

SUPREME COURT OF NIGERIA
12TH DECEMBER, 1997. SC. 120/1991
CORAM:-A. B. WALL, M. E. OGUNDARE, U. MOHAMMED,
S. U. ONU, A. I. IGUH, JJSC

ALHAJI SIKIRU SANUSI & 2 ORS DEFENDANTS/APPELLANTS
AND
YESUFU ADEBIYI & ANOR PLAINTIFFS/RESPONDENTS
(For themselves and on behalf of
Orikunkun family)

***APPEALS** - Brief - Argument based on grounds of appeal rather than issues formulated - Is non compliance with the rules - But condonation thereof by the Court of Appeal does not amount to miscarriage of justice.*

***APPEALS** - Grounds of appeal - founded on a point not raised at the court of Appeal - And without having sought the leave of the Supreme Court - Ought to be struck out.*

***COURTS** - Concurrent findings of fact - Supported by sufficient evidence - Will not be disturbed.*

***LAND LAW** - Declaration of title - Conflicting traditional history - Where the traditional history of one of the parties is ex facie discredited - The principle in *Kojo II v. Bonsie* need not be applied.*

***RULES OF COURT** - Extension of time - Where the Order is made by a non judicial Officer pursuant to the Rules of Court - It is valid.*

FACTS

The plaintiffs/respondents at the High Court of Oyo State holden at Ibaden claimed against the defendants/appellants a declaration that they are entitled to a statutory right of occupancy in respect of the land in dispute, ownership of the house situate thereon, damages for trespass and an injunction.

The plaintiffs claimed ownership of the property by virtue of inheritance from their ancestor Eleduwe alias Orikunkun, who was granted a piece or parcel of land at the Mapo area of Ibadan by Bashorun Oluyole and on part of which their ancestor built the property in dispute. While the case of the defendants on the other hand was that Osofi the ancestor of the 3rd defendant

granted a portion to settle his drummers known as Alaros (the ancestors of the 2nd and 3rd defendants) who then built the property in dispute.

At the conclusion of the trial, judgment was entered in favour of the plaintiffs. Dissatisfied with the judgment, the defendants appealed to the Court of Appeal which dismissed the appeal. They have further appealed to the Supreme Court raising four issues.

ISSUES FOR DETERMINATION

"1. Whether or not it was proper to decide the appeal on grounds of Appeal and not on the issues formulated.

2. Whether in all the circumstances of this case the Rule in Kojo v. Bonsie (1957) 1 WLR 1223 is not applicable for the proper determination of the case particularly when there is a conflict on the traditional evidence given by the parties.

3. Whether or not the order made by a non-judicial officer on the basis of which the Statement of Claim and plan were filed renders the proceeding and judgment a nullity.

4. Whether the Appeal Court was right in affirming the findings of the trial Court made in favour of the Respondents particularly that relating to the ownership of the house on the land in dispute."

HELD (Unanimously dismissing the appeal per lead reasons for judgment of **OGUNDARE.JSC**)

Appeals - Brief that is not in compliance with the rules

1. No doubt their brief before the Court of Appeal was irregular not being in compliance with the rules of that Court that require issues formulated, rather than the grounds of appeal, to be argued in a brief. The non-compliance notwithstanding, the appeal was decided on arguments based on the grounds of appeal. I cannot see how a condonation by the Court of Appeal with the non-compliance occasioned a miscarriage of justice. I see no substance whatsoever in the defendants' complaint. (p. 1964 F)

Conflicting traditional history - Application of Kojo II v. Bonsie

2. I think I agree with the contention of the plaintiffs. The witnesses for the defendant not only contradicted each other on the traditional history relating to the property in dispute, they also contradicted the pleadings of the defendants. In a situation such as this, there is no room for the application of the rule in Kojo 11 v. Bonsie. In Iriri v. Erhurhobara (1991) 2 NWLR 252, 269 this Court held that a "trial judge is entitled to reject evidence of traditional history which is incredible." As the traditional evidence for the Defendants is ex facie discredited, there is no need for the application of Kojo v. Bonsie in the instant

case. I, therefore, find no substance in defendants' complaint. (p. 1965 C)

Raising new point at the Supreme Court

3. The validity of the order granting the plaintiffs extension of time to file their pleading was not raised in the Court of Appeal. Nor was specific leave of this Court sought to raise this issue before us as a new point. On this ground alone, ground 6, of the grounds of appeal ought to have been struck out. (p. 1966 B)

