

SUPREME COURT OF NIGERIA
12TH MARCH, 1999. SC.122/1993
CORAM: A. B. WALL, I. L. KUTIGI, U. MOHAMMED,
S. U. ONU, A. I. IGUH, JJSC

MADAM EUNICE ENABULELE APPELLANT
AND
MADAM OMOYEBESE AGBONLAHOR RESPONDENT

APPEALS - Concurrent findings of fact - Interference with such findings - When the Supreme Court will so interfere.

CUSTOMARY LAW - Title - Acquisition of land - Under Bini native law and custom - The fundamental principles governing it.

CUSTOMARY LAW - Better title - Proof - Benin customary law - Although the parties did not appear before the Oba of Benin - There was overwhelming evidence that the respondent proved her claim.

JUDGMENTS - Concurrent findings of fact - Interference with such findings - When the Supreme Court will so interfere.

LAND LAW - Title - Acquisition of land - Under Bini native law and custom - The fundamental principles governing it.

LAND LAW - Title - Individual ownership - Requirements - Under Benin Customary Law - Where the respondents satisfied all the requirements - There is no basis for her to further establish prior title to the land in dispute - As against the appellant in the present case.

LAND LAW - Better title - Proof - Benin Customary Law - Although the parties did not appear before the Oba of Benin - There was overwhelming evidence that the respondent proved her claim.

FACTS

The plaintiff/respondent at the High Court holden in Benin City sued the defendant /appellant claiming for a declaration that she is entitled to a Statutory right of occupancy in respect of the piece or parcel of land in dispute, general damages and perpetual injunction. In 1972, the respondent applied to the Oba of Benin through the plot allotment committee, Evbareke, for a plot of land, approval for which was conveyed to her on 2nd February 1973. It was when the appellant trespassed on the said piece of land in 1987 that she brought the action claiming the above reliefs. The appellant's defence on the other hand is that in 1970, one Ajayi Erhabor who happened at the time to be the chairman of the Evbareke plot Allotment Committee applied through that committee for 14 plots of land. That the application was approved by the Oba of Benin on 8th June, 1971 vide Exhibit G. The plot in dispute, plot 296 was one of the 14 allotted to Ajayi Erhabor who entered into possession and subsequently by a deed of gift gave the said plot to his son Kennedy Ajayi.

Kennedy Ajayi farmed on the said plot of land and later sold it to the appellant for the sum of N1,000.00 in 1974. The appellant entered into possession and erected a building on the land, in consequence of which the respondent instituted this action claiming title under Benin customary law. The respondent contended that the grant in 1971 made in favour of Ajayi Erhabor was on behalf of the plot allotment Committee.

At the conclusion of hearing the learned trial judge found in favour of the respondent and granted all her claims. Dissatisfied, the appellant appealed to the Court of Appeal, Benin Division which dismissed the appeal. The appellant has further appealed to the Supreme Court raising two issues.

ISSUES FOR DETERMINATION

1. Whether having regard to Exhibits A and G the Respondent has established a prior title under Benin Customary Law as to defeat the interest of the Appellant and her predecessors in title on the land in dispute.

2. Whether taking cognizance of the whole evidence before the court the Plaintiff/Respondent has proved her claim under Benin Cus-

tomary Law as to entitle her to the declaration and injunction sought.

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

Land Law - Title - Acquisition of land

1. Indeed, the fundamental principles governing acquisition of land under Bini native land law and custom may more clearly and expensively stated as follows:-

(a) *The Oba of Benin is the only authority competent under Bini Customary Law to make allocation or grant of bini lands in or outside Benin City; for under the self-same law, all Bini lands are communal property of the entire Bini people and the legal estate in such lands is vested and resides in the Oba as trustee for the Benin people.*

(b) *Application for such transfer is usually made to the appropriate plot Allocation Committee having jurisdiction over the land in question.*

(c) *Recommendations of the application are then made by the relevant plot Allotment Committee to the Oba of Benin.*

(d) *The endorsement of the Oba of his approval on the grantee's written application, duly recommended by the relevant and appropriate Plot allocation Committee, immediately transfers to the purchaser or grantee the plot of land involved.*

(e) *An approval once given remains valid until set aside by the Oba of Benin when evidence is subsequently produced of a prior approval for the same land, the second approval being bona fide and in ignorance of the existence of an earlier one.*

(f) *It is contrary to Benin Customary law to unilaterally set aside an earlier approval. Therefore, to set aside an approval which is admittedly made in error, the two parties affected by the conflicting grants must be present before the Oba at the same time and his decision must be communicated to them after an open hearing at the Oba's Palace. Such decision must also be communicated to Ward Allocation Committee from which the two conflicting recommendations had emanated. See Aigbe v. Edokpolo (1977)2 SC. 1 at 3; Arase v. Arase (1981) 5 SC. 33. (p. 656 G*

