

**SUPREME COURT OF NIGERIA**

15TH JULY, 1999. SC. 116/1993

**CORAM:- A. G. KARIBI-WHYTE, I. L. KUTIGI, S. U. ONU,  
A. I. KATSINA-ALU, U. A. KALGO, JJSC.**

MOSES OKOYE DIKE & 2 ORS. .... APPELLANTS

(For themselves and on behalf of the Uruezikeokwe  
family Umuisiedo Nwewi/Agbaja, Akabo-Edorji,  
Uruagu, Nwewi)

AND

FRANCIS OKOLOEDO & 2 ORS. .... RESPONDENTS

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***EVIDENCE*** - Appeals - Reevaluation of evidence- The Court of Appeal was entitled - To reevaluate the evidence adduced in this case - Where the evidence of the appellants though believed - Was insufficient to prove the root of title - As required by law.

***LAND LAW*** - Title - Claim for declaration of title to land - Proof - A plaintiff has the burden of proving his case - On his own evidence - But can take advantage of and rely upon evidence by the defence- Which supports his case.

***LAND LAW*** - Title - Declaration of title - Traditional evidence - Once it is found to be conclusive and cogent - There would be no need whatsoever to require further proof.

***LAND LAW*** - Evidence - Traditional history- Time immemorial- It is not enough for the appellants in the instant case - To testify only that they own the land from time immemorial - They must go ahead to show from whom the land started - And finally devolved to them.

***LAND LAW*** - Declaration of title - Proof - Where plaintiffs failed to prove their root of title satisfactorily - Defendants who have not counter claimed - Need not answer the claim upon such defective evidence.

*LAND LAW - Title to land- Purchasers of land- Their case will succeed or fail - With the case of their common vendor*

### **FACTS**

In a suit filed in the Nnewi High Court of Anambra State, the plaintiffs/appellants in a representative capacity claimed against the defendants/respondents jointly and severally for a declaration that they are entitled to a statutory/customary right of occupancy to the land in dispute. According to the appellants, the land in dispute is known as "Orura Mbuba" and it is situated in front of "Okwu Edo" shrine, but is only a part of a larger piece of land called "Ana Edo" or "Ilo Edo " which had from time immemorial been the property of their family by virtue of their being the chief priests of Edo goddess. Many years ago, their entire family allowed one Okoledo, father of the 1st respondent, to farm on the land in dispute as he was then the head servant of their family. The permission given to him to farm on the land founded upon the services he performed for the family did not authorize him to reap economic trees thereon. He was to use the land during his life time. Only without any right to alienate the land or any part thereof or to be inherited by any of his children. However, the 1st respondent's father in his life time made a grant of part of the land to the 1st respondent who erected a building thereon. This was initially resisted by the appellants' family but when customary gifts were offered to them, they consented to the grant. Thereafter the 1st respondent sold parts of the land in dispute to the 2nd and 3rd respondents who started cutting down the economic trees thereon. Preparatory to putting up their buildings on the said land. It was this latter action which provoked the filing of the suit.

It is the 1st respondents case that the land in dispute is part of a larger piece of land know and called Ana Edo or Ilo Edo. It was only the servants or messengers of Edo goddess that could live on the land. The 1st respondent's ancestors and people were and still are the servants or messengers of Edo goddess (umu Edo) and never those of the appellants. He testified that the land in dispute was cleared from a virgin land by Ezeocha who lived on it and on his death the son Odogwu took it over.

After Odogwu his son Amanuche alias Eze-Ononigbe-Eze enjoyed it before it passed over to Okoloedo, the 1st respondent's father. On the death of Okoloedo, the 1st respondent inherited the land in dispute. At the conclusion of hearing, the learned trial judge in a considered judgment found in favour of the appellants and granted all the reliefs sought by them. Dissatisfied the respondents appealed to the court of Appeal, Enugu Division. That court allowed the appeal and set aside the judgment of the trial court. The appellants have now appealed to the supreme court raising two issues while the respondents also raised two similar issues. The appeal was determined on the two issues raised by the appellants.

### **ISSUES FOR DETERMINATION**

*"1. Whether the Court of Appeal was right when it held in favour of the respondents as against the Appellants as regards the findings in favour of the Appellants by the learned trial judge as to the root of title of the parties when the roots of title as pleaded and as given in evidence by the Respondents were different and fundamentally irreconcilable while the root of title given by the Appellants was established according to Law.*

*2. Whether the Court of Appeal was right when it held in effect that there was no evidence before the learned trial judge upon which he could have lawfully come to the conclusion that the appellants had established their ownership of the land in question and therefore entitled to the reliefs which they claimed".*

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

### ***Land Law - Evidence***

1. This is the sum total of the evidence adduced by and on behalf of the Appellants in support of their claims. It is very clear that they have failed to prove how they came to own the land in dispute. It is not enough in my view in this type of action for them to testify only that they own the land for a long time or time immemorial. They must go ahead to show from whom the land started and finally devolved to them. They have

awfully failed to do that. Also a plaintiff who seeks declaration of title to land must prove his root of title to the land. If he traces his title to a particular person, it is not enough to stop there. He must go further to prove how that person got his own title or came to have the title vested in him including where necessary the family that originally owned the land. See Thomas v. Preston Holder 12 WACA 78; Ajibona v Kolawole (1996) 10 NWLR (Pt. 476) 22. Therefore in this case, it is not sufficient for the Appellants to say that the land in dispute belonged exclusively to the Uruezikeokwe family from time immemorial and stop there. They must show how that family got it either from some other persons or authority in succession or that they found it a virgin land and deforested it. They did not do either and to that extent, they have in my view, failed to establish their root of title as required by law. (pp. 2287 D/2288 C)

#### ***Declaration of title - Traditional evidence***

2. With due respect to the learned trial judge, the traditional evidence adduced by the Appellants at the trial as elicited above, did not go anywhere near being vivid or impeccable nor was it cogent or sufficient to support any judgment in favour of the Appellants. It is well settled that one of the five ways of establishing a claim for declaration of title to land is by traditional evidence. See Idundun v. Okumagba (1976) 9-10 SC. 227. It is also settled that once the traditional evidence is found to be conclusive and cogent, there would be no need whatsoever to require further proof. See Akunyili v Ejidike (1996) 5 NWLR (Pt 449) 381 at 417. Balogun v. Akanji (1988) 1 NWLR (Pt. 70) 301; Amajideogu v Ononaku (1988) 2 NWLR (Pt. 78) 614. But the traditional evidence must be such as to be consistent and properly linked the plaintiff with the traditional history relied upon. See Owoade v. Onitola (1988) 2 NWLR (Pt. 77) 413. (p. 2287 H)

