

SUPREME COURT OF NIGERIA

6TH JUNE, 1997. SC. 310/1990

**CORAM:- S. M. A. BELGORE, M. E. OGUNDARE, E. O. OGWUEGBU,
S. U. ONU, Y. O. ADIO, JJSC**

CHIEF J. I. ILEDARE PLAINTIFF/APPELLANT/RESPONDENT
AND
J. O. AJAGBONNA DEFENDANT/RESPONDENT/APPELLANT

COURTS - Customary courts - Where there is abundant evidence in support of area court's findings - The judgment would be upheld - Upon the principle of placing broad interpretation - On customary court's proceedings.

LAND LAW - Evidence - Presumption under S. 146 of the Evidence Act - As to person in possession being presumed owner - Cannot arise where plaintiff proved his title to the land in dispute.

LAND LAW - Title - Where plaintiff proved his root of title - And appellant was not shown to be in possession - S. 146 of the Evidence Act will not be applied in appellant's favour.

FACTS

Before the Yagba Area Court Grade I holden at Isanlu, Kwara State, the plaintiff/respondent filed an action against the defendant/appellant (both parties representing their respective communities) claiming title to the land in dispute. The trial Area Court which also visited the locus in quo, relied on the abundant evidence before it in finding for the plaintiff. Defendant's appeal to the Upper Area Court sitting in Lokoja was allowed in part as that court ordered a retrial. Both parties appealed to the High Court Lokoja, which allowed the defendant's appeal and dismissed the plaintiff's claim.

Being aggrieved, plaintiff appealed to the Court of Appeal Kaduna which allowed the appeal by restoring the judgment of the trial Area Court. Defendant has now appealed to the Supreme Court raising 5 issues which may be summarized into a single issue.

ISSUE FOR DETERMINATION

"Was the Court of Appeal correct in setting aside and reversing the judgment of the High Court."

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

Abundant evidence in support of Area Court's findings

1. There is abundant evidence to support the findings of the trial Area Court which was affirmed by the Court of Appeal. It should be remembered that this case was tried by a customary court and latitude must be given and broad interpretation placed on its proceedings and the courts are enjoined to look at the substance rather than the form. (p. 1129 D)

Where plaintiff proved his root of title

2. The inferences drawn show conclusively that the plaintiff proved his root of title, that various acts of ownership claimed by the appellant were not proved; that section 145 of the evidence Act did not apply and the trial Area Court visited the locus in quo, saw the area claimed by the plaintiff, heard the parties during the inspection and made a sketch map. That court was in no doubt as to the ownership of the land in dispute. The appellant was not shown to be in possession of the land in dispute as to warrant the application of section 146 of the Evidence Act. (p. 1129 F)

Presumption under s. 146 of the Evidence Act

3. It is only where a plaintiff fails to prove his title to the land in dispute that the defendant's possession raises the presumption which the plaintiff is unable to rebut. Section 146 of the Evidence Act cannot stand when the plaintiff proves good title as in this case. It is my view that the Court of Appeal neither misdirected itself on the facts nor misconceived the evidence. Its conclusion is justified. (p. 1129 H)

REPRESENTATION

Mr. A. Anyanniyi, with A. S. Abimbola, for the Appellant
J. O. Ijaodola, Esq., for the Respondent

CASES REFERRED TO

Opebiyi v. Oshoboja (1976) 10 S.C. 195
Onyekaonwu v. Ekwubiri (1966) 1 All N.L.R. 32.
Elebute v. Odekilekun (1969) 1 All N.L.R. 449
Ijale v. Ajadi (1967) F.N.L.R. 300
Ikpang v. Edoho (1978) 6-7 S.C. 221
Udofia v. Afia 6 W.A.C.A. 216 at 218
Da Costa v. Ikomi (1968) 1 ALL N.L.R. 394
Gyang v. Gyang (1969) NNLR. 99
Waziri v. Ugye (1977) NNLR 129
Barau v. Board of Customs & Excise (1982) 10 S.C. 48

Bkare v. The State (1987) 1 NWLR (part 52) 579; (1987) 3 SCNJ I

STATUTE REFERRED TO

Evidence Act s. 146

LEAD JUDGMENT BY OGWUEGBU JSC

In the Yagba Area court Grade 1 holden at Isanlu, Kwara State the plaintiff for himself and as representing Ere Community in West Yagba claimed from the Kati family of Egbe also in West Yagbe and represented by the defendant on record "a parcel of land belonging to Ogbagbo family in Odo-Ere situate between Lawiri River and Okuta gigiri hill on both left and right of the Federal Road Kabba - Ilorin and between odo-Ere and Egbe township."