Land Law- Title - Individual Ownership

2. After a careful consideration of the arguments proffered on both sides, I am of the firm view that the Oba's approval of the layout scheme I tendered as Exhibit "G" by the appellant, does not invalidate the Oba's subsequent approval of individual applications recommended by the plot Allotment committee for ownership of the building plots in the layout scheme I among which was Exhibit "A" tendered by the respondent in respect of Plot No.296. In actual fact, Exhibit 'G' was not approved by the Oba for ownership by an individual of the layout scheme 1 in Evbareke quarters. There was therefore, in my judgment, no basic, having regard to Exhibits 'G' and 'A' for the respondent to further establish prior title to the building plot since Exhibit 'A' in support of the respondent's evidence at the trial satisfied all the customary law requirements for individual ownership by Bini Customary Law. On the other hand, the appellant had no title whatsoever. To start with, she did not apply for ownership of building Plot No. 296 in Evbareke quarters for approval by the Oba. Chief Ajayi Erhabor Chairman of the Plot Allotment Committee, and the supposed appellant's predecessor in title, together with other members of the plot Allotment committee did recommend the respondent's application which was approved by the Oba for her ownership of the said plot 296. By this act, Chief Ajayi Erhabor, even granted he was the individual approved owner of the layout scheme 1, would have transferred his ownership of plot 296 thereof to the respondent in accordance with Bini Customary Law. See Uwagboe Obasoki v. Evbuomwan (1959) 4 FSC. 91 and Atiti Gold v. Osasoren (supra), both in which the crucial and underlining principle laid down by this court is that "the question at all times was which of the parties had made a good title to the said land and certainly not which of them first obtained the Oba's approval." This Court in the later case decided that the Oba's approval was but a single though culminating step in a whole chain of events and conditions to be strictly fulfilled by a prospective purchaser. (p.663H)

Land Law - Better title

3. I take the firm view that having regard to the evidence led at the trial, the respondent established her claim in accordance with Bini Customary

Law to entitle her to the declaration sought. Even though the parties to the present case did not appear before the Oba of Benin and the question turned on who had a better title, there was a clear preponderance of overwhelming evidence in this case that the respondent proved her claim under Benin customary law as to entitle her to the declaration and injunction she sought. (pp. 668 F/670 B)

Appeals - Concurrent findings of fact

4. Finally, as it is the settled policy and attitude of this court not to interfere with the concurrent findings of fact of lower courts unless such findings occasion miscarriage of justice and /or are violation of principles of law and practice which are alleged and substantiated by the appellants, it will decline to do so in the instant case. See Ogunsola Ajadi v. Alhaja Ladunni Okenihun (1985) NWLR (part 3) 484; Dike & Ors. v. Obi Nzeka 11 & Ors. (1986) 4 NWLR (part 34) 144. (p. 670 C)

REPRESENTATION

Ayo Olanrewaju Esq. for the Appellant.
S.O. Edema-Sillo for the Respondent.

CASES REFERRED TO

Aigbe v. Edokpolo (1977)2 SC. 1 at 3
Arase v. Arase (1981) 5 SC. 33
Atiti Gold v. Osaseren (1970) 1 All NLR 132; (1971) U.I.L.R. 131
Aikhonbara v. Omoregie (1976) SC. 11 at 28
Bello v. Eweka (1981 (1 SC. 101 followed.
Awonyegbe v. Ogbeide (1988) 1 NWLR (part 73) 695
UBN v. Penny Market Ltd. (1992) 5 NWLR (Part 240) 228
Union Bank of Nigeria Ltd. v. Nwaokolo (1995)6 NWLR (Part 400) 127
Omoregie v. Aiwerioghene (1994) 1 NWLR (Part 321) 488 at 500
Nwankpu v. Ewulu (1995) 7 NWLR (Part 407) 269 at 288
Faleye v. Otapo (1995)3 NWLR (Part 381)
Aigbe v. Edokpolo (1972)2 SC.1
Bello v. Eweka (1981) 1 SC. 101

LEAD JUDGMENT BY ONU JSC

The appellant who was the defendant in the trial High Court -the High Court of Bendel (now Edo) State holden in Benin City - was sued by the respondent, therein plaintiff, who claimed:-

B "(a) *A declaration that the plaintiff is entitled to a Statutory right of occupancy in respect of the said piece or parcel of land measuring approximately 1283.3 sq. Yards.*

 (b) *N5,000.00 General Damages for trespass committed by the Defendant on Plaintiff's said land.*

C (c) *A perpetual injunction restraining the Defendant, her servants or agents from committing further or other acts of trespass on the said plaintiff's land."*

The facts of the case may be briefly stated as follows:-

D For the respondent, it is that in 1972, she applied to the Oba of Benin through the plot Allotment Committee for Evbareke, for a plot of land, approval for which was conveyed to her on 2nd February, 1973. She said that because the appellant trespassed on the said piece of land in 1987, she sued her in the trial court claiming the above reliefs.

E The appellant's case on the other hand is that in 1970, one Ajayi Erhabor who happened at the time to be the Chairman of the Evbareke Plot Allotment Committee applied through that Committee for 14 plots of land. That the application was approved on 8th June, 1971 by the Oba of Benin Vide Exhibit G. That the plot in dispute, Plot 296, was one of the 14 allotted to Ajayi Erhabor who entered into possession and subsequently by a deed of gift, gave the said Plot 296 to his son. Kennedy Ajayi who farmed thereon by planting cashew and pineapple. That Kennedy Ajayi later sold the said plot of land to the appellant for the sum of N1,000.00 Vide Exhibit L. That that sale was in 1974 and the appellant who entered into possession thereof, erected buildings thereon. It was this act of trespass by the appellant that led the respondent to institute this action at the Benin High Court claiming title under Benin customary Law.