#### ***Land law - Claim***

3. It is now well settled that in a claim for declaration of title to land, a plaintiff has the burden of proving his case on his own evidence and cannot rely on the weakness of the defendant's case. If that burden is

not discharged, the weakness of the defendant's case will not help him and proper judgment will be for the defendant. See Kodilinye Odu (1935) 2 WACA 336 at 337, Odesanya v. Ewedemi (1962) 1 All NLR 320; Atuanya v. Onyejekwe (1975) 3 SC. 161; Bashua v Maja (1976) 11 SC. 143. However a plaintiff can take advantage of and rely upon evidence by the defence which supports his case. See Akinola v. Oluwo (1962) WNLR 133. Realizing this principle of law, the learned counsel for the Appellants submitted in his brief that since both parties to the case agreed that the land in dispute was intimately connected with the Edo goddess, and the Chief Priest of Edo goddess had always come from the Appellant's family, it necessarily followed that there had been a succession of Chief Priests who held the land in trust for the Appellants' family which proved the root of their title. I do not think that this submission holds any water here. In the first place, the Appellants, apart from mentioning the names of Chief Priests who held that office in their family over the years, did not prove their ownership of the land or that they lived there without any interference, and in the second place, except the admission in the pleadings that the family of the Appellants produced the Chief Priests, no other evidence was given proving any title or ownership by the respondents at the trial. It is an after thought to bring it at this stage and cannot in my view be accepted to prove any root of title by the Appellants. Therefore the Akintola v Oluwo case (supra) is not relevant here. (p. 2288 H)

#### ***Declaration of title - Proof***

4. Ordinarily, since the Appellants as plaintiffs failed to prove their root of title satisfactorily in a claim for declaration of title to the land in dispute, they have failed to make out a prima facie case, and the respondents as defendants who have not counter-claimed need not answer the claim upon such defective evidence. See Ajibona v. Kolawole (supra). In the instant case, the respondents as defendants, did not counter-claim. They only defended the action by presenting their own case and denying the claims of the Appellants. (p. 2289 F)

***Title to land - Purchasers of land***

5. It is common ground that the 1st respondent sold parts of the land in dispute to the 2nd and 3rd respondents. It is also common ground that the 2nd respondent had put up a completely different defence to the action from that of the 1st and 3rd respondents. The defence of the 2nd respondent as per his pleadings was that the land in dispute, part of which was sold to him by the 1st respondent, was communal land held by 4 Nnewi Obis, including DW. 4, in trust for Nnewi people. In his evidence at the trial as DW.6, the 2nd respondent did not testify that the land in dispute was communal land. He only confirmed that he bought the portion of the land from 1st respondent whom he was made to believe was the owner of the land in dispute. And although DW. 4, gave evidence on communal ownership of the land in dispute, he was not 2nd respondent's witness and his evidence was not of any substance at the trial. In any event, I agree with the learned trial judge when he said in his judgment after reviewing the evidence of the parties:-

*"But let me state at once that the case of the 2nd and 3rd defendants who are purchasers will succeed or fail with the case of their common vendor, the first defendant. They obtained title to parts of the land in dispute from him and if he does not possess the radical title he has nothing to pass to them."*

I cannot agree more with the learned trial judge on this in the circumstances of this case. (p. 2293 C)

***Evidence - Appeals***

6. Lastly, I have no doubt in my mind that the Court of Appeal was perfectly entitled to re-evaluate the evidence adduced in this case and conclude as it did, even though the learned trial judge said he believed and accepted the evidence of the Appellants. It is very clear that on the authorities, the evidence of the appellants though believed was insufficient to prove the root of title as required by law. (p. 2294 A)

**NOTABLE POINTS OF INTEREST****ONU JSC***1. Where evidence of tradition accepted by the trial judge did not exist*

I am of the firm view that implicit in this averment is the Appellants' claim of ownership of the Shrine along with the Headship thereof and not settlement by ownership tied down to the priesthood. If that was the case, it should have been expressly and clearly pleaded as such. It ought at this juncture to be pointed out that the evidence of PW1 relied on at page 8 of the Appellants' Brief did not fare better for it simply claimed ownership of Orura Mubba which is also worshipped by Oraifite and other communities commonly called Agbaja people. Of note too, is the fact that when PW1 was cross-examined and specifically asked how the Edo came to be owned by them, he was unable to answer the question. Indeed, there was no evidence of settlement by anybody, not even the Goddess reputed by PW1 was once a human being before transforming into a spirit. Nor was it the Appellants' case that whoever is the Chief Priest if the Edo Goddess becomes the owner of the land on which it is. Indeed, no such tradition or custom was pleaded by the Appellants and no such evidence was given. When such a situation arises as indeed it did in this case, the Appellants' root of title can be said to hang in the air. See Alade v. Awo (1975) 4 SC. 21; (1974) 9 NSCC 141 at 148. See also Prior v. Tenalo (1976) 12 SC. 31; Kalio v. Woluchem (1985) 1 NWLR (Part 4) 610 and Mogaji v. Cadbury (Nig.) Ltd (1985) 2 NWLR (Part 7) 393. In the instant case, the evidence of tradition accepted by the learned trial judge did not exist either in the pleadings or evidence led. The court below was therefore justified to so find for reasons proffered in its judgment. (p. 2299 F)

**KATSINA-ALU JSC***2. What a plaintiff whose claim is founded on traditional history must prove*

A plaintiff, whose claim is founded on traditional history in proof of a claim for declaration of title to land, must plead and establish such facts as:-

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

claims.