Order made by a non judicial Officer

4. The above notwithstanding, it is clear that there is no substance whatsoever in the complaint. At the time of the trial of this case in the High Court of Oyo State it was the high Court (Civil Procedure) Rules Cap 46 Laws of Oyo State 1978 that applied. Order 11 rules 1 and 28 empowered a legally qualified Registrar of the High Court to entertain an application for extension of time to file pleadings. It is not contended by the defendants that Mr. J.O. Oyekan who presided over the hearing of the Appellants' motion for extension of time was not a qualified legal practitioner. (p. 1966 C)

Concurrent findings of fact

5. It was held by this Court in Njoku v. Eme (1973) 5 SC 293 that concurrent findings of fact of the courts below where there is sufficient evidence to support them should not be disturbed. As rightly found by the court below in the instant case, the findings made by the learned trial judge were adequately supported by the credible evidence before him. They were affirmed by the court below. I have no reason whatsoever to disturb those findings. And as those findings supported the case for the plaintiffs, judgment was rightly given in their favour. (p. 1967 B)

REPRESENTATION

R. A. Ogunwole, Esq. for the Appellants

J. A. Olanipekun with S. A. Afolabi for the Respondents

CASES REFERRED TO

Kojo v. Bonsie (1957) 1 WLR 1223 at 1226

Ogbuokwelu v. Umeanafunkwa (1994) 4 NWLR 676, 710

Njoku v. Eme (1973) 5 SC 293

Okafor v. Idigo (1984) 1 SCNLR 481

Chukwuogor v. Obuora (1987) 3 NWLR (Part 61) 454 at 457

Ojibah v. Ojibah (1991) 5 NWLR (PART 191) 296 at 299

Ajani v. Ladepo (1986) 3 NWLR (Part 28) 276

Amadi v, Nwosu (1992) 5 N.W.L.R. (Part 241) 273 at 280

STATUTES & RULES REFERRED TO

High Court (Civil Procedure) Rules Cap 46 Laws of Oyo State 1978 Order 11
B rules 1, 28, 29, 30 and 32; order 16 r 3

High Court (Civil Procedure) Rules, Laws of Oyo State 1988 oyo State Edict
No. 10 of 1988

High Court Law Cap. 46 volume III Laws of Oyo State 1978, s. 53

Evidence Act, Cap 112 Laws of the Federation of Nigeria, 1990 section 150(1)
C and (2)

LEAD REASONS FOR JUDGMENT BY OGUNDARE JSC

When this appeal came before us on 22nd September and after hearing learned
counsel for the parties in oral arguments I dismissed the appeal with N10,000.00
D costs to the plaintiffs/respondents, I indicated then that I would give reasons
for my judgment today. I now proceed to give my reasons. The plaintiffs, who
are now Respondents before us, had sued the defendants (now the Appel-
lants) claiming as per their Statement of Claim:

"(a) A declaration that the plaintiffs are entitled to a Statutory
E Right of Occupancy over all that piece of land situate at Orikunkun Com-
pound, Mapo - Ojaba Area, Ibadan a Survey plan of which is attached here-
with .

(b) A declaration that the plaintiffs are the owners according to
Native Law and Custom of the house No. C2/224 known as Orikunkun' s
F house situate lying and being on the said land in dispute.

(c) Four hundred Naira (N400.00) general damages for continu-
ing trespass committed and still being committed by the Defendants on the
said land.

(d) An order of Injunction restraining the Defendants, their ser-
G vants or agents or any one claiming through or under them from committing
further acts of trespass on the said land."

Pleadings having been filed and exchanged (the defendants, with leave of
Court, filed an amended statement of defence and the plaintiffs equally filed
an amended Reply to the amended statement of defence), the case proceeded
H to trial at the end of which after addresses by learned counsel for the parties,
the learned trial Judge Agbaje-Williams J. (as he then was) found the plaintiffs'
case proved and entered judgment in their favour as hereunder::

"I am satisfied, from the preponderance of evidence placed before
me by the plaintiffs, that they are the persons entitled to a declaration to a

statutory right of occupancy to the piece of land shown verged red in Exhibit 'C'; also, that they are entitled to a declaration of ownership according to native law and custom of the house numbered C2/224 on the said land; also, and by reason of the 1st and 3rd Defendants' continuing trespass to, and disturbance of, their possession, to an injunction restraining the said 1st and 3rd Defendants, their servants or agents or anyone claiming through or under them from committing further acts of trespass on the said piece of land. Those orders I now make. After carefully considering all the circumstances of this case, I assess damages for the trespass in favour of the plaintiffs and against the 1st and 3rd Defendants only, jointly and severally, at N250.00. I assess costs in plaintiffs' favour at N650.00". C

Being dissatisfied with that judgment the defendants appealed to the Court of Appeal which latter Court, in the lead judgment of Kutigi JCA (as he then was) and with which Akanbi and Ogwuegbu JJ.CA (as they were then) agreed, found:

It is clear from what I have already said above and apparent from the record that the learned trial judge took pains to consider every aspect of the case as presented before him. He made findings of facts and rightly in my view came to the conclusion that Iba Oluyole made a grant to Orikunkun who built the house in dispute." D

and dismissed the appeal. The defendants have further appealed to this Court after obtaining the leave of this Court given on 23/9/91. E

The property in dispute is situate at Akere Mapo Ojaba area in Ibadan. There seems to be no dispute as to the identity of the property. The plaintiffs claimed ownership of this property by virtue of inheritance from their ancestor Eleduwe, nicknamed Orikunkun, who was granted a piece or parcel of land at the Mapo area of Ibadan by Bashorun Oluyole and on part of which land Eleduwe, alias Orikunkun, built the property in dispute. The case for the defendants on the other hand was that the property in dispute belonged to the drummers known as Alaro whom Osofi brought from Oyo to beat drums for him some years back. Osofi granted a portion of his land on which he settled the drummers (Alaros) who then built the property in dispute. The 1st and 2nd defendants descended from these drummers whilst the 3rd defendant is a descendant of Osofi. F

The following four issues have been raised by the defendants as calling for determination in this appeal, that is to say: H

"1. Whether or not it was proper to decide the appeal on grounds of Appeal and not on the issues formulated.

2. Whether in all the circumstances of this case the Rule in Kojo v. Bonsie (1957) 1 WLR 1223 is not applicable for the proper determination of

the case particularly when there is a conflict on the traditional evidence given by the parties.

3. *Whether or not the order made by a non-judicial officer on the basis of which the Statement of Claim and plan were filed renders the proceeding and judgment a nullity.*

B 4. *Whether the Appeal Court was right in affirming the findings of the trial Court made in favour of the Respondents particularly that relating to the ownership of the house on the land in dispute."*

I shall now consider the issues raised.

C ISSUE (1): In the Court of Appeal, the defendants filed a brief of argument in which, contrary to the rules of Court, they argued the grounds of appeal rather than the issues formulated by them in that brief. The plaintiffs in their Respondents' Brief made similar error. The Court below, per Kutigi JCA commented thus:

D *"Five grounds of appeal were originally filed and with leave of court seven others were added, bringing the total to twelve. Mr. Sarumi learned counsel for the appellant submitted four issues for determination in the brief filed by him. He however failed to treat the issues but instead proceeded to deal with the grounds of appeal one after the other. Mr. Isola-Gbenla learned counsel for the respondents also in his brief identified three*
E *issues for determination but abandoned same and went to deal with the grounds of appeal. Those issues in both cases would therefore be deemed to have been abandoned."*

Rather than reject the briefs of the parties and order at new briefs be filed, that Court, in the interest of justice, proceeded to consider the appeal on the
F grounds of appeal as argued in the briefs. The defendants have now raised a complaint against the generosity of the Court below. In effect they want to profit by their own error. This is rather strange.

No doubt their brief before the Court of Appeal was irregular not being in compliance with the rules of that Court that require issues formulated, rather than the grounds of appeal, to be argued in a brief. The non-compliance notwithstanding, the appeal was decided on arguments based on the grounds of appeal. I cannot see how a condonation by the Court of Appeal with the non-compliance occasioned a miscarriage of justice. I see no substance whatsoever in the defendants' complaint. It is not surprising that
H Appellants' counsel abandoned this issue in the course of oral argument and Ground (1) based on it was accordingly struck-out.

ISSUE (2): It is not in dispute that on the pleadings the parties relied on conflicting traditional histories relating to the ownership of the land of the property in dispute. The plaintiffs led evidence in support of their pleadings.

The defendants also proffered evidence. It is true that the learned trial Judge came to his findings by ascribing credibility to the witnesses in support of plaintiffs' case. The defendants have now complained that this approach by the learned trial judge was wrong. They contend that the proper approach should have been that laid down by the privy Council in Kojo v. Bonsie (1957) 1 WLR 1223 at 1226 which approach has been approved and followed in numerous cases in this country. The plaintiffs on the other hand contend that the rule in Kojo v. Bonsie (supra) could not rightly be applied in the instant case in which the version of traditional history of the defendants was incredible. They further contend that the learned trial Judge, however, considered facts in recent years before coming to his decision.

