

SUPREME COURT OF NIGERIA
2ND MAY, 1997. SC. 232/1993
CORAM:- M. L. UWAISS CJN, S. M. A. BELGORE, I. L. KUTIGI,
S. U. ONU, A. I. IGUH, JJSC

ABEL NKADO & 2 ORS. DEFENDANTS/APPELLANTS

(For themselves and on behalf of
members of Umuonadili Family,
Nkitaku, Agulu)

AND

OZULIKE OBIANO & ANOR PLAINTIFFS/RESPONDENTS

(For themselves and on behalf of
members of Umu-Obekwu family Nkitaku,
Agulu)

EVIDENCE - *Burden of proof - In a case for declaration of title - Was discharged by the plaintiffs.*

LAND LAW - *Traditional history - Plaintiff who relies thereon - Must lead evidence to show the root of his title.*

LAND LAW - *Title - Traditional history - Apart from placing reliance thereon - Respondents relied on other 3 methods of proving title.*

LAND LAW - *Traditional history - Passing of land to the respondents - It is not correct to say - That respondents failed to show - How their ancestors passed the land to them.*

LAND LAW - *Title - Case that rests on 4 ways of establishing title - Was properly upheld by the lower Court.*

LAND LAW - *Title - Ownership of connected land s. 46 Evidence Act - Was rightly relied upon by the lower courts - In finding for the respondents.*

WORDS & PHRASES - *"Time immemorial" - Proper meaning thereof - Respondents' case cannot fail - Because they did not call evidence beyond human memory.*

FACTS

Before the Awka High Court, the plaintiffs/respondents filed an action against the defendants/appellants claiming title, damages for trespass and perpetual injunction in respect of the land in dispute. The respondents based their claim on traditional history and 3 other methods of establishing title as laid down in the case of *Idundun v. Okumugba* (1976) NMLR 200. Respondents contended that the appellants were strangers who migrated from another town. The appellants denied the respondents' claim and based their case on traditional history that was not established.

The trial court found that the respondents established their claim to title on the 4 methods relied upon, and gave judgment in their favour. Appellants' appeal to the Court of Appeal was dismissed. Being dissatisfied, appellants have further appealed to the Supreme Court raising 3 issues but the honourable court preferred 3 out of the 5 issues raised by the respondents.

ISSUES FOR DETERMINATION

3.02. Whether the Court of Appeal was right in affirming the decision of the trial court that, on the pleadings and evidence, the plaintiffs/Respondents were entitled to a declaration of title to the land in dispute on four out of the five usual methods of proving title to land including the application of the principle in KOJO 11 V. BONISIE; Whether the plaintiffs /Respondents proved their claim and were entitled to a declaration of title on grounds of traditional evidence. Etc, see p. 897

HELD (Unanimously dismissing the appeal per lead judgment of **ONU JSC**) **Traditional history - Need to lead evidence to show root of title**

1. It is now trite law that a plaintiff who relies on traditional history in proof of a claim for declaration of title to land must lead evidence to show the root of his title; and this includes how his ancestor had come to own the land in the first place and how the land devolved over the years on the claimant's family until it got to the claimant. (p. 902 A)

Respondents relied on other 3 methods of proving title

2. Thus, apart from pleading traditional history, evidence of which they gave at the hearing of the case leading to the instant appeal, the respondents testified in strict compliance with their pleading how the land now in dispute devolved on them exclusively for over a considerable length of time now as plaintiffs, and by their exercise of acts of possession and enjoyment thereof as well as establishing by evidence following their averments, that they were in possession of connected and adjacent land rendering it probable that they would, in addition, be owners of the land in dispute. Clearly, therefore, the

respondents were relying on four of the five ways (the second method being inapplicable) of entitlement to or ownership of the land in dispute. (p. 904 B)

Passing of land to the respondents

3. It is therefore not correct to say that they did not show how Obekwu and his successors passed on the land in dispute to the present respondents. The respondents' pleading in the above paragraphs of the statement of claim that "the plaintiffs' and their family members from time immemorial have been the communal owners in possession" of the land in dispute amounts to saying that their ancestor Obekwu Egolum first occupied and possessed the land. By thus pleading the names of these several ancestors from Obekwu Egolum, the founder down to the respondents, it amounted, in my firm view, to strict compliance with the views held by this Court in Akinloye v. Eyiola (1968) NMLR. 92 as to proof of traditional history regarding root of title. (p. 906 D)

Burden of proof - Declaration of title

4. The onus is on the plaintiffs in a case of declaration of title (in the instant case, the respondents) to prove his/their case on a preponderance of evidence in his/their favour. See Elufisoye v. Alabetutu (1968) N.M.L.R. 298. In the instant case, the respondents have by credible evidence led strictly in compliance with their pleadings, discharge that onus. Re-enforced by the concurrent findings of fact by the two courts below, I have no hesitation in affirming the decision of the court below which confirmed the decision of the trial court. (p. 908 C)

Words & Phrases - "Time immemorial"

5. It would, in my view, be unjust to insist that respondents must fail because they did not show how Obekwu first acquired the land. For, as earlier pointed out, "time immemorial" means "time beyond human memory; time out of mind". See Blacks Law Dictionary (6th Edn. p.750 (ibid)). Indeed, it would run against the grain of justice to insist that the respondents who had pleaded and called evidence, as pointed out above, must fail because they did not call evidence, on an incident which occurred beyond human memory. (p. 913 G)

Case that rests on 4 ways of establishing title

6. While the case of Lawal v. Olufowobi (supra) failed because it hung from a traditional history of "immemorial" tenor which could not be sustained, the instant case rests on the firm anchor of four ways of establishing the respondent's title to the land in dispute. The respondent's case would still survive were the traditional history aspect to have failed. Fortunately, it did not and I uphold the conclusion arrived at by the court below. My answer to

respondent's issues 3.02 and 3.03 which collectively tally with the appellant's issue (1) is accordingly in the affirmative. (p. 914 C)

Ownership of connected land s. 46 Evidence Act

7. The learned trial Judge having thus resolved the issue of possession and ownership of the parcel verged pink by the application of section 45 (now B section 46) of the Evidence Act - a finding which the court below affirmed - this court has no option than to confirm the conclusion of the two lower courts. And as this is one of the ways of proving title, I have no hesitation in holding that even on this conclusion alone, this appeal ought to fail and stand dismissed. This issue is accordingly answered in the negative and it is C resolved against the appellants. (p. 916 D)

NOTABLE POINTS OF INTEREST

ONU JSC

1. When acts of possession will become irrelevant

Indeed, the law postulates that where possession rests on traditional history D which has failed, then such acts of possession become irrelevant and should not be considered in granting a declaration of title. (p. 907 E)

2. Style of writing judgment - Whether findings are perverse thereby

Thus, the minority judgment of the court below which alleged that the find- E ings of fact of the learned trial Judge were perverse, without showing how, ought not to be countenanced. Admittedly, the learned trial Judge's style of writing his judgment is not ideally commendable in places but his style is his style and this court cannot impeach it when his conclusions, as here, cannot be faulted. (p. 909 B)

3. Whether decision of trial judge is right not his reasons

The judgment of the learned trial Judge in the instant case cannot be said to be deficient in the above attributes. Indeed, an appellate court has to decide whether the decision of the trial Judge was right, not whether his reasons were. (p. 909 F)

IGUH JSC

4. Proof of one root of title is enough

A claimant in a declaration of title action needs not plead and prove any more than one root of title to succeed. Where, however, he pleads and relies on more than one root of title, proof of one single root of title is sufficient to H sustain his title to the land claimed. (p. 919 F)

REPRESENTATION

Chief Chimezie Ikeazor, S.A.N. with Chief (Mrs.) Uju Ikeazor and T. U. Oguji Esq. for the Appellants
Chief O. B. Onyali, for the Respondents

CASES REFERRED TO

- | | |
|--|---|
| Osafire v. Odi (1994) 3 KLR 38 | B |
| Udeze v. Chidebe (1990) 1 NWLR (Part 125) 141 at 160 | |
| Onwugbufo v. Okoye (1996) 1 KLR (pt 37) 1 | |
| Amobi v. Amobi (1996) 9 KLR (pt 44) 1715 | |
| Njoku v. Eme (1973) 55 S.C. 293 at 300 | C |
| Ogbuokwelu v. Umeanafunkwa (1994) 4 NWLR (Part 341) 676 | |
| Kojo II v. Bonsie (1957) 1 WLR 1223 | |
| Total Nig. Ltd. v. Nwako (1978) 5 S.C. 1 at p. 12, 13 and 16 | |
| Piaro v. Tenalo (1976) 12 S.C. 31 at 41 | |
| Bello v. Eweka (1981) 1 S.C. 101 | D |
| Onajobi v. Olanipekun (1985) 11 S.C. (part 2) 156 at 163 | |
| Ikejianya v. Uchendu 13 W.A.C.A 45 at page 46 | |
| Onwuka v. Ediala (1989) 1 NWLR (Part 96) 182 | |
| Okafor v. Idigo (1984) 1 SCNLR 481 | |
| Fasoro v. Beyioku (1988) 2 NWLR (Part 76) 263 | E |

STATUTE REFERRED TO

Evidence Act s. 46

LEAD JUDGMENT BY ONU JSC

The case giving rise to the appeal herein is in relation to a land dispute wherein the Plaintiffs/Respondents claimed in representative capacities as against the defendants/appellants who defended in their representative capacities for:

- | | |
|----------------------------------|---|
| (1) title to the land in dispute | G |
| (2) damages for trespass and | |
| (3) perpetual injunction. | |

Pleadings were ordered, duly filed and exchanged. Evidence was adduced from witnesses called by either side, at the close of which, the learned trial Judge entered judgment for the plaintiffs/Respondents' claim in its entirety.

