

**SUPREME COURT OF NIGERIA**  
17TH DECEMBER, 1999. SC. 246/1993  
**CORAM:- S. M. A. BELGORE, E. O. OGWUEGBU, O. ACHIKE,**  
**U. A. KALGO, E. O. AYOOLA, JJSC.**

CHIEF EDWIN OBIANEFO OKEKE & 4 ORS. .... APPELLANTS  
AND  
ANTHONY AGBODIKE & 5 ORS. .... RESPONDENTS

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***APPEALS** - Evidence - Contradictions - There is no material contradiction - To warrant interference - With concurrent findings of fact.*

***COURTS** - Evidence - Duty of trial court - To make findings on the evidence - Was admirably carried out.*

***EVIDENCE** - Proof - Claim - Burden is on plaintiffs to prove their case - And that burden was not discharged - Plaintiffs are not to rely on weakness of the defence.*

***SUCCESSION** - Proof - Seniority in family line - Claimed by the plaintiffs - Was not proved by them.*

**FACTS**

Before the High Court of Anambra State sitting at Nnewi, the plaintiffs/appellants filed an action against the defendants/respondents. Plaintiffs claimed declaration of seniority in their family and entitlement to all rights and privileges of a first son under Nnewi native law and custom. The parties have a common ancestor named Umeagbunnono who has some sons. Plaintiffs claimed to have directly descended from the eldest of these sons. The trial court found that the plaintiffs' evidence never discharged the burden of proving their case. The plaintiffs case was accordingly dismissed. Their appeal to the Court of Appeal was unsuccessful. Being aggrieved, plaintiffs have further appealed to the Supreme Court.

**ISSUE FOR DETERMINATION**

*Whether the appellants discharged the burden of proving their claim before the trial court.*

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

***Evidence - Duty of trial court***

1. The duty of a trial court is to listen to the evidence of witnesses for both side, to examine all exhibits tendered in the course of the witnesses' testimonies and make findings on them. The trial judge did this admirably. (p. 2925 F)

***Proof - Seniority in family line***

2. It is always the plaintiffs that must prove their case. In the instant case, the only credible evidence of the plaintiff is that they are descendants of Umeagbunnono, all other assertions remain unproved. The defendants' evidence clearly established that chief Anthony Agbodike (1st defendant) was the Obi of Umeagbunnono. Whatever contradictions there may be in testimonies of the defence witnesses, they never touched on the substance of the case i.e. that the defendants' line was the senior of all the descendants of Umeagbunnono. Other issues are minor and the plaintiffs never proved their case. In all cases, the plaintiffs's primary obligation is to prove their case and not rely on weakness of the defence unless the evidence of defence supports that of the plaintiffs. The defence never supported any position of the plaintiffs on the fact that the defendants' line was the senior of the descendants of Umeagbunnono; this very important position was clearly established by the defendants. (pp. 2925 G/2926 G)

***Appeals - Evidence - Contradictions -***

3. There was no single material contradiction in the evidence of the defendants to justify interference with the trial court's decision by the court of Appeal. In this court, the appellants have not advanced enough reasons for this court to disturb the court of Appeal's decision. [Ude v.

Chimbo (1998) 12 NWLR (part 577) 169. This appeal is against the concurrent findings of fact by the trial court and the court of Appeal, but no cogent and compelling reasons have been adduced to justify disturbance of those findings by this court. (p. 2927 C)

### **PRESENTATION**

Philip Umeadi, Jr., with O. Nnoli for the appellant  
Nnaemeka Ngige for the respondent.

