

SUPREME COURT OF NIGERIA

3RD JULY, 1998. SC. 310/1991

**CORAM:- S. M. A. BELGORE, A. B. WALI, I. L. KUTIGI,
S. U. ONU, A. I. IGUH, JJSC**

DANIEL IGWE UCHE PLAINTIFF/APPELLANT
AND
JONAH EKE & 2 OTHERS DEFENDANTS/RESPONDENTS

***APPEALS** - Misconception of issues - Alleged against the Court of Appeal - Is unfounded - And the concurrent findings in this case will not be disturbed.*

***EVIDENCE** - Proof - Land matter - Failure of plaintiff to prove his case - Leaves the case without merit and the suit would be dismissed.*

***LAND LAW** - Family land - Document of sale - Executed without the consent of the head or principal family members - Is a nullity.*

***LAND LAW** - Title - Failure of plaintiff to plead or reveal his vendors' root of title - Makes his pleading incomplete - As any grant of land is worthless - If the root of title is not vested in the Vendor.*

FACTS

The plaintiff/appellant at Aba, filed an action against the defendants/respondents claiming entitlement to Certificate of Occupancy, perpetual injunction and N1,000.00 damages for trespass in respect of the land in dispute. Appellant averred that he entered into a registered lease with Josiah Ohiara and Simon Ekpen on 3-5-60 of a 20.31 acre land. That he surveyed, plotted the land and had been in possession until in 1981 when the 1st respondent broke and entered the vacant undeveloped portion of the land in dispute. The appellant failed to prove his case which was denied by the respondents.

The trial Judge found the appellant's case to be without merit

and dismissed the suit. Appellant's appeal to the Court of Appeal was dismissed. He has further appealed to the Supreme Court raising 4 issues.

ISSUES FOR DETERMINATION

"(1) Whether the learned Justices of the Court of Appeal were not in error when they held that the Deed of Conveyance, Exhibit A, was void despite the fact that they had come to the conclusion that the District Officer's Court of Appeal Judgement, Exhibit E, had rendered nugatory the Judgement of the Native Court, Exhibit D, in Suit No. 834/58 in which it had been decreed that the land in question belonged to the family of the 3rd Respondent, the very foundation upon which the Respondents built their defence.

(2) Whether the learned Justices of the Court of Appeal did not err in law when after holding that the Vendors in Exhibit A had not the capacity to sell the land and they thereupon went on to conclude that it was no longer important to consider any other issues formulated for determination in the appeal.

(3) Whether the learned trial Judge and the learned Justice of Appeal who wrote the lead Judgment concurred in by the other Justices did not totally misconceive the case put before them by the parties and thereby came to a wrong decision.

(4) Whether the learned Justices of the Court of Appeal did not misdirect themselves when they dismissed the appeal having regard to the weight of evidence before the trial Court."

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

Evidence - Proof

1. The interesting aspect of this case is that the plaintiff in his evidence in Court never tendered the alleged plan of how he divided the land into plots with numbered blocks. He never called any of the persons he claimed to have alienated portions of the land to. Exhibits A and B on which he based his right to possession are clearly shown to have been executed and assigned to him by two persons who were not heads of the

family that had title to the land. The plaintiff never even pleaded the root of title of his alleged assignors and of course never offered evidence as to this. The trial judge, Johnson J, in a very well-considered judgment never found any merit in the plaintiff's claims and he dismissed the suit in its entirety. (p. 1677 A)

Family land - Document of sale

2. The Court of Appeal, after hearing the parties, found no reason to interfere with the clear findings of fact by the trial Court. It was clear, the Court of Appeal held, that Exhibit A, as well as Exhibit B linked with it, was a document that was a nullity as it was executed without the consent of the head or principal members of the defendants' family, Umuike-Osiamana. That is where the case of the plaintiff completely collapsed. There was no earthly reason why the Court of Appeal should proceed further as nullity of Exhibit A knocked the bottom off the plaintiff's other claims on the land. (p. 1677 F)

