

SUPREME COURT OF NIGERIA
4TH APRIL, 1997. SC. 25/1993
CORAM:- A. B. WALL, I. L. KUTIGI, M. E. OGUNDARE,
U. MOHAMMED, A. I. IGUH, JJSC.

E.K. ISERU DEFENDANT/APPELLANT
(Substituted by Doris Iseru)
AND
CATHOLIC BISHOP OF WARRI PLAINTIFF/RESPONDENT
DIOCESS

CONVEYANCING - *Fake document - Deed of Lease - With attached plan that was drawn 7 years latter - Whether a fake document.*

LAND LAW - *Leasehold - Land that has been established to be a Crown or State land - Cannot be leased by private individuals.*

LAND LAW - *Trespass - Appellant that failed to establish lawful possession - Cannot maintain an action in trespass.*

PLEADINGS - *Evidence - That is at variance with pleaded facts - Goes to no issue.*

FACTS

Before the High Court Warri, the plaintiff/respondent filed an action against the defendant/appellant claiming N100,000.00 as special and general damages for trespass, and perpetual injunction in respect of the land in dispute. The land in dispute was granted to the Catholic Mission by the Crown vide a lease Exhibit "A". The respondent claimed that the land was leased to him by the Agbassa people and he registered the lease - Exhibit "M" - in the land registry.

The trial court found the appellant's lease to be a fake document and gave judgment granting N3,000.00 damages for trespass in the respondent's favour. Appellant's appeal to the Court of Appeal was dismissed. He has further appealed to the Supreme Court raising 3 issues.

ISSUES FOR DETERMINATION

Whether the appellant could be adjudged a trespasser when the respondent was not in exclusive possession of the land allegedly trespassed upon by the appellant.

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

Evidence - That is at variance with pleaded facts

1. In his testimony before the trial court the appellant gave evidence that, in 1963 the Agbassa people leased to him a piece of land along Bowen Avenue. A portion of that land was a creek running into Agbassa creek. He said he had to reclaim that portion of the creek. This evidence is clearly contrary to what the appellant had pleaded above. In his pleadings the appellant did not say that he reclaimed a creek running into Agbassa Creek but that he reclaimed a swamp land. The appellant adduced no other evidence supporting the averment that he reclaimed a swamp land and it is quite well known to the learned counsel that evidence on facts not pleaded goes to no issue. (p. 623 H)

Land that has been established to be a Crown land

2. Another big dent in the defence put up by the appellant is the averment in the Statement of Defence that the land in dispute was obtained by him through a leasehold granted to him by Agbassa people. The appellant failed to call a single witness from the Agbassa people to confirm the grant of the leasehold by the Agbassa people in his favour. I quite agree that the land having been established to be a Crown or State Land could not be leased to anyone by the Agbassa people. (p. 624 B)

Conveyancing - Fake document

3. Exhibit "M" has a number of features which establishes clearly that the learned trial judge was right to call it a fake document. The Deed of Lease was said to have been executed on 20th December, 1966. It had no plan attached to it. A plan was later drawn in 1973 and attached to it. The dimension of the land in dispute in the plan did not agree with the area of the land leased by the Agbassa people to the appellant, which was given in the leasehold. (p. 624D)

Trespass

4. In a claim for trespass to land once the plaintiff is shown to be in possession, the defendant, in order to defeat plaintiff's claim must show better title to the land. This is so since a trespasser or squatter can maintain an action in trespass against the whole world except the true owner or the one with a better title. - See Amakor v. Obiefuna (1974) 1 All NLR 119. The appellant has failed, both in documentary and oral evidence to establish that he was lawfully put in possession of the land in dispute. The feeble attempt to establish special circumstances which would permit me to disturb the concurrent findings of the two lower courts, in this appeal, has failed. (p. 624 F)

REPRESENTATION

Chief Debo Akande SAN., D.E. Iseru with him for the Appellant
 Chief A. O. Akpedeye for the Respondent