### **CASES REFERRED TO**

Adeyemo v Anokpo 1988) 2 NWLR part 79 703  
Ezeoke v. Nwagbo (1988) 1 NWRL (part 72) 612  
Chukwu v. Nnaji (1990) 6 NWRL (part 156) 363, 3811  
Ude v. Chimbo (1998) 12 NWLR (part 577) 169  
Agbabiaka v. Saibu (1998) 10 NWLR (part 571) 534  
Osho v. Ape (1998) 8 NWLR (part 562) 4921  
Ibenye v. Agwu (1998) 1 NWLR (part 574) 372  
Odiba v. Agege (1998) 9 NWLR (part 566) 370  
Alakija v. Abdulai (1998) 6 NWLR (part 552) 1  
Ojomu v Ajao (1983) 2 SC NLR 156  
Ibrahim v Shagari (1983) 2 SC NLR 176  
Omoboriowo v Ajasin (1984) 1 SC NLR 108  
Chukwu v Nnaji (1990) 6 NWLR (pt.156) 363  
Odiba v Abdulai (1998) 9 NWLR (pt.566) 370

### **LEAD JUDGMENT BY BELGORE JSC**

This is an appeal from the decision of Court of Appeal, Enugu Division, which dismissed the appellants' appeal against the judgment of High Court of Anambra State, sitting at Nnewi. The claim by the appellants as plaintiffs in the trial court was for:

*" (a) A declaration that the plaintiffs, as the descendants of Eze-Omodo, are the eldest or senior of the umeagbunnono (Akabo Edeji) of a Uruagu Nnewi.*

*(b) A declaration that the plaintiffs as the eldest family of the*

*Umeagbunnono (Akabo Edeji) are entitled to all rights and privileges of a first son under Nnewi native law and custom including the right to be the seat of authority over and above the defendants and right to exercise first option over any common property belonging to Umeagbunnono according to Nnewi native law and custom especially the common property especially the common property situate at Uruagu Nnewi.*

*(C) An injunction restraining the defendants, their agents, relations, servants and functionaries from further destruction and interference with the authority and rights of the plaintiffs as the eldest family of Umeagbunnono (Akabo-Edeji) Uruagu."*

The parties filed and exchanged pleadings, called witnesses and tendered various documents many of which are irrelevant to the claim. At the end of addresses by counsel to the parties, learned trial judge dismissed the claim in its entirety by concluding as follows:

*"But on a totality of the evidence before me I prefer the evidence of the defendants. The plaintiffs have failed to attain the minimal standard in proof of their case. If truth and justice should prevail without an flower of speech, I have no difficulty in holding that the defendants (1st -3rd defendants) succeeded on the balance of probability in showing that they have been exercising the rights and privileges of a first son in an unbroken succession and therefore the Obi of umeachunnono. The plaintiffs' case fails. It is dismissed."*

Against the decision of the trial court, plaintiffs/appellants appealed to the court of Appeal, which affirmed the trial court's decision. Thus the appeal in this case was filed.

The appellants and respondents have a common ancestor named Umeagbunnono. The plaintiffs' case is that Umeagbunnono had a son called Duru Onalibe who in turn had four sons. The four sons were Eze-Umeaka Eze-Onuodo, Ume-Okula and Eze-Ozulumba. As Eze-umeaka predeceased his father, Duru Onalibe, Eze-Onuodo became the eldest. Plaintiffs then claimed to be direct descendants of Eze-Onuodo and therefore the most senior descendants of Duru Onalibe with the 1st - 3rd defendants belonging to Ume Okula, the 4th - 6th defendants/respondents belong to Eze-Ozulumba. As against these assertions, the defendants/re-

spondents claimed, while admitting ancestry through Umeagbunnono, that nobody called Duru Onalibe existed. Rather respondents claimed that Umeagbunnono had three sons to wit, Umeakula, Eze-Onuodo and Eze-Ozulumba in that order of seniority. They deny the plaintiffs' sub family as the senior of the three sub-families. They listed the immediate past B Obi as one Nnajiifo Agbodike, the father of 1st defendant. They traced all along the 1st defendant's line many Obis. The plaintiffs' evidence, according to trial judge, never discharged the burden of proving their case, and the defendants offered cogent and firm evidence of their being C the senior of umeagbunnono descendants. The plaintiffs never proved existence at any time of Duru Onalibe who allegedly predeceased his father, Umeagbunnono. Learned trial judge, upon all evidence before him, found the case of plaintiffs not proved and dismissed it.

