLR (Part 12) 248 at 250.

H In the light of all I have stated above as well as hereinbefore in Issue 1, the Justices of the Court below were, in my view, right in holding that the Appellants did not appeal against the adverse findings concerning the issue of pledge of the land in dispute. This is because the main focus of by the

Appellants being in relation to redemption which presupposes the existence of

a pledge, once the carpet was removed from under the Appellants' feet that no pledge through their pleading of traditional evidence as to their root of title as well as evidence adduced at the trial in support thereof were established, their case as to pledge which therefore collapsed provided no basis for an appeal against any such adverse finding. The learned trial Judge was perfectly right to have found as a fact that the Respondents are the owners of the land in dispute and that the land in dispute was not pledged as claimed by the Appellants. The principle enunciated in Onobruchere's case was therefore not wrongly applied. Consequently the court below was therefore justified to have upheld the findings of facts by the trial Judge. Indeed, the two decisions constitute concurrent finding of facts by the two courts below which this court will not lightly disturb since they have neither been shown to be perverse nor in breach of any substantive rule of law or procedure to warrant such interference by me. See Akinsanya v. U.B.A. (Nig.) Ltd. (1986) 4 NWLR (Part 35) 273; Nwadike v. Ibekwe (1987) 4 NWLR (Part 67) 718; Ibodo v. Enarofia (1980) se 42 at 58 and Western Steel Works v. Iron & Steel Workers Union (1987) 1 NWLR (Part 49) 284.

The two issues are accordingly answered in the positive.

ISSUE4

The Appellants' complaint in this issue is whether the Court below was right in upholding the decision of the learned trial Judge in accepting case No. 10C/55/61: Ukpakara v. Emonido & anor. as an act of possession in favour of the Respondents in this case.

I will commence the consideration of this issue by first advertng in paragraph 10 of the Further Amended Statement of *Claim* wherein the Respondents pleaded –

“Sometime in 1961, the 2nd defendant and one Emonido Akpobeno at the institution (sic) of the other defendants, trespassed on the plaintiffs' ERAWHA land and cleared a portion of it for farming and began building their houses on other portions without the leave of the plaintiffs first obtained. The plaintiffs challenged them and when they (and defendants and Emonido Akpogbeno) laid claim to the land, the 1st plaintiff, for herself and on behalf of the Ovie family, sued them at the Isoko-Oleh Grade B Customary Court in Suit No. 10C/55/61 claiming a declaration of title to the said land and injunction. The 1st plaintiff won the action and title to said Erawha land was conferred on her family. The case was fought to the knowledge of the other defendants and the 7th defendant Inana Utunedi gave evidence for the

2nd defendant in the case (No. 10C/55/61 aforesaid).”

The Respondents adduced evidence in line with the above pleading pertinent to mention that Suit No. IOC/55/61 vide Exhibit B will to the knowledge of the Appellants. It was part of the uncontradicted evidence of the Respondents at the trial that the 7th Appellant gave evidence as a witness for the 2nd Appellant in Exhibit B'. There was also no issue of pledge and redemption raised by the 2nd and 7th Appellants in Exhibit 'B' before the Isoko-Oleh Grade B Customary Court. The 2nd appellant however, said therein that *"The land belongs to one Emalereta who sold to 1st respondent"*.

After the 1st Respondent had won the case (Exhibit 'B'), the 2nd Appellant and Emonido Akpogbeno pleaded with the 1st Respondent to allow them complete their buildings on the land in dispute and for them to live thereon as customary tenants of the Respondents and having agreed to pay N40.00, two bottles of native gin and a bottle of schnapps, thus acknowledging the title to the land in dispute in the Respondents as plead paragraph 11 of the Further Amended Statement of Claim. In paragraph of the Amended Statement of Defence, the Appellants averred that Appellant does not belong to the Eweke branch but he is of Edegbe oral. But the 2nd Appellant in his evidence in Exhibit 'B' said that his father Emonido Akpogbeno and Okoro were half brothers, indicating that 2nd Appellant is a descendant of Eweke and therefore a member of Appellants' family. In paragraph 11 of the Appellants' Further Amended Statement of defence they (Appellants) jointly pleaded that they were not aware of the evidence (IOC/55/61) cited but 7th Appellant was the 2nd witness to the defendant, in Exhibit 'B'. Moreover, in the instant case, the 2nd Appellant was in court. But he did not give evidence to show that:

(a) the land the subject matter of the litigation in Exhibit' B' was different land from the land in dispute.