CASES REFERRED TO

Chinwendu v. Mbamali (1980) 3 SC. 31
 Ibodo v. Enarofie (1980) 5-7 SC 42 at 55
 Adejumo v. Ayantegbe (1989) All NLR 468
 Amakor v. Obiefuna (1974) 1 All NLR 119
 Onowan v. Aserifa (1990) 3 NWLR (Pt. 136) 94
 Aromire v. Awoyemi (1972) 1 All N.C.R. (Part 1) 101
 Enang v. Ado (1981) 11 - 12 S.C. 25 at 42
 Igwego v. Ezego (1992) 6 N.W.L.R. (Part 249) 561 at 574
 Chukwunta v. Chukwu 14 W.A.C.A. 341
 Isaac v. Robertson (1948) 3 W.L.R. 705 at 709

LEAD JUDGMENT BY MOHAMMED JSC

The Court of Appeal, Benin Division, dismissed the appellant's appeal against the decision of Warri High Court, Bendel State (now in Delta State). The judgment of the High Court was delivered by Uwaifo J (as he then was) on the 5th day of February, 1985. The suit was filed by the Catholic Bishop of Warri Diocese against the appellant claiming for the following reliefs:

"(a) The sum of N100,000.00 (One Hundred Thousand naira) being special and general damages suffered by the Plaintiff when in the month of April, 1977, and thereafter the Defendant by himself and or his agents broke and entered onto the land of the Plaintiff (Catholic Mission) lying and situate along Warri/Sapele Road by Bowen Avenue, Warri within the jurisdiction of this Honourable Court without the consent of the Plaintiff and against his will and thereby damaged and or destroyed the Plaintiff's fence, cash crops, sugar cane, etc., and started to construct a building thereon.

(b) Perpetual injunction restraining the defendant; his agents and or servants from further trespass into the said land".

The facts stated briefly are in the following narrative:

The respondent is the sole trustee and custodian of all the properties belonging to the Catholic Mission within the Warri Catholic Diocese. The land in dispute forms a portion of a parcel of land owned and possessed by the respondent either through a grant or by possessory right. In the case presented before the trial High Court, through the evidence of P.W.1, the respon-

dent tendered a copy of the leasehold granted by the Crown to the Catholic Mission Warri in respect of the land in dispute. It was admitted in evidence as exhibit "A". The Catholic Mission took possession of the land and developed it. PW1, explained further, in his evidence as follows:-

"We built church, and school, convent, old people's home, Rev. Fathers' quarters, Cathecists' houses, boys quarters, gardening etc. In 1945 the Catholic Mission got another leasehold but it is not related to the land shown in exh. A. The lease as per exh. A is still subsisting. In 1951, a road was constructed through the land in exh. A by the local authority. The road cut the land into two. There was a swamp area nearby. The Catholic Mission demanded that the swamp area be given to them as compensation for the portion taken by the road constructed through their land. The road which was constructed through the Catholic Mission's land in exh. A is now called Bowen Avenue. The District Officer who was administering the local authority then was called Bowen and the road was named after him. Eventually, a licence for temporary occupation of Crown Land was granted to the Catholic Mission. This covered part of the swamp area. I have a certified true copy of that licence. Here it is, Court: Document tendered, Admitted as exh. B. Witness continues: The Catholic Mission reclaimed the swamp area and planted crops such as sugar cane, yams etc."

Five more witnesses testified for the respondent. The appellant was the only witness for the defence. In his testimony he alleged that the land in dispute was leased to him by Agbassa people and he registered the leasehold in the Land Registry at Benin City. The appellant who is relying on the leasehold granted him by Agbassa people did not call any of those people who executed the leasehold in his favour to testify and confirm what he told the trial court. After the addresses, the learned trial judge considered all the evidence adduced before him and entered judgment in favour of the respondent, granting to him the following reliefs:

"(a) N3,000.00 (Three Thousand Naira) as General Damages for trespass and

(b) Perpetual Injunction restraining the Appellant, his servant, workmen, agents, tenants and otherwise whosoever collectively and individually from entering the land in dispute or part thereof with N500.00 costs in favour of the Respondent".