Pleadings having been ordered, filed and duly exchanged, the case went to trial before Akpomudjere, J. who in a well considered judgment found for the respondent by granting her all her claims on the 26th Janu-

ary, 1990 with costs.

Being dissatisfied with the said judgment of the High Court, the appellant appealed to the Court of Appeal, Benin Division (hereinafter in this judgment referred to as the court below) which dismissed the appeal on 16th April, 1993. B

The appellant has further appealed to this Court upon a Notice of Appeal dated 19th April 1993 and filed the same day containing nine grounds. The parties subsequently filed and exchanged briefs of argument in accordance with the rules of this court. The appellant's original brief C dated 8th March, 1994 and filed the same day having been amended by an amended brief dated 17th September, 1996, the respondent's brief dated the 18th day of May, 1994 and filed on 25th day of May, 1994 was filed in response thereto unamended.

Two issues were formulated at the appellant's instance as arising D for our determination. They are:-

1. Whether having regard to Exhibits A and G the Respondent has established a prio title under Benin Customary Law as to defeat the interest of the Appellant and her predecessors in title on the land in dis- E pute.

2. Whether taking cognizance of the whole evidence before the court the Plaintiff/Respondent has proved her claim under Benin Customary Law as to entitle her to the declaration and injunction sought. F

The two issues submitted by the respondent for our determination on the other hand state as follows:-

(i) Whether the Oba's approval of the application by the Plot Allotment Committee (set up by the Oba) for approval of a Layout Scheme G in Evbareke Quarters, Benin City, covering 14 Building Plots invalidates subsequent Oba's approval of individual application recommended by the plot Allotment Committee for ownership of the 14 building plots.

(ii) Whether the subsequent Oba's approval of application of individual owners of Building plots in a Layout scheme earlier approved by H the Oba is contrary to Benin Customary law.

At the hearing of the appeal on 14/12/98, learned counsel on either side each adopted his brief and expatiated thereon.

As the appellant's two issues overlap and are clearly co-terminus with the two issues the respondent has also proffered for the determination by this Court, I express a preference for the appellant's two issues as being enough to dispose of the appeal herein. I shall therefore commence the consideration of this appeal with appellant's issue Number One as follows:-

ISSUE 1:

Whether, on the evidence adduced in this case, the respondent proved her title to the land in dispute as require under Benin Customary Law on acquisition.

The Law is that under Bini Customary law, title to land is acquire through a grant by the Oba of Benin through a specific procedure, which is as follows:-

(a) *A person intending to acquire land must direct an application in writing to that effect through the Plot Allotment committee responsible for the ward in which the land intended to be acquired is situated.*

(b) *Upon receipt of the application the Plot Allotment Committee will delegate some of its members to carry out an inspection of the land and they in turn will report back to the Committee on their inspection; the purpose of inspection being to ascertain the Plot to be granted with certainty and also to ascertain if it is free from dispute or has been previously granted to someone else.*

(c) *After being satisfied that the desired piece of land is dispute-free, the Committee will endorse the application and forward it to the Oba of Benin.*

(d) *The Oba of Benin will then grant his approval to the application in writing.*

Indeed, the fundamental principles governing acquisition of land under Bini native land law and custom may more clearly and expensively stated as follows:-

(a) The Oba of Benin is the only authority competent under Bini Customary Law to make allocation or grant of bini lands in or outside Benin City; for under the self-same law, all Bini lands are

communal property of the entire Bini people and the legal estate in such lands is vested and resides in the Oba as trustee for the Benin people.

(b) *Application for such transfer is usually made to the appropriate plot Allocation Committee having jurisdiction over the land in question.*

(c) *Recommendations of the application are then made by the relevant plot Allotment Committee to the Oba of Benin.*

(d) *The endorsement of the Oba of his approval on the grantee's written application, duly recommended by the relevant and appropriate Plot allocation Committee, immediately transfers to the purchaser or grantee the plot of land involved.*

(e) *An approval once given remains valid until set aside by the Oba of Benin when evidence is subsequently produced of a prior approval for the same land, the second approval being bona fide and in ignorance of the existence of an earlier one.*

(f) *It is contrary to Benin Customary law to unilaterally set aside an earlier approval. Therefore, to set aside an approval which is admittedly made in error, the two parties affected by the conflicting grants must be present before the Oba at the same time and his decision must be communicated to them after an open hearing at the Oba's Palace. Such decision must also be communicated to Ward Allocation Committee from which the two conflicting recommendations had emanated. See Aigbe v. Edokpolo (1977) 2 SC. 1 at 3; Arase v. Arase (1981) 5 SC. 33; Okeaya v. Aguebor (1970) All NLR 1 at 8-10 (Reprint); Atiti Gold v. Osaseren (1970) 1 All NLR 132; (1971) U.I.L.R. 131; Aikhonbara v. Omoregie (1976) SC. 11 at 28; Bello v. Eweka (1981) (1 SC. 101 followed. See also Awonyegbe v. Ogbeide (1988) 1 NWLR (part 73) 695.*

It is the appellant's contention that the respondent herein relied on her claim to title to the land in dispute on the approval granted by the Oba of Benin in 1973 vide paragraphs 2 and 3 of the Amended Statement of Claim at page 30 of the record. The appellant in paragraph 2 of the Further Amended Statement of Defence at page 55 of the record joined

issues with the respondent by denying the said paragraphs 2 and 3 of the Amended Statement of Claim. In proof of her case, it is maintained, the respondent gave and called evidence as well as tendered the approval of her application which was admitted as Exhibit "A". That in her evidence on oath she stated as follows:-

"The committee bulldozed the area and constructed roads. The committee also surveyed the land into plots. I filled a form for allocation of a plot which I submitted to the committee which was later sent to the oba for approval. After the approval, the committee showed me the land.