The background facts in the case herein as borne out in the plaintiffs/Respondents' Writ of Summons dated 25th June, 1979 and in the parties' respective pleadings in Suit No.AA/49/79 commenced in the Awka High

Court may be summarized as follows:-

The Respondents in their 37 - paragraph statement of claim based their case on:

(i) *tradition, tracing their title to their great ancestor Obekwu Egolum from whom they inherited their land through their genealogical tree*

(ii) *the fact that Appellants migrated from Arondizogu and were B strangers in Agulu and inter-marry with respondents' people who granted them part of their lands for residential and farming purposes but who in 1979, on taking over the lands of their kith and kin who had died or returned to Arondizogu, trespassed on the Respondents' land in dispute, hence this suit.*

(iii) *the fact that they from their predecessors and they themselves C after them, have been owners in possession of the land in dispute from time immemorial exercising maximum acts of ownership and possession over the land till the present day.*

(iv) *the fact that the land in dispute, verged pink in their plan, is only part of their (Respondents') land, all verged red, and forms one parcel of land with another contiguous, continuous, and identical parcel of land, D verged green in their plan - both parcels together verged red being separated by Agulu - Nnobi Road with both bearing the name "Agu-Obekwu" and*

(v) *that the elders and councillors of Umunkpoko and Nkitaku had arbitrated over the dispute according to custom and found that the land in dispute belongs to the Respondents. The Respondents' plan at the trial is E Exhibit 'A'.*

The appellants in their 42 - paragraph statement of defence denied, traversed and joined issues with the Respondents in most of the latters' averments of facts contained in their claim. In particular they contended that:

(i) *they and the Respondents descended from a common ancestor and F denied that they were strangers and grantees of the land from the respondent and maintained that they and the Respondents are members of Umunkpoko extended family made up of Onadile (Appellants) Okwuogbo (Respondents) and Nwike*

(ii) *they denied that they were strangers who migrated from Aron-dizogu and further contended that they and the Respondents formed the G same kith and kin in Umunkpoko, asserting that being from a different Obi in Umunkpoko, they could and do, intermarry with persons from another Obi*

(iii) *they denied Respondents' ownership of the land in dispute which they maintained is called "Ana Agu Ngene Umuo Nadili."*

(iv) *On the pleaded tradition over the land they denied that it orig- H inally belonged to Respondents' ancestor Obekwu and maintained that it descended to them through Onadili, one of the children of Umunkpoko. They did not however, show how Onadili inherited the land or got it as his share*

(v) on customary arbitration over the land in dispute between the parties by the elders and councillors of the Nkitaku community, the Appellants arbitration, rather relied on one which they alleged was done by Igwe Ejidike and maintained that he found for them. The Appellants tendered their survey plan as Exhibit 'D'. They called the land in dispute 'Ana Agu Ngene Umuonadili' and testified that they inherited it from their ancestor, Nkpoko Ukuta, and have been enjoying it undisturbed from their ancestor up till the present day and have been exercising various acts of possession and ownership thereof. They denied that they were strangers in Agulu, adding that they migrated from Arondizogu and were granted land by the Respondents' people.

Aggrieved by the said judgment, the Appellants appealed to the Court of Appeal, Enugu Division (hereinafter referred to as the court below) on several grounds. Briefs of argument were subsequently filed and exchanged. After arguments were proffered by both sides, the court below on 30th March, 1993 delivering its judgment constituting a split decision (Abdullahi and Akintan, JJ.C.A. with Oguntade, J.C.A. dissenting), affirmed the decision of the trial court. The further appeal to this Court is against the majority decision aforesaid.

The appellants who filed a brief and a Reply Brief, identified three issues for the determination of this Court, to wit:

(i) *Whether the Court of Appeal was right in affirming the decision of the trial court, that on the pleadings and evidence led, the plaintiffs/Respondents were entitled to a declaration of title to the land in dispute?*

(ii) *whether the Court of Appeal was right in affirming the decision of the trial court that the defendants/Appellants are strangers in Agulu?*

(iii) *Whether, from the facts and circumstances of this case, the Court of Appeal was not in error in affirming the decision of the trial court which invoked section 45 of the Evidence Act in favour of the plaintiffs/respondents?*

The respondents, on the other hand, submitted the following five issues as arising for our determination, namely:

3.01. *Whether the supreme court should interfere with the concurrent findings of facts by the courts below when not perverse.*

3.02. *Whether the Court of Appeal was right in affirming the decision of the trial court that, on the pleadings and evidence, the plaintiffs/Respondents were entitled to a declaration of title to the land in dispute on four out of the five usual methods of proving title to land including the application of the principle in KOJO 11 V. BONISIE; Whether the plaintiffs /Respondents proved their claim and were entitled to a declaration of title on grounds of traditional evidence.*

3.03. *Whether the Court of Appeal was right in affirming the decision of the trial court that the Defendants/Appellants were strangers in Agulu and migrated from Arondizogu.*

3.04. *Whether from the facts and circumstances of this case, the Court of Appeal was in error in affirming the decision of the trial court which*
 B *invoked section 45 of the Evidence Act in favour of the plaintiffs/Respondents?*

3.05. *Whether the Court of Appeal was right to have affirmed the decision of the learned trial Judge to have preferred the case of the plaintiffs/*
 C *Respondents as it relates to the Customary arbitration over the land in dispute between the parties to the arbitration by Igwe which the defendants relied upon.*

In as much as the Notice of Appeal filed by the appellants on 10th November, 1993 setting in motion the appeal herein two sets of issues formulated on behalf of the appellants and respondents are three and five respectively, the five submitted at the respondents' instance are, in my opinion, more succinct and fairly overlap the six grounds. I therefore prefer the respondents' to the
 D appellants' issues. The appellants in their Reply Brief have, however, submitted, quite rightly in my view, that in as much as issue numbers 3.01 and 3.05 appear to be hinged on and/or formulated from the fifth and sixth grounds of appeal contained on pages 277 and 278 of the Notice of Appeal dated 10th November, 1993, they cannot be sustained. This is because, it is contended
 E on their behalf, quite rightly in my view, that although they filed six grounds of appeal, their issues for determination relate only to grounds one to four. That being so, grounds five and six are deemed to have been abandoned by them.

Consequently, the appellants have further maintained, quite cor-
 F rectly in my view, that the respondents cannot rightly formulate issues and canvass argument at length on the said grounds of appeal deemed to have been abandoned by them vide Osafire v. Odi (1994) 2 NWLR (part 325) 129. A fortiori, the following paragraphs in the respondents' Brief, that is to say: paragraphs 2.01 (v), 2.02(v), 2.03(iv), 3.05(h), 4.05(h) 4.09 and 6.01 must be and are hereafter discountenanced. Issue Nos. 3.01 and 3.05 in the
 G respondents' brief and all the arguments, proffered thereon but which were not contained in the respondents' original Brief now withdrawn, amendment of which was granted by this court on 27th November, 1996, shall be and are accordingly discountenanced and struck out as incompetent. It is pertinent in this regard to point out, too, that while respondents' issues 3.02 and 3.03 are coterminous with appellants' issue (i), their issue 3.04 overlaps appellants'
 H issue (iii). Accordingly, I intend for my consideration of this appeal, to adopt the respondents' issues namely, to deal with issues 3.02 and 3.03 together and

3.04 separately as hereunder, respectively.

Before the appeal came up for hearing on 3rd February, 1997, an application was made and granted to withdraw the respondents' original Brief. On the same day, the appellants simultaneously applied to file out of time and to deem as filed their Reply Brief. The request having been acceded to, subject to the payment of penalty, argument was proffered by both sides in B elaboration of the parties' respective Briefs as follows:-

On the first issue, learned Senior Advocate, Chief Ikeazor, urged in oral argument firstly, that the Respondents relied mainly on traditional history and also on their having inherited the land in dispute from their ancestor Obekwu. C

Secondly, that the Respondents failed to plead and prove how he, Obekwu Egolum came to own and live on the land, adding that all the other reliefs will fail, the Respondents failed having failed to plead and prove their traditional history. Had they pleaded and proved their root of title could they have relied on acts of ownership and possession. After referring us to the case of Onwugbufor v. Okoye (1996) 1 NWLR (part 424) 252, learned Senior Advocate submitted that this case is to be distinguished from the case of Amobi (1996) 8 NWLR (part 469) 638 at 658, where the plaintiff failed to plead how his father came to own the land which he alleged his father gave to his mother from whom he inherited it. Learned Senior Advocate after conceding the fact that one can prove all five methods of acquiring title, argued that if one relies and pleads inheritance from the grantor or the owner the question is, how did the root of title come about? When reminded by court how in the instant case it has been pleaded that Obekwu settled on the land in dispute, learned senior Advocate contended that when one fails to prove how F one came about the land, proof of title is fatal - the Respondents not having pleaded that they were the first to settle on the land. Learned Senior Advocate cited in support thereof the case of Udeze v. Chidebe (1990) 1 NWLR (part 125) 141 at 160, a case in which the parties pleaded settlement but did not prove how their root of title came about. In the instant case, he argued, the Respondents did not say they gave the Appellants their land and since they G pleaded Obekwu as their source of inheritance, their case upon their root of title failed. Upon this alone, learned senior Advocate further argued, the Respondents' traditional history as to their root of title was fractured.