Land law - Title

3. The plaintiff, contrary to his posture in his brief actually was claiming entitlement to Right of Occupancy as owner, not possession. This is clear in his statement of claim as to what the orders he would like the trial Court to make should he be victorious. The plaintiff never ventured in his pleadings to reveal the title or root of title of his vendors. To badly state that the land was conveyed or assigned by the vendors without stating their root of title is not complete pleadings in our land holding system except it is a grant by the government or land acquired by government. Any grant of land whether by private treaty or by government right of occupancy, evidenced by a certificate of occupancy will be mere piece of paper not worth anything if the root of title to make the conveyance is not vested in the vendor. (p. 1678 H)

Misconception of issues

4. I find the Court of Appeal appreciated fully the matter before them and it is not right to submit as the appellant has done that the learned Justices

misconceived the issues before them, an allegation applicable to the appellant whose case was clearly not proved at the trial Court. I cannot see within the four corners of the entire proceedings where the Court of Appeal misdirected itself. In sum total, this appeal is based on attempt to reverse the concurrent findings of facts by the two lower Courts. I find no substance in this appeal to justify interference with those findings based entirely on facts as found by the trial Court and upheld, rightly so, by the Court of Appeal. (p. 1679 D)

C
NOTABLE POINTS OF INTEREST
IGUHJSC

1. Proof of title - Mere tendering of title document is not enough

D It has been stressed times without number that it would be wrong to assume that all a person who resorts to a grant as a method of proving his title to land needs do is simply to produce his deed of title and rest his case thereon. Without doubt, the mere tendering of such document of title may be sufficient to prove such grant where the title of the grantor to such land is either admitted or not in dispute. Where, however, as in the present case, an issue has been seriously raised as to the title of such a grantor to the land in dispute, the origin or root of title of such a grantor must not only be clearly averred in the pleadings, it must also be proved by evidence. See Ogunleye v. Oni (1990) 2 N.W.L.R. 745 at 782 and 783. (p. 1684 F)

2. Void alienation of family land

G The law is long established that a sale or lease of family land by a member or members of the family without the consent of the head and the principal members of such family is void ab initio. See Ekpendu v. Erika (1959) 4 F.S.C. 79 at 81, Oyebanli v. Okuwela (1968) 1 N.M.L.R. 221, the head of a family must, under customary law, join in a conveyance, H lease or disposition of family land and the principal members must consent thereto otherwise such a disposition would be void ab initio. See Agbloee v. Sappor 12 W.A.C.A. 187. Applying the above principles of law, it is plain to me that the land in dispute, being family land and not the

absolute property of the lessors in Exhibit A, the purported lease to the appellant in the circumstances of the case is clearly void ab initio.
(p. 1685 G)

REPRESENTATION

Chief (Mrs.) C. J. Aremu, for the Plaintiff/Appellant
Chief K. K. Ogba, for the Defendants/Respondents

CASES REFERRED TO

Ezewani vs Onwordi (1986) 4 NWLR (Pt. 33) 27
Sodipo vs. Lemminkainen (1985) 2 NWLR (Pt. 8) 547
Owoade vs. Omitola (1988) 2 NWLR (Pt. 77) 413
Adimora vs. Ajufo (1988) 3 NWLR (pt. 80) 1
Ogunleye vs. Oni (1990) 2 NWLR (Pt. 135) 745
Kimdey vs. Military Governor, Gongola (1988) 2 NWLR (Pt 77) 445
Dibiamaka vs. Osakwe (1989) 3 NWLR (pt 107) 101
Ogunleye v. Oni (1990) 2 N.W.L.R. 745 at 782 and 783
Ekpendu v. Erika (1959) 4 F.S.C. 79 at 81
Oyebanli v. Okuwela (1968) 1 N.M.L.R. 221
Akerele v. Atunrase (1968) 1 ALL N.L.R. 201

LEAD JUDGMENT BY BELGORE JSC

The plaintiff at the trial Court was the appellant at the Court of Appeal as he is in this Court. He and the defendants hail from Amaufuru in Aba Local Government. According to the plaintiff in his statement of claim, he entered into a registered lease (Exhibit A) of 20.31 acre land with Josiah Ohiara and Simon Ekpen on 3rd of May 1960. He acquired this lease with one Owo Ajonkwu Awele who died soon after the alleged lease was executed and he (plaintiff) later acquired the portion of Owo Ajonkwu Awele and had it registered, (Exhibit B). Plaintiff claimed he went into possession immediately and proceeded to plot the land into building plots with roads and that he made a plan of the set-up by commissioning a land surveyor for it. He pleaded the plan containing, according to him 145 plots whose sketch or survey he was going to found

upon at the trial. After plotting the land he sold some plots to various individuals who proceeded to put up buildings on them and that all the plots were identified by blocks and numbers. The unsold plots he claimed to farm by himself and the members of his family.