Dissatisfied with the trial court's decision the appellant filed an appeal before the Benin Division of the Court of Appeal. The appellant was again not successful because the Court of Appeal affirmed the decision of the High Court. The appellant has finally reached this court appealing against the judgment of the Court of Appeal and urging us to reverse the two concurrent

findings of fact given by the two lower courts in favour of the respondent.

The learned counsel for the appellant filed three grounds of appeal but submitted in the appellant's brief that he would argue only the third ground which reads as follows:-

"The Court of Appeal erred in law and came to the wrong conclusion on the facts when it confirmed the decision of the court of first instance that the defendant trespassed upon the two parcels of land in dispute that is parcel "A" and parcel "B" respectively when the evidence in connection therewith clearly shows that the plaintiff/respondent was never in exclusive possession of either parcel "A" or parcel "B".

C Particulars of Error

(i) Having reclaimed the swampy area granted to it per exhibit "B" the plaintiff/respondent applied for a leasehold of the said area per exhibit "H".

(ii) Exhibit "B" shows clearly the features of entire swampy area D which the respondent applied for and got.

(iii) Exhibit "H" is in conflict with exhibit "L" the survey plan of the land in dispute and related to exhibit "L" the plaintiff was never in possession of parcel "B" and only partly in possession of parcel "A".

In the single issue raised from the third ground of appeal (reproduced above), the appellant questioned whether the appellant could be adjudged a trespasser when the respondent was not in exclusive possession of the land allegedly trespassed upon by the appellant. Before I consider the argument in support of this issue it is pertinent to note that there are two concurrent findings of fact in which the two lower courts agree that the evidence before the trial court had shown the location and extent of the land in dispute. The lower courts also made decisive findings that the respondent was in exclusive and effective possession of that land. It is for the appellant, to bear in mind that the rule of practice is that, in the absence of special circumstances, this court will not allow a question of fact to be re-opened where there have been two concurrent findings of fact by two lower courts. This was clearly stated in our decisions in Mogo Chinwendu v. Nwanegbo Mbamali (1980) 3 SC. 31 and Ukpe Ibodo & ors. v. Enarofie and ors (1980) 5-7 SC 42 at 55.

Learned counsel for the appellant, Chief Debo Akande, SAN, took H the main issue upon which this appeal rests. The issue is whether the respondent could succeed in his claim against the appellant based on trespass to the land in dispute when the Mission was not in exclusive possession of the land in dispute. The learned S.A.N., referred to Exhibit "L" which was the survey Plan made by Licensed Surveyor, Chief Ufougbone who gave evidence for the

plaintiff/respondent as P.W. 3. Exh. "B" is the licence and sketch of the land given to the Catholic Mission in compensation for the use of the Mission's land which was used to construct a road linking Warri/Sapele road with Alder's Town in Daudu Area of Warri. Chief Akande submitted that the respondent pleaded that the Catholic Mission reclaimed the swamp land which was granted to it by the Local Authority, but gave evidence that the Bishop reclaimed the B creek.

It is evidently clear that the Learned Senior Advocate is not correct to say that the Mission gave evidence contrary to their pleadings. The evidence of PW2, Mr. Simon Okene, who was a teacher when the road, later named Bowen Road, was constructed through the land of the Catholic Mission is very clear. He was present in the Mission when the road was constructed. He knew when the swamp land was granted to the Mission. He was present together with Rev. Father Healey who was then in charge of the Mission when the District Officer offered to grant swamp land to the Mission. Mr. Okene's evidence continued thus: C

"Mr. Crudas said if the Bishop needed land he was prepared to give him the nearby swamp land on application. In the end the Bishop agreed to the proposal. Construction of the road through Mission land then commenced. Rev. Fr. Healey got a contractor to reclaim the swamp land. The Catholic Mission reclaimed the entire land up to Agbasa creek from 1944. I, with the help of my school pupils who were usually big boys in those days took part in the reclamation to the best of our efforts. Mr. Bowen himself came and met us when he came to supervise the bridge. I remember he used to write with his left hand. The reclaimed land was thereafter used by the Catholic Mission as farm land". D

In fact it was the appellant who gave evidence contrary to his pleading in this case. In paragraph 8 (iii) the appellant pleaded as follows:

(iii) Since 1963 the Defendant pursuant to acts of ownership performed by him as aforesaid had reclaimed the swamp land which was originally leased to him by the people of Agbassa and later confirmed in a Deed of Lease registered as 14/14/227 of the Lands Registry in the Office at Benin City: Thereafter the Defendant has continuously been in undisturbed possession thereof until this day, and this to the knowledge of plaintiff: the Defendant contends that he has been on this land nec clam nec vi nec precario". E F

In his testimony before the trial court the appellant gave evidence that, in 1963 the Agbassa people leased to him a piece of land along Bowen Avenue. A portion of that land was a creek running into Agbassa creek. He said he had to reclaim that portion of the creek. This evidence is clearly H

contrary to what the appellant had pleaded above. In his pleadings the appellant did not say that he reclaimed a creek running into Agbassa Creek but that he reclaimed a swamp land. The appellant adduced no other evidence supporting the averment that he reclaimed a swamp land and it is quite well known to the learned counsel that evidence on facts not pleaded goes to no B issue - see Akin Adejumo and 2 others v. Ajani Yusuf Ayantegbe (1989) All NLR. 468.

Another big dent in the defence put up by the appellant is the averment in the Statement of Defence that the land in dispute was obtained by him through a leasehold granted to him by Agbassa people. The leasehold was C tendered as Exhibit "M". It was dated 20th December, 1966 and registered as No. 14 page 14 in volume 227 of the Lands Registry, Benin-City. Learned counsel for the respondent submitted that the land which was said to have been leased to the appellant had been confirmed to be Crown or State Land in Exhibit A, B, C, E, F, G and H and that the evidence of PW4 clearly showed it to D be so. The appellant failed to call a single witness from the Agbassa people to confirm the grant of the leasehold by the Agbassa people in his favour. I quite agree that the land having been established to be a Crown or State Land could not be leased to anyone by the Agbassa people. Exhibit "M" has a number of features which establishes clearly that the learned trial judge was right to E call it a fake document.

The Deed of Lease was said to have been executed on 20th December, 1966. It had no plan attached to it. A plan was later drawn in 1973 and attached to it. The dimension of the land in dispute in the plan did not agree with the area of the land leased by the Agbassa people to the appellant, which F was given in the leasehold. In a claim for trespass to land once the plaintiff is shown to be in possession, the defendant, in order to defeat plaintiff's claim must show better title to the land. This is so since a trespasser or squatter can maintain an action in trespass against the whole world except the true owner or the one with a better title. - See Amakor v. Obiefuna (1974) 1 All G NLR 119.

The appellant has failed, both in documentary and oral evidence to establish that he was lawfully put in possession of the land in dispute. The feeble attempt to establish special circumstances which would permit me to disturb the concurrent findings of the two lower courts, in this appeal, has H failed.

In the result, this appeal has failed. The judgment of the Court of Appeal in which it affirmed the decision of the trial High Court is hereby affirmed by me. The appeal is dismissed. I award N1000.00 costs in favour of the respondent.

WALI JSC

I have had a preview of the lead judgment of my learned brother Uthman Mohammed, J.S.C with which I entirely agree.

This is an appeal involving concurrent findings of fact by the lower court and the court below which the appellant has failed to fault. See Onowan & Anor v. Aserifa (1990) 3 NWLR (Pt. 136) 94. B

The appeal lacks merit and is hereby dismissed for the reasons contained in the lead judgment, with N1,000.00 costs to the respondent.