Learned Senior Advocate in his written submission contained in H the appellants' Brief submitted in addition by referring us to the pleadings, especially paragraph 16 of the respondents' statement of Claim representing their root of title. The respondents, it is argued, clearly pleaded and relied on evidence of traditional history in proof of their case, although in so doing,

they failed to plead and/or prove How their ancestor Obekwu came to own the land. In addition, it was contended that the averment in paragraph 16 (bid) did not attempt to throw any light whatsoever on the founding of the land in dispute, the result being that at the close of pleadings (and throughout the trial) the vital issue of how the respondents came to own the land was at large.

Significantly, it is further contended, it was the appellants' counsel who raised this paramount issue, which despite its fatality as a defect that was pointed out and the learned trial Judge in consequence was urged to dismiss the claim, he paid no heed thereto. Turning to the court below, argument was proffered that the same point was raised in one of appellants' issues as well as in their counsel's oral arguments, yet that court failed to make any finding on it in its majority decision which thus affirmed the trial court's judgment. For the proposition that the respondents' root of title pleaded by them could not support any decree of title in their favour and was thus fatally defective as had been persistently raised in the two courts below, the following cases were further cited in support thereof, viz:

1. Ezulumeri Ohiaeri v. Adinnu Akabeze (1992) 2 NWLR. (Part 221)

1.

2. Mogaji & ors. v. Cadbury & Co. (1985) 2 NWLR. (Part 7)393 and,

3. Oyibo Madubonwu & ors. v. Anumudu Nnalue & ors. (1992) 8 NWLR (Part 260) 440.

It was next contended that while the majority decision of the court below overlooked this fundamentally important issue the dissenting judgment applied the law correctly.

After our attention had been drawn to several passages in the Record of appeal, it was contended that the majority decision of the court below was wrong in that the pleadings, the evidence and legal deductions as well as inferences capable of being drawn therefrom do not support the conclusion arrived at by it. In the first place, it was contended, as far as the issue of acts of ownership and enjoyment of land goes, the law is settled that:

"..... evidence of positive and numerous acts of possession is only relevant in the absence of traditional evidence."

After the cases of Ohiaeri v. Akabeze (supra) and Mogaji v. Cadbury Nigeria Ltd. (supra) were called in aid, it was further submitted that having found (albeit erroneously) that the traditional evidence in this case was incapable of sustaining an award of declaration of title in favour of the respondents, it became legally unnecessary for the court below to consider evidence of numerous acts of possession etc. The court below, it was this argued, confused the

issues before it leading it into error which has in turn occasioned a miscarriage of justice. On acts of ownership and enjoyment of the land in dispute, it was contended that a careful look at the statement of Claim will readily show that the respondents never pleaded that it was their ancestors who in fact built the Ekpe walls nor was it their (respondents) case that the said Ekpe walls were erected to protect their farms on the land in dispute against their neighbours or at all. All the evidence in that direction (whether or not accepted by the learned trial Judge and confirmed by the court below), it was maintained, went to no issue, it being trite that parties are bound by their pleadings and that evidence on a matter not pleaded goes to no issue Vide Kalu Njoku & ors. v. Ukwu Eme & ors. (1973) 55 S.C. 293 at 300.

With respect to farming on the land and enjoyment of economic trees thereon, it was contended on appellants' behalf that the respondents who relied on traditional evidence and traced their descent from Obekwu Egolum, cannot without proving their root of title, rely on acts done by them on the land as proof that they are the owners of the land. This, it was argued, is because as Oputa, J.S.C. put it in Fasoro v. Beyioku (1988) 2 NWLR (part 76)263 at 271-272:-

"One cannot talk of acts of ownership without first establishing that ownership. Where a party's root of title is pleaded as say - a grant or a sale or conquest etc. that root has to be established and any consequential acts following therefrom can properly qualify as acts of ownership. In other words, acts of ownership are done because of and in furtherance to ownership. Ownership forms the Quo-warranto of these acts as it gives legality to acts which would have otherwise been acts of trespass."

After enquiring as to whether the respondents by reliance on acts of ownership and enjoyment of the land would suffice to decree title in their favour and answering the question in the negative, reliance was placed on the case of Balogun v. Akanji (1988) 1 NWLR (part 70) 301 at 323 and the earlier cases cited in support of the appellants' argument of Mogaji v. Cadbury Nigeria Limited (supra) and Ohiaeri's Case (supra). The argument was concluded with a submission that after all, the law places paramountcy on the origin of a party's title, adding that this can only be so since in the absence of any other evidence indicative of ownership, the mere fact of farming on a piece of land could suggest that the person who farms it is in occupation thereof while that cannot by itself lead to an inference of ownership or title.

It is now trite law that a plaintiff who relies on traditional history in proof of a claim for declaration of title to land must lead evidence to show the root of his title; and this includes how his ancestor had come to own the land in the first place and how the land devolved over the years on the claimant's family until it got to the claimant. See Madubuonwu v.

Nnalue (supra).

By a long line of decided cases by this Court, it is now trite and settled law that there are five different ways of establishing title to land, as enunciated in Idundun v. D. E. Okumagba & ors. (1976) NMLR. 200 at 210; (1976) 10 S.C.227 at 246 (per Fatayi-Williams, J.S.C. as he then was), in the following immortal words, to wit:

“As for the law involved, we would like to point out that it is now settled that there are five ways to which ownership of land may be proved.....

FIRSTLY ownership of land may be proved by traditional evidence

SECONDLY ownership of land may be proved by production of documents of title which must of course be duly authenticated in the sense that their due execution must be proved.

THIRDLY acts of ownership extending over a sufficient length of time and are numerous and positive enough to warrant the inference that the person is the true owner (See EKPO v. ITA 11 NLR.68).

FOURTHLY acts of long possession and enjoyment of land which may be prima facie evidence of ownership of the particular piece of parcel of land or quantity of land (See section 45 of the Evidence Act) -

FINALLY proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land, would in addition be the owner of the land in dispute.”

See also Ayoola v. Odofin (1984) 2 S.C. 120; Roland Omoregie & 3 ors. v. Oviawonyi Idugiemwanaye & ors. (1985) 2 NWLR (part 5) 41; (1985) 6 S.C. 150; Agu v. Ikewibe (1991) 3 NWLR (Part 180) 385; Epka v. Utong (1991) 6 NWLR (part 197) 258 and Ogbuokwelu v. Umeanafunkwa (1994) 4 NWLR (part 341) 676, to mention but a few. Proof of anyone of the five different ways of establishing title to land is the minimum the law requires therefor.

In the case in hand, before the parties joined issues on their pleadings, the respondents in their Statement of Claim had averred in paragraphs 3,4,6,7,8,13,14,15,16,17,18,19, and 21 thereof as follows: -

“3. The plaintiffs and the defendants are not related by birth though they form with other families which have relationship with the plaintiffs, what is known as Umumkpoko in Nkitaku village, Agulu.

4. The defendants ancestors were strangers from Ndizuogu to Umumkpoko Agulu town and were habitude by the plaintiffs Ancestors with whom they lived together and from whom the defendants ancestors got pieces of land on which they lived and farmed.

6. The Onadili family of the defendants are made up of Nkado,

Mbanisi, Maduka, Okonkwo Ogbii Anu and Mkpideke. These first came and settled with the plaintiffs ancestors.