B About 1981, to his surprise, without his leave, licence or consent, the first defendant broke and entered the vacant undeveloped portion of the land in dispute, which he claimed is called "KONKOM UKANGWA", at his block 5 No. 7 verged red in the survey plan, Exhibit C. Later in 1984 the defendants broke and entered the disputed land at block 5 No. 11, and that he reported to Police because he was also attacked, but the Police did nothing. Upon all these averments the plaintiff claimed jointly and severally against the defendants:

"(a) N1,000.00 damages for trespass on the said plaintiff's land.
D (b) Perpetual injunction restraining the defendants their agents, servants, or privies from interfering with the plaintiff's right in the said land.

(c) A declaration that the plaintiff is the rightful person entitled
E to the possession of Statutory Certificate (sic) of Occupancy over the land in dispute."

In the statement of defence, the defendants denied knowledge of any land by name "KONKOM UKANGWA". They averred that when
F Timothy Ekpem was the head of the family of Umuike-Osiam, to which the defendants belong in Amaufuru village, Josiah Ohiara, Simon Ekpem and one other person attempted to alienate their land called "Egbelu Ajulo" and the attempt was stalled because Timothy Ekpem sued together with other principal members of the family in 1958 at the Native Court in suit
G No. 834/58 (Exhibits D and E). The defendants were Josiah Ohiara, Simon Ekpem and one other. Timothy Ekpem was the father of Sunday Ekpem, the 3rd defendant. The plaintiff's claim to possession through the acts of plotting and alienating were denied; rather the defendants
H claim they have always been in possession of the land in dispute. It was in 1984 when the 3rd defendant was constructing a wall fence on the land, the plaintiff and some persons he believed were thugs attacked him and demolished the wall whereupon he was taken to Court and con-

victed.

The interesting aspect of this case is that the plaintiff in his evidence in Court never tendered the alleged plan of how he divided the land into plots with numbered blocks. He never called any of the persons he claimed to have alienated portions of the land to. Exhibits A and B on which he based his right to possession are clearly shown to have been executed and assigned to him by two persons who were not heads of the family that had title to the land. The plaintiff never even pleaded the root of title of his alleged assignors and of course never offered evidence as to this. The trial judge, Johnson J, in a very well-considered judgment never found any merit in the plaintiff's claims and he dismissed the suit in its entirety. This led to appeal to the Court of Appeal. It must however be pointed out that Exhibits D and E, the proceedings of the Native Court that culminated in the judgment in 1960 had nothing to do with the land in dispute on their surface, and supposing it had, it had nothing to do with the plaintiff. It was a family dispute having nothing to do with the plaintiff. The root of the title of the vendors of Exhibit A and Exhibit B are not there. The vendors of Exhibit A were never the heads or even principal members of the defendants' family. The alleged vendors were members of Umuike-Osiamama family and had no authority to convey or assign any land. The pleading and evidence led by the defendants was very clear that they not only had title but also possession of the land, "Egbelu Azulo" which the plaintiff wished to call "Konkom Ukangwa".

The Court of Appeal, after hearing the parties, found no reason to interfere with the clear findings of fact by the trial Court. It was clear, the Court of Appeal held, that Exhibit A, as well as Exhibit B linked with it, was a document that was a nullity as it was executed without the consent of the head or principal members of the defendants' family, Umuike-Osiamama. That is where the case of the plaintiff completely collapsed. There was no earthly reason why the Court of Appeal should proceed further as nullity of Exhibit A knocked the bottom off the plaintiff's other claims on the land.