The issues before Court of Appeal concerned the alleged issues D raised suo motu by that court on the equitable pleas of laches and acquiescence matters not pleaded. It must however be pointed out that the court of appeal resolved these issues clearly but stated that the bigger issue was, whether the appellants were the senior group of the descen- E dants of Umeagbunnono. It was merely in passing that the trial judge alluded to laches and acquiescence but the matter was determined on the entire evidence before the trial judge. It was held by the trial court that the appellants never adduced enough evidence to prove their claim. The F court of appeal had no reason to interfere with this finding of fact.

**The duty of a trial court is to listen to the evidence of wit-  
nesses for both side, to examine all exhibits tendered in the course  
of the witnesses' testimonies and make findings on them. The  
trial judge did this admirably. It is always the plaintiffs that must G  
prove their case. In the instant case, the only credible evidence of  
the plaintiff is that they are descendants of Umuagbunnono, all  
other assertions remain unproved. The defendants' evidence clearly  
established that chief Anthony Agbodike (1st defendant) was the H  
Obi of Umuagbunnono.** The instances cited are many, as the court of  
Appeal in its judgment record inter alia as follows:

*"Among such acts proved were the claim of Chief Anthony Agbodike*

(1st defendant), who established before the trial court, that he was the obi of the Umeagbunnono and that he had been performing the foundations of the obi of that family without being challenged by any of the defendants. He produced and tendered in evidence documents in support of such instances. An example given by 1st defendant in support of his contention in this respect was in 1972 when the family had a dispute over Agbo-Edo land owned the Uruagu community. The community inserted a warning notice in the newspaper. The newspaper assertion, which was admitted as Exh. "I" at the trial, shows that the 1st defendant signed the publication as the obi of umeagbunnono while the 1st plaintiff signed the same document as councillor.

Other instances given by the 1st defendant were two invitations he received from DW3 and Uruagu community (admitted as Exhs M & N respectively) in which he was addressed as "Obi" It was also established that the 1st defendant usually collect the share of anything meant for Umeagbunnono as the Obi of the family. The appointment of tax collector for the Umeagbunnono (which was described as Ward 21 for the purpose) also confirmed that the 1st defendant was the Obi. Evidence was led to show that it was the practice that such appointment, although usually made on rotational basis, it was established that the appointment usually start with obi. The first tax collector for the ward was said to be Abe Ikeagwuonu from Umeakuka; followed by Chukwuemaka Okeke, the father of the 1st plaintiff from Ezeomodo,"

It was also clearly established that the plaintiffs never produced an Obi in their line and the Ibo " symbol of authority" "OFO" was in possession of first defendant, Anthony Agbodike. The plaintiffs alluded to one Josaiah Chukwuma as regent for Obi of Umeagbonnono but countered by defendants as "regent obi of Ezeomodo" as distinct from the superior obi of Umeagbonnono. **Whatever contradictions there may be in testimonies of the defence witnesses, they never touched on the substance of the case i.e. that the defendants' line all was the senior of all the descendants of Umeagbunnono. Other issues are minor and the plaintiffs never proved their case. In all cases, the plaintiffs's primary obligation is to prove their case and not rely on**