7. *Mkpideke died without issues; Maduka was survived by issues who later went back to Ndizuogu and so their respective lands fell into the hands of Nkado and Mbanisi lines.*

8. *Okonkwo Ogbii Anu had issues but later went back to Arondizuogu B with his children and the Defendants' family took over his lands as well.*

13. *The land in dispute is a portion of a larger area of the plaintiffs' communal land known as and called "Ana Obekwu or Agu Obekwu" situate at Agulu, within jurisdiction. The land in dispute is verged pink in plaintiffs plan No. ASC/AN 449 LD/79 filed with his statement of claim.* C

14. *The entire area belonging to the plaintiffs is verged red as shown in plan No. ASC/AN 449 LD/79 filed with this statement of Claim. The boundaries and boundary men are as shown in the said plan No.ASC/AN 449LD/79.*

15. *The plaintiffs and their family members from time immemorial D have been the communal owners in possession of the area verged red which area include the portion now in dispute.*

16. *One Obekwu Egolum was the ancestor of the present plaintiffs and it was from him that the entire Obekwu land including the land now in dispute descended to the plaintiffs' family.* E

17. *Obekwu had 2 sons to wit: Obiano and Ike. Obiano begat Udewene, Gebriel and Ozulike (the 1st plaintiff). These in turn begat issues who now with the plaintiffs and others make up Obekwu family.*

18. *Ike begat Josiah, and onyejimbe, Josiah begat John the 2nd plaintiff) and Samuel.* F

19. *Obekwu during his life time farmed, reaped and enjoyed the entire Agu Obekwu including the land in dispute.*

21. *The plaintiffs' like their ancestors before them have been enjoying the land in dispute by farming thereon and reaping all economic trees thereon without let or hindrance from any person including the present defendants until G sometime in 1963, when the plaintiffs saw some scattered mounds secretly make (sic) in the land in dispute."*

What in essence by the combined averments in paragraphs 4, 6, 13, 14, 15, 16, and 21 above in particular the respondents are saying, is that they first settled on a large parcel of land part of which is the land in dispute; that the H appellant's as strangers from Arondizuogu later joined them to form the Umuonadili family; were given pieces of the larger tract as opposed to their (respondents') own Umu-Obekwu family who were owners in possession though forming a confraternity of Umu-Mkpoko and staying together in

Nkitaku Village, Agulu with both being free to inter-marry.

Thus, apart from pleading traditional history, evidence of which they gave at the hearing of the case leading to the instant appeal, the respondents testified in strict compliance with their pleading how the land now in dispute devolved on them exclusively for over a considerable length of time now as plaintiffs, and by their exercise of acts of possession and enjoyment thereof as well as establishing by evidence following their averments, that they were in possession of connected and adjacent land rendering it probable that they would, in addition, be owners of the land in dispute. Clearly, therefore, the respondents were relying on four of the five ways (the second method being inapplicable) of entitlement to or ownership of the land in dispute. This accounts for the reason, when the chips are down, that the court below fully and justifiably (in its majority decision), in my view, held inter alia that:

"The next point to be resolved therefore is whether the plaintiffs have in fact satisfied any of the five ways by which title to land should be proved as laid down in Idundun & ors. v. Okumagba & ors. (supra). In answering that question I have no doubt in holding that the plaintiffs satisfactorily led traditional evidence in support of their pleading. They have also successfully led evidence to show acts such as farming on the land extending over sufficient length of time, numerous and positive as to warrant the inference that they are the true owners of the land in dispute. The plaintiffs were also able to prove acts of long possession and enjoyment of the land beginning with their great ancestor. Obekwu Egolum, right to the present plaintiffs. They also proved that they were in possession of connected or adjacent land in circumstances rendering it probable that they would, in addition, be the owners of the land in dispute." (The underlining in the above extract is mine for emphasis and comments.)

The appellants have contended that by the above findings the court below was wrong in that the pleadings, the evidence and all legal deductions as well as inferences capable of being drawn therefrom do not support the above view. Their argument hangs on the reason, among others, that as far as the issue of acts of ownership and enjoyment of land goes, the law is settled that:

"..... evidence of positive and numerous acts of possession is only relevant in the absence of traditional evidence."

Reliance was placed on this court's decisions in Ohiaeri v. Akabeze (supra) and Mogaji v. Cadbury Nig. Limited (supra).

I must point out straight away that traditional evidence, the absence, failure or inconclusiveness of which would lead to a reliance on evidence of

positive and numerous acts of possession, is but one (indeed the FIRST mode in Idundun's Case (supra) out of five ways of proving title to land in dispute. The law in that method (traditional evidence) properly put is that where there are two competing histories relating to land in dispute and it is difficult to determine which is more probable resort to the demeanor of the parties and their witnesses is not the best guide; the duty of court is to test the two stories B by reference to acts in recent times. This was the principle that was given interpretation in the case of Kojo 11 v. Bonsie & anor. (1957) 1 WLR. 1223 wherein the privy Council (per Lord Denning) held inter alia:

"Where there is a conflict of traditional history, one side or the other must be mistaken, yet both may be honest in his belief. In such a case C 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."

This principle dealing with conflict or inconclusiveness in a plaintiff's case has been applied by this Court and other hierarchy of courts in Nigeria as D exemplified in the following cases, to cite but a few:-

1. Agedegudu v. Ajenifula (1963) 1 All NLR. 109 at 115-116.
2. Ekpo v. Ita 11 NLR. 68
3. Ogundiaro v. Gbadamosi (1974) 4 W.S.C.A.27 at 31.
4. P. M. Alade v. Lawrence Awo (1975) 4 S.C. 215 at 228. E
5. Okafor v. Idigo (1984) 1 SCNLR. 481.
6. Chukwueke v. Nwankwo (1985) 2 NWLR. (part 6) 195 at 201.
7. Ogbuokwelu v. Umeanafunkwa (supra).
8. Thanni v. Saibu (1977) 2 S.C. 89.

The above typifies how far evidence of traditional history goes in its role to F aid in sustaining an award or refusal of declaration of title in favour of the plaintiffs/respondents herein for, there are in their case, other ways (indeed three other modes pleaded and proved at the trial in proof of their right in aid or sustenance of such an award of declaration of title, to wit:

(a) acts such as farming on the land extending over sufficient length G of time, numerous and positive as to warrant the inference that they are the true owners of the land in dispute. See Fasoro v. Beyioku (1988) 2 NWLR (part 76) 263 at 271-272

(b) acts of long possession and enjoyment of the land in dispute H sufficient to support a decree of title. See Balogun v. Akanji (1988) 1 NWLR (part 70) 301 at 323

(c) possession of connected or adjacent land in circumstances rendering it probable that they would in addition, be the owners of the land in dispute. See Okechukwu v. Okafor (1961) 2 SCNLR. 369; (1961) 1 All NLR. 685.

From the foregoing, I take the firm view that the appellants' adoption of the views expressed in the dissenting opinion of the learned justice, as a complete misapprehension of the issue when they submitted inter alia that -

"The plaintiffs/respondents clearly pleaded and relied on evidence of traditional history in proof of their case. But in so doing they failed to plead and/or prove how their ancestor Obekwu came to own the land."

It ought to be borne in mind as I had occasion to point out earlier in this judgment, that the respondents based their ownership from time immemorial from Obekwu through Obiano and Ike, through Udewene, Gabriel and Ozulike (1st plaintiff/respondent), Onyejimbe, Josiah who begat John Ike (2nd plaintiff/respondent) and Samuel vide paragraphs 15, 16, 17, 18 and 19 of the Statement of claim (ibid). **It is therefore not correct to say that they did not show how Obekwu and his successors passed on the land in dispute to the present respondents. The respondents' pleading in the above paragraphs of the statement of claim that "the plaintiffs' and their family members from time immemorial have been the communal owners in possession" of the land in dispute amounts to saying that their ancestor Obekwu Egolum first occupied and possessed the land.** "For time immemorial" as defined by Black's Law Dictionary (6th Edn. page 750) means "*times beyond human memory; time out of mind.*" Thus, in Ohiaeri & anor. v. Akabeze & ors. (supra) Akpata, J.S.C. held at page 19 paragraph D E of the Report in similar circumstances thus:

"It is of interest to note that the trial Judge made no mistake in regarding the averment that "the land in dispute was originally the property of Doha" as amounting to saying that Dioha was the founder of the land."

By thus pleading the names of these several ancestors from Obekwu Egolum, the founder down to the respondents, it amounted, in my firm view, to strict compliance with the views held by this Court in Akinloye v. Eyiyola (1968) NMLR. 92 as to proof of traditional history regarding root of title See also Total (Nig.) Ltd. v. Nwako (1978) 5 S.C. 1 at p.12, 13 and 16; Igbodin v. Obianke (1976) 9 & 10 S.C. 179 and Adedire v. Aderemi (1966) N.M.L.R. 398 at page 401. I am therefore in complete agreement with the respondents' submission that they indeed pleaded and proved their traditional history. See Jude Ezeoke v. Moses Nwagbo (1988) 1 NWLR (part 72) 616 at 621. For as Iguh, J.S.C. in Onwugbufo v. Okoye (1966) 1 NWLR (part 424) 252 at 283 clearly put it:

"With profound respect, I cannot agree with the court below that the appellants must on the main issue that arises in this case establish their ownership of the land in dispute from time immemorial and whom their forefathers were before they can lead evidence of their acts of possession on

the land. The reason is because where, as in the present case, the appellants merely relied on mere acts of ownership and possession of the land and did not rely exclusively on traditional evidence as proof of their root of title from a particular source, proof of the original ownership of the land in dispute, such as who founded it, how he founded it and the particulars of the intervening owners through whom he claims cannot arise." (Underlining is mine). B