(b) he is not from tile Eweke branch but from the Edhegbe branch, and to deny the story of how he and Akpogbeno lost tile case in Exhibit' 8' to the 1st Respondent and their being customary tenants in relation to the land on which they built their buildings with the ensuing incidents thereto

(c) the issues of pledge and redemption were raised in Exhibit '8'

(d) the Appellants (including 2nd Appellant) and the Eweke family were not aware of Exhibit 'B'.

Besides, the land in dispute herein as shown in Exhibit 'A' is called ERAWHA land, distinguishing it from any other lands founded by the Respondents' ancestor, Ovie. One is left in no doubt in both the parties' pleadings and evidence that it was the same land that was litigated upon in Suit No. IOC/55/61 otherwise referred to as Exhibit 'B' in this appeal. Being quite oblivious of the Respondents' pleadings in paragraphs 6, 7, 8 and 10 of the Further Amended

Statement of Claim and the evidence adduced in support thereof, the Appellants' submission at page 10 of their brief to the effect that-

"According to the Respondents even though Ovie founded the land dispute in his life time he ordered that Itefe (sic), his only daughter should! farm on the disputed land which was a gift inter vivos to Plaintiffs ancestors.

B

In order to prove acts of possession, Respondents tendered Exhibit 'B' a judgment of Isoko-Oleh grade 'B' Customary Court against some individuals to which the Appellants were not parties. Apart from the Appellants not being parties, the subject matter in Exhibit 'B' cannot be the same matter of the case at hand in that in Exhibit 'B' the land which was in dispute was that inherited and not acquired inter vivos as shown in the said judgment. And bearing in mind that it is the contention of Respondent that Ovie founded many parcels of land, it must be established that what was in dispute in Exhibit 'B' is the same as the land in dispute in the case in hand to enable Exhibit 'B' be of evidential value of acts of possession by the Respondents.

D

From the pleadings of Respondents, the land in dispute having been given by Ovie in his life time as the exclusive property of Itefe (sic) his only daughter, all other members of Ovie family can (sic) longer lay claim to the use of the said parcel of land. In contradistinction to the land in dispute, the land the subject matter of Exhibit 'B' is the exclusive property of entire Ovie family which the parties in the said case got title to at the time of bringing the action by inheritance. The above I submit with all respect are two sets of parcel of land one by gift inter vivos and the other by inheritance.

E

With respect, the trial court and indeed the Court of Appeal did not see this copious difference in the title to the land in the case in hand and Exhibit "B" cannot be correct in the light of all I had set out earlier. The submission, in my view, is of no avail to the Appellants. Besides, the law is that the land in dispute is the area plaintiff is claiming in the instant case that as shown on tile survey plan vide Exhibit A. See Nwobodo Ezeudu & ors. v. Isaac Obiagwu (supra) at page 18. Also in the instant case, no issue was joined as to the identity of the land in dispute because it is well known to both parties as ERAWHA land. See Omoregie v. Idugiemwanye (1985) 2 NWLR (Part 5) 41 at p. 60. Thus although

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the radical title to the land in dispute remained in Ovie family of the Respondents, Ovie ordered that Itete and her descendants should be allowed to farm on it - the respondents being descendants of Itete, the daughter of Ovie. The

Respondents being members of Ovie family have interest in Erawha land and they are, as earlier concluded, in possession of the land in dispute.

The court below was accordingly right to have held that the learned trial Judge was justified in treating Exhibit “B” ‘as evidence of possession on the part of the Respondents. See James Ulube & ors. v. Chief Sillo (1973) 1 SC B 37 at pp.55-56 and Paul Nwadike v. Cletus Ibekwe & ors. (1987) 12 SC 14 at pages 34-44.

The issue is therefore answered in the positive,

In the result, this appeal fails and is accordingly dismissed, The Appellants shall pay costs of N1,000.00 only to the Respondents.

C

BELGOREJSC

I am in full agreement with the judgment of my learned brother, Onu, JSC, that this appeal totally lacks merit and must be dismissed. I adopt his reasons also as mine and therefore find no merit in this appeal and I dismiss it. I make the order of N1,000.00 as costs to the respondents in this appeal against the appellants.

E

WALIJSC

I have read before now, the lead judgment of my learned brother, Onu, JSC and I agree with the reasoning given by him for dismissing the appeal.

For these same reasons which I hereby adopt, I also hereby dismiss the appeal and affirm the decisions of the lower court and the court below. I award N1,000.00 costs to the respondents

G

OGWUEGBUJSC

I agree with the judgment just delivered by my learned brother Onu, JSC the draft of which I had read before now. I agree that this fails.

The facts that the issues in the appeal have been elaborately lucidly stated in the lead judgment, it is therefore not necessary to state them. For the sake of emphasis, I wish to comment on one or two points.