The Yagba Area Court Grade 1 after carefully reviewing and evaluating the evidence led by both parties held as follows:

" From the facts above we are satisfied that the plaintiff was able to establish ownership of the land in dispute as the land of Odo-Ere and therefore the land between Lawiri river and Okutagigiri between Ode-Ere town and Egbe town is awarded to the plaintiff (Odo-Ere Community)."

The defendant who was aggrieved by the decision of the Yagba Area Court Grade 1 appealed to the Upper Area Court sitting at Lokoja. The court allowed the defendant's appeal, set aside the decision for the Yagba Area Court Grade 1 and ordered a re-trial by the Upper Area Court, Ilorin. Both parties were dissatisfied with the decision of the Upper Area Court Lokoja and appealed to the High Court Lokoja sitting in its appellate jurisdiction. This court allowed the appeal of the defendant, set aside the decisions of the Upper Area Court and the trial Area Court. The plaintiff's claim was dismissed. On a further appeal by the plaintiff to the Court of Appeal, Kaduna Division, the judgment of the High Court was set aside and that of the Yagba Area Court Grade 1 was restored.

The defendant as would be expected has appealed to this court against the decision of the Court of Appeal.

Both parties filed and exchanged their respective briefs of argument. The defendant/appellant identified the following five issues for determination in the appeal:-

(a) *Did the Court of Appeal not misdirect itself on the facts when it held that by the plaintiff was accepted by the court of trial when there was such finding? (Ground 1)*

(b) *Did not the High Court properly interfere and make inferential findings which it was entitled to make from the primary evidence on the record (Grounds 2 and 3).*

(c) *Is the Court of Appeal not wrong to have held that there was no member of the defendant's village who built a house on the land in dispute or near it and thereby came to a wrong decision that the defendants were not in firm possession of the land. (Ground 3)*

(d) *Does the finding of the High Court that the defendants had more acts of possession on the area of land in dispute not raise in their favour:*

(i) *a statutory presumption of ownership which was not rebutted;*

(ii) *as well as a logical inference of ownership being in them as against the plaintiff? (Grounds 3 and 4)*

(e) *Was the judgment of the Court of Appeal not infected with misreception of evidence and irrelevant matters which rendered the judgment unsupportable? (Grounds 3, 4 and 5)."*

After setting out the above issues in the appellant's brief of argument, the learned appellant's counsel in paragraph 9.2 of the briefs stated:

"Having regard to the Issues for Determination and the posture of this case it is submitted that all the issues for determination and argument in this appeal are directed to showing that the judgment of the Court of Appeal was for the reasons which it gave wrong in law and on the facts in setting aside and reversing the judgment of the High Court (where both parties were appellants)."

He proceeded to argue all the issues together.

In paragraph C of the respondent's brief the only issue identified by the respondent is:

"Was the Court of Appeal correct in setting aside and reversing the judgment of the High Court."

This agrees with the summary of the issues for determination set out in paragraph 9.2 of the appellant's brief.

As stated earlier in this judgment, after a very careful review and appraisal of the evidence. The Area Court made the following findings:

"1. Area Court was established at Odo-Ere for many years ago and all the Obas of West-Yagba met there to hold court sessions and there was no any other courts in any part of West Yagba Area again in those days. This may mean that Odo-Ere town has been existing before any other town existed in West Yagba and this made it to have the first Area Court in West Yagba.

2. Hoeing road from one town to a certain place was an important land mark and boundary being recognized by any part in Oyi L.G.A. in those days as the boundary between a community and another community.

3. The defendant listed about 28 names whom his family was al-

leged to have given land in dispute but failed to call any of them as neutral people to give evidence in this case. Adebayo whom they claimed to have been arrested for harvesting locust bean fruit should have been called to testify in this case to buttress their claim over the land in dispute.

4. Exhibits D1-D6 tendered by the defendant could have played a very important roll (sic) had it been that the compensation awarded by the Dumez company to the individual persons was only paid to the Ikat family on the vouchers, because it is a common knowledge that if a company destroys anybody's crops that company is liable to pay for the crops destroyed and it was the individual names that appeared on the vouchers.
5. Shrines are always very important in any land dispute and non (sic) of the parties took us to any place of worship of any god on the disputed land during land inspection."