The latter rational encompassed in the underlined words above is in contrast to what this court decided in Kalio v. Woluchem (1985) 1 NWLR (part 4) 610 at 628, where it was held that where a plaintiff relied on traditional history (simpliciter) he would "aver facts to the founding of the land in dispute, the persons who founded the land and exercised original acts of possession and the persons on whom the title in respect of the land devolved since its founding. See also Piaro v. Tenalo (1976) 12 S.C. 31 at 41. Where he fails to satisfy this requirement, his case fails particularly where the defendant proves good title. See Da Coata v. Ikomi (1968) 1 All NLR. 191. Indeed, the law postulates that where possession rests on traditional history which has failed, then such acts of possession become irrelevant and should not be considered in granting a declaration of title. See Ogungbemi v. Asamu (1986) 3 NWLR (part 27) 161; Mogaji v. Cadbury (Nig.) Ltd. (supra) and Odojin v. Ayoola (1984) 11 S.C. 72. This was the narrow aspect of derivation and devolution of acquisition of land through traditional history on which the writer of the dissenting judgment of the court below dwelt to disagree with the majority view held by that court. He was, in my humble opinion, palpably wrong to have taken such a myopic view of the matter, moreso when the legal position, as Adio J.S.C., admirably put it in Akunyili v. Ejidike (1996) 5 NWLR (part 449) 381: D

"the court below (the Justice who wrote the dissenting Judgment) F thought that proof of a claim for a declaration of title by means of traditional evidence was mutually exclusive with other means of proving the claim. A plaintiff may adopt one or more of the ways of proving ownership, for example, traditional evidence or by means of evidence of acts of ownership or possession. The two or one or the other of them may be sufficient to sustain the claim. It is only where a plaintiff fails to prove his case by means of traditional evidence and also fails to establish it by means of evidence of acts of ownership and possession when these were the means pleaded and riled upon by him that his claim will be dismissed. That was not what happened in this case. The plaintiff/appellant succeeded in proving his claim through H the method alleged." (Parenthesis mine).

As I had occasion to point out at page 406 of the Report:

"Plaintiff could still succeed in an action for declaration of title on acts of exclusive possession and of ownership even where traditional history

was entirely lacking.” See Abdulai v. Manue (1945)10 W.A.C.A. 172.

However, it is a well known principle of law 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. Odu (1935) 2 W.A.C.A. 336 and Bello v. Eweka (1981) 1 S.C. 101. **The onus is on the plaintiffs in a case of declaration of title (in the instant case, the respondents) to prove his/their case on a preponderance of evidence in his/their favour. See Elufisoye v. Alabetutu (1968) N.M.L.R. 298. In the instant case, the respondents have by credible evidence led strictly in compliance with their pleadings, discharge that onus. Re- enforced by the concurrent findings of fact by the two courts below, I have no hesitation in affirming the decision of the court below which confirmed the decision of the trial court.**

On evaluation of evidence, I wish to stress firstly, by saying that the confirmation of the concurrent findings of facts by this court of the decisions of the two courts below is compelling in the sense that it is an avowed and age-long judicial policy in this country that the evaluation of evidence called at the trial, the ascription of probative values to them and making primary findings on them, are matters within the province of the court of trial which has the singular advantage or pre-eminently placed to hear the witnesses testify and watching their demeanours. See Balogun & ors. v. Alimi Agbonda (1974) 1 All N.L.R. (part 2) 66; The Military Governor of Western States v. Afolabi Lanibe & anor. (1974) 1 All N.L.R. (part 2) 179. For this reason, there is a presumption that a trial Judge’s decision on facts is correct - a presumption which must be displaced by a person who seeks to upset the decision if he can. An appellate court for its part in such a case, should always be reluctant to interfere or to substitute its views of the facts for those of the court of trial. See Ajao v. Ajao (1986) 5 NWLR (part 45) 802 and Kponuglo v. Adja Kodaja (1933) 2 W.A.C.A. 24.

Secondly, the court below as an appellate court faced with the trial court’s decision which had been carefully weighed, gave additional reasons, some based on demeanour which had not been faulted, why it must disbelieve certain witnesses (such as DW3, DW4 and DW5) was left with no choice but to agree with the trial court as in the majority decision.

Thirdly, based on the authority of this court’s decisions, the court below could have arrived at a different decision on the primary facts only if they came to the conclusion that the findings of the trial court were perverse or not a result of proper exercise of judicial discretion. See Kuma v. Kuma (1936) 5 W.A.C.A. 4; Akinloye v. Eyiola (supra). As has been demonstrated by this court in Adimora v. Ajufo (1988) 3 N.W.L.R. (part 80) 1 at 15, Nzekwu v. Nzekwu (1989) 2 NWLR (pt. 104) 393 at 396 and Atolagbe v. Shorun (1985)

1 N.W.L.R. (part 2) 360 at 7373 and 375, a finding is said to be perverse when it runs counter to the evidence and pleading or where it has been shown that the trial Judge took into account matters which he ought not to have taken into account or shuts his eyes to the obvious. Thus, the minority judgment of the court below which alleged that the findings of fact of the learned trial Judge were perverse, without showing how, ought not to be countenanced. B Admittedly, the learned trial Judge's style of writing his judgment is not ideally commendable in places but his style is his style and this court cannot impeach it when his conclusions, as here, cannot be faulted. For instance, while discussing the issue of marital custom practised between the appellants and the respondents in Agulu the learned trial Judge made a misplaced C application of the Matrimonial Causes Decree, 1970 whose section 3(1) he quoted, inaptly though, to exemplify his point, as there was no miscarriage of justice thereby. That apart, his judgment was painstaking and thorough. Indeed, the judgment of a court, it is trite to say, can be arrived at through different routes. See Onajobi & anor. v. Olanikpekin & ors. (1985) 11 S.C. D (part 2) 156 at 163; Balewa v. Doherty (1963) 1 W.L.R. 949 at 960 and Arisa v. The State (1988) 3 NWLR (part 83) 387 at 399. It is enough, in my view, if the judgment shows adequate perception of the facts of the case as disclosed in evidence, evaluation of the facts, belief or disbelief of the witnesses vide Isaac Stephen v. The State (1986) 5 NWLR (part 46) 978 at 1005 and Onuoha v. The State (1988) 3 NWLR (part 83) 460 at 464 and a finding based on the evidence accepted by the Court. The judgment of the learned trial Judge in the instant case cannot be said to be deficient in the above attributes. Indeed, an appellate court has to decide whether the decision of the trial Judge was right, not whether his reasons were. See Abaye v. Ofili (1986) 1 S.C. 231 F and Ikejianya v. Uchendu 13 W.A.C.A. 45 at page 46.

In the alternative, the appellants while accepting that the common sense concept the learned trial Judge brought to bear in the resolution of the issues at stake may sometimes be helpful, they (appellants argued that in the instant case they are unhelpful especially when the issues raised were those G of facts which must be decided after evidence, followed by evaluation and which may amount to the throwing away of uniformity in legal proceedings. This argument beside being fatuous and hypothetical, has, in my judgment, no bearing on what the learned trial Judge said, which, devoid of any burden to be discharged by either party, except by way of analogy, is harmless to the H Respondents' case and I so hold.

Fourthly, the numerous other conclusions of facts which the court below reached which were in line with those arrived at by the learned trial Judge, made their two decisions to be concurrent findings on those facts. See

Balogun v. Akanji (supra) at page 319. It is incorrect to say as asserted by the learned justice of the court below who dissented and whose line of argument the appellants have adopted in their argument of this appeal, that the learned trial Judge did not evaluate the evidence in making his findings on them. In any event, the majority decision of the court below, in my view, stated the law correctly when it held inter alia thus"

_____ "*Similarly where the trial court made no findings of fact after evaluating evidence in a civil matter, the appellate court is in as good a position to make such finding from the evidence in the printed record if such findings are not related to any advantage to be gained by watching the demeanour of the witnesses as in the present case where the trial court had considered all the evidence led and made observation on the relevant witnesses after watching their respective demeanours in the witness box. (See Orji v. Zaria Industries Ltd. & anor. 1992) 1 NWLR (part 216) 124 at 141; B.C.C.I. v. Stephens Ind. Ltd. (1992) 3 NWLR (part 232) 272; section 16 of the Court of Appeal Act; order 1 rule 20 and order 3 rule 23 of the Court of Appeal rules and Muraina Ajadi v. Dorcas Olarewaju (supra) per Fatayi-Williams, J.S.C. (as he then was) making it adequately clear that a distinction must be drawn between findings of fact based on the credibility of witnesses and findings based on evaluation of evidence which has been accepted. In the latter case, the court of trial, though it will give weight to the opinion of the trial Judge."*

Be that as it may, as the learned Justice in his dissenting judgment made no findings thereon nor drew any inferences from the accepted facts as found by the trial Judge and in fact the trial judge made detailed findings with which the majority of the Justices of the court below agreed, these culminate in concurrent findings of facts by those two courts, which can only be reversed

unless shown to be perverse or in violation of some essential principles of law or procedure so substantial enough to lead to a miscarriage of justice if left uncorrected. See Onwuka v. Ediala (1989) 1 NWLR (part 96) 182; Onowan v. Iserhien (1976) 9-10 S.C. 95; Enang & ors. v. Adu & ors. (1981) 11-12 S.C. 133 at 170-171; Elike v. Nwankwoala (1984) 12 S.C. 301 at 325 and Okolo v. Eunice Uzoka (1978) 5 S.C. 86, to mention but a few. In the case in

hand, the task of the appellants to upset these findings of fact by the learned trial Judge who based his disbelief of two of the five witnesses called by the appellants upon their demeanour (see Egri v. Uperi (1974) 1 NWLR. 22 at 26 and Chief Frank Ebba v. Chief Warri Ogodo & anor. (1984) 4 S.C. 84 at 99) and the third witness on the facts which negated his impartiality. As the Supreme Court has not the opportunity of seeing those witnesses and so cannot

have the benefit or advantage which the trial court had, this court ought not to disturb those findings of fact for the following reasons:-