KUTIGI JSC

I read before now the judgment just delivered by my learned brother Mohammed, J.S.C. I agree with the conclusion that the appeal lacks merit and ought to be dismissed. The lone issue submitted for resolution in this appeal reads - C

"Whether the Appellant can be adjudged a trespasser when the Respondent is not in exclusive possession of land allegedly trespassed upon by the appellant." D

It was the same issue that was argued and lost as issue (2) in the Court of Appeal. The court in its judgment on page 342 of the record per Salami J.C.A. who read the lead judgment said:-

"The respondent's case is that the Local authority, Warri constructed a road, Bowen Avenue, through their property and in exchange gave them another parcel of land, a swamp area which they reclaimed to compensate them for what was taken up by the road construction. The swamp area given to the respondent is covered by a temporary occupation licence No. A 15420 and is situate and lying on either side of Bowen Avenue as depicted by Exhibit' L' F

All the drawings and exhibits show that the swamp area swopped for the road run from East to West of the grant to the Mission or was behind the Whole premises of the respondents. The evidence of P.W. 2 Simon Okene which the trial judge accepted show that the respondent was in effective control of the land. He testified inter alia as follows:- G

"REV. FR. HEALEY got a contractor to reclaim the swamp land. The Catholic Mission reclaimed the entire land up to Agbassa Creek from 1944. I with the help of my school pupils who were usually big boys in those days took part in the reclamation to the best of our efforts The reclaimed land was thereafter used by the Catholic Mission as farm land. Up to 1977 the Mission used the land for farming purposes. But that year in 1977, the defendant went into the land, erected as shed on part of it for selling firewood." H

Apart from these acts of possession exercised by the respondent over the land in dispute, they also put tenants from whom they collected rents. The forceful or stealthy entry by the appellant does not destroy the fact of possession of the respondent Possession of a parcel of land means no more than physical control of the said land either directly or through servants or agents. And possession means no more than possession of that character of which the subject is capable of being possessed: LORD ADVOCATE v. YOUNG (1887) 12 A.C. 544, 556."

I think both the Court of appeal and the High court were right. Appellant's counsel has not succeeded in convincing me that the act of unlawful entry by his client has deprived the plaintiff/respondent of possession of the land in dispute.

The appeal therefore fails and it is hereby dismissed with N1,000 costs to the Plaintiff/Respondent.

D **OGUNDARE JSC**

I have had the advantage of a preview of the judgment of my learned brother, Mohammed JSC just delivered. I agree with him that this appeal fails. There is a concurrent finding of the two Courts below that at all times material to this case, the plaintiff was in possession of the land in dispute. This finding is supported by the overwhelming evidence adduced at the trial. The Defendant has failed to convince me that the finding is wrong. I, too, therefore, affirm it.

The Plaintiff, being in possession, to defeat his claim in trespass Defendant has to show that he has a better title to the land in dispute. See Amakor v. Obiefuna (1974) 356. This, again, he has failed to prove; the deed of lease he relied on was rightly found by the learned trial Judge to be worthless.

The net result is that judgment was rightly entered against the Defendant and in favour of the Plaintiff. This appeal lacks merit and I unhesitatingly dismiss it with costs as assessed by my learned brother, Mohammed, JSC.

G **IGUH JSC**

I have had the advantage of reading in draft the leading judgment just delivered by my learned brother, Mohammed, J.S.C. and I entirely agree that there is no merit in this appeal and that the same should be dismissed.

The only issue that was canvassed before us is whether the appellant can be adjudged a trespasser when the respondent was allegedly not in exclusive possession of the land trespassed upon by the appellant.

The respondent's claims against the appellant before the trial court were in trespass and injunction. The appellant raised the question of title to

the land in dispute. His claim was that the land belonged to him. In this regard the appellant tendered his deed of lease, Exhibit M, which was the sole basis on which he founded his claim of title to the land in dispute.

It cannot be disputed that in such circumstances, the respondent, to succeed, must establish superior or better title to the land. See Alhaji Aromire and others v. J.J. Awoyemi (1972) 1 All N.C.R. (Part 1) 101. It is also settled law that where two parties, as in the present case, claim to be in possession of land in dispute, the law ascribes possession thereof to the one who can show that he has a better title to such land. See Jones v. Chapman (1848) 2 Ech. 803, Canvey Island Commissioner v. Preedy (1922) 1 Ch. 179, Alhaji Aromire and others v. J.J. Awoyemi, supra.

Generally, a claim for trespass to land is rooted in exclusive possession. Once however a defendant asserts ownership of the land in dispute, as in the present case, title to it is put in issue, and, in order to succeed, the plaintiff must show a better title than that of the defendant. See Amakor v. Obiefuna (1974) 1 All N.L.R. 119 at 128. I will now consider the issue in controversy between the parties against the above principle of law.