**weakness of the defence unless the evidence of defence supports that of the plaintiffs. The defence never supported any position of the plaintiffs on the fact that the defendants' line was the senior of the descendants of Umeagbunnono; this very important position was clearly established by the defendants.** The contradictions referred to in the defendants' evidence are totally immaterial to the main issues in contention by the parties. The learned trial judge made enough findings of fact that could not be demolished before the court of Appeal. [Adeyemo v Anokpo (1988) 2 NWLR (part 79) 703; Ezeoke v. Nwagbo (1988) 1 NWRL (part 72) 612; Chukwu v. Nnaji (1990) 6 NWRL (part 156) 363, 3811. **There was no single material contradiction in the evidence of the defendants to justify interference with the trial court's decision by the court of Appeal. In this court, the appellants have not advanced enough reasons for this court to disturb the court of Appeal's decision.** [Ude v. Chimbo (1998) 12 NWLR (part 577) 169; Agbabiaka v. Saibu (1998) 10 NWLR (part 571) 534; Osho v. Ape (1998) 8 NWLR (part 562) 4921. **This appeal is against the concurrent findings of fact by the trial court and the court of Appeal, but no cogent and compelling reasons have been adduced to justify disturbance of those findings by this court.** [Ibenye v. Agwu (1998) 1 NWLR (part 574) 372; Odiba v. Agege (1998) 9 NWLR (part 566) 370; Alakija v. Abdulai (1998) 6 NWLR (part 552) 1.

I find no merit in this appeal and I dismiss it with N10,000.00 costs to the respondents.

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### OGWUEGBU JSC

I am in entire agreement with the judgment just delivered by my learned brother Belgore, J.S.C. of which I had a preview. For the reasons given by him, I also would dismiss this appeal.

The entire case is based on facts and both the trial court and the court below made concurrent findings of fact on the evidence produced by the parties. As the appellant could not show any exceptional circumstance to justify any interference with those judgments, he is bound to

fail.

The appeal totally fails. It is dismissed by me with N10,000.00 costs in favour of the defendants.

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**ACHIKE JSC**

I have had the privilege of reading before now the judgment just delivered by my learned brother, Belgore, JSC with which I am in full agreement.

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The learned trial Judge, after a thorough review of the evidence tendered by the parties stated categorically, inter alia, that "The plaintiffs have failed to attain the minimal standard in proof of their case", and thereafter dismissed their case. This is a straight forward declaratory

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action wherein the plaintiffs prayed the court to decree that they are eldest family vis-a-vis the defendants' family and accordingly are entitled to the privileges and perquisites which the first son, under Nnewi native law and custom, is entitled to generally and in particular the communal

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property of both parties situate at Uruagu Nnewi. The plaintiffs also prayed for injunction against the defendants restraining them from interfering with plaintiffs' authority and rights as the eldest family of Umeagbunnono (Akabo-Edeji) Uruagu Nnewi. As already stated, the

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learned trial judge found the plaintiffs' case not established and found for the defendants.

On appeal to the court of Appeal, the plaintiffs canvassed and capitalized on the trial court's raising and determination suo motu of pleas of laches and acquiescence. The appellate court disposed of this complaint without much ado as this complaint was peripheral to the main issue before that court, namely, which of the three sub-families is the senior sub-family. As earlier noted, the Court of Appeal had no difficulty in reaching the same conclusion that the evidence adduced at the trial fell below standard to warrant disturbing the judgment of the trial Judge.

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From the stand of the Court of Appeal, the learned trial Judge thoroughly appraised and evaluated the evidence before him and that court (i.e. trial court) was in a privileged position to carry out such appraisal.



The more striking pieces of evidence that swayed the case in favour of the defendants were that the plaintiffs had never produced an Obi in their line and currently the symbol of authority called "OFO" (among Ibos) was in 1st defendant's possession. The lower court found no justification to disturb the findings of the trial court. It is pertinent to observe B that the trial court found some contradictions in the defendants' case but found them totally inconsequential to the main bone of contention contested by the parties. On the main issue, the trial court's finding that the defendants were the senior group was also endorsed by the court of Appeal to be fully supported by evidence and therefore confirmed same C because ordinarily, it cannot without justification, disturb the findings of fact made by the trial court. See Kasaduku v Atolagbe (1973) 5 SC 195 and Ogundulu v Philips (1973) 2 SC 71.