The secretary of the Committee, one Godfrey Erhabor and one other person took me to the land and showed it to me. Godfrey Erhabor the Secretary showed me the beacon numbers round my plot."

(Emphasis is by me).

It can be seen from the Statement of Claim and evidence of the respondent, the appellant maintained, that a fundamental requirement or prerequisite for the acquisition of land under Bini Customary Law, to wit: that "the ward plot allotment committee upon receipt of the application would delegate some of their members to carry out an inspection of the land acquired within the area of the ward and they in turn would report back to the committee on their inspection, "the purpose of their inspection "being" to ascertain the plot to be granted with certainty and also to ascertain if it is free from dispute or has not been previously granted to someone" was not complied with. Thus, it is further argued, there was no inspection of the land prior to the submission and recommendation of the respondent's application to the Oba of Benin; a fortiori the approval of same.

It was the appellant's further contention that the affect of the failure to have an inspection of the land before the respondent's application was recommended for approval in the case in hand, became more evident when it was shown by the appellant through Exhibit "G" that the land had in fact been previously granted to someone else" i.e., the respondent's predecessor in title as far back as 1971. The appellant therefore submitted that the failure to fulfil a condition precedent, in this case, the requirement of a prior visit to the land, nullified and vitiated the Oba's approval to the respondent's application. The cases of Gold v. Osaseren (supra), Arase

v. Arase and Okeaya v. Aguebor (supra) were called in aid. It was argued in addition that in this case, Ajayi Erhabor through whom appellant traced her root of title obtained the Oba's approval Exhibit. G on 8th June, 1971 while the respondent obtained hers on 2nd February, 1973. The appellant went on to point out that once there is a valid Oba's approval in favour of a party, the legal title in the property in dispute passes to that party and there will be nothing left for the Oba to grant subsequently vide Bello v. Eweka (1981) 1 SC.101 at 129. It follows therefore, it is further maintained, that once there had been a valid Oba's approval in favour of Ajayi Erhabor in this case, the subsequent approval in favour of the respondent amounted to nothing as there was nothing left for the oba to grant in favour of the respondent. Appellant next submitted that as it was not the respondent's case that the said Ajayi Erhabor to whom the appellant traced her title did not fulfil all the requisite conditions necessary before the grant to him in 1971 but that it was her case that the said grant was made in favour of the said Ajayi Erhabor on behalf of the Plot Allotment Committee, then the said Oba's approval which nowhere indicated that it was made otherwise than in favour of Ajayi Erhabor, whose name appears thereon, does not support the contention. B C D E

We were referred to several extracts from the judgment of the court below and it was thereafter submitted that there was no iota of evidence on the record to support the conclusion that the fact that the respondent was taker to see the land after the Oba's approval instead of before it, was not such an irregularity as would nullify or vitiate the allocation made to the respondent. Rather, it was asserted, it was the normal procedure adopted in any place where there is a "layout scheme", adding that in any event, the requirement of prior inspection of the land permits of no exception. In opposition to Exhibit "A", it was further pointed out, the respondent's approval is Exhibit "G" the approval of the Oba of Benin to which the appellant traced her title to the land in dispute, After the contents of Exhibit "G" were set out, the appellant contended that the only conclusion that can be drawn and which this Court is called upon to so draw, is that the approval of the Oba contained therein was to a single individual, the individual named therein to wit: Ajayi Erhabor for the fol- F G H

lowing reasons:-

(a) *There is nothing to suggest on the face of the approval that it was so given on behalf of or to more than one person, (other than the person named therein. In this regard the use of the word "application" in paragraph 2 of the approval is instructive.*

(b) *The application for allocation of land was signed by A. Erhabor and there is no indication therein that he was applying on behalf of any one or other person/s other than himself. He requested that the Oba of Benin should "Please allocate for me."*

In the premise, it was contended, the court below could not have been right considering the overwhelming evidence on the record when it held thus:-

"In this connection one must point first to the fact that the Oba's approval given to Respondent in Exhibit "A" was inspect of a single and indivisible plot given to Respondent alone, and duly recommended by all members of the Plot Allocation committee which included even Chief Ajayi Erhabor (father of D.W. 2) himself. On the other hand, the approval given to the father of DW2 was in respect of a composite plan comprising 20 plots numbered from 276 to 301. It was the case of the Respondent that approval in Exhibit "G" was a blanket approval given to father of DW2 as Chairman of the committee handling the layout scheme. Even the layout plan attached to the exhibit "G" clearly says so, The committee were to further sub-allocate each of the plots embraced in the compos the allocation Exhibit "G" to individual plot owners, who would then apply again directly to the oba for personal allocation to the as was done by Respondent. There has been no single or individual allocation of plot No. 296 to any other person besides the respondent. To this extent Respondent's approval appears to be superior even though later in time than the composite approval in Exhibit "G".