B Where therefore the line of succession is not satisfactorily traced and that line of succession has gaps and mysterious linkage or nexus which are not established, then such line of succession would be rejected. See Mogaji v. Cadbury Nig. Ltd. (1985) 2 NWLR (Pt. 7) 393. (p. 2302 C)

C **REPRESENTATION**

Chief (Mrs.) C. J. Aremu for the Appellants

Respondents absent, not represented

D **CASES REFERRED TO**

Thomas v. Preston Holder 12 WACA 78

Ajibona v Kolawole (1996) 10 NWLR (Pt. 476) 22

Idundun v. Okumagba (1976) 9-10 SC. 227

E Akunyili v Ejidike (1996) 5 NWLR (Pt 449) 381 at 417

Balogun v. Akanji (1988) 1 NWLR (Pt. 70) 301

Owoade v. Onitola (1988) 2 NWLR (Pt. 77) 413

Kodilinye Odu (1935) 2 WACA 336 at 337

F Odesanya v. Ewedemi (1962) 1 All NLR 320

Atuanya v. Onyejekwe (1975) 3 SC. 161

Bashua v Maja (1976) 11 SC. 143

Alade v. Awo (1975) 4 SC. 21; (1974) 9 NSCC 141 at 148

Prior v. Tenalo (1976) 12 SC. 31

G Kalio v. Woluchem (1985) 1 NWLR (Part 4) 610

Mogaji v. Cadbury (Nig.) Ltd (1985) 2 NWLR (Part 7) 393

**LEAD JUDGMENT BY KALGO JSC**

H In suit No. HN/18/77 filed in the Nnewi High Court of Anambra State, the appellants who were the plaintiffs claimed against the respondents jointly and severally as per paragraph 26 of their Amended Statement of Claim, the following reliefs:-



"1. Declaration that the plaintiffs are entitled to the statutory/ Customary rights of Occupancy to that piece or parcel of land known as and called "ORURA MBUBA" land, situated in front of "EDO" SHRINE, at Uruagu village, Nnewi, within the jurisdiction of this Honourable Court and more particularly delineated and verged BROWN in the plaintiffs survey plan No. NLS/AN. 563/88 and filed with this amended statement of claim. B

2. Declaration that the purported sale of a portion of the said "Orura Mbuba" land by the 1st Defendant or his privy to the 2nd Defendant is void and ineffective by Nnewi law and custom. C

3. Declaration that the purported sale of the said "Orura Mbuba" land by the 1st Defendant or his privy to the 3rd Defendant is void and ineffective by Nnewi Native Law and custom.

4. An order setting aside the purported sales mentioned above. D

5. Recovery of possession of the said "Orura Mbuba" land from the 1st, 2nd and 3rd Defendant."

At the trial, the appellants called three witnesses and the respondents called six witnesses in support of their respective pleadings. Counsel for the parties addressed the court and the learned trial judge, Olike J., in his considered judgment delivered on 5th day of February, 1990, granted all the reliefs claimed by the appellants and rejected the defence of the respondents. E

The respondents were dissatisfied with this decision and they appealed to the Court of Appeal Enugu Division, which finally heard the appeal and held per Uwaifo JCA (as he then was) that:- F

"This appeal therefore succeeds and is allowed. The judgment of the lower court together with the order for costs is set aside. The plaintiffs' claim is dismissed." G

The other two Justices of the court who heard the appeal with him also agreed.

The appellants, thereafter filed their appeal in this court on four H grounds. They later filed a brief of argument in which they elicited two issues for the determination of the court in this appeal which read:-

"1. Whether the Court of Appeal was right when it held in

*favour of the respondents as against the Appellants as regards the findings in favour of the Appellants by the learned trial judge as to the root of title of the parties when the roots of title as pleaded and as given in evidence by the Respondents were different and fundamentally irreconcilable while the root of title given by the Appellants was established according to Law.*

2. *Whether the Court of Appeal was right when it held in effect that there was no evidence before the learned trial judge upon which he could have lawfully come to the conclusion that the appellants had established their ownership of the land in question and therefore entitled to the reliefs which they claimed".*

The Respondents also filed a written brief in which they formulated the following issues:-

"(1) *Whether the Court of Appeal was right when it held that the plaintiffs/Appellants neither pleaded nor gave evidence of traditional History on which they solely relied thereby dismissing their claims.*

(2) *Whether the Appellants can rely on the weakness of the defendants' case, in the instant case to prop up their own case".*

Looking at the issues raised by the parties, it appears to me that the two issues of the Respondents can easily be subsumed and argued in those of the Appellants and I intend to treat them accordingly.

It seems to me pertinent at this stage to set out albeit briefly, the relevant facts in this case which gave rise to this appeal. The Appellants who brought the action on behalf of themselves and the Uruezikeokwe family of Umuisiodo, Nnewi, claimed that the land in dispute which is called "ORURA MBUBA" and which forms part of a large area of land called "ANA EDO" or "ILO EDO" had been from time immemorial, the exclusive property of the Urueziokwe family. The land in dispute was located or situated in front of the "OKWU EDO" shrine and as the Head Servant of Edo goddess, the family of the Respondents were allowed to farm on the land, and to reap the fruits of the economic trees on the land for services rendered in the nature of cleaning, sweeping, and looking after the "EDO SHRINE". Many years ago, the Urueziokwe family allowed one Okoloedo, the father of the 1st respondent, who was

then the head servant of the family, to farm on the land in dispute, but not to reap the economic trees thereon. He was to use the land during his life time only without any right to alienate the land or any part thereof or to be inherited by any of his children. But according to the appellants, the father of the 1st respondent, made a grant of part of the land to the 1st respondent who erected a building thereon. This was initially resisted by the appellants' family but when customary gifts were offered to them, they consented to the grant. Thereafter, the 1st respondent sold parts of the land in dispute to the 2nd and 3rd respondents who started cutting down the economic trees thereon, preparatory to putting up their buildings on the said land. It was this latter action which provoked the filing of the suit in the trial court.

In respect of the issues for determination in this appeal which I set out earlier in this judgment I have indicated that I prefer the issues set out by the appellants in their brief of argument. In my limited understanding of these issues, issue 1, looks at the root of title of the parties to the action having regard to their pleadings and evidence presented at the trial. Issue 2, deals with the evaluation of the evidence generally by the learned trial judge and how he came to the conclusion that the Appellants as plaintiffs were entitled to the reliefs claimed. As pleadings and evidence are inseparable, I intend to take the two issues together and discuss them in this appeal.

In the Amended Statement of Claim paragraphs 3, 4, 5, and 6, the Appellants as plaintiffs pleaded that:-

"3. The land in dispute is known as and called "ORURA MBUBA" and is situated in front of "OKWU EDO" Shrine at Uruagu village, Nnewi, within the jurisdiction of this Honourable Court. The said land in dispute is more clearly shown and delineated and Verged BROWN in the plaintiff's Survey plan No. NLS/AN 563/88 dated 18th March, 1988, and filed with this Amended Statement of Claim.

The plaintiffs plead and will at the trial of this case rely on all the features of the said Survey plan No. NLS/AN. 563/88.