H

The reasons for the findings and the conclusion of the learned trial Judge that there was no redemption of the land in dispute was contested in the Court below and the decision of the court below on that issue is also attacked in this court.

The learned trial Judge in rejecting the evidence on the redemption of

the pledge, held as follows;

“The 5th defendant testified that some time in 1975, they summoned the plaintiffs before D.W.1 Chief Ikpobrisi from Iluelogbo and Chief Avwenagbeku from Akiewhe to redeem the land and after hearing from both parties. They were allowed to redeem the land and they paid the sum of N200.00 instead of 80k to D.W.1 who handed it to the 1st plaintiff. When cross-examined, B he said that they were not given a receipt for the sum of N200.00 they paid through D.W.1. D.W.1 said that the land was redeemed by the defendants in the presence of all Iletus of Owhe and they included Chief Okpobrisi.....It is my view that if the defendants really redeemed the land from the plaintiffs in 1975, they could have called Chief C Okpobrisi and Chief Avwenagbeku who are the spokesman (sic) and the most senior Oletu in Owhe respectively to testify for them in the case. This is more so when there is no evidence that they are dead. Failure on the part of the plaintiffs in 1975 is to my mind fatal to their case... There was no evidence from D.W.1 that the meeting took place in his house. Equally there was no evidence D from him that the sum of N200.00 was handed over to him and he in turn handed it over to the 1st plaintiff.

(the underlining is for emphasis only).

It was argued in the Court below that the underlined findings of the learned trial judge were wrong and so was the judgment on them. E

The Court below held that the rejection of the evidence of D.W.1 by the trial Judge flowed from his treatment of that evidence as unreliable. It declined to interfere with the findings of fact of the learned trial judge because the findings were based on the credibility of witnesses and they were not perverse. F

On the reasons for disbelieving the evidence of D.W.1, the court below said:

“Evidently, the reasons given by the learned trial judge in disbelieving the evidence of D. W. 1 was that no receipt for the redemption money was issued, that Chief Okpobrisi and Avwenagbeku did not testify, GLearned counsel for the appellants is of the view that these reasons are wrong. I agree with him that a Customary transaction need not be evidenced in writing and that generally no particular number of witnesses is required to prove a fact In my view, at the worst, H the reasons given by the lower court can only amount to a misdirection but the law is well settled that it is not every misdirection that will lead to the reversal of the judgment of a trial court. “

It further held that the trial judge who heard evidence on the pledge made a finding that there was no pledge and that there cannot be a redemption without

a pledge.

I am in agreement with the court below on the above conclusions. What the Court of Appeal is required to do is to determine whether the decision of the learned trial judge was right and not whether the reasons were right. See Ukejianya v. Uchendu 13 WACA 45 at 46. In that case Blackall, Ag. C. J.

B observed, rightly in my view as follows:

“It seems to me, however that what this court has to decide is whether the decision of the judge was right not whether his reasons were”

See also Abaye v. Ofili & Or. (1986) 1 NSCC 94. The wrong reason given by the learned trial judge on that point did not lead to a wrong decision.

C It was not material and did not lead to a miscarriage of justice.

Furthermore, the learned trial judge rejected the appellants’ traditional evidence on the pledge. One wonders what the appellants were redeeming when there was no pledge of the subject matter. He founded as follows:

D *“The variance in the evidence of D.W.1, D.W.3, and the 5th defendant and paragraph 9 of the further amended statement of defence as to whether it was Odijokor who pledged the land personally to Esekwe, or Oneroha seized it from Odjokor and pledged it to Esekwe coupled with the material contradictions in their evidence as to whether it was Odjokor or Akpughe*
 E *who pledged the land to Esekwe render their traditional evidence contradictory, inconsistent and inconclusive. I therefore reject the defendants’ traditional evidence that the land in dispute was pledged by the defendants’ ancestor to the plaintiffs’ ancestor.”*

F The court below agreed with the learned trial judge on the issue of pledge thus:

“A pledge of land naturally proceeds its redemption..... The learned trial judge heard evidence on the pledge and made a finding against which there was no appeal to the effect that there was no pledge. Having taken this posture, it would have been perverse for him
 G *to hold that there was a redemption of the land by the appellants. “*

It is quite clear that without a pledge of land, there can be no redemption of it. The appellants having failed to appeal against the cruel finding on pledge on which their claim for redemption rested, they cannot be heard to complain in this court of any error committed by the trial judge or the Court
 H below on that issue. The judgment of the learned trial judge which was affirmed by the court below is sound and unimpeachable.

For these and the fuller reasons contained in the lead judgment of Onu, JSC I am satisfied that the Court of Appeal was right in coming to its decision.