I think I agree with the contention of the plaintiffs. The witnesses for the defendant not only contradicted each other on the traditional history relating to the property in dispute, they also contradicted the pleadings of the defendants. In a situation such as this, there is no room for the application of the rule in Kojo 11 v. Bonsie. In Irimi v. Erhurhobara (1991) 2 NWLR 252, 269 this Court held that a "trial judge is entitled to reject evidence of traditional history which is incredible." See also Ogbuokwelu v. Umeanafunkwa (1994) 4 NWLR 676, 710 D-F where I endorsed what Uwaifo JCA had said in the case in the Court of Appeal to the effect:

".. where a story is told by a witness which in itself has serious internal conflicts or is based, for instance, apparently on fiction and mysticism beyond the comprehension of the court and therefore incapable of being assigned any probability of truth, then the trial court must of necessity wonder whether the witness's ancestors in fact told that story and whether the story, if told, could possibly be true. Once the internal conflicts in the evidence destroy it or the answers posed above are in the negative and the traditional history breaks down on its own, the question of applying the principle in Kojo 11 v. Bonsie (supra) will not arise: See Joseph E. Aikhuele & Ors. v. Eichie Oakhena (1980-) 3 CA 54 (Benin Division).

But where the traditional histories of both parties are merely in conflict, but each is a probable story on its own, then the best way to test which one is more probable is by reference to facts in recent years as established by evidence".

As the traditional evidence for the Defendants is ex facie discredited, there is no need for the application of Kojo v. Bonsie in the instant case. I, therefore, find no substance in defendants' complaint.

ISSUE (3): In the trial High Court the plaintiffs having failed to file their pleadings within time, applied by way of motion, to the court for extension of time to do so. The application was taken by Mr. J.O. Oyekan a Registrar of the

High court of Ibadan Judicial Division. At the hearing before the Registrar both parties were represented by counsel. Time was extended and the plaintiffs subsequently filed their statement of claim and plan. The defendants filed their own statement of defence and plan in response to the plaintiffs' statement of claim. With leave of court their statement of defence was subsequently amended. The defendants have now complained that the Court of Appeal was in error in failing to observe that the statement of claim filed by the plaintiffs was filed pursuant to an invalid order of the court.

The validity of the order granting the plaintiffs extension of time to file their pleading was not raised in the Court of Appeal. Nor was specific leave of this Court sought to raise this issue before us as a new point. On this ground alone, ground 6, of the grounds of appeal ought to have been struck out.

The above notwithstanding, it is clear that there is no substance whatsoever in the complaint. At the time of the trial of this case in the High Court of Oyo State it was the high Court (Civil Procedure) Rules Cap 46 Laws of Oyo State 1978 that applied. Order 11 rules 1 and 28 empowered a legally qualified Registrar of the High Court to entertain an application for extension of time to file pleadings. The rules read:

"1. Where by these Rules any application is authorized to be made to the Court or a Judge such application shall, save as hereinafter expressly provided, be made to the Registrar, who is hereby empowered to hear and determine such application.

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28. A Registrar hearing any application by virtue of the provisions of these Rules shall have and exercise all the powers conferred by these Rules on the Court or a Judge when dealing with such applications

29. No registrar other than one who is also a qualified legal practitioner shall have the power to hear and determine any application which by these rules is conferred upon a Registrar.

30. In any judicial division where there is no legally qualified Registrar, any application which by these rules is authorized to be determined by a Registrar shall be made to a Judge who in his absolute discretion may take such application in Court or in chambers."

It is not contended by the defendants that Mr. J.O. Oyekan who presided over the hearing of the Appellants' motion for extension of time was not a qualified legal practitioner. Indeed when the rules were drawn to the attention of learned counsel for the defendants at the hearing before us, he did not press the point any longer.

ISSUE (4): The learned trial judge on the credible evidence before him found:

"The erection of houses by both the 1st and 2nd plaintiffs to the right and left of that line shows that the plaintiffs were not mere strangers or domestics of Lajumoke and that their families were in the area in right of the lawful grant of the land from Iba Oluyole to Orikunkun, their ancestor."

He made other findings of fact. On appeal to the Court of Appeal, that Court affirmed those findings of fact. The defendants are now complaining against these concurrent findings of the courts below. **It was held by this Court in Njoku v. Eme (1973) 5 SC 293 that concurrent findings of fact of the courts below where there is sufficient evidence to support them should not be disturbed. As rightly found by the court below in the instant case, the findings made by the learned trial judge were adequately supported by the credible evidence before him. They were affirmed by the court below. I have no reason whatsoever to disturb those findings. And as those findings supported the case for the plaintiffs, judgment was rightly given in their favour.**

In conclusion I found no merit in the appeal it is for this and other reasons stated herein that I dismissed the appeal on 22nd September 1997.

WALI JSC

On 22nd September, 1997, after hearing learned counsel for the appellants and the respondents in elaboration of their respective briefs in this appeal, I dismissed it and indicated that I would give my reasons for so doing today.

I have since been privileged to have a preview of the lead Reasons for Judgment of my learned brother Ogundare, JSC with which I entirely agree and adopt as mine.

It is for these same reasons as stated by my learned brother that I dismissed the appeal on 22/9/97.