4. The whole of the "ORURA MBUBA" land in dispute Verged Brown, had from time immemorial, been the exclusive property of the

entire Uruezikeokwe family, Umuisedo, Nnewi/Agbaja, Akabo-Edorji, Uruagu, Nnewi

The land in dispute is a part of a large and an extensive area of the land called "ANA EDO" of "ILO EDO" land of the plaintiffs verged B YELLOW on the plaintiffs' Survey plan No. NLS/AN. 563/88 filed with this Amendment Statement of Claim and situate at Okpuno, Uruagu vil- lage, Nnewi.

5. The whole of the said land in dispute had been from time C immemorial a farm land with many economic trees like palm trees, coco- nut trees, breadfruit trees e.t.c. and had been used as a farm land by the plaintiffs' ancestors.

6. Many years ago, the entire Uruezikeokwe family (the plain- tiffs' family) allowed one Okoloedo Okeke (the father of the 1st Defen- D dants' who hailed from Oraifite), who was during his life time, the "Head Servant" of the Uruezikeokwe family, to farm on the whole of the said land "Orura Mbuba" land and so to reap the economic trees thereon in consideration for the domestic services he Okoloedo rendered to the E tire Uruezikeokwe family in the nature of cleaning, sweeping and look- ing after the Edo Shrine (situate immediately opposite the "Orura Mbuba" land in dispute) which by Nnewi Custom and tradition was owned by the Uruezikeokwe family and who are also the Head of the Shrine, but that F Shrine serves the whole of Agbaja (Nnewi, Oraifite and Ichi.)"

In support of their pleadings the Appellants called 3 witnesses. On the root of title of the Appellants to the land in dispute, this is all what P.W. 1 the 1st Appellant said:-

"The land is owned by all members of Uru-Ezike-Okwe family G exclusively from time immemorial. There are economic trees on the land. I know one Okoloedo Okeke now deceased. He has a surviving son called Francis Okoloedo the first defendant on record."

P.W. 1 was cross-examined at length by the two counsel for the respon- H dents. Although he said too much about the historical background of the families involved and the nature and extent of the Edo Shrine and the various activities that took place in connection with the land in dispute, he did not explain in any way, how the Uru-Ezike-okwe came to be in

possession or exclusive ownership of the land in dispute. He had maintained throughout the cross-examination that the land in dispute belonged to the Uru-Ezike-Okwe family all the time because they "saw the Edo in its nakedness."

P.W. 2, Emmanuel Igwegbe, did not improve the situation either. He only said in his evidence that he knew the land in dispute called Orira-Mbuba and that the land is owned by the Uru-Ezike-Okwe family. He did not elaborate on how the land came to be owned by the said family.

P.W. 3, Cyprian P.C. Nwosu is a licensed Surveyor who was employed by the Appellants to produce a plan which was used at the trial and admitted in evidence as Exhibit 'C'. He knew nothing about how his employers came to own the land in dispute and he did not say so.

**This is the sum total of the evidence adduced by and on behalf of the Appellants in support of their claims. It is very clear that they have failed to prove how they came to own the land in dispute. It is not enough in my view in this type of action for them to testify only that they own the land for a long time or time immemorial. They must go ahead to show from whom the land started and finally devolved to them. They have awfully failed to do that.** The learned trial judge must therefore be wrong when in his judgment he held:-

*"On a totality of the evidence I am satisfied that the plaintiffs gave a vivid and impeccable evidence of the traditional history of the land in dispute, the custom on land within and around the area of the Edo Shrine. They establish how they got to the land and their right to possession."*

He later added that :-

*"The traditional evidence in the instant case is in my view cogent, sufficient, satisfactory and conclusive and safe to base the judgment in the case on it."*

**With due respect to the learned trial judge, the traditional evidence adduced by the Appellants at the trial as elicited above, did not go anywhere near being vivid or impeccable nor was it co-**

gent or sufficient to support any judgment in favour of the Appellants.

It is well settled that one of the five ways of establishing a claim for declaration of title to land is by traditional evidence. See Idundun v. Okumagba (1976) 9-10 SC. 227. It is also settled that once the traditional evidence is found to be conclusive and cogent, there would be no need whatsoever to require further proof. See Akunyili v Ejidike (1996) 5 NWLR (Pt 449) 381 at 417. Balogun v. Akanji (1988) 1 NWLR (Pt. 70) 301; Amajideogu v Ononaku (1988) 2 NWLR (Pt. 78) 614. But the traditional evidence must be such as to be consistent and properly linked the plaintiff with the traditional history relied upon. See Owoade v. Onitola (1988) 2 NWLR (Pt. 77) 413. Also a plaintiff who seeks declaration of title to land must prove his root of title to the land. If he traces his title to a particular person, it is not enough to stop there. He must go further to prove how that person got his own title or came to have the title vested in him including where necessary the family that originally owned the land. See Thomas v. Preston Holder 12 WACA 78; Ajibona v Kolawole (1996) 10 NWLR (Pt. 476) 22.

Therefore in this case, it is not sufficient for the Appellants to say that the land in dispute belonged exclusively to the Uruezikeokwe family from time immemorial and stop there. They must show how that family got it either from some other persons or authority in succession or that they found it a virgin land and deforested it. They did not do either and to that extent, they have in my view, failed to establish their root of title as required by law. I agree entirely with the Court of Appeal when, after reviewing the evidence adduced by the Appellants at the trial held:-

*"The plain truth is that no facts of traditional history were pleaded and no evidence led. It is amazing therefore that the learned trial judge found traditional evidence which he so much commended."*

It is now well settled that in a claim for declaration of title to land, a plaintiff has the burden of proving his case on his own evidence and cannot rely on the weakness of the defendant's case. If that

burden is not discharged, the weakness of the defendant's case will not help him and proper judgment will be for the defendant. See Kodilinye Odu (1935) 2 WACA 336 at 337, Odesanya v. Ewedemi (1962) 1 All NLR 320; Atuanya v. Onyejekwe (1975) 3 SC. 161; Bashua v Maja (1976) 11 SC. 143. However a plaintiff can take advantage of and rely upon evidence by the defence which supports his case. See Akinola v. Oluwo (1962) WNLR 133. Realizing this principle of law, the learned counsel for the Appellants submitted in his brief that since both parties to the case agreed that the land in dispute was intimately connected with the Edo goddess, and the Chief Priest of Edo goddess had always come from the Appellant's family, it necessarily followed that there had been a succession of Chief Priests who held the land in trust for the Appellants' family which proved the root of their title. I do not think that this submission holds any water here. In the first place, the Appellants, apart from mentioning the names of Chief Priests who held that office in their family over the years, did not prove their ownership of the land or that they lived there without any interference, and in the second place, except the admission in the pleadings that the family of the Appellants produced the Chief Priests, no other evidence was given proving any title or ownership by the respondents at the trial. It is an after thought to bring it at this stage and cannot in my view be accepted to prove any root of title by the Appellants. Therefore the Akintola v Oluwo case (supra) is not relevant here.