In this Court, the plaintiff as appellant, formulated the following issues for consideration:

"(1) *Whether the learned Justices of the Court of Appeal were not in error when they held that the Deed of Conveyance, Exhibit A, was void despite the fact that they had come to the conclusion that the District Officer's Court of Appeal Judgement, Exhibit E, had rendered nugatory the Judgement of the Native Court, Exhibit D, in Suit No. 834/58 in which it had been decreed that the land in question belonged to the family of the 3rd Respondent, the very foundation upon which the Respondents built their defence.*

(2) *Whether the learned Justices of the Court of Appeal did not err in law when after holding that the Vendors in Exhibit A had not the capacity to sell the land and they thereupon went on to conclude that it was no longer important to consider any other issues formulated for determination in the appeal.*

(3) *Whether the learned trial Judge and the learned Justice of Appeal who wrote the lead Judgment concurred in by the other Justices did not totally misconceive the case put before them by the parties and thereby came to a wrong decision.*

(4) *Whether the learned Justices of the Court of Appeal did not misdirect themselves when they dismissed the appeal having regard to the weight of evidence before the trial Court."*

I have dealt with the first issue as well as the second issue. I will however point out what has been the golden rule of civil trials. A party who wishes to succeed in his claim must not only plead but also if there are averments not admitted by his adversary offer evidence to support his pleadings and at no stage will evidence be received of unpleaded facts. [See Ezewani vs Onwordi (1986) 4 NWLR (Pt. 33) 27; Sodipo vs. Lemminkainen O. Y. (1985) 2 NWLR (Pt. 8) 547; Owoade vs. Omitola (1988) 2 NWLR (Pt. 77) 413; Adimora vs. Ajufo (1988) 3 NWLR (pt. 80) 1, all explaining the effect of pleadings]. **The plaintiff, contrary to his posture in his brief actually was claiming entitlement to Right of Occupancy as owner, not possession. This is clear in his statement of claim as to what the orders he would like the trial Court to**

make should he be victorious. The plaintiff never ventured in his pleadings to reveal the title or root of title of his vendors. To badly state that the land was conveyed or assigned by the vendors without stating their root of title is not complete pleadings in our land holding system except it is a grant by the government or land acquired by government. Any grant of land whether by private treaty or by government right of occupancy, evidenced by a certificate of occupancy will be mere piece of paper not worth anything if the root of title to make the conveyance is not vested in the vendor. If this is not so, all a person has to do is to go to the land office of the government and obtain a right of occupancy in respect of land of a family who may not know even that their land has been given to a complete stranger. [See Ogunleye vs Oni (1990) 2 NWLR (Pt. 135) 745].

I find the Court of Appeal appreciated fully the matter before them and it is not right to submit as the appellant has done that the learned Justices misconceived the issues before them, an allegation applicable to the appellant whose case was clearly not proved at the trial Court. I cannot see within the four corners of the entire proceedings where the Court of Appeal misdirected itself.

In sum total, this appeal is based on attempt to reverse the concurrent findings of facts by the two lower Courts. I find no substance in this appeal to justify interference with those findings based entirely on facts as found by the trial Court and upheld, rightly so, by the Court of Appeal. [In Re: Mogaji (1986) 1 NWLR (Pt 19) 759; Kimdey vs Military Governor, Gongola (1988) 2 NWLR (Pt 77) 445; Dibiamaka vs Osakwe (1989) 3 NWLR (pt 107) 101.]

For the foregoing reasons I find no merit in this appeal and I hereby dismiss it with N10,000.00 costs to the defendants/respondents.

WALI JSC

I have read in advance the lead judgment of my learned brother Belgore JSC and I entirely agree with his reasoning for dismissing the appeal.

For the same reasons ably stated in the lead judgment, which reasons I hereby adopt as mine, I also find this appeal devoid of any merit and I accordingly dismissed it. The concurrent findings of fact by both the trial court and the Court of Appeal are unimpeachable.

B The appeal is dismissed with N10,000.00 costs to the respondent against the appellant.

KUTIGI JSC

C I read before now the judgment just delivered by my learned brother, Belgore, JSC. I agree with the conclusion that there is no merit in this appeal. Both the trial High Court and the Court of Appeal having rightly found the land in dispute to be family land and there being no evidence that the appellant was the owner of the land as his lessor claimed, D the appeal must fail. It is hereby dismissed with N10,000.00 (Ten thousand naira only) costs to the respondents.