MOHAMMED JSC

On 22nd September, 1997 this appeal was summarily dismissed by this court with N10,000.00 costs awarded in favour of the plaintiffs/Respondents. I indicated then that I would give my reasons on 12th December, 1997. I have since had the privilege of reading in draft the Reasons for Judgment written by my learned brother, Ogundare, J.S.C. I entirely agree with the reasons he adduced and hereby adopt same as mine. I have nothing more to add.

ONU JSC

On September 22, 1997 when we heard this appeal, I dismissed it with N10,000.00 costs against the appellants and indicated that I would give my reasons for so doing today. I shall proceed to do so here and now.

In the High Court of Oyo State holden at Ibadan presided over by Agbaje Williams, J. (as he then was) the plaintiffs/Respondents' claims as contained in paragraph 31 of their Statement of Claim were as follows:-

"(a) A Declaration that the plaintiffs are entitled to a Statutory Right of Occupancy over all that piece of land situate at Orikunkun Compound, Mapo - Ojaba Area, Ibadan a Survey plan of which is attached herewith.

(b) A Declaration that the plaintiffs are the owners according to Native Law and Custom of the house No. C2/224 known as Orikunkun's house situate lying and being on the said land in dispute.

(c) (Four Hundred) (N400.00) general damages for continuing trespass committed and still being committed by the Defendants on the said land.

(d) An Order of Injunction restraining the Defendants, their servants or agents or any one claiming through or under them from committing further acts of trespass on the said land."

Pleadings were ordered, filed and exchanged by the parties. The case went to trial after which the learned trial Judge found in favour of the plaintiffs/Respondents (hereinafter referred to shortly as respondents) when he concluded inter alia as follows:-

"I am satisfied from the preponderance of evidence placed before me by the plaintiffs, that they are the persons entitled to a declaration to a statutory right of occupancy to the piece of land shown verged red in Exhibit 'C'; also, that they are entitled to a declaration of ownership according to native law and custom of the house numbered C2/224 on the said land; also, and by reason of the 1st and 3rd Defendants' continuing trespass to, and disturbance of their possession, to an injunction restraining the said 1st and 3rd Defendants, their servants or agents or anyone claiming through or under them from committing further acts of trespass on the said piece of land,....."

Being aggrieved by the said decision, the Defendants/Appellants (hereinafter referred to simply as appellants) appealed to the Court of Appeal, Ibadan Division and thereto, lost to the respondents in a unanimous decision of that Court per Kutigi, JCA and concurred in by Akanbi and Ogwuegbu, JJ.CA (as they were then).

It is significant to note that of the four issues the appellants have

submitted for the determination of this Court, to wit:

1. Whether or not it was proper to decide the appeal on grounds of appeal and not on the issues formulated.

2. Whether in all the circumstances of this case the Rule in Kojo v. Bonsie (1975) (sic) 1 WLR 1223 is not applicable for the proper determination of the case particularly when there is a conflict on the traditional evidence given by the parties. B

3. Whether or not the order made by a non-judicial officer on the basis of which the Statement of Claim and plan were filed renders the proceeding and judgment a nullity.

4. Whether the Appeal Court was right in affirming the findings of the trial Court made in favour of the Respondents particularly that relating to the ownership of the house on the land in dispute. C

Issue 4.01 which covers ground 1 (learned counsel for appellants being unable to meaningfully argue same abandoned it) and it was accordingly struck out. D

The gravamen of the appellants' argument on issue 2 which was argued next is that the Court of Appeal fell into serious error by failing to apply the rule in Kojo 11 v. Bonsie (1957) 1 WLR 1223, in that from the pleadings and evidence, it is clear that both parties are relying on traditional evidence to prove their respective grants which are conflicting. Further, that the learned trial Judge relied on the credibility of the witnesses and their demeanour and so failed to evaluate the evidence as was confirmed by the Court of Appeal. E

What the principle in Kojo 11 v. Bonsie (supra) referred to above connote simply is that, 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, demeanour 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 Okafor v. Idigo (1984) 1 SCNLR 481; Uyiekpen Omoregie v. Enogie of Evbuoba Ohen Village & others (1976) 12 SC. 11 at 27; Chukwueke v. Nwankwo (1985) 2 NWLR (part 6) 95 at 201 and Thanni v. Saibu (1977) 2 SC.89. Thus, in the instant case, the learned trial Judge accepted the evidence led by the respondents and the court below, rightly in my view, affirmed the same when the latter held inter alia that - F

"I am inclined to agree with Mr. Isola-Gbenla for the respondents that this is not a case in which the principles in Kojo 11 v. Bonsie (supra) would apply. This was not a case where there was any finding at all that the traditional evidence led by any of the parties was inconclusive. Rather it is a case decided on the credibility of witnesses on both sides. I have already G H

held under grounds 2 and 10 above that the learned trial Judge did take advantage of having seen and heard the witnesses before him and evaluated their evidence before making his findings and coming to conclusion. That equally holds here. The respondents' case was believed while that of the appellants was disbelieved and reasons abound in the judgment."