Ordinarily, since the Appellants as plaintiffs failed to prove their root of title satisfactorily in a claim for declaration of title to the land in dispute, they have failed to make out a prima facie case, and the respondents as defendants who have not counter-claimed need not answer the claim upon such defective evidence. See Ajibona v. Kolawole (supra). In the instant case, the respondents as defendants, did not counter-claim. They only defended the action by presenting their own case and denying the claims of the Appellants. It will be pertinent therefore to set out the respondent's presentation at the trial particularly in view of the attitude of the learned trial judge

in making sure in his judgment that he destroyed their case first in an effort to uphold the claims of the Appellants.

In their Amended Statement of Defence, the 1st and 3rd respondents pleaded traditional history in respect of the land in dispute in paragraphs 4, 5, and 6 thus:-

"12. *The Defendants aver that late Okoloedo Okeke lived on the land in dispute and exercised maximum acts of ownership and possession in and over the same without any interference from the plaintiffs or anyone else except in 1971 when one Agbanusi Uzukwu laid claim to the ownership of the same. The land in dispute was first cleared when it was a virgin forest of Ana Edo by Ezeocha who lived on it and exercised maximum acts of ownership and possession in and over the same. The land in dispute was inherited by the first Defendant through Ezeodogwu, Anamuche (alias Ezeononighe-Edo) and Okoloedo.*

*15. The Defendants aver that under Nnewi native law and custom the first person who clears the virgin forest of any god or juju becomes the owner of the portion so cleared by him. Early Christian converts in Nnewi cleared parts of certain juju forest in Nnewi and thereby became the owners in possession thereof to this date.*

*16. Owing to the constant loss by death of his children on the land in dispute, late Okoloedo, about 46 years ago and before the birth of the first Defendant moved to the first Defendant's present place of abode shown verged GRAY on the said plan. Okoloedo as the owner in possession of the land in dispute and to harvest or reap the fruits of the economic trees growing thereon including one iroko tree without any interference from the plaintiffs or any one else whomsoever until suit No. 0/178/1971. Plan No. OKE/D 53/72 dated the 24th day of June, 1972 filed by Okoloedo in the said suit showing the ruins of his former residence and other features on the land in dispute shall be relied upon by the Defendants at the trial of this suit.*

*17. The first Defendant's ancestors and people were and still are the servants or messengers of Edo Goddess (Umu Edo) and never those of the plaintiffs. It has never been the right or duty of the plaintiffs to apportion any dwelling site or any land at all to a servant or messenger*



*of Edo Goddess. The first Defendant hitherto worships the Orimiri Edo, Uku Edo and Udo Edo as his late father did before him."*

He gave evidence and called 3 other witnesses in support of his defence, DWs 2, 3 and 4. He testified that the land in dispute was cleared from a virgin land by Ezeocha who lived on it and on his death the son B Odogwu took it over. After Odogwu his son Anamuche alias Eze-Ononigbe - Eze enjoyed it before it passed over to Okoloedo, the 1st respondent's father. On the death of Okoloedo, the 1st respondent inherited the land in dispute. DW 2 and 3, in their testimonies substantially C supported the evidence of the 1st respondent.

DW 4, His Royal Highness Igwe Orizu III also substantially corroborated the grant of the land in dispute to the head servants of Edo Shrine of Nnewi. He confirmed that his own father appointed the father D of the 1st respondent as head servant to the Shrine but did not know or hear of Ezeocha Odogwu, Anamuche or Onukwuli as past Head Servants of Edo. I do not think that it is necessary that he should know that the said people were in the post appointed Head Servants before the court could accept that fact as true if other witnesses have clearly confirmed E this to be so. And looking at the testimonies of P.W. 1, Moses Okoye Dike, DW 2, Okolo Onyeogu, DW 3, Chief Samson Nwachukwu Azubuike, and the 1st respondent there is ample evidence to support the F existence of Ezeocha, Odogwu, Anamuche and Onukwuli as Head Servants of the Edo Shrine at different times in the past. P.W. 1, gave evidence in line with what was pleaded in paragraph 8 of the Amended Statement of Claim of the Appellants which clearly mentioned all the past Head Servants of the Edo Shrine up to the father of the 1st respondent. G In effect the learned trial judge expressed surprise that DW 4, said he did not know these past Head Servants when in his judgment he observed:-

*"If it is correct that the head servants of Edo are appointed by the Igwe of Obi of Nnewi and if indeed his late father appointed the 1st defendant it is strange and puzzling that he did not know of these past H head servants of Edo through whom the 1st defendant claimed he inherited or derived his root of title to the land in dispute."*

The learned trial judge went on in his judgment to criticize the

Igwe in his complicity with the other 3 Obis in their dealing is with the land in dispute and held that the land was not held in common by them as trustees for the benefit of the Nnewi Community. They have no title to it and could not confer any proper title to any body by grant. He finally ended up by saying that the evidence of the Igwe (DW4) was confusing and conflicting and could not attempt to reconcile it. This in my view, amounts to rejecting the evidence of D.W. 4. But he did not reject the evidence of DW2 and the 1st respondent even though he said there were areas of disagreement. He however observed in favour of the respondents that:-

*"All I can say is that if the institution of head servant of the Edo is as old as the Edo and if the head servants have been living on Efo land it follows as a natural phenomenon that they have since spread on both sides of the Ile-Edo road up to Nnewi-Onitsha Road and that explain their concentrated presence around the Edo Shrine and its approach as shown in their plan Exhibit D".*

This goes to confirm the evidence of the respondents that the Head Servants and their families had been well settled in the land in dispute.

In his brief, the learned counsel for the Appellants submitted that the Court of Appeal was wrong in holding that there was no traditional evidence standing against that of the 1st respondent at the trial. He argued in the brief that the evidence of P.W.1, and that of DW.4, are in direct conflict with the traditional evidence of the 1st respondent.