In the circumstances, I find no merit in this appeal. Accordingly, I hereby dismiss it, and affirm the decision of the Court of Appeal dated 7th December, 1990. There will be costs to the respondents which I assess at N1,000.00

IGUHJSC

I have had the privilege of reading in draft the lead judgment just delivered by my learned brother, Onu, JSC and I find myself in complete agreement with his reasoning and conclusion thereon.

This case was fought by the parties before the trial court mainly on the basis of traditional evidence. The learned trial judge accepted the evidence of traditional history adduced on behalf of the plaintiffs/respondents, stating as follows-

“The traditional evidence of the plaintiffs as given by the 2nd plaintiff is consistent with paragraphs 5-8 of their further amended statement of claim. I am therefore inclined to accept and believe the traditional evidence of the plaintiffs that Ovie, the grandson of Azagba and Owhe, founded Erawha land which he later shared to Itete, her only daughter through whom they traced their title to the land in dispute.”

In respect of the defendants’ evidence of traditional history, the trial court observed thus-

“The variance in the evidence of D.W.1, D.W.3 and 5th defendant and paragraph 9 of the further amended statement of defence as to whether it was Odjokor who pledged the land personally to Esekwe or Oneroha seized it from Odjokor and pledged it to Esekwe coupled with the material contradictions in their evidence as to whether it was Odjokor or Akpughe who pledged the land to Esekwe render their traditional evidence contradictory, inconsistent and inconclusive. I therefore reject the defendants’ traditional evidence that the land in dispute was pledged by the defendant’s ancestor to the plaintiffs’ ancestor.”

The above findings were affirmed by the Court of Appeal as a result of which it dismissed the appellants’ appeal against the decision of the trial court

in favour of the respondents.

In the first place, it is well settled that each of the five methods of proving title to land set out by this court in Idundun and others v. Okumagba and others (1976) 9-10 S.C. 237 will suffice independently of the others, to establish title. See too Nwosu v. Udeala (1990) 1 NWLR (Part 125) 188, Sunday Piaro v. Chief Tenalo and others (1976) 12 SC 31 at 42. Okonkwo v. Okolo (.1988) 2 N. W. L.

R. (Part 79) 632 at 656 etc. One of these recognised five methods is proof of ownership of land by traditional evidence. The respondents' version of how the land in dispute was founded by their ancestor, Ovie was found credible and conclusive and was therefore accepted by the trial court. This finding was affirmed by the Court of Appeal. On this ground alone, the court below was right B to uphold the trial court's judgment in favour of the respondent for title to the said land.

Secondly, the appellants' claim that the land in dispute was pledged by their ancestor to the respondents' ancestor was rejected by the trial court and again affirmed by the court below. Once the issue of pledge was rightly rejected C by the trial court it became idle to consider the question of redemption of the same land raised by the appellants. In other words, the issue of the alleged redemption of part of the land in dispute in 1975 could neither arise nor become any matter of great moment in view of the trial court's finding that the land in dispute was never on pledge to the respondents, a finding which was upheld D by the court below. This is because redemption of land presupposes a pledge which the trial court had found did not exist in respect of the land.

Thirdly, the appellants by paragraph 9 of their further amended Statement of Defence admitted that at one time, the respondents were in possession of some portion of the land in dispute through an alleged pledge, E this pledge was vigorously denied by the respondents. In my view, the onus was on the appellants to prove the pledge they alleged and not on the respondents to prove the negative, that is to say, that the land was not on pledge to them. See Onobruhere v. Esegine (1986) 1 NWLR (Part 19) 799 at 806-807 this alleged pledge pleaded by the appellants, they were unable to establish.

F Finally, it is trite that this court will not interfere with the concurrent findings of the High Court and the Court of Appeal on issues of fact except there is established a miscarriage of justice or a violation of some principles of law or procedure. See National Insurance Corporation of Nigeria v. Power and Industrial Engineering Co. Ltd. (1986) 1 NWLR (Part 14) 1 at 36, Enang v. Adu (1981) 11-12 SC 25 at 42, Mora v. Okon (1987) 3 NWLR (Part 60) 314 at 321. Igwego v. Ezeugo (1992) 6 NWLR (Part 249) 561 at 574 etc. No reason has been adduced to justify my interference with the concurrent findings of fact made by the trial court and the Court of Appeal in this case.

G In the final result, I can find no reason to interfere with the judgment of the court below in this case. This appeal lacks substance and it is for the above and the more detailed reasons contained in the lead judgment of Onu, JSC that I too, dismiss this appeal. I abide by the order for costs therein contained.