(i) *That the appellants were strangers in Agulu because if they were not, they would not have had customs diametrically in conflict with the respondents and further that were both parties to be related, they would not have been intermarrying;*

(ii) *That by reason of the foregoing the appellant's case that they were related to the respondents and so co-owners of their lands in the past B was improbable;*

(iii) *That the two parcels of land verged green and pink in the respondents' plan (Exhibit 'A') are one contiguous, continuous and identical parcels of land, and that the failure of the appellants to cross-examine P.W.8 and PW9 on the evidence on the issue and to call evidence to the contrary, C amounts to an admission;*

(iv) *That the respondents' ancestors built an ekpe wall around the parcel of land comprised of the two pieces of land verged green and pink in Exh. A, both together called Agu Obekwu;*

(v) *That respondents had proved that they have been exercising numerous and positive acts of ownership and possession of the land in dispute including building the ekpe wall around it, farming on it, reaping an economic trees in it and asserting their right when officials of the posts and Telegraphs department went on the land without their consent; and*

(vi) *That respondents' evidence of their traditional history is preferable to the appellant'.*

As against the case put forward by the respondents the appellants had in their statement of defence denied, traversed and joined issues with them in particular that -

(i) *They (appellants) and the respondents descended from a common F ancestor and denied that they were strangers and grantees of the land from the respondents; and asserting that they and the respondents were members of Umunkpoko extended family made up of Onadili (appellants) Okwuogbo (respondents) and Nwike.*

(ii) *They denied that they were strangers who migrated from Arondizuogu and contended that they and the respondents formed the same kith and G kin in Umunkpoko, and asserted that being from a different obi in Umunkpoko, they could, and do, intermarry with persons from another obi.*

(iii) *They denied respondents' ownership of the land in dispute which they maintained is called "Ana Agu Ngene Umuonadili"*

(iv) *On the pleaded tradition over the land, they denied that the land originally belonged to the respondents' ancestor Obekwu and maintained that it descended to them through Onadili, one of Umunkpoko's children. They failed to state how Onadili inherited the land or had it as his share.*

The Court below in upholding the evaluation of the trial court by weighing the case of either side, particularly with reference to the foregoing, held as follows:-

(i) *There is no doubt therefore that there was abundant evidence before the trial court to support the findings of fact made by the trial court B and the conclusion it reached in the case.*”

(ii) *Later, they continued:*

“on the allegation that the learned trial Judge, failed to resolve, in his Judgement, the conflicting issues joined in the pleadings and evidence regarding acts of ownership and possession, I cannot find any such case of C unresolved conflict. What really happened was that the learned trial Judge preferred the evidence adduced by the plaintiffs and rejected the defendants’ case.”

(iii) On whether or not the respondents proved their case by any of five ways recognized by law, the Court by its majority judgment held inter alia.

D “In other words, the plaintiffs were able to meet four of the five ways by which ownership of land may be proved as set out in the Idundun’s & ors. v. Okumagba case.”

(iv) On trespass, their Lordships held inexorably that:

E *“Also on the failure to make any specific findings of fact in respect of acts of trespass, the court was not bound to do that since it was admitted by the defendants in paragraph 34 of their statement of defence that they went on the land, because it belonged to them. Once that collapsed, as it did in this case, their going on to the land became trespass.”*

F (v) On the value of testimonies of some of the defence witnesses to their case, the court below held, making sure it gave particulars of the bases of these conclusions, to wit:

“I have no doubt that the learned trial judge carefully considered the evidence given by D.W.3, D.W.4 and D.W 5 before holding that they were unreliable witnesses.”

G (vi) On proof by the parties of the identity and boundaries of the land in dispute the court below held thus:

“The evidence given by PW2, PW3, P.W7 (Christopher Ogbo), and P.W8 relate to their respective boundaries with the land in dispute in line with the plaintiffs’ survey plan (Exh. A). The defendants on the other hand, virtually failed to call any boundary man as witness in line with their survey plan (Exh. D).”

H (vii) Last but not the least, on the application of section 45 (now section 46) of the Evidence Act earlier alluded to, as being in favour of the

respondents, the court below itself considered the relevant evidence as established on the issue and concluded, rightly in my view, that the learned trial judge came to a correct conclusion on the issue.

The above is not my last word on this matter. For, as later transpired, learned Senior Advocate for the appellants forwarded to me in Chambers a recently decided case by this court Number SC. 136/ 1991 delivered on Friday, December 20, 1996: Lawal v. Olufowobi and now reported in 12 SCNJ. 376: to aid me in the logical conclusion to which I may arrive at therein. Of particular significance, I think, is learned Senior Advocate's reference to a portion of that judgment contained at page 384 of the Report wherein the writer of the lead judgment (Kutigi, J.S.C.) had this to say: B

"I think mere pleading as the plaintiffs had done in this case, that they (Ibipe Community) were founded in 1425 A.D. and therefore had since owned and possessed the land in dispute is not sufficient pleading of tradition. In this regard the plaintiffs were bound to have pleaded who founded the land, how it was founded and particulars of the intervening owners through whom they claim. (See Akiniloye & anor v. Eyiola (1968) NMLR. 92, Olujinle v. Adeagbo (1988) 2 NWLR (Part 75) 238, (Adejumo v. Ayantegbe (1989) 3 NWLR (Part 110) 47). The lower courts therefore rightly came to the conclusion that the plaintiffs failed to prove that the land in dispute is Ibipe Community land." C

With profound respect to the learned Senior Advocate, on the strength of the respondents' Pleading that their ancestors, beginning with Obekwu, had owned and possessed the land in dispute from time immemorial, quite apart from the fact that the issue did not arise from the pleadings, **it would, in my view, be unjust to insist that respondents must fail because they did not show how Obekwu first acquired the land.** For, as earlier pointed out, "time immemorial" means "time beyond human memory; time out of mind". See Blacks Law Dictionary (6th Edn. p.750 (ibid). Indeed, it would run against the grain of justice to insist that the respondents who had pleaded and called evidence, as pointed out above, must fail because they did not call evidence, on an incident which occurred beyond human memory. D

For, come to think of it, any evidence which the respondents might have given as to the precise manner in which Obekwu Egolum first acquired the land in dispute several generations ago, beyond living memory could have been no better than speculative make -belief. It is to obviate such attempt at recollecting and reconstructing such pieces of evidence that the privy council had to warn in the case of Kojo Il v. Bonsie (supra) that "Witnesses of the utmost veracity may speak honestly but erroneously as to what took place a hundred years ago." Thus, it is for the inherent unreliability of such type of evidence that the court in that case devised a more reliable approach E

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culminating in the principle laid down in Kojo II v. Bonsie (supra) and has been adopted by this court in innumerable cases, some of which I have mentioned hereinbefore. Hence, the rationale behind this court's decision in Balogun & ors v. Akaji & ors. (supra) wherein at page 317 of the Report Nnamani, JSC, said:

B *"Of course if the evidence of tradition led by both sides is inconclusive then the court will have recourse to recent acts of possession and ownership."*

While the case of lawal v. Olufowobi (supra) failed because it hung from a traditional history of "immemorial" tenor which could not be sustained, the instant case rests on the firm anchor of four ways of establishing the respondent's title to the land in dispute. The respondent's case would still survive were the traditional history aspect to have failed. Fortunately, it did not and I uphold the conclusion arrived at by the court below. My answer to respondent's issues 3, 02 and 3,03 which collectively tally with the appellant's issue (1) is accordingly in the affirmative.

D In answering the question posed in respondent's issue 3.04. Which corresponds with appellant's issue (iii) whose grouse is whether from the facts and circumstances of this case the court below was in error in affirming the decision of the trial court which invoked section 45 (now section 46) of the Evidence Act in favour of the respondents, much has already been said in respect of this issue hereinbefore to need any repetition here. It will suffice to add as follows:-

Firstly, for a fair and proper construction of the section, it cannot be said to mean that its application is limited to cases in which "the land in dispute is surrounded by other lands belonging to " the party which asserts ownership of the land in dispute. The section clearly provides that it shall apply where ".....the other land is situated or connected therewith by locality or similarity that what is true as to one piece of land is likely to be true of the other pieces of land".

G Secondly, it is pertinent to make an observation that in the clear provisions of the section, what the appellants have tried to do to cases in which the land in dispute is completely surrounded by the land proved or admitted to belong to the respondents, is to erroneously do violence to the clear words of the statute. In this regard I take the view that Idundun & ors. v. Okumagba & ors. (supra) has been quoted out of context. This is because, in that case this court stated that one of the circumstances in which the provisions of the section (section 146 (ibid)) could properly be invoked is:

"Finally, proof of possession of connected or adjacent land in

circumstances rendering it probable that the owner of such connected or adjacent land, would in addition be the owner of the land in dispute."