I have already examined the evidence of DW. 4 above and as I said earlier, it appeared to me clearly that due to the adverse comments made by the trial judge on the evidence of DW.4, that evidence was virtually rejected and not relied upon by the learned trial judge. It cannot therefore stand against any evidence at all. In respect of the evidence of P.W. 1, I cannot see anything in it which showed the sequence of succession to the land in dispute by the Chief Priests who were all appointed from the Appellants' family. His evidence was only to the effect that the land in dispute belonged to the Appellants' family of which he is a member, from time immemorial, without showing how they came by the land. This is not good evidence of root of title in an action like this.

The 1st respondent, however, who was DW. 5 at the trial gave evidence of his root of title thus:-

*"The first person to clear Okpu-Kpe-Edo land was Ezeocha, who lived on it and when he died his son Eze-Odogwu began to enjoy it. After his son Ana-ama-Eze-Ononigbe Edo took over. After him his first son Okoloedo began to enjoy it. After him it fell to my lot to enjoy it."* B  
This evidence is clear on how the land in dispute devolved from the 1st respondent's ancestors unto him. I agree with the Court of Appeal that it is cogent and the evidence of P.W. 1 or that of DW. 4, cannot stand in C  
opposition to it and I so hold.

**It is common ground that the 1st respondent sold parts of the land in dispute to the 2nd and 3rd respondents. It is also common ground that the 2nd respondent had put up a completely different defence to the action from that of the 1st and 3rd respondents. The defence of the 2nd respondent as per his pleadings was that the land in dispute, part of which was sold to him by the 1st respondent, was communal land held by 4 Nnewi Obis, including DW. 4, in trust for Nnewi people. In his evidence at the trial as DW.6, the 2nd respondent did not testify that the land in dispute was communal land. He only confirmed that he bought the portion of the land from 1st respondent whom he was made to believe was the owner of the land in dispute. And although DW. 4, gave evidence on communal ownership of the land in dispute, he was not 2nd respondent's witness and his evidence was not of any substance at the trial. In any event, I agree with the learned trial judge when he said in his judgment after reviewing the evidence of the parties:-** D  
E  
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*"But let me state at once that the case of the 2nd and 3rd defendants who are purchasers will succeed or fail with the case of their common vendor, the first defendant. They obtained title to parts of the land in dispute from him and if he does not possess the radical title he has nothing to pass to them."* H

I cannot agree more with the learned trial judge on this in the circumstances of this case.

Lastly, I have no doubt in my mind that the Court of Appeal was perfectly entitled to re-evaluate the evidence adduced in this case and conclude as it did, even though the learned trial judge said he believed and accepted the evidence of the Appellants. It is very clear that on the authorities, the evidence of the appellants though believed was insufficient to prove the root of title as required by law.

I answer both issue raised by the Appellants in this appeal in the affirmative.

For the reasons stated above, this appeal therefore fails and it is dismissed. The decision of the Court of Appeal given on 14th January, 1992 in this case is hereby affirmed. I award N10,000.00 costs in favour of the respondents.

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#### KARIBI-WHYTE JSC

I have had the privilege of a preview of the leading judgment of my learned brother Umaru Atu Kalgo, JSC in this appeal. I agree with his reasoning and the decision affirming the judgment of the Court of Appeal dated 14th January, 1992. I have nothing more pertinent and useful to add.

Appellants shall pay to Respondents costs of this appeal assessed at N10,000.

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#### KUTIGI JSC

I read before now the judgment just rendered by my learned brother Kalgo, J.S.C. I agree with his reasoning and conclusion. The plaintiffs/Appellants' case which was founded an traditional history necessarily failed because they failed not only to plead the history of devolution of the land in dispute, they did not also plead the name or names of the founders and or their ancestors.

Consequently, they adduced no evidence of traditional history at the trial. I will therefore dismiss the appeal and affirm the decision of the

Court of Appeal. The Respondents are awarded costs of N10,000.00 against the Appellants.

### ONU JSC

In paragraph 26 of their Amended Statement of Claim the plaintiffs, herein Appellants who are members of Uruezikeokwe family, Umuisedo Akabo-Edorji Uruagu, Nnewi claimed from the Defendants, now Respondents in the High Court of Anambra holden at Nnewi, jointly and severally as follows:-

*"(1) Declaration that the plaintiffs are entitled to the statutory/customary rights of occupancy to the piece or parcel of land known as and called "Oruru Mbuba" land, situate in front of "Edo" shrine, at Uruagu Village, Nnewi, within the jurisdiction of this honourable court and more particularly delineated and verged Brown in the plaintiffs' Survey Plan No. NLS/AN/563/88 and filed with this amended statement of claim.*

*(2) Declaration that the purported sale of a portion of the said "Oruru Mbuba" land by the 1st defendant or his privy to the 2nd Defendant is void and ineffective by Nnewi law and custom.*

*(3) Declaration that the purported sale of a portion of the said "Oruru Mbuba" land by the 1st Defendant is void and ineffective by Nnewi native law and custom.*

*(4) An order setting aside the purported sales mentioned above.*

*(5) Recovery of possession of the said "Oruru Mbuba" land from the 1st, 2nd and 3rd Defendants."*

The claim was expressed by the Appellants to be in a representative capacity for themselves and no behalf of their family. Pleadings were ordered, duly filed and exchanged by the parties following which evidence was led by both sides on the issues joined, which culminated in a judgment in favour of the Appellants. The Respondents were aggrieved by the said decision and their appeal to the Court of Appeal sitting at Enugu (hereinafter in the rest of this judgment referred to as the court below) was upheld with the judgment of the lower court with the order

for costs therein set aside.

The appeal to this court is against the latter decision premised on four grounds.

The Appellants and Respondents alike each submitted two similar issues as arising for our determination. For my consideration of the appeal herein I adopt the two Appellants' issues which ask:

"(1) *Whether the Court of Appeal was right when it held in favour of the Respondents as against the Appellants as regards the findings in favour of the Appellants by the learned trial Judge as to the root of title of the parties when the roots of title as pleaded and as given in evidence by the Respondents were different and fundamentally irreconcilable while the root of title given by the Appellants was established according to law.*

(2) *Whether the Court of Appeal was right when it held in effect that there was no evidence before the learned trial Judge upon which he could have lawfully come to the conclusion that the Appellants had established their ownership of the land in question and therefore entitled to the reliefs which they claimed."*

Before considering the arguments of the two issues set out above, I wish to state the relevant facts of the case which both sides acceded to as being common ground and as to their authenticity.