ONU JSC

E I had the privilege before now to read in draft the judgment of my learned brother Belgore, JSC just read and with it, I am in entire agreement that the appeal is devoid of any merit and it fails.

I wish, however, to add by way of expatiation the following comments of mine.

F In the first place, if the land in dispute which the plaintiff/appellant called KOMKOM UKANGWA but the defendants/respondent refer to as EGBELU AZULO was PW1's father's land, he (Chief Josiah Ohiara) ought not to have leased it out jointly with one Simon Nwala Ekpem, a G member of another family, to the plaintiff/appellant. As attested to by DW1, Elijah Ekpem, the oldest man in Amaufuru Village on behalf of the defence to the effect "that no piece of land in Amaufuru is called KOMKOM UKANGWA", what was leased by PW1 in Exhibit A was the H communal property of Amaufuru Village and that that piece of land is called EGBELU AZULO.

Secondly, it was established by the pleadings and evidence led in the trial court and affirmed by the Court of Appeal (hereinafter referred

to as the court below), that it was on account of this EGBELU land that PW1 and two others were sued earlier before the Aba-na-Ohazu Customary Court - the copy of the proceedings before that Native Court is Exhibit D. PW1 had admitted as much in evidence that in 1958 himself and two others were sued at the Aba-na-Ohazu Native Court by the then head of the Amaufuru family and that only one suit was brought against them at that Native Court. As clearly illustrated in Exhibit D, the subject matter at the Customary Court was EGBELU AZULO and not KOMKOM UKANGWA. One of the plaintiffs in Exhibit D was one Elijah Ekpem who testified as DW1 in the present case herein on appeal. In his testimony in the trial court DW1 had admitted among other things that:

"The name of the land in Native Court case is Egbelu Azulo. The other plaintiff in that suit were (1) Timothy Ekpem (2) William Adukwu (3) Ahukanna Imuka (4) Nwankpa Nwogwugwu. This Ahukanna is also called Johnson Imuka; and myself. The defendants were (1) Simon Ekpem (2) Josiah Ohiara (PW1) (3) Ahuwanya Ekpem. We sued the defendants because they went and sold our communal land. Timothy Ekpem is now dead. The Native Court case at Aba-na-Ohazu was decided. The Court decided that the defendants withdraw from the land and that it was communally owned. Timothy Ekpem was the head of the family. Egbelu Azulo land was not the only communal land. At the time Josiah Ohiara was a small boy in the family. We sued the defendants because they sold communal land to the plaintiff. Our custom is that communal land is not exclusively owned by any one person. It is for the use of the family members in common. During farming season the land is plotted (sic) out to individual farmers. Anybody wishing to erect his building, the family usually meet, and directs the part of the land on which such building is to be build (sic)." (Underlining is mine for emphasis).

The evidence of D.W.1 which had earlier identified two kindred in Amaufuru, namely: Umuikeosiam and Umuamachi, was corroborated in the testimony of D.W.2, Chief James Ekpendu. The only outstanding feature of the defence as poignantly made in the evidence of these witnesses therefore is that the sharing of land (EGBELU AZULO) into plots

did not take place in 1960 when PW1 said he was seized of it and sold a plot thereof to the plaintiff/appellant, but some four years after the Civil War in Nigeria i.e. around 1974. There was thus abundant evidence that what was leased to the plaintiff/appellant was the communally owned land - EGBELU AZULO and property of the Amaufuru Community or village.

Thirdly, with regard to Exhibit E which is a copy of the appeal against Exhibit D. it is patently clear that the decision reached in Exhibit E was that "the evidence led in Exhibit D before the Native Court was unsatisfactory," and therefore sent back for a retrial. As Exhibit E never stated that the land for which PW1 and two others were sued before the Customary Court was not a communally owned land, it follows logically that what was leased to the plaintiff/appellant in 1960 in Exhibit a, was Amaufuru communal land. Being a communal land a fortiori, the lessors in Exhibit A had no capacity to lease the land to the plaintiff/appellant. The learned trial Judge after setting out ten issues he found not to be in controversy in the case, identified five contentious issues to be:

- (1) the name of the land in dispute
- (2) whether the land was communally owned at the time of the sale to the plaintiff (appellant) or personal to the vendors.
- (3) as regards the plaintiff (appellant) vis a vis the 1st defendant (respondent) who has valid title.
- (4) whether Exhibits A and B - the lease transferred valid title to the land to the plaintiff (appellant)
- (5) whether or not the vendors - PW1 and later Simon Ekpem - had capacity to sell the land to the plaintiff (appellant).