B In effect therefore, both decisions constitute concurrent findings of fact which this Court on appeal, will be loath to interfere with, moreso that they have not been shown to be perverse or constitute an error of law on the face of the Record or that a miscarriage of justice has been occasioned thereby. See Sule Lengbe v. Imale (1959/60) WNLR 325; Chukwuogor v. Obuora (1987) 3 NWLR (part 61) 454 at 457 and Ojibah v. Ojibah (1991) 5 NWLR (part 191) 296 at 299. Further, as both courts amply demonstrated that there were self-contradictions in the evidence led in proof of the appellants' traditional history that they pleaded their case failed and stood dismissed. See Mogaji v. Cadbury Nigeria Ltd. (1985) 2 NWLR (part 7) 393; and Ajani v. Ladepo (1986) 3 NWLR (part 28) 276. Compare Onyido v. Ajemba (1991) 4 NWLR (part 184) 203 at 223. The rejection of the appellants' story by the two courts below which is not far fetched or difficult to decipher due to its being discredited for its incredibility and self-induced conflicts, may be discerned from the following random passages in the trial court's record as follows:

E (a) The appellants by their pleading denied the existence of Orikun family and compound. D.W.1, Alhaji Sikiru Sanusi, admitted when examined in chief thus:

"I know Lajumoke family; also orikunkun family. Orikunkun family were mere lodgers of Lajumoke family."

F This witness under cross-examination however said::

"I do not know the history of Orikunkun family."

(b) D.W.4, Chief Lasisi Olasupo Akande, when examined in chief said inter alia:

"There is no compound called Orikunkun in the area."

G Under cross-examination, however, he said:

"I am over 40 years of age. I am not up to 40 years of age..... I know the history of Otunla very well. I do not know his father. It was Lajumoke who gave land to Otunla. The 1st plaintiff built upon part of the land granted to Otunla."

H *Alaros and Osofi are not related. Alaros' Drummers were brought by Osofi from Oyo. It was the father of Otunla who was called Orikunkun..... I know very well the history of Orikunkun family; also the history of Otunla. Otunla was the same person bearing Orikunkun."*

While from the foregoing, D.W.4 admitted the case of the respon-

dents in all material respects, he not only contradicted himself but also clearly contradicted the defence as averred in their pleading.

In addition, the evidence of DW.10, Alhaja Asimowu Olatundun, discredited the case of the appellants in all material particulars. When it is borne in mind that the respondents' case that Orikunkun was the father of Otunla who begat Adeisi, the father of the respondents, the principle of law herein propounded by the appellants cannot but be the antithesis of that set out in Kojo 11 v Bonsie (supra) and issue 2 canvassed by them must perforce be resolved against them.

On issue No.4.03 which encompasses ground 6 of the appellants' grounds of appeal, the contention of the appellants is that because the Registrar who granted the order extending the time within which to file the Statement of Claim and Survey plan was not a judicial officer, consequently, the order with the subsequent proceedings and judgment was null and void.

It is pertinent to observe that in arguing this issue, the appellants rely on the provisions of the High Court Civil Procedure) Rules, 1988 which came into effect on March 1, 1989 by virtue of Oyo State Edict No. 10 of 1988. As the application for an order for extending the time to file the Statement of Claim and plan at the material time was brought at the respondents' instance on 14th April, 1981, heard and determined on 30th April, 1981 before J.O. Oyekan Esquire, the fact that by virtue of Section 53 of the High Court Law Cap. 46 Volume 111 Laws of Oyo State, 1978 the Chief Judge is empowered to make Rules of Court for carrying the law into effect, *inter alia*, by making Rules regulating pleading and practice pertaining to business which may be transacted and of the jurisdiction which may be exercised by the Judges of the High Court, or the Registrars or other officers thereof, the provisions of the High Court (Civil Procedure) Rules, 1988 (*ibid*), cannot retrospectively be applied to an application heard and determined on 30th April, 1981 under the old Rules in Order 11 Rules 1, 28 and 29 which conferred powers on Registrars to determine applications for extension of time. See Order 11 Rule 32 (a), (b), (c) and (d) (*ibid*) and the enrolled order duly signed by J.O. Oyekan, Registrar, (as he then was). Indeed, there was no argument proffered that J.O Oyekan Esquire aforesaid was not legally qualified. In the absence of such a submission, I accept as valid and incontestable learned counsel for the respondent' submission that he later became a Chief Magistrate and later on got promoted to the office of Deputy Chief Registrar before his elevation to the post of a High Court Judge in Oyo State.