Firstly, the three Appellants brought the suit on behalf of themselves and no behalf of Uruezikeokwe family of Umuisiodo, claiming that the land in dispute belongs to their family. On the other hand, the 1st Respondent claims that the land belonged to him by inheritance and that he sold part of it to each of the other two Respondents.

Secondly, according to the Appellants, the land in dispute is known as "Orura Mbuba" and it is situated in front of "Okwu Edo" shrine, but is only a part of a larger piece of land called "Ana Edo" or "Ilo Edo" which had from time immemorial been the property of their family by virtue of their being the Chief Priests of Edo goddess. Many years ago, their entire family allowed one Okoloedo, father of the 1st Respondent, to farm on the land in dispute as he was then the head servant of their family. The permission given to him to farm on the land founded upon

the services he performed for the family did not authorize him to reap economic trees, and in any case the land was not to devolve on his children or anyone through him. However, in complete disregard of his limited powers to deal with the land, the 1st Respondent's father in his life time purported to make a grant of part of the land to the 1st Respondent. The Appellants resisted the attempt, but later the 1st Respondent pacified the Appellants and gave the customary gifts to the Appellants, after which he was permitted to erect a building on that portion of the land. Then early in 1977, the Appellants noticed that some workmen started to cut down economic trees, and generally to clear the land in dispute preparatory to erecting buildings thereon. It was these activities that led to the Appellants instituting this suit.

According to the Respondents, the land in dispute is known and called Okpupke Edo, but this is not an indication that the identity of the land is in doubt or that there is a dispute as to the exact location of the land. It is further the 1st Respondent's case that the land in dispute is part of a larger piece of land known and called Ana Edo or Ilo Edo/ Ezemewi land. It was only the servants or messengers of Edo goddess that could live on the land. 1st Respondent further asserted that the land is his family land - the first person to settle on it being one Ezeocha, followed by his son Eze Odogwu; then his own son Eze-Oronigbe Edo, who was later succeeded by his son Okoloedo. The 1st Respondent is the son of Okoloedo and it was he who gave land to the other Respondents.

The case of the 2nd Respondent is that from time immemorial, a large piece of land of which the piece in dispute was a part, had been a communal land of the whole of Nnewi people vested in Igwe Orizu 111 as the head. This witness further stated that it was the ancestor of Igwe Orizu 111 and three other Obis that settled the ancestor of 1st Respondent on part of the land. Finally, that the 2nd Respondent had first purchased his own portion of the land from one Agbunusi Uzoukwu, a member of the Appellant's family. That the said Uzoukwu sued the father of the 1st respondent and after the case had been in the court for six years, 1971-1977 and was withdrawn, he (the 2nd Respondent) then went and

purchased it again from the 1st Respondent.

I will now deal with the issues in order of sequence as follows:-

#### ISSUE NO. 1

Put in a nutshell, the complaint by the Appellants here is that the court below erroneously held that they neither pleaded nor led any evidence of traditional history as to how they came by the land in dispute. I am of the firm view that the finding is amply justified in that the Respondents neither pleaded traditional history nor led any such evidence. Said the court below on the point:-

*"The plain truth is that no facts of traditional history were pleaded and no evidence led. It is amazing therefore that the learned trial Judge found traditional evidence which he so much commended. There are also no acts of possession on the part of the plaintiffs that can be of any moment. ...."*

Indeed, there has been no hidden meaning in paragraphs 4 and 5 of the Appellants' Statement of Claim as contended by the Appellants who therein averred as follows:-

*"4. The whole of "ORURA MBUBA" land in dispute Verged Brown, had from time immemorial, been the exclusive property of the entire Uruezikeokwe family, Umuisedo, Nnewi/Agbaja, Akabo-Edorji, Uruagu, Nnewi. The land in dispute is a part of land called "ANO EDO" or "ILO-EDO" land of the plaintiffs verged YELLOW on the plaintiffs' Survey plan No. NLS/AN. 563/88 filed with this Amended Statement of Claim and situate at Okpuno, Uruagu Village, Nnewi.*

*5. The whole of the said land in dispute had been from time immemorial a farm land with many economic trees like palm trees, coconut trees, bread fruit trees etc. and had been used as a farmland by the plaintiffs' ancestors."*

As can be seen from the above piece of pleading there is nothing to suggest the mode of acquisition of the said land. Neither is there any thing therein to indicate how the said land devolved on the Appellants, whether by settlement, grant or purchase. See D.O. Idundun & 6 Ors. v. Daniel Okumagba (1976) 6 SC. 227 at 246-248. The burden is on a plaintiff who is claiming a statutory right of occupancy as in the instant



case, to satisfy the court that he is entitled on the evidence adduced by him to the declaration sought. He must rely on the strength of his own case and not on the weakness of the defendant's case, for the purpose of discharging that burden. See Kodilinye v. Mbanefo Odu (1935) 2 WACA 336; Imah v. Okogbe (1993) 9 NWLR (Part 316) 159; Okedare v. Adebara B (1994) 6 NWLR (part 349) 157 at 173 and Salu v. Egeibon (1994) 6 NWLR (Part 348) 23 at 44. If a plaintiff fails to fulfil the requirement, that is to prove or establish the identity of the land in dispute, his claim for a declaration of statutory right of occupancy will be dismissed. See C Makanjuola v. Balogun (1989) 3 NWLR (Part 108) 192.

It is also the established law that in a declaration of title, the burden of proof on the plaintiff is not discharged even where the scales are evenly weighted between the parties. See Odiete & Ors. v. Okotie & Ors. (1975) 1 NMLR 178 applied in Saka Owoade & Anor. v. John D Abodunrin Omitola & Ors. (1988) 2 NWLR (Part 77) 413.

In paragraph 6 of the Appellants' Amended Statement of Claim they pleaded inter alia as follows:-

"..... to farm on the whole of the said ORURA MBUBA E land and to reap economic trees thereon in consideration for domestic services rendered in the nature of cleaning, sweeping and looking after the Edo Shrine situate immediately opposite the Orura Mbuba (land in dispute) which by Nnewi Custom and Tradition was owned by the F Umuezikeokwe family and is also the Head of the Shrine but the Shrine serves the whole of Agbaja, Nnewi, Oraifite and Ichi."

I am of the firm view that implicit in this averment is the Appellants' claim of ownership of the Shrine along with the Headship thereof and not settlement by ownership tied down to the priesthood. If that was the G case, it should have been expressly and clearly pleaded as such. It ought at this juncture to be pointed out that the evidence of PW1 relied on at page 8 of the Appellants' Brief did not fare better for it simply claimed ownership of Orura Mubba which is also worshipped by Oraifite and H other communities commonly called Agbaja people. Of note too, is the fact that when PW1 was cross-examined and specifically asked how the Edo came to be owned by them, he was unable to answer the question.