It was submitted that as the above holding is not based on any evidence before the court, it has therefore occasioned a miscarriage of justice because it formed the basis of the conclusion of the court to dismiss the appellant's appeal. After citing to us the case of UBN V. Penny Market Ltd. (1992) 5 NWLR (Part 240) 228 in support of the proposition, it was

contended that the provisions of section 132(1) of the Evidence Act Cap. 112 Laws of the Federation, 1990 as well as the case of Union Bank of Nigeria Ltd. v. Nwaokolo (1995)6 NWLR (Part 400) 127, in which Halsbury's Laws of English, 3rd Edition Vol.9 at page 142 was quoted with approval and relied upon, were apposite. It was further the appellant's submission that it was not and has never been stated to be, as evidenced by a host of authorities over the years relating to Bini customary law, that before a plot or ward allotment committee can recommend land to the Oba for grant to an individual, it must first obtain the Oba's approval in respect of the same land in favour of itself. What the cases decided, it is stressed, is that Bini land is sub-divided into areas over which the respective Plot/Ward Allotment committees have authority. Such once a plot allotment committee is created for an area, it is maintained, it needs not obtain Oba's approval in respect of the land in the area before it can recommend applications of individuals to the Oba for approval. It follows from the above, it is emphasized, that there was no reason in the first place to assume, as the lower courts did, that Exhibit "G" was obtained on behalf of the Plot Allotment Committee and not Ajayi Erhabor for himself in 1971. Thus, weighing Exhibit 'G' side by side with Exhibit 'A', it is argued, it becomes evident that at the time Exhibit 'A' was approved by the Oba, there was no longer any legal estate in the oba to so approve as the legal title no longer inured to him but only to him but only to Ajayi Erhabor who alone could transfer same. This fact, it was pointed out, was acknowledged by the respondent witness, PW2. It was appellant's further submission that the fact that the survey plan which denotes the 14 plots approved by Exhibit 'G' and more, may have been made on behalf of the Plot Allotment Committee, does not support the finding of the lower court as the same plan was also used to denote the land approved by virtue of Exhibit 'A' in favour of the respondent. This very evidence from the respondent, it is contended, amounts to a very crucial defect which operates to nullify the oba's approval in Exhibit "A". The case of Atiti Gold v. Osaseren (supra) at pages 131 at 137-138 where this court decided that non-fulfillment of any of the conditions precedent to obtaining the Oba's approval - in that case the non-settlement of the farmers on the land - vitiated the approval granted by

the Oba. It was further argued that it was the defect of not complying with the strict conditions precedent to obtaining the Oba's approval that led this court in that case (Gold v. Osaseren (supra) at pages 137-138, to enunciate the principle that the crucial "question at all times was which of the parties has made a good title to the land and certainly not which of them first obtained the Oba's approval," This Court, the Appeal ant stressed, decided in that case that the Oba's approval was but a single though culminating step in a whole chain of events and conditions to be strictly fulfilled by a prospective purchaser.

Our attention was next adverted to passages from the case of Okeaya v. Aguebor (supra) following which it was submitted on appellant's behalf, that in the case in hand, no evidence was adduced to show that the producer for setting aside an approval enunciated was strict followed and as further decided in Arase v. Arase (supra) Omoriegie v. Aiwerioghene (1994) 1 NWLR (Part 321) 488 at 500, the latter in which the principle postulated and being restated, was to the effect that acquisition of legal interest in land under Bini customary law after 1961 must be evidenced in writing. It was submitted in addition that based on the foregoing that since evidence of approval of land by the Oba must be in writing, any proof of subsequent setting aside of such approval made after 1961 must also be in writing, adding that the importance of the requirement that such evidence of setting aside must be in writing will be appreciated when it is recalled that it is the established custom that the fact of such setting aside must be communicated to the plot allotment committee which keeps record relating to such transactions in land in its area of jurisdiction vide Okeanya v. Aguebor (supra) at pages 8-9 and Omoriegie v. Aiwerioghene (supra) at page 501 paragraphs A-D).

The appellant in the light of the foregoing submitted in addition that the respondent having failed to show any written evidence of the setting aside of the approval - Exhibit "G" - either from the Oba or from the relevant Ward allotment committee, has failed to discharge the onus on her and must therefore fail in her case. The oral evidence as stated by the respondent, the appellant maintained, is insufficient to establish that fact especially as Ajayi Erhabor in whose favour Exhibit 'G' was made had

died. The appellant concluded by submitting that from the foregoing, it was wrong for the court below to hold that the respondent made out a better title based on Exhibit 'A' as to entitle her to the declaration sought. It was further submitted in addition that the onus is on the respondent to prove her claim on the strength of her evidence, failing which declaration must not be made in her favour but rather her case must be dismissed. See Kodlinye v. Odu (1935) 2 WACA 336; Woluchem v. Gudi (1981) 5 SC, 291, followed recently in the cases of Nwankpu v. Ewulu (1995) 7 NWLR (Part 407) 269 at 288; Faleye v. Otapo (1995) 3 NWLR (Part 381) 1 at page 32 paragraphs G -H. It was additionally argued that if the defendant is able to adduce evidence, oral or documentary, which has the effect of discrediting the plaintiff's evidence, such a declaration should be refused vide Ogundairo v. Okanlawon (1963) 1 All NLR 358.