In the circumstances, the contention that J.O. Oyekan Esq. was not a judicial officer and was not empowered to determine the application for extension of time in his capacity as Registrar, is inept and misconceived. To

speculate therefore that J.O. Oyekan Esq. could not have been legally qualified, is accordingly out of the question. Besides, there is the presumption of regularity of official acts to the effect that, where there is no evidence to the contrary, things are presumed to have been rightly and properly done. This is expressed in the common law maxim in the Latin phrase omnia praesumuntur B rite esse acta - a presumption very commonly resorted to and applied especially with respect to official acts. See Ogbuanyinya v. Okudo (No. 2) (1990) 4 NWLR (part 146) 551 at 570 and Section 150 (1) and (2) of the Evidence Act, Cap, 112, Laws of the Federation of Nigeria, 1990.

Regarding question No. 4 as to whether the Court below should C have exercised its power to evaluate the evidence, I need only refer to what my learned brother, Kutigi. JCA (as he then was) said in that regard to discount the appellants' grouse when he said:

"It is long settled that a Court of Appeal should not easily disturb the findings of facts of a trial Judge who had the singular opportunity of D listening to the witnesses and watching their performance in Court. It is however equally settled that such finding of facts or the inferences drawn from them may be question in certain circumstance which are not present here. See for example Akinola v. Oluwo (supra); Fatoyinbo v. Williams (1956) 1 FSC 87. I have carefully studied the record in this appeal and E completely unable to agree with Mr. Sarumi for the appellants that the trial court failed to properly evaluate the evidence in this case. It is my view that the trial court properly and adequately evaluated both the evidence in support of the appellants' case and that in support of the respondents' case before making his findings and drawing his conclusions therefrom. The learned trial F Judge accepted unreservedly the respondents' case and rejected that of the appellants. The (sic) reasons galore everywhere on the record. And the law is that where a court of trial unquestionably evaluates the evidence and appraises the facts it is no business of a Court of Appeal to substitute its own views for the views of the trial court. See for example Fabunmiyi & Anor. v. Obaje & ors G (1968) NMLR 242"

I see no reason to derogate from the above sound conclusion as to represents a clear re-statement of the law and founded on the evidence led in the trial court in the instant case and rightly, in my view, affirmed by the court below.

Issue No. 4 is accordingly also resolved against the appellants.

H It is for the above reasons and the fuller ones set out in the Reasons For Judgment of my learned brother Ogundare, JSC with which I entirely agree, that I allowed this appeal on September 22, 1997.

On the 22nd day of September, 1997, I dismissed this appeal and then indicated that I would give my reasons for so doing today.

I have since had the privilege of reading in draft the reasons for judgment just delivered by my learned brother, Ogundare, J.S.C. and I agree entirely with the reasoning and conclusions therein.

Only issues 2, 3, and 4 were canvassed before us in this appeal. B

Issue 2 raises the question whether in all the circumstances of this case, the principle of law enunciated in the privy Council decision in Kojo 11 v. Bonsie and Another (1957) 1 W.L.R. 1223 is not applicable for the proper determination of the suit particularly when the traditional evidence led by both parties was in conflict. It is the appellants' contention that the Court below fell into an error by failing to apply the said principle of law. For the respondent, it was submitted that the principle of law in issue is inapplicable, having regard to the facts and circumstances of the present case. C

It cannot be doubted, as laid down in the privy Council decision in Kojo 11 v. Bonsie and Another, supra, a principle of law which has been approved and repeatedly applied by this Court in various cases, that where there is a conflict in traditional history, the issue of credibility or the demeanour of witnesses becomes of little guide to the truth as it must be recognized that in the course of transmission from generation to generation of the traditional history, mistakes may quite possibly occur on the part of one side or the other without any dishonest motives whatever. In such a case it was held that the best way to solve the issue is to test the traditional history by reference to the facts in recent years as established by evidence and by seeing which of the two competing histories is the more probable. This principle of law is now firmly established. The real issue in controversy is whether this principle of law is applicable to the facts and circumstances of the present case. D E F

A close study of the record of proceedings and the judgment of the learned trial judge clearly discloses not only that each of the two parties presented the version of their traditional history, the trial court meticulously considered the two sets of traditional histories before it and advanced cogent and unassailable reasons for rejecting the appellants' version "as impossible". In other words, the trial Court, on the evidence before it, found the appellants' version of traditional history basically unfounded and unacceptable. This conclusion, it arrived at, not relying on the demeanour or credibility of the witnesses, but on the logical impossibility of the appellants' projected history. I think the learned trial judge was right in his decision on the issue. G H

Notwithstanding the above, the learned trial judge further proceeded to consider, again in great details, the facts in the recent years established by the evidence of the parties and found no difficulty in holding that these were in

favour of the respondents. In particular, the trial Court found that the respondents had erected and enjoyed the use of permanent buildings on the land indispute for some 40 years before the cause of action in the suit arose without any interruption from the appellants. Without doubt, it tested the traditional histories before the Court by reference to the facts in recent years as established B by evidence as aforesaid and finally came to the conclusion that of the two competing histories, that of the respondents was more probable than the appellants.