See Okechukwu v. Okafor (supra), followed in many authoritative supreme court decisions binding upon the two courts below, including Okafor v. Idigo (1984) 1 SCNLR. 481; Atanda v. Ajani (1989) 3 NWLR (part iii) 511; Buraimoh v. Bamgbose (1989) 3 NWLR

(part 109) 511 and Motunwase v. Sorungbe (1985) 5 NWLR (part 92) 90.

Thirdly, having due regard to the pleadings and the evidence led, the two courts below were, in my respectful view, entitled to have applied the principle as correct and to have invoked it in the respondent's favour, namely that-

(a) In the respondent's paragraphs 13, 14 and 15 of their Statement of Claim and their plan (Exh. A) the following facts emerged, to wit ; that it is their case that their entire land is verged red in Exh A and is called "Ana Obekwu" or ' Agu Obekwu;" that the area Verged red is made up of the area verged green, which is not in dispute and the area verged green and red- the Agulu- Nnobi Road which has not been proved to be a boundary mark, but are contiguous to one another and are almost completely surrounded by an "ekpe" wall.

(b) The appellants in their pleadings denied or traversed some of these averments; hence issues arose on them and became matters for evidence at the trial: see

Lewis & peat (N.R.I) Ltd. v. Akhimien (1976) 7 S.C. 157; (1976) 1 All N.L.R. (part I)

460 and Otakpo v. Sunmonu (1987) 2 N.W.L.R. (part 58) 587.

(c) At the trial, the respondents gave evidence through p.w 8 and F p.w.9 in line with their pleading and claimed ownership of both parcels and showed that they were one and the same continuous piece or parcel of land. Not only did the appellants not cross examine these witnesses on this vital issue, but also they called no evidence to show that the areas verged green and pink on respondent's plan (Exh. A) were not contiguous or were not one contiguous piece of land.

They did not prove that the road separating the parts of Agu Obekwu marked green and pink was a boundary.

(d) On the evidence before him, the learned trial judge found that the respondent's ancestor had built the ekpe wall around the whole of Agu Obekwu marked green and pink on Exh. A in order to guard their farmlands against their neighbours to the north and west and the settlers to whom they granted part of their land to the east. He had no difficulty in finding from Exh. A the unchallenged evidence of P.W.8 and P.W.9 and the supportive evidence

of P.W.2, P.W.3 and P.W.7 that the two parcels of land verged green and pink and lying to the north and south of Agulu-Nnobi Road were contiguous and one continuous parcel of land. Even the appellants; surveyor (DW1) admitted that there is nothing between the land in dispute and the road. Invoking section 45 (now section 46) on the issue of ownership of the land verged pink B on Exh. A, he held that

“.....what is true as to plaintiffs’ “Ana Obekwu” North of Agulu-Nnobi main road up to where it has boundary with Okpu Village is likely to be true of the plaintiffs’ “Ana Obekwu” South of Agulu-Nnobi main road irrespective of the defendants’ encroachment from the east.....”

C **The learned trial Judge having thus resolved the issue of possession and ownership of the parcel verged pink by the application of section 45 (now section 46) of the Evidence Act - a finding which the court below affirmed - this court has no option than to confirm the conclusion of the two lower courts. And as this is one of the ways of proving title, I have no hesitation in holding that even on this conclusion alone, this appeal D ought to fail and stand dismissed.**

This issue is accordingly answered in the negative and it is resolved against the appellants.

In the result, this appeal lacks substance and it accordingly fails. I therefore dismiss it and award costs assessed in the sum of N1,000 against E the appellants in the respondents’ favour.

UWAIS CJN

I have had the advantage of reading in draft the judgement read by F my learned brother Onu, J.S.C. I agree that there is no merit in this appeal. Accordingly, I too hereby dismiss the appeal and affirm the decision of the Court of Appeal with N1,000.00 costs to the Respondents.

BELGORE JSC

G The case, as fought in the trial Court was on facts and the two lower Courts on those facts found for plaintiffs/respondents. In the absence of any compelling legal reasons for interfering with those facts as found by the lower Courts, this Court will allow matters to rest where they are. I agree entirely with the judgment of my learned brother , Onu, J.S.C. , that this appeal is devoid of any merit. I also dismiss it for the reasons ably advanced in that H judgment and make the same consequential orders as to costs.

KUTIGI JSC

The plaintiffs claimed for :-

- (i) *a declaration of title (customary right of occupancy) to the land in dispute known as "Ana Obekwu" or "Agu Obekwu";*
- (ii) *N5,000.00 general damages for trespass; and*
- (iii) *perpetual injunction restraining the defendants etc. from further B trespass.*

In their statement of claim, they had pleaded amongst others, thus²

20. *Popular on the Agu Obekwu land was an Ukpaka tree called "Ukpaka Obekwu" around which bad things including dead bodies were dropped. This tree the stump of which is shown on plaintiffs' plan continued C to cause fear on the village inhabitants until the present Agulu Adazi-Nnewi road was built across it in recent times.*

I am inclined to agree with the finding of the lower courts that by these averments carefully read together, the plaintiffs are saying that their ancestor first founded or settled on a large parcel of land part of which is the land in dispute. The plaintiffs therefore no doubt based their claim for ownership of the land in dispute on inheritance and or devolution of same, from Obekwu whom they said was their ancestor. Consequently, they pleaded and clearly relied on evidence of traditional history in proof of their case.

On traditional evidence given by the plaintiffs the learned trial judge E said:-

"The historic evidence given by the plaintiffs is no rumour, but the experiences of their great grandparents to grandparents and retold to them by their parents which was a living fact."

He had before now observed that:-

"From the historical background, it would appear that the plaintiffs are the descendants of Obekwu family Their ancestor had occupied the land shown in plan No. ASC/AN 449/LD/79 (Exhibit 'A' in the proceeding)"

The Court of Appeal per Akintan, JCA., who read the lead majority G judgment, also observed thus:-

² See p. 903 C for paras. 13 - 19 & 21 of the statement of claim

"There is no doubt therefore that there was abundant evidence before the trial Court to support the findings of fact made by the trial court and the conclusions it reached in the case I have no doubt in holding H that the plaintiffs satisfactorily led traditional evidence in support of their pleadings."

I therefore agree with Chief Ikeazor, SAN. for the defendants, that

the lower courts having found that the evidence of traditional history in this case was capable of sustaining an award of a declaration of title in favour of the plaintiffs, it was no longer necessary for them to have considered evidence of numerous acts of possession etc. The law simply is that once radical title has been pleaded and proved as in this case, acts of ownership or possession resulting from such title need no longer be considered for they are then non-issues. Conversely where the title pleaded has not been proved, it will be unnecessary to consider acts of possession which are no longer acts of possession but rather acts of trespass. Moreover acts of long possession in a claim for a declaration of title are really a weapon more of “defence” than of “offence”, and that although under Section 145 of the Evidence Act, possession may raise a presumption of ownership, it does not do more and cannot stand when another proves a good title. (See BALOGUN V. AKANJI (1988) 1 NWLR (part 70) 301; FASORO & ANOR V. BEYIOKU & ORS. (1988) 2 NWLR (part 76) 263; DACOSTA V. IKOMI (1968) 1 All NLR 394). This point alone however, is not sufficient to sustain the appeal.

D On the concurrent findings of the trial High Court and the Court of Appeal which have not been shown to be perverse, I am unable to interfere with the judgment appealed. (See for example IRIRI V. ERHURBARA (1991) 2 NWLR 173).

E It is for the above reasons that I agree with the conclusion in the lead judgment of my learned brother, Onu, JSC. which I read before now to dismiss the appeal. The appeal is therefore dismissed. I endorse the order for costs.

F **IGUH JSC**

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Onu, J.S.C. and I agree entirely that this appeal lacks substance and ought to be dismissed.

G The main argument of learned counsel for the appellants, Chief Chimezie Ikeazor, S.A.N. is that the respondents’ case was predicated on ownership of the land in dispute by traditional evidence. He made reference to the decisions of this Court in Onwugbufor v. Okoye (1996) 1 N.W.L.R. (part 424) 252 and Amobi v. Amobi (1996) 8 N.W.L.R. (part 469) 638 at 658 contended that the respondents failed to establish the essential elements of the traditional history they alleged. He claimed that they cannot consequently rely on any acts of ownership and possession of the land as such acts ought to fail along with the evidence of tradition which the respondents were unable to prove. Learned counsel cited the

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case of Udeze v. Chidebe (1990) 1 N.W.L.R. (part 125) 141 at 160 and submitted that evidence of settlement is not enough to establish traditional history. He urged the Court to allow the appeal.