In his oral contention and expatiation of the brief on behalf of the appellant at the oral hearing of this case, learned counsel, Mr. Olarenwaju, emphasized how Exhibit "A" represented the approval in favour of the respondent while Exhibit "G" was the approval in favour of the appellant. Learned counsel submitted that there is nothing in Exhibit 'G' to show that Plot 296 was allocated to the respondent and to her alone, adding that he would urge court to examine it (Exhibit 'G') very very carefully. He further contended that while the court below stated the applicable law correctly, it failed to consider and apply it in relation to the facts of this case, adding that appellant was first in time. It was thereupon contended that it was not shown that the principle of inspection i.e. seeing the land in dispute first was not adopted here. Where his attention was thereupon adverted to the court of Appeal decision in Ugbo v. Aburime (1993) 2 NWLR (Part 273) 101, learned counsel referred us to another 1995 Court of Appeal case (citation undisclosed) whose facts he said, are on all fours with the instant case, adding that he urged us to allow the appeal.

Edema-Sillo Esq., of counsel for the respondent, after adopting the brief he filed on 24th May, 1994 on his client's behalf, submitted that the first plot was a layout scheme. The Oba of Benin, he contended, accepted the scheme and later appointed a Plot Allotment Committee.

After a careful consideration of the arguments proffered

on both sides, I am of the firm view that the Oba's approval of the layout scheme I tendered as Exhibit "G" by the appellant, does not invalidate the Oba's subsequent approval of individual applications recommended plot Allotment committee for ownership of the building plots in the layout scheme I among which was Exhibit "A" tendered by the respondent in respect of Plot No.296. In actual fact, Exhibit 'G' was not approved by the Oba for ownership by an individual of the layout scheme I in Evbareke quarters. There was therefore, in my judgment, no basic, having regard to Exhibits 'G' and 'A' for the respondent to further establish prior title to the building plot since Exhibit 'A' in support of the respondent's evidence at the trial satisfied all the customary law requirements for individual ownership by bini customary Law. On the other hand, the appellant had no title whatsoever. To start with, she did not apply for ownership of building Plot No. 296 in Evbareke quarters for approval by the Oba. Chief Ajayi Erhabor Chairman of the Plot Allotment Committee, and the supposed appellant's predecessor in title, together with other members of the plot Allotment committee did recommend the respondent's application which was approved by the Oba for her ownership of the said plot 296. By this act, Chief Ajayi Erhabor, even granted he was the individual approved owner of the layout scheme 1, would have transferred his ownership of plot 296 thereof to the respondent in accordance with Bini Customary Law. See Uwagboe Obasoki v. Evbuomwan (1959) 4 FSC. 91 and Atiti Gold v. Osasoren (supra), both in which the crucial and underlining principle laid down by this court is that "the question at all times was which of the parties had made a good title to the said land and certainly not which of them first obtained the Oba's approval." This Court in the later case decided that the Oba's approval was but a single though culminating step in a whole chain of events and conditions to be strictly fulfilled by a prospective purchaser.

Thus, in the instant case, the learned trial Judge arrived at the following invetable conclusions following a careful appraisal of the cases made by the parties before him viz:-

"The above is the summary of the evidence and the submission of both counsel in the matter. The plaintiff is claiming for a statutory right of occupancy in respect of Plot 296 Evbareke quarters Benin city damages and order of perpetual injunction. The plaintiff in order to prove her case called two witnesses apart from herself to testify in the matter. The plaintiff tendered Exhibits "A", "B", "E" and "F" to prove her case. Exhibit "A" being the Oba's approval in respect of Plot 296, Exhibit "B" the litigation survey plan, Exhibit "E" and "F" were proceedings, the Statement of Defence and survey plan of the Defendants in Suit No. B/64/77 which was between late Chief Ajayi Erhabor and six others including the plaintiff in respect of claims to parcels of land in Evbareke Quarters. My examination of the evidence of the parties and documents tendered by them and pleadings revealed the following facts namely:-

1. That there was a layout Scheme by members of Evbareke Quarters and as a result a Plot Allotment Committee was established with the approval of the Oba of Benin.

2. The Plot allotment Committee comprised of seven members with the late Ajayi Erhabor as Chairman.

3. The initially, the allocating of plots to members of the quarters in the said layout especially those who contributed to the establishment of the Plot Allotment Committee were each given a plot including the plaintiff.

4. When the other members of the Committee discovered that the late Ajayi was claiming more than what he had been allowed, trouble started between said Ajayi and some members resulting in Suit No. B/64/77 which was later withdraw and struck out.

5. The survey pillars/beacons shown in Exhibit "A" were copied thereon after Exhibit "D" was prepared because the said Exhibit 'D' was prepared after the Oba's approval which was given earlier.

6. Also the survey pillars/beacons shown in Exhibit "G" and the Plot numbers shown were copied thereon after Exhibit "D" was prepared that is, after the Oba's approval which was earlier and dated 8/6/71.