All five issues were resolved against the plaintiff/appellant by the learned trial Judge who then proceeded to dismiss the case with the following words among others, to wit:

"From the foregoing authorities, it follows that whether the Vendors who executed Exhibit A to the plaintiff sold the land as their personal land or as family land, in either case, they had no capacity to sell the land, and the sale is void. The latin maxim "nemo dat qui non habet" meaning that no one gives what he possesses not" applies. See

Ekpendu v. Erika (1959) 4 FSC 79."

From the foregoing, it appears manifestly clear to me that Exhibit A is void ab initio; therefore the plaintiff/appellant got no title to the land. See Solomon & ors. v. Mogaji & ors. (1982) 11 SC. 1 at 7; Akanni v. Makanju (1972) 11 & 12 SC. 13 at 20 and Ekpendu v. Erika (supra). In upholding B and affirming the above decision of the trial court, the court below had this to say inter alia:-

"I hold the view that the law is well settled that a sale or lease of family land carried out by the head of the family in which the principal members of the family do not concur is voidable while a sale or lease of such land by principal members without the concurrence of the head of the family is void ab initio. (see Ekpendu & 2 ors. v. Erika (1959) 4 FSC 79 at page 81; Kasumu Ajeja v. Ajayi (1969) 1 ALL NLR 72; Samuel Adenle v. Michael Oyegbade (1967) NMLR 136). The 1st PW Josiah D Ohiara who is the only surviving lessor admitted that Timothy Ekpem was head of Amaufuru family and that as head of the family he was in charge and "had the sole control, power or right to alienate portions of the family land", it follows that the lease Exhibit A by Josiah Ohiara and E Simon Ekpem who were not shown to be principal members of the Amaufuru family is void ab initio.

Applying the principle in Ekpendu and ors. v. Erika to this appeal, and agreeing as I do with Johnson J. that the land in dispute is F family land and not the absolute property of Josiah Ohiara, it follows that the lease by him to the plaintiff is void ab initio. If the lease is void then Exhibit B is valueless. That being so, the learned trial Judge was, in my opinion, correct in holding at page 92 lines 14-19 that"

As the decisions of the two courts below constitute concurrent findings G of fact, I am not prepared to upset them unless exceptional circumstances such as an error or misdirection of law or procedure or what amounts to a miscarriage of justice, are shown to warrant such interference therewith. See Ogunola v. Alhaja Ladunni Okenihun (1985) 1 NWLR H (Part 3) 484; Kodilinye v. Anatogu (1953) 1 WLR 231; Dawodu v. Danmole (1962) 1 ALL NLR 702; Iroegbu v. Okwordu (1990) 6 NWLR (part 159) 643; 659 and Olaloye v. Balogun (1990) 5 NWLR (part 148) 24. Such

exceptional circumstances not having been shown, I hereby confirm the decision of the court below which affirmed the judgment of the trial court.

For the reasons I have given and the fuller ones set out in the leading judgment of my learned brother Belgore, JSC I too dismiss the appeal and make the same consequential orders inclusive of costs contained therein.

IGUH JSC

I have had the advantage of reading in draft the judgment just delivered by my learned brother, Belgore, J.S.C. and I am in complete agreement that this appeal is devoid of substance and ought to be dismissed.

The main issue that arises for resolution in this appeal is which of the parties that established a better title to the land in dispute.

In this regard, the foundation of the appellant's claim to the land in dispute is based wholly on the deed of lease, Exhibit A and the deed of surrender, Exhibit B. The appellant, as plaintiff in the trial court, and on the state of the pleadings was entitled to succeed in his claims only if he established a better title to the land in dispute than the respondents who were the defendants in the suit. The crucial question for determination is whether the deeds, Exhibit A and B, transferred any title to the land in dispute to the appellant. Both courts below proffered answers to this question in the negative and I respectfully agree with them on this issue.