It was argued in the appellant's brief that:

1. The establishment of an Area Court in Odo-Ere many years ago is nothing more than a conjecture which has nothing to do with the case.
2. Hoeing road from one community to another is irrelevant unless its relevance to the case is proved by evidence and that there is no such evidence.
3. The 28 names listed by the defendant whom his family gave land was relevant and weighty and that the defendant's evidence on this was not controverted.
4. Adebayo could not have been called as a witness when the man was arrested by the defendant and the evidence of his arrest was given by the defendant.
5. The evidence of the defendant was that Dumez Construction Company damaged some of their crops and paid compensation to his people and that this evidence was not challenged.
6. The defendant showed more acts of possession or ownership on the land in dispute than the plaintiff.
7. The defendant's evidence not having been challenged in cross-examination, ought to have been accepted as it was credible.

We were referred to the case of Opebiyi v. Oshoboja & Or. (1976) 10 S.C. 195 among others. We were urged to find that defendant is the person in possession by virtue of section 145 of the Evidence Act. Counsel relied on the cases of Onyekwonwu v. Ekwubire (1996) 1 All N.L.R 32, Elebute v. Ode kilekun (1969) 1 All N.L.R. 449 and Ijale v. Ajadi (1967) F.N.L.R. 300.

It was contended in the respondent's brief that it is the exclusive prerogative of a trial court who heard and saw the witnesses while they gave evidence to determine their credibility and that the court below was right in

reversing the judgment of the High Court.

Notice of preliminary objection was given in paragraph B of the respondent's brief of argument filed on 17:12:93 to the effect that grounds 1, 2, 3, 4, and 5 of the appellant's amended grounds of appeal filed on 22:11:93 are incompetent. The objection was withdrawn at the hearing of the appeal on 17:3:97 by the learned counsel for the respondent and it was accordingly B struck out.

As to the acts of possession or ownership, the court below observed that it may be true that the defendant showed more acts of possession or ownership than the appellant; that it required more than that to prove title to land and that the said acts must be related to the area of land in dispute. C

I will now consider the acts of ownership or possession relied upon by the defendant. Both the trial Area Court and the Court of Appeal examined the act of ownership of the land by the defendant which arose from compensation paid by Dumez Construction Company in 1973 for damages done to economic crops and trees during the construction of Ilorin - Lokoja road. The trial court observed that if the compensation had been paid to Ikati family as against individuals, Exhibits D1 - D6 would have played a very important role. The court below went further to hold that the exhibits did not state the name or even the location of the land in respect of which compensation was paid. When the defendant tendered the exhibits the plaintiff also pointed out that E the exhibits do not bear the name of the land in dispute. In other words, the exhibits are not referable to the land in dispute. The court below came to the conclusion that Exhibits D1 - D6 cannot be said to be evidence of acts of ownership done by the respondent on any particular land.

The defendant and his witnesses testified that in 1971 his family F (Ikati family of Egbe) gave a portion of the land in dispute to Philip Morris Company where they erected a building. The trial Area Court found during its inspection that the building is 50 yards away from the boundary of the land in dispute at Okutagigiri. This can be seen from the sketch map prepared by the Area Court when the members of that court inspected the land in dispute on G 20:8:86.

As to who gave out the portion of land where a Nursery Garden was established by the Ministry of Agriculture on the land in dispute, P.W.3 His Highness Mark Dada of Igbaruku Okeri, the Oba of West Yagba testified as follows:

"I know that this land Okutadudu which is in dispute belongs to Ere community. In 1945 when the Ministry of Agriculture sought land for their nursery garden at a place between Old Odo-Ere and Egbe, I was on of those who followed them to the site it was the Elere who was asked to hand

H

over the land in question to the Ministry of Agriculture because the land belongs to Eere/community. It was the Ministry of Agric. under the Native Authority who sought for the land,"

Under cross-examination, P.W. 3 stated|:

By Defendant: *"Question: From whom did the Ministry of Agric. beg for B land for their Nursery Garden?*

Ans: From Ere Community and I was called by the Ere Community to witness it.

Question: Did you know Aina Aganyin as the Oba of Egbe in those days?

C Ans: I knew him very well.