From the analysis of the evidence so far, I believe and accept the

case presented by the plaintiff that the Evbareke quarters constitute a Plot Allotment Committee which allocated to her Plot 296 in the Evbareke Layout Scheme I and she was granted the Oba's approval Exhibit "A" in respect of the same. I also believe that the purported survey carried out by Ivbaraye Williams (now deceased) licensed surveyor was for the Evbareke Community. I came to this conclusion after examining Exhibits H, H1 and H2. The defendant could not establish her title under Bini Native Law and Custom to the land in dispute.

I am of the view that having regard to the state of the evidence that the plaintiff presented a more plausible case and I prefer her case to that of the defendant. In the circumstance the plaintiff's case succeeds, and it is hereby allowed."

(Underlining is by me for emphasis).

In Ugbo v. Aburime (supra) at page 111, paragraphs A-D the Court of Appeal, following the Supreme Court cases of Arase v. Arase (supra) and Awoyegbe v. Ogbeide (supra), restated the procedure (per Craig, JSC) as follows:-

"When there is a competing title to a piece of land, the question to be asked is who has made a good title and not who first obtained the Oba's approval."

Also, at page 712 of the report Nnamani, JSC after reviewing most of the previous cases on the topic such as Atiti Gold v. Osaseren (supra); Mrs. Aigbe v. Bishop Edokpolo (1972) 2 SC.1, Bello v. Magnus Eweka (1981) 1 SC. 101, stated in his contribution *inter alia* as follows:-

"Where two allocations have been made by the same Ward Allocation Committee, the first one takes priority, if two separate plot allotment committees allocate a piece of land, the issue of priority does not arise. One person in the case of such a dispute will not get title just because he got the Oba's approval first."

The writer of the leading judgment in that case (Ugbo v. Aburime (*supra)), however, proceeded by clearly pointing out as follows:-

"In view of the foregoing, it becomes clear that the learned trial judge was merely stating the general principle that under Bini Customary Land Law, priority is dependent on the date of Oba's approval. To that

extent he was partially right; perhaps he ought to have gone further to say that in exceptional cases where the same piece of land was granted to two people, priority would depend on whoever shows better title when both parties appear before the Oba at his palace to prove their case.

However, in the instant case, it has not been shown that the parties herein ever appeared before the Oba for any adjudication for priority to be determined.

Also, with the advent of the land Use Decree in 1978, it appears that the Benin Customary Land tenure system has been overtaken by events. On the totality of the foregoing, it appears that notwithstanding the partially accurate statement of the law of priority under the Benin Customary Land Law, the learned trial judge had accurately considered the evidence of both parties and put same on an imaginary scale of justice, as required by the Supreme Court in Mogaji v. Odofin (1978)4 SC 91, and rightly came to the conclusion that the respondent proved a better title....."

In the instant case, the facts of which are in all respects almost on all fours with the Ugbo v. Aburime case above, the court below affirmed the important findings of the trial court as follows:-

"In this connection one must point first to the fact that the Oba's approval given to the Respondent in Exhibit "A" was in respect to a single and indivisible plot given to Respondent alone and duly recommended by all members of the Plot Allotment Committee which included even Chief Ajayi Erhabor (father of D.W2) himself. On the other hand the approval given to father of DW2 was in respect of a composite plan comprising 20 Plots numbered from 276 - 301. It was the case of the Respondent that approval in Exhibit "G" was a blanket approval given to father of DW2 as Chairman of the Committee handling the layout scheme. Even the layout plan attached to the Exhibit "G" clearly say (sic) so. The Committee were to further sub-allocate each of the plots embraced in the composite Exhibit "G" to individual plot owners who would then apply again directly to the Oba for personal allocation to them as was done by Respondent. There has been no single or individual allocation of Plot No. 296 to any other person besides the Respondent. To this

extent Respondent's approval appears to be superior, even though later in time than the composite approval in Exhibit "G". There was also the fact pleaded in Respondent's statement of claim and supported by evidence of PW2 that both sides had once appeared before the Oba himself and he granted title to individual allottees of the land as against father of DW2. Father of DW2 later instituted an action against the seven individual allottees of the land in Suit No. B/64/77, but could not proceed and so the action was struck out. The record of proceedings in that suit was tendered and admitted as Exhibit "E" in this (sic) proceedings. In view of the above, one must say that although as a general rule priority under Bini Native Law and Custom may depend on date of Oba's approval but in the instant case the Respondent showed a better title and so was rightly given priority by the learned trial Judge." (The Underlining above is mine for emphasis).

In view of the above concurrent findings of fact by the trial High Court and the court below, coupled with the fact that the appellant has not made out a case for the reversal of these concurrent orders, the issue herein is resolved against the appellant.

ISSUE NO.2

This issue questions whether, taking cognisance of the whole evidence before the court the respondent proved her claim under Bini Customary Law as to entitle her to the declaration and injunction sought.

In the light of all I have said under Issue I above, I take the firm view that having regard to the evidence led at the trial, the respondent established her claim in accordance with Bini Customary Law to entitle her to the declaration sought.