I think it ought to be stressed that two plausible but conflicting evidence of tradition from the parties must exist side by side before the evaluation of C such conflicting evidence by events of the present facts as laid down in Kojo 11 v. Bonsie. The principle does not seem to me to apply where, as in the present case, one of the parties traditional history is intrinsically false and unacceptable. See Mogaji v. Cadbury Nigeria Ltd. (1985) 7 S.C. 59 at pages 80 and 155. In my view, the Court below was entirely right to have upheld the treatment by the trial D Court of the traditional evidence adduced by the parties before it. Issue 2 is accordingly resolved against the appellants. There is next issue 3 which concerns the validity or otherwise of the order for extension of time within which the plaintiffs might file their Statement of Claim and plan. This order was made on the 30th day of April, 1981 by J.O. Oyekan, Esq. Registrar, as he then was. The E contention of the appellants is that because the said order was made by a Registrar who at the material time was not yet a judicial officer, the order and all subsequent proceedings in the case including the judgment of Court were null and void. The respondent, for their part, submitted that the said Registrar who at the material time was a qualified legal practitioner was pursuant to the provisions of F Order 16 Rule 3 and Order 11 Rules 1 and 29 of the High court (Civil Procedure) Rules of Oyo State 1978 entitled to hear and to determine the application in issue.

Order 16 Rule 3 provides as follows :-

"The Court may as often as it thinks fit and whether before or after the expiration of the time appointed by these Rules or by any judgment, order or G rule of the Court, extended or adjourn the time for doing any act or taking any proceeding".

There are also the provisions of Order 11 Rules 1 and 29 which stipulate thus :-

Order 11 Rule 1

H *"Where by these Rules any application is authorized to be made to a Court or a judge, such applications shall, save as hereinafter expressly provided, be made to the Registrar who is hereby empowered to hear and determine such applications".*

Order 11 Rule 29

"No Registrar other than one who is also a qualified legal practitioner shall have the power to hear and determine any application which by these Rules is conferred upon a Registrar".

The above Rules seem to me plain and clearly conferred ample jurisdiction on the Registrar who, at all material times was a qualified legal practitioner to hear and determine the respondents' application in issue. In my view, the said order of the 30th April, 1981 was validly made and issue 3 must again be resolved against the appellants.

There is finally issue 4 which questions whether the Court below was right in affirming the findings of the trial Court in favour of the respondent, particularly those relating to the ownership of the houses on the land in dispute. In this regard, it is an elementary principle of law that the evaluation of evidence and the ascription of probative value to such evidence are the primary functions of a trial Court which saw, heard and assessed the witnesses. Where a Court of trial unquestionably evaluates the evidence and makes definite findings of facts which are fully supported by such evidence and are not perverse, it is not the business of the Court of Appeal to substitute its own views for those of the trial Court. See Akinloye and Another v. Eyiola and others (1968) N.M.L.R. 29 at 95, Enang v. Adu (1981) 11 - 12 S.C. 25 at 39, Woluchem v. Gudi (1981) 5 S.C. 291 at 320. What the Court of Appeal ought to do is to find out whether there is evidence on which the trial Court arrived at its findings. Once there is such evidence on record, the appellate Court cannot interfere. See Akpabue v. Ogu (1976) 6 S.C. 63, Odojin v. Ayoola (1984) 11 S.C. 72, Amadi v. Nwosu (1992) 5 N.W.L.R. (Part 241) 273 at 280 etc.

In the present case, issue was joined by the parties as to the ownership of the houses on the land in dispute. Copious evidence was led by them on the issue. The learned trial Judge fully considered all the evidence that was led on the point and came to the conclusion that the houses in issue belonged to the respondents. There is nothing to suggest that this finding is perverse or that it was reached as a result of any wrong approach to the evidence or a wrong application of a principle of substantive law or procedure. In these circumstances, it is plain to me that Court below was right in affirming the findings complained of. Issue 4 is accordingly resolved against the appellants.

It is for the above and the more detailed reasons contained in the leading "Reasons for Judgment" of my learned brother, Ogundare, J.S.C., that I dismissed the appeal with N10,000.00 costs to the respondents.

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