Question: (Did) (sic) Aina Ayanyin present at the time when the Ministry of Agric. begged for land?

Ans: Aina Aganyin the then Oba was there.

By plaintiff: Question: Could you remember that no body can give out land D for any project in West Yagba without informing you?

Ans: It is true.

Question: Could you remember that it was Elere of Ere Asorosebiagba who cut leaves and gave them to you and you gave the leaves to the Agric. Officers?

E Ans: Yes it is true.

Question: Could you remember that Elegbe of Egbe then Chief Aina Owojanye and his Bales Babaliworamo and Omoba Olola did not oppose to this that day?

Ans: Yes it is true.

F The point made by the plaintiff from the evidence of P.W. 3 is that the Oba of Egbe and his Bales were present when the Elere of Ere gave the land to the Ministry of Agriculture through P.W. 3 and that they raised no objection.

On other acts of possession, the court below found as follows:

"It must also be pointed that throughout the evidence of the respon- G dents (sic) there was no indication that any member of Respondents (sic) village built or had any house on the land in dispute or near it. The act of letting out land to outsiders to farm or build upon were of recent origin and so could well amount to the acts of trespass the appellants are suing about. In effect therefore, one cannot say H that the acts of possession relied upon by the Respondents were "numerous and positive enough" as to lead to the inference that the Respondent were the owners of the land."

The Court of Appeal went further to make the following findings:

"Another reason why the case of the Respondent was weak was that

their traditional history of the land left much to be desired. Most of the defence witnesses could not tell how they came by the land, nor how their ancestors came by it. So they had no root of title to show. In contrast with this was the fact that the appellants relied on a customary grant made to their fore-fathers by Ogbagbo family of Ere, and a member of the said family, in the person of P.W. 2 (Alhaji Jimoh Odojin) testified to confirm the said grant. Last but not the least was the fact that the trial courts judges as custodians of the customs, history and tradition of their people took judicial notice of the fact that Odo-Ere town has been existing before any other town existed in West Yagba, and this made it have the first Area Court in West Yagba. Coupled with this was the fact that trial Area Court actually visited the locus in quo, and saw the area claimed by the appellants (sic) as well as its boundaries, and also drew a sketch as evidence of what they saw. So, on the totality of the foregoing, I am of the view that the trial Area Court was justified in finding for the plaintiff/appellant. The High Court should not therefore have upturned the decision of the trial Area Court which was founded mainly on facts and history found not to be false or perverse."

There is abundant evidence to support the findings of the trial Area Court which was affirmed by the Court of Appeal. It should be remembered that this case was tried by a customary court and latitude must be given and broad interpretation placed on its proceedings and the courts are enjoined to look at the substance rather than the form. See Ikpan & Ors. v. Ugee Edoho & Ors. (1978) 6-7 S.C. 221 and Udofia v. Afia 6 W.A.C.A 216 at 218. But the Yagba Area Court, Kwara State performed above expectation in their handling of this case. The court below drew logical and necessary inferences from the facts established in the proceedings before the trial Area Court. The inferences drawn show conclusively that the plaintiff proved his root of title, that various acts of ownership claimed by the appellant were not proved; that section 145 of the evidence Act did not apply and the trial Area Court visited the locus in quo, saw the area claimed by the plaintiff, heard the parties during the inspection and made a sketch map. That court was in no doubt as to the ownership of the land in dispute. The appellant was not shown to be in possession of the land in dispute as to warrant the application of section 146 of the Evidence Act (formerly section 145) Laws of the Federation of Nigeria, 1990 which provides that:

"146. When the question is whether any person is owner of any-thing of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."

It is only where a plaintiff fails to prove his title to the land in dispute that the defendant's possession raises the presumption which the plaintiff is

unable to rebut. Section 146 of the Evidence Act cannot stand when the plaintiff proves good title as in this case. See Da Costa v. Ikomi (1968) 1 All N.L.R. 394, Aromire & Ors. v. Awoyemi (1972) 1 All N.L.R. (pt. 1) 101 at 112 - 113. **It is my view that the Court of Appeal neither misdirected itself on the facts nor misconceived the evidence. Its conclusion is justified.**

B The appeal therefore fails and it is accordingly dismissed. The judgment of the court below is hereby affirmed. The judgment of the court below is hereby affirmed. Appellant shall pay N1,000.00 as costs to the Respondent.