In the appellant's Brief at pages 6 and 7 paragraph 4.2 thereof, she relies on the case of Okeya v. Aguebor (supra) wherein this Court outlined the established principles governing the acquisition of land under Bini Customary Law, to wit:

- (a) all lands in Benin Division are vested in the Oba of Benin who is thus trustee or legal owner therefore on behalf of the people of Benin who are beneficiaries in respect thereof;
- (b) in respect of Benin City itself, the Oba of Benin had by 1961

appointed Ward, Allotment Committees in respect of 12 Wards into which the City had been divided shortly before this for the purpose of plot allocation;

(c) whereas any grantee of land in Benin City before 1961 might not be able to produce the approval in respect thereof reduced by the Oba of Benin into writing, such a grantee after this period must be able to produce such evidence;

(d) One of the several functions of a ward plot allotment Committee is to recommend plot applications to the Oba of Benin for approval;

(e) an applicant for land in Benin City as from 1961 has to direct his application in writing to the ward plot allotment committee of his choice

(f) the ward plot allotment committee upon receipt of the application would delegate some of their members to carry out an inspection of the land acquired within the area of their ward and they in turn would report back to the committee on their inspection "the purpose of the inspection "being" to ascertain the plot to be granted with certainty and also to ascertain if it is free from dispute or has not been previously granted to someone;

(g) upon being satisfied at out the exact locations, the dimensions and the facts that the desired plot is "dispute free" the ward plot allotment committee would endorse the application with the above facts and forward it to the oba of Benin as recommended;

(h) the Oba of Benin would, as a rule, accord his approval in writing to a recommended application and an applicant whose application is approved by the Oba of Benin becomes the beneficial owner of the land as approved for him;

(i) an approval once given remains valid until set aside by the oba of Benin when evidence is subsequently produced of a prior approval for the same land, the second approval being bona fide and in ignorance of the existence of an earlier one;

(j) it is contrary to Benin custom to set aside an approval made in error upon an exparte application by one of the affected parties. In other words, to set aside an approval made in error the two parties

affected by the conflicting grants must be present before the Oba at the same time and his decision must be communicated to them after an open hearing at the Oba's palace, such decision must also be communicated to the ward allotment committee from which the two conflicting recommendations had emanated" (Underlining is mine for emphasis)

Even though the parties to the present case did not appear before the Oba of Benin and the question turned on who had a better title, there was a clear preponderance of overwhelming evidence in this case that the respondent proved her claim under Benin customary law as to entitle her to the declaration and injunction she sought.

Finally, as it is the settled policy and attitude of this court not to interfere with the concurrent findings of fact of lower courts unless such findings occasion miscarriage of justice and or are violation of principles of law and practice which are alleged substantiated by the appellants, it will decline to do so in the instant case. See Ogunsola Ajadi v. Alhaja Ladunni Okenihun (1985) NWLR (part 3) 484; Dike & Ors, v. Obi Nzeka 11 & Ors. (1986) 4 NWLR (part 34) 144; Etowa Enang & Ors. v. Fidelis Ikor Agu (1981) 11-12 SC. 25 at 38-40; Chief Frank Ebba v. Chief Warri Ogodo (1984) 4 SC, 84 and Fabunmi v. Agbe (1985)1 NWLR (part 2) 200.

Issue 2 is accordingly resolved in favour of the respondent.

The two issues argued herein having been resolved against the appellant, this appeal lacks merit and it is accordingly dismissed with N10,000.00 costs to the respondent.

WALI JSC

I have the privilege of reading before now, the lead judgement of my learned brother Onu, JSC, and I agree with his reasoning and conclusions for dismissing the appeal.

Both the trial court and the Court of Appeal have painstakingly considered the evidence adduced by both parties and came to the unimpeachable conclusions that the respondent had made out a better and stronger case than the appellant. No convincing argument were advanced

in support of the appellant's case to warrant interference with the concurrent findings of facts by the two lower courts.

For the same reasons given in the lead judgement of my learned brother Onu, JSC, I also dismiss this appeal. I adopt the consequential orders in the lead judgment, that of costs inclusive.

B

KUTIGI JSC

I have read the record as well as the judgment just delivered by my learned brother Onu, JSC., in this case. It is settled that this court will not interfere with concurrent findings of fact of the lower courts unless such findings are perverse (see ARUNA & ANOR VS THE STATE (1990) 6 NWLR (PT. 155) 125, EBBA VS , OGODO (1984) 4 S.C 84). I find no reason to interfere with the decision of the lower courts in this case I think they were right.

I therefore agree with the lead judgment and dismiss the appeal with costs as assessed.

E

MOHAMMED JSC

I agreed that this appeal has no merit . The judgement of my learned brother, Onu JSC, has covered the two issues raised for the determination of this appeal and I adopt his opinion that the submissions of the learned counsel for the appellant have not affected the concurrent findings of facts made by the two lower Courts. In the result this appeal fails and it is dismissed. The judgement of the Court of Appeal, Benin Division, is hereby affirmed. I also award N10,000.00 costs in favour of the respondent.

G

IGUH JSC

I have had the privilege of reading in draft the judgement just delivered by my learned brother, Onu, JSC, and I agree entirely that this appeal is without substance and should be dismissed.

H

I need only add that the concurrent findings of fact of both the trial court and the court below on relevant issues are fully supported by evidence and have not been shown to be perverse or patently erroneous. It is also clear to me that no miscarriage of justice will result if they are allowed to remain. In the circumstance, this court is not entitled to interfere with them.

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

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