On the issue of possession of the land in dispute, the learned trial Judge, Uwaifo, J., as he then was, after a thorough and exhaustive consideration of the evidence before the court found as follows -

"Here the plaintiff was long in possession of the land in dispute before the defendant purported to procure a conveyance which he alleged conveyed title thereto in him. But the conveyance has been found to be defective beyond redemption. The defendant is therefore a trespasser and the plaintiff can maintain this action against him."

Earlier on in his judgment, the learned trial Judge had observed -

"I do not believe the defendant's contention that he reclaimed any part of the land in dispute. The second item in the schedule to the said exhibit M tends to say that the portion reclaimed by the defendant was a creek. The land in dispute as reflected in exhibit L filed by the plaintiff does not show that any part of the Agbassa creek there shown was reclaimed. The creek is shown to exist up till now. The evidence contained in exhibit L and supported by the Surveyor, Chief Umemezie Ugogbune (p.w.3), has not been controverted. The defendant did not go so far as to tender the plan which he had filed for the purpose of this case. I therefore prefer the evidence of the plaintiff that the land in dispute was reclaimed by the Catholic Mission long before the defendant embarked on his act of trespass."

He went on -

"At this point, I think it will make a refreshing impact, which I believe is desirable, to recount the salient facts in the present case, in a

nutshell, as I have found them established. The plaintiff, for the Catholic Mission in Warri Diocese, got a lease of land from the Crown along Warri/Sapele Road, Warri for a term of 39 years with effect from 2nd August, 1935 as stated in a deed of lease, exhibit A. This was in addition to an earlier acquisition from the Crown of the adjoining land as contained in the said exhibit A itself inter alia: the Governor doth hereby demise unto the Lessee all that parcel of land situate on the Warri-Sapele Road and adjoining the Leasehold property of the Lease at Warri "As to that adjoining land the Catholic Mission constructed a tennis court on part of it at that time. It is known that it was subsequently built up; so was the land in exhibit A. The various buildings on the entire land, including a cathedral church, Rev. Fathers' and Rev. Sisters' houses, bookshop, clinic, schools, poor people's home etc., still exist today and are in active use. But the Crown at a time took part of the land through which it constructed the Bowen Avenue from Warri/Sapele road. In negotiations for this loss to the Catholic Mission, the Crown decided to compensate them with the swamp area behind the Catholic Mission land for their use. The swamp land was on both sides of the said Bowen Avenue and extended to the Agbassa creek. The Catholic Mission were let into possession of it and with the consent and privity of the Crown embarked on reclaiming the swamp area and by 1953 this had been successfully accomplished. This is the first concrete act of possession of the swamp land area by the Catholic Mission. In 1953 a temporary occupation licence was issued by the crown to the catholic Mission and was renewed in 1954, exhibit B.

The Catholic Mission also cultivated the land right from then and later put tenants on part of it up till 1977 when early in 1978 the defendant broke and entered part of the land and despite warnings commenced building operations thereon. He extended his acts of trespass to another part of the land by harassing the tenants put there by the Catholic Mission by using agents of his native tribe to take possession as given in evidence by P.W. 1, Rev. Father Joseph Efebe. In respect of the part on which the defendant commence building operations until he was stopped by an interlocutory injunction, he claims to have acquired a leasehold title thereto from some people said to be Agbassa natives upon a spurious deed of lease, and contends that before then the plaintiff had lost every right to possession because the temporary occupation licence by the Crown had expired.

I think on these facts all the leading authorities agree that the plaintiff has the right to seek remedy for trespass to get damages against the defendant and obtain injunction against him and his agents. If the plaintiff were not to have such protection, people like the defendant will sooner than later in-

vade the entire premises of the Catholic Mission, Warri and take over possession."