Learned counsel for the respondents, Chief Ozoemena Onyali, in his reply, referred to the decision of this Court in Idundun v. Okumagba (1976) 9 & 10 S.C. 727 and stressed that the respondents, in addition to traditional evidence, pleaded and relied on various other roots of title to the land in dispute. These included numerous and positive acts of possession and ownership, extending over sufficient length of time as to warrant the inference that they are the true owners of the land and acts of possession of connected or adjacent land under circumstance which rendered it probable that being the owners of such adjacent land they were also the owners of the land in dispute. B C

It is beyond dispute, as submitted by chief Ikeazor, S.A.N. that where a party to an action claims entitlement to a declaration of title to land, not on ground of numerous and positive acts of possession thereof, but simply on evidence of tradition, it is not enough for him to show that he has been in possession of the land for a long time; he must, in addition, prove the origin and nature of that possession as well as when and how he acquired exclusive ownership of the land. See Raphael Udeze and others v. Paul Chidebe and others (1990) 1 N.W.L.R (Part 125) 41 at 160. In the present case, however, the respondents not only pleaded and relied on traditional evidence, they also pleaded and relied on various other roots of title, the proof of any which would entitle them to title of the sort claimed. D E

See Atanda v. Ajani (1989) 3 N.W.L.R. (part 111) 511, Anyanwu v. Mbara (1992) 5 N.W.L.R. (part 242) 381. A claimant in a declaration of title action needs not plead and prove any more than one root of title to succeed. Where, however, he pleads and relies on more than one root of title, proof of one single root of title is sufficient to sustain his title to the land claimed. See Balogun and others v. Akanji and Another (1988) Vol. 19 1 N. S. C. C. 180. F G

On the issue of the respondent's traditional history and various other evidence of roots of title, the learned trial judge after an exhaustive review of the evidence found that it was the respondent's great grand ancestor, Obekwu, that was the founder of the land in dispute from time beyond human memory, said he:- H

"From the historical background it would appear that the plaintiffs are the descendants of Ubekwu family of kpoko from Ukuta in Nkitaku Village in Agulu. Their ancestors had occupied the land shown in plan No. ASC/AN 449/LD/ 79 having common boundaries with their neighbours

and some settlers they gave land to the right of their living homes. The early settlers from Ndizuogu were Nkado Mbanusi, Okolonkwo Ogbenye-yeonu Maduka and Nkpidike. With time they settlers had by few inter marriages integrated party with Umuonadili so that when Kpidike and his family died off and Maduka and Ogbenyeonu and their families returned to Ndizuogu, the remaining settlers without consent of their grantors expanded and occupied the lands granted to Maduka and Nkpidike; but not knowing the boundaries of Maduka and Nkpidike with the plaintiffs, they expanded encroaching on the land of the plaintiffs even over the plaintiffs Ekpe boundary over which they common land when wilfred Ogbo of the plaintiffs family died, the defendants continued their expanding. When the plaintiffs sued as result, the defendants reached with a plan which depicted them as having been totally in possession. The same plan exposed their plot when their witnesses could not corroborate the features on the plan while testifying from their minds eye particularly under cross examination.”

D He concluded:-

“ I have found as a fact on the balance of probabilities that the ancestors of the plaintiffs from time immemorial had built the Ekpe walls guarding their farm land against their neighbours in the North and West and settlers whom they gave land by the right where the settlers had by marriage been trying to grow into part of the Onadili extended family. When Nkpidike, one of the original settlers died and was extinct and Maduka with his sons, another of the original settlers and Ogbenyeonu, for private reason, returned back to Ndizuogu, the others remaining forcibly expended and occupied the area vacated by these demised and outgoing settlers. Not being satisfied with their gains thus made, they expanded further and encroached beyond the Ekpe walls of the plaintiffs boundary, cultivated and farmed; which act sparked -off these differences. And when the plaintiffs sued, the defendants wanted to exploit it and to totally evict their benefactors. The historic evidence given by plaintiffs is no rumour but the experience of what their great grand parents told to grand parents and retold to them by their parents which was a living fact.”

The learned trial judge further found it established that the juju shrine “Ududonka” was on the respondents’ land in dispute and that its high priest, Ozulike Obiano, came from the respondents’ family. He considered the evidence of each and every witness that testified for the parties and came to the conclusion that those of the respondents were entirely more convincing, credible and reliable. On the other hand, he found the testimony of the appellants’ witnesses, in the main, as unimpressive and not

worthy of any credence. He was additionally of the view that the respondents had established their possession of the connected or adjacent land in circumstances which rendered it probable that they were also the owners of the land in dispute.

The Court of Appeal in affirming the above views of the trial Court commented thus:-

“The facts pleaded and proved by evidence by the plaintiffs in the instant case are that the land in dispute formed part of the plaintiffs’ family landed properties communally owned and occupied from time immemorial. That Obekwu Egolum was their ancestor who first occupied the land and that it was through the said man that the present plaintiffs came to inherit the land. The plaintiffs thereafter traced their genealogy right from the said Obekwu Egolum to the present plaintiffs. The plaintiffs also pleaded and led evidence to establish that they had been enjoying the land in dispute along with their adjoining undisputed land by farming and reaping the economic trees thereon without let or hindrance from any person including the present defendants until sometime in 1963 when the defendants first trespassed thereon.

Evidence was also led by the 2nd plaintiff (who testified as P.W.9) to the effect that one of the features of the plaintiffs’ entire land in the area, including the land in dispute was that the plaintiffs’ entire land was fenced with “Ekpe” walls and that this was done by their ancestors. Dr. Charles Iwuaha (P.W.1) the surveyor employed by the plaintiffs, produced and tendered a survey plan No. AS/AN,449/LD/79 (admitted as Ext. A). He also confirmed in his evidence at the hearing that as at the time he went on to the land to carry out the survey work, he saw the remains of the ‘Ekpe’ walls which originally formed a boundary between the plaintiff’s land and the one alleged given to the defendants.

The plaintiffs also pleaded and led evidence to the effect that the defendants were strangers who came from Aro-Ndizuogu and that they were not members of the same family as the plaintiffs, hence there were instances of inter-marriages between members of the two families. This would not have been possible, according to the plaintiffs, and the defendants had been members of the same family.”

It concluded :-

“There is no doubt therefore that there was abundant evidence before the trial Court to support the findings of facts made by the trial Court and the conclusion it reached in the case. The next point to be resolved therefore is whether the plaintiffs have in fact satisfied any of the five ways by which title to land should be prove as laid down in Idundun & Ors. V.

Okumagba, supra. In answering that question, I have no doubt in holding that the plaintiffs satisfactorily led traditional evidence in support of their pleading. They have also successfully led evidence to show acts such as farming on the land extending over a sufficient length of time, numerous and positive as to warrant the inference that they are the true owners of the land in dispute.

The plaintiffs were also able to prove acts of long possession and enjoyment of the land beginning with their great ancestor, Obekwu Egolum, right to the present plaintiffs. They also proved that they were in possession of connected or adjacent land in circumstances rendering it probable that they would, in addition, be the owners of the land in dispute.

In other words, the plaintiffs were able to meet four of the five ways by which ownership of land may be proved as set out in the Idundun & Ors. V. Okumagba case."

I have myself studied the above concurrent findings of the two Courts below and must state that from the overwhelming evidence in support thereof, I can find no reason to interfere with them,

Learned counsel for the appellants drew the attention of the Court to the decisions of this Court in Udeze v. Chidebe and Amobi v. Amobi, supra, and submitted that mere evidence of settlement is insufficient to establish a claim in declaration of title to land. In Amobi's case, the plaintiff who claimed that his father owned the land in dispute neither pleaded nor established how his father came to own the land. His claim was accordingly dismissed. In the present case, however, the respondents pleaded Inter alia by way of traditional evidence that their great grand father Obekwu Egolum was the first occupier and fonder of the land in dispute.

This claim, he was able to establish before the trial Court. The finding was also affirmed by the Court below. How Obekwu founded the land, on the evidence accepted by both Courts below, was clearly stated to be as a result of his being the first settler to occupy the land in dispute. The respondents were also able to establish the intervening previous members of their family who similarly occupied and owned the land before them and through whom title to the land devolved on them by inheritance.

The law is well settled that where evidence of tradition is relied on in proof of declaration of title to land, the plaintiff, to succeed, must plead and establish such facts as :-

1. Who founded the land,
2. How he founded the land and
3. The particulars of the intervening owners through whom he claims.

See Akinloye v. Bello Eyiyaola (1968) N.M.L.R. 92, Sunday piaro v. Chief Tenalo and Another (1976) 12 S.C. 31 at 41, Olujinle v. Adeagbo (1988) 2 N.W.L.R. (part 75) 238, Adejumo v. Ayantegbe (1989) 3 N.W.L.R. (part 110) 417, Anyanwu v. Mbara (1992) 5 N.W.L.R. (part 242) 386 at 399 etc. The above constituents of traditional evidence were firmly established in this case. I think the respondents in the circumstances established their ownership of the land in dispute, not only by traditional evidence, but by prove of acts of ownership which extended over sufficient length of time, numerous and positive enough to warrant the inference that they are the true owners thereof and proof of acts of long possession and enjoyment of the land under section 45 of the Evidence Act.

It is for the above and the more elaborate reasons contained in the leading judgment of my learned brother that I, too, dismiss this appeal as lacking in merit. I abide by the order for costs contained in the leading judgment.

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