Indeed, there was no evidence of settlement by anybody, not even the Goddess reputed by PW1 was once a human being before transforming into a spirit. Nor was it the Appellants' case that whoever is the Chief Priest if the Edo Goddess becomes the owner of the land on which it is.

B Indeed, no such tradition or custom was pleaded by the Appellants and no such evidence was given. When such a situation arises as indeed it did in this case, the Appellants' root of title can be said to hang in the air. See Alade v. Awo (1975) 4 SC. 21; (1974) 9 NSCC 141 at 148. See also Prior v. Tenalo (1976) 12 SC. 31; Kalio v. Woluchem (1985) 1 NWLR

C (Part 4) 610 and Mogaji v. Cadbury (Nig.) Ltd (1985) 2 NWLR (Part 7) 393. In the instant case, the evidence of tradition accepted by the learned trial judge did not exist either in the pleadings or evidence led. The court below was therefore justified to so find for reasons proffered in its judgment.

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It is trite law that in a claim for declaration of title based on inheritance, the plaintiffs must plead the names and histories of their various ancestors. See Akinloye v. Eyiola (1968) NWLR 91 93; (1965) 5

E NCSS 15 at 18 and Owoade v. Omitola (1988) 2 NWLR (Part 77) 413. In the case in hand, the Appellants have, in my firm view failed to trace their genealogy or line of descent to any named original settlor or grantor (either human or mythical) as the case may be.

F It is also settled law that in a claim for declaration to land, it is not sufficient to simply claim ownership of the land as the Appellants did in this case, they must plead and establish by credible evidence how they got the land, either by grant, settlement or conquest. This is lacking in the instant case; thus the learned Justices of the court below were

G correct to have so found by setting aside the trial court's judgment.

## ISSUE NO. 2

Learned counsel for the Appellants has in his Issue No. 1 argued that because the 2nd Respondent who filed a separate defence pleaded

H and relied on a separate root of title from that of his Vendor (1st Respondent), the court below ought not to have overturned the judgment of the High Court. I agree with the 2nd and 3rd Respondents' submission that inasmuch as the 1st and 3rd respondents filed a joint defence the domi-

nant question is whether the 2nd Respondent pleaded and led evidence on a root of title different from that of his Vendor (to wit: 1st Respondent) as this amounted to a weakness (a crack in the defence ranks) upon which the Appellants can rely. See Josiah Akinola & Anor. v. Fatoyinbo Oluwo & 2 Ors. (1962) 1 All NLR 224 at 227. The court below was therefore B  
right, in my view, in holding that this could not be so in that 2nd respondent who derived his title from the 1st Respondent cannot set up a root of title different from that of his vendor. He must either sink or swim with him, it being that a vendor can only pass to the purchasers whatever C  
title he has. See Fasoro v. Beyioku (1988) 2 NWLR (Part 76) 263.

In the light of the foregoing, I share the respondents' view that whatever case was independently put out by the 2nd Respondent in the trial court could not have helped the Appellants - the Appellants' case D  
being that the land in dispute belonged to their family whereas the case out up by the 2nd Respondent was that it was communal land of Nnewi people. It is the submission of learned counsel for the Appellants that the evidence of the 1st respondent as to his root of title was contradicted by that of Igwe Orizu, the 4th D.W. and that this has tended to weaken the E  
defence of the Respondents.

I am unable to agree with this submission in as much as the Igwe (DW.4) gave evidence as the witness of the 2nd Respondent who filed a separate defence to that of the 1st and 3rd respondents. F  
I do not share the view that the case of the 2nd respondent cannot weaken the entire defence and it is of no benefit to the Appellants who in any event have conceded actual possession of the land to the 1st respondent's G  
ancestors and members of the family from 1923 to 1976. The onus of giving a satisfactory explanation of that possession spanning several decades lies squarely on the Appellants. This they have been found by the court below not to have discharged. Besides, when the court below held that there was no evidence in opposition to the evidence of the root of title of the 1st respondent, that court was in effect, referring to the H  
evidence of the appellants - the real tussle being in fact, between the Appellants and the 1st Respondent as parties to the case.

Both issues are accordingly resolved against the Appellants. It is

for the above reasons and those more elaborately set out in the leading judgment of my learned brother Kalgo, JSC and with which I express my entire agreement, that I too dismiss this appeal. I make the same consequential orders inclusive of those as to costs as contained in the lead judgment.

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### KATSINA -ALU JSC

C I have had the privilege of reading in draft the judgment of my learned brother Kalgo JSC in this appeal. I entirely agree with his reasoning and conclusion.

D A plaintiff, in an action for declaration of title to land, must succeed on the strength of his own case and not on the weakness of the defendant's case. See Kodilinye v. Odu 2 WACA 336; Nkado v. Obiano (1997) 5 NWLR (Pt. 503) 31. A plaintiff, whose claim is founded on traditional history in proof of a claim for declaration of title to land, must plead and establish such facts as:-

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

F Where therefore the line of succession is not satisfactorily traced and that line of succession has gaps and mysterious linkage or nexus which are not established, then such line of succession would be rejected. See Mogaji v. Cadbury Nig. Ltd. (1985) 2 NWLR (Pt. 7) 393.

G The plaintiffs in the present case pleaded in paragraphs 4 and 5 of their amended statement of claim that:

"4. *The whole of the 'ORURA MBUBA' land in dispute verged Brown, had from time immemorial, been the exclusive property of the entire Uruezikeokwe family, Umuisiedo, Nnewi/ Agbaja, Akabo-Edorji, H Uruagu, Nnewi.....*

*5. The whole of the said land in dispute had been from time immemorial a farm land with many economic trees like palm trees, coconut trees, breadfruit trees etc. and had been used as a farm land by the*

*plaintiffs' ancestors."*

These pleadings are plainly defective. They are lacking in all material particulars. They failed completely to state who first acquired the land and how he acquired it. They are also silent on the intervening owners. The result is that the plaintiffs pleaded no facts of traditional history and B also led no evidence. This case should therefore have been dismissed without more by the trial judge. The court below was clearly right when it allowed the appeal of the defendants.

For this reason and the fuller reasons given by my learned brother C Kalgo, JSC I too will dismiss this appeal by the plaintiffs and affirm the decision of the Court of Appeal. I abide by the order for costs.

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