He finally concluded -

"The defendant clearly trespassed on the portion marked B verged red in exhibit L despite warnings and proceeded through his agents to drive the plaintiff's tenants from the portion marked A verged pink and made the said agents to take possession thereof on his behalf. He, and they acting for him, did so after destroying the plaintiff's crops on the land and some structures which the plaintiff's tenants erected on part of the land where they carried on petty trading."

It seems to me quite plain that the trial court was of the clear view that the respondent, as plaintiff before that court, was in possession of the land in dispute, a finding which the court below fully endorsed. Both the trial court and the court below thus made concurrent findings of fact on the issue of possession of the land in dispute in favour of the plaintiff/respondent.

This court has repeatedly stressed that it will not interfere with the concurrent findings of facts of both the trial High Court and the court of Appeal 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 N.W.L.R. (Part 14) 1 at 36, Enang v. Ado (1981) 11 - 12 S.C. 25 at 42, Mora v. Okonkwo (1987) 3 N.W.L.R. (Part 60) 314 at 321, Igwego v. Ezengo (1992) 6 N.W.L.R. (Part 249) 561 at 574. No acceptable reasons have been established by the appellant for the interference by this court of the said findings of fact. I therefore fully endorse these findings of both courts below to the effect that the respondent was at all material times in possession of the land in dispute.

Turning now to the appellant's claim for title to the land, Exhibit M is the only basis on which he rested this claim. The trial court gave Exhibit M a most careful consideration and came to the following conclusion -

"The least that can be said is that the circumstances of this document are a very sad commentary on the conveyancing practice of the legal practitioner who prepared the document and of the defendant himself who is also a lawyer by profession. I cannot imagine how they can ever defend the document in any way. I completely reject the said deed of lease, exhibit M, as entitling the defendant to be on the land in dispute. It is a worthless piece of document."

The court below affirmed the above decision of the trial court when it stated thus -

"The learned trial judge, after a most careful consideration of exhibit 'M', the deed of lease which the appellant affirmed as "all I rely on",

considered it to be a fake and rejected it for various reasons. The survey plan which was subsequently attached to the deed of conveyance was not drawn until 20th July, 1973. It thus follows that it was not in existence when exhibit 'M' was purportedly executed. The said deed of lease ought not to have been registered and if it had not been registered, it should not have been admissible as it was not validly executed. None of the lessors was summoned to give evidence and the learned trial judge wondered how the alleged lessors came to derive their title to the parcel of land which is known to be either Crown or State land. The learned trial judge then concluded thus on exhibit 'M'.

C *"I can not imagine how they can ever defend the document in any way. I completely reject the said deed of lease, exhibit 'M', as entitling the defendant to be on the land in dispute. It is a worthless piece of document."*

The sole basis of the appellant's claim for title to the land in dispute was clearly thoroughly discredited by both the trial court and the court below.

D Under such circumstance, the appellant's claim for title to the land in dispute was rightly dismissed by both courts below as unsubstantiated. I need only add that the appellant did not appeal against these concurrent findings in respect of Exhibit M. In such a situation, they remain final and binding until set aside on appeal by a competent court. See Chukwunta v. Chukwu 14 E W.A.C.A. 341, Grafton Isaac v. Emary Robertson (1948) 3 W.L.R. 705 at 709. Besides, every judgment is conclusive proof, as against parties and privies, of facts directly in issue in the case and actually decided by the court unless evidence was admitted in the action in which the judgment was delivered which is excluded in the action in which that judgment is intended to be F proved. See Section 53 of the Evidence Act and Timitimi and others v. Chief Amabebe and others 14 W.A.C.A. 374.

The position, therefore, is that the concurrent findings of both the trial court and the court below to the effect that Exhibit M is spurious and worthless, not having been appealed against remain valid and conclusive as G between the parties hereto. The appellant can therefore be said to have woefully failed to establish his claim of title to the land in dispute. This is as against the respondent's possession of the land in dispute and title thereto which both the trial court and the court below found established. Accordingly the one issue for consideration in this appeal must be resolved in favour H of the respondent.

It is, for the above and the more detailed reasons contained in the leading judgment of my learned brother, Mohammed, J.S.C. that I, too, dismiss this appeal. I abide by the order as to costs therein made.