By the lower court's endorsement of the decision of the trial court, D this court is automatically faced with concurrent findings of fact made by the high Court and the court of appeal and bound by the same unless there exists any special circumstance which warrants the re-opening of such question or questions of fact. See Ojomu v Ajao (1983) 2 SC NLR E 156, Ibrahim v Shagari (1983) 2 SC NLR 176 Omoboriowo v Ajasin (1984) 1 SC NLR 108 Chukwu v Nnaji (1990) 6 NWLR (pt.156) 363 and Odiba v Abdulai (1998) 9 NWLR (pt.566) 370. Appellants have not shown that there exists such exceptional circumstance for this court to F make any interference sought by them. I have had a second hard look at the decisions of the two lower courts and I am unable to find any reason to disagree with their judgments. It is for the foregoing and more detailed reasons contained in the leading judgment that I, too, would dismiss this appeal with N10,000.00 costs in favour of the respondents. G

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### KALGO JSC

I have had a preview of the judgement of my learned brother Belgore H JSC in this appeal just delivered and I agree that there is no merit in the appeal. The learned trial Judge made clear and correct findings of fact in my view, based on the evidence before him.

It is common ground that the parties originated from one common ancestor-Umeagbunnono and all the three sub-families are descendants of this common ancestor. The only dispute which arose in this case was which is the most senior of the three. According to the appellants, the order of seniority was (i) Eze-Omodo (ii) Umeakuka and (iii) Eze-Ozulumba but according to the respondents the order is (i) Umeakuka, (ii) Eze-Omodo and (iii) Eze-Ozulumba.

Both parties called evidence to support their claims. The learned trial judge found, quite rightly in my view, that the evidence of the respondents is more reliable and supportive to their claim and the contradictions in their evidence were not material to the claim itself. He has also resolved the issue of laches and acquiescence in their favour. The evidence on record disclosed that the members of the respondents' family had all along been first appointed to the important post of Obi of the area and as Tax collectors. They had also been in possession of the 'ofò' the symbol of authority of the area concerned.

The court of Appeal in affirming the decision of the learned trial judge was right in my view, and there are no special circumstances shown in this appeal to entitle this court to interfere with its decision.

In the circumstances, I agree with the judgement of my learned brother Belgore JSC that this appeal has no merit. I accordingly dismiss it and award N10,000.00 costs to the respondents.

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### AYOOLA JSC

At the end of the day the case from which this appeal arose turned at the trial and in the court of Appeal on facts. The question was: which of the rival claims to precedence by the descendants of Eze-Omodo was to be preferred. The parties adduced evidence to buttress their respective competing claims. The High Court after adverting to conflicting evidence, preferred that of the defendants to that of the plaintiff. The conclusions of fact were supported by the evidence. The Court of Appeal affirmed to trial court's decision whereby the time the matter reached this court there were concurrent findings of fact by the two courts be-

low.

In order to raise a semblance of question of law the plaintiffs, who are appellants in this appeal, sought to make an issue of passing remarks of the trial judge, when he said that-

*"The plaintiffs if they have the right they claim appears to have folded their arms scratched their elbows for too long. They tacitly consented and approbated the situation. There is an unpardonable delay and indolence in seeking their rights and equity is never on the side of the indolent."* B

Fastening on these remarks, the plaintiffs raised in the Court of Appeal C the contention that the trial judge erred in raising an issue of laches and acquiescence suo motu and that he in any event misapplied the principle of laches and acquiescence.

The court of Appeal dismissed the contention. Akintan, JSC, who D delivered the leading judgment interpreted the remarks of the trial judge, quoted above, as meaning no more than that the plaintiffs' story could not be true because of their past acts which were incompatible with their claim.. On this further appeal the plaintiffs contended that such interpretation was erroneous and that the finding of laches and acquiescence E connoted that a right had been established.

In my view the interpretation put on the remarks of the judge by the court below is reasonable. Besides, the finding of the trial judge that: F "In event they did not prove the existence of the birth right", makes the much contested remarks inconsequential.

On the whole, this appeal which in the final analysis turns on facts, is without substance. I too would dismiss it with N10,000.00 costs to the respondents. G

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