In the first place, it has been stressed times without number that it would be wrong to assume that all a person who resorts to a grant as a method of proving his title to land needs do is simply to produce his deed of title and rest his case thereon. Without doubt, the mere tendering of such document of title may be sufficient to prove such grant where the title of the grantor to such land is either admitted or not in dispute. Where, however, as in the present case, an issue has been seriously raised as to the title of such a grantor to the land in dispute, the origin or root of title of such a grantor must not only be clearly averred in the pleadings, it must also be proved by evidence. See Ogunleye v. Oni (1990) 2 N.W.L.R.

In the present case, the lessors in Exhibit A through whom the appellant claimed his title to the land in dispute were stated to be Josiah Ohiara and Simon Ekpem, both of Amaufuru family. No where was it pleaded in the appellant's amended Statement of Claim their root of title or how they acquired title to the land which they purportedly leased to the appellant and one Owo Ajonkwu Awele per Exhibit A. It was following the death of Owo Ajonkwu Awele soon after the execution of Exhibit A that his heir and successors in title by the deed, Exhibit B, surrendered the interest of the said Owo Ajonkwu Awele in the land to the appellant. The appellant having based his title on Exhibit A, and the title of his lessors having been seriously challenged both in the pleadings and at the trial, failure by the appellant to plead and prove the root of title of his lessors to the said land in dispute seems to me fatal to his claim. It is only where the appellant traced his title to a person or persons whose title was admitted or established that the onus would shift on the respondents to prove a better title. See Ogunleye v. Oni (supra).

In the second place, it is the finding of both courts below that the land covered by Exhibits A and B was the communal property of the appellant's lessors, Josiah Ohiara and Simon Ekpem. Additionally there was the evidence of the appellant's first witness who admitted that it was one Timothy Ekpem that was the head of the Amaufuru family at the time Exhibit A was executed. This witness further testified that the said Timothy Ekpem as head of the Amaufuru family was in charge of and "had the sole control, power or right to alienate portions of the family land". It was neither suggested nor established that either of the appellant's lessors was a principal member of the Amaufuru family or that they had the permission of the head and the principal members of that family to execute Exhibit A.

The law is long established that a sale or lease of family land by a member or members of the family without the consent of the head and the principal members of such family is void ab initio. See Ekpendu v. Erika (1959) 4 F.S.C. 79 at 81, Oyebanli v. Okuwela (1968) 1 N.M.L.R. 221, Akerele v. Atunrase (1968) 1 ALL N.L.R. 201, Lucan v. Ogunsusi

(1972), ALL N.L.R. (Part 2) 41. The head of a family must, under customary law, join in a conveyance, lease or disposition of family land and the principal members must consent thereto otherwise such a disposition would be void ab initio. See Agbloee v. Sappor 12 W.A.C.A. 187.

B Applying the above principles of law, it is plain to me that the land in dispute, being family land and not the absolute property of the lessors in Exhibit A, the purported lease to the appellant in the circumstances of the case is clearly void ab initio. It is equally clear that if the lease, Exhibit A, is void as indeed, it is, it stands to reason that Exhibit B
C whose validity is dependent on the said Exhibit A must be treated as valueless and conveying nothing to the appellant. The learned trial Judge was therefore right when he stated as follows -

*"It follows that whether the vendors who executed Exhibit 'A' to
D the plaintiff sold the land as their personal land or as family land, in either case, they had no capacity to sell the land, and the sale is void."*

The above observation was affirmed by the court below and I have no reason to fault them on the point.

E Turning to the case of the respondents, the learned trial Judge after a careful review of the evidence concluded thus -

*"As to item 2, I should say that the 1st defendant and the 2nd
F defendant have got valid title to the land by reasons of the sale to them by the 3rd defendant. I accept the evidence that the 3rd defendant as the son of late Timothy inherited the land from his late father as the late father's share and had the legal right to sell the land. That was after the partitioning of the family land. Nothing has been said against this evidence."*

G The above finding was endorsed by the court below. It remains for me to say that I, too, agree with the same. The court below was therefore right when it affirmed the dismissal of the appellant's claims by the trial court.

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