C **BELGORE JSC**

This appeal totally lacks merit. Trial Court, to my mind, found correctly on the evidence before it for the respondents, the Odo Ere Community who were plaintiffs in that Area Court. There was no justification in law for the appellate Upper Area Court and the High Court in its appellate jurisdiction to D interfere with the trial Courts findings of fact which are not found perverse or defective. Court of Appeal, Kaduna therefore entered the correct judgment. As Ogwuegbu, J.S.C. said in the lead judgment, the case is clear on the evidence received in Court and at locus in quo by the trial Area Court pointing out clearly that the appellants' claim to the land cannot be justified. For the E fuller reasons in the lead judgment which I adopt as mine, I find no reason to fault the decision of the Court of Appeal. I also dismiss the appeal and uphold the judgment of the Court of Appeal. I award N1,000.00 costs against the appellants.

F **OGUNDARE JSC**

I have had the advantage of a preview of the judgment of my learned brother Ogwuegbu JSC. For the reasons given by him in the said judgment I, too, dismiss this appeal with costs to the Appellant assessed at N1,000.00.

G **ONU JSC**

I have had the advantage of a preview of the judgment of my learned H brother Ogwuegbu, J.S.C. just read. I am in complete agreement with him that this appeal lacks merit and I too accordingly dismiss it.

I wish, however, to add the following comments of mine. One of the principles of native law and custom brought to the fore in this appeal is that which provides that the local area court is presumed to know the local native

law and custom, albeit that the presumption is rebuttable. See Gyang v. Gyang (1969) NNLR. 99 and Waziri v. Ugye & Ors. (1977) NNLR. 129. Thus, when the Area Court sitting at Isanlu made inter alia the following findings, to wit:

"1. Area Court was established at Odo-Ere for many years ago and all the Obas of West Yagba met there to hold court sessions and there was no any other courts in any part of West Yagba Area again in those days, this may mean that Odo-Ere town has been existing before any other town existed in West Yagba and this made it to have the first Area Court in West Yagba. B

2. Hoeing road from one town to a certain place was an important land mark and boundary being recognized by any part in Oyi L.G.A. in those days as the boundary between a community and another community. C

.....
5. Shrines are always very important in any land dispute and non (sic) of the parties took us to any place worship of any god on the disputed land during land inspection" the presumption arrived there-at is, in my opinion, irrebuttable. D

At the end of the day, the only question which, in my view, is left to be determined in this appeal is "Was the Court of Appeal correct in setting aside and reversing the judgment of the High Court."

In setting about to answer the above question it should be recalled that the case giving rise to this appeal emanated from a claim by the respondent against the appellant in relation to title to land situate between Lawiri River and Okutagigiri areas said to lie both left and right of Kaba - Ilorin Federal Road and between Odo-Ere and Egbe townships. The trial area Court - the Yagba Area Court Grade 1, which tried the case, visited the locus, evaluated the evidence adduced from the witnesses with the fineness of a toothcomb, F drew a sketch-plan of the area in dispute before arriving at a conclusion which left no one in doubt as to the identity of the land. Thus, when that court held:

"Judgment:- from the facts above we are satisfied that the plaintiff was able to establish ownership of the land in dispute as the land of Odo-Ere town and Egbe town is awarded to the plaintiff (Odo Ere Community)" G
a judgment which the court below ultimately upheld when it set aside the decision of the High Court, I cannot resist endorsing the judgment or the Court below when it arrived at the following inevitable conclusions, to wit:

"Since the decision of the High Court is the one being directly appealed against in this Court, I shall start by examining its validity. H

The High Court in upturning the decision of the Upper Area Court and awarding title to the Respondent, relied on the fact that the Respondent showed more acts of possession or ownership than than the appellant; but it required more than mere acts of ownership or possession to prove a case of

title to land. The said acts of ownership must be related to the area of land in dispute and not in vacuo.

For instance, it was part of Respondent's act of ownership that in 1973, the Respondent were paid compensation by the Dumez Construction Company in respect of their economic crops and trees damaged by the Construction Company in the course of their road construction work. Six vouchers evidencing payment of various sums of money to people by the Dumez Company were then tendered and admitted as Exhibits D1 - D6. But these exhibits, as was promptly pointed out by the appellant at the trial, did not specify the name and even the location of land in respect of which the said compensation was paid. So, for all practical purpose, Exhibits D1 - D6 cannot really be said to be evidence of acts of ownership done by the Respondents on any particular land."

The learned Justices of the Court below then went on to say:-

"It must also be pointed out that throughout the evidence of the Respondents, there was no indication that any member of Respondents' Village built or had any house on the land in dispute or near to it. So that they could not really be said to have been in firm possession of the land as the High Court judgment put it. The act of letting out land to outsiders to farm or build upon were of recent origin and so could well amount to the acts of trespass the appellants were suing about.

In effects, therefore, one cannot say that the acts of possession relied upon by the respondents were "numerous and positive enough" as to lead to the inference that the Respondents were the owners of the land.

Another reason why the case of Respondent was weak was that their traditional history of the land left much to be desired. Some of the defence witnesses could not tell how they came by the land, nor how their ancestors came by it. So they had no root of title to show. In contrast with this was the fact that the appellants relied on a customary grant made to their forefathers by the Ogbogbo family of Ere, and a member of the said G family, in person of PW2 (Alhaji Jimoh Odofin) testified to confirm the said grant.

Last but not the least was the fact that the trial (sic) court judges as the custodians of the custom, history and tradition of their people took judicial notice of the fact that Odo Ere town has been existing before any other town existed in West Yagba, and this made it to have the first Area Court in West Yagba. "Coupled with this was the fact that: the trial Area Court actually visited the locus in quo, and saw the area claimed by appellants as well as its boundaries, and also drew a sketch as evidence of what they saw.

So, on the totality of the foregoing, I am of the view that the trial Area Court was justified in finding for the plaintiff/appellant. The High Court should not, therefore, have upturned the decision of the trial Area Court which was founded mainly on facts and history which were not found to be false or perverse." [The underlining above is mine.]

The purport of the underlined words above is to highlight the fact that the decision of the trial Area Court was founded mainly on facts the purport of which enables me to endorse unhibited and without reservation the submission of learned Counsel for the respondent to the effect that an appellate court which did not see and hear the witnesses nor visited the locus in quo must not substitute its own views for those of the trial court on findings of facts based on credibility of witnesses. See Fashanu v. Adekoya (1974) 6 S.C. 83 at 91; Kuforiji & anor. v. V. Y.B. (Nig.) Ltd. (1981) 6-7 S. C. 40 at 85 and Popoola Olubode & 2 ors. v. Alhaji Salami (1985) 2 NWLR (part 7) 282.

Indeed, it is settled law that it is the prerogative of the trial court which heard and saw the witnesses while they gave evidence to determine the credibility of the witnesses and as a result of a visit to locus. See -

- (i) Alhaji I Barau v. Board of Customs & Excise (1982) 10 S. C. 48;
- (ii) Mufutau Bakare v. The State (1987) 1 NWLR (part 52) 579; (1987)

3 SCNJI.

- (iii) Nwosu v. Board of Customs & Excise (1988) 5 NWLR (part 93) E 225; (1988) 12 SCNJI (part 2) 313.

The proper order for the High Court to have made in the circumstances was to decide whether the Area Court was right or wrong. The court below for its part in emphasizing the need for it to overlook some of the weaknesses in the Area Court judgment so as to do substantial justice, stressed the need that instead of the High Court allowing the Appellant's appeal, it should have called upon the trial Area court to forward the sketch plan. In this regard, the court below cannot, in my opinion be successfully indicted of having raised a point of law suo motu which had hitherto not been canvassed by either of the parties and basing its decision thereon.

The conclusion arrived at by the Court below to the effect that

"It is our view that since the decision of the trial court was based mainly on facts and traditional evidence which the Court believed, coupled with the visit to the locu in quo, which the High Court did not undertake, the said Lokoja High Court ought not to have interfered with the findings of the said trial court which were not found to be perverse"

being, in my opinion unimpeachable, the single issue submitted at the appellant's instance for determination is accordingly answered in the affirmative.

For the reasons I have given and the fuller ones contained in the leading judgment of my learned brother Ogwuegbu, JSC, I too dismiss this appeal. I abide by the consequential orders made therein.

B **ADIO JSC**

I have had a preview of the judgment just read by my learned brother, Ogwuegbu, JSC, and I agree with him that this appeal fails and should be dismissed. I too dismiss the appeal and abide by the consequential orders, including the order for costs.

C

D

E

F

G

H