

**SUPREME COURT OF NIGERIA**  
18TH FEBRUARY, 2000. SC. 153/1992  
**CORAM:- A. B. WALI, M. E. OGUNDARE, S. U. ONU,**  
**A. I. IGUH, E. O. AYOOLA, JJSC**

PSRINCE NGENE ..... DEFENDANT/APPELLANT  
AND  
CHIKE IGBO & ANOR. .... PLAINTIFFS/RESPONDENTS  
(For themselves and on behalf  
of the family of Chinyelugo  
S. O. Igbo (deceased))  
substituted for  
CHINYELUGO S. O. IGBO

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***LAND LAW** - Trespass and injunction - Where plaintiff's prior possession is established - He is entitled to succeed in trespass and injunction - Though his claim to title fails.*

***LAND LAW** - Title - Proof - What plaintiff must prove in the present case - for his claim in title to succeed.*

***LAND LAW** - Title - Where plaintiff traced his title to an original owner - Without pleading the root of title of that owner - Onus of prove is not discharged.*

**FACTS**

Before the Enugu High Court, the plaintiff/Respondent filed an action against the defendant/Appellant claiming declaration of title, N5,000.00 damages for trespass and an injunction. Whereas the plaintiff traced his root of title to one Ugwu Mba who transferred to one Nwankwo who in turn transferred title to plaintiff, he failed to plead and establish how Ugwu Mba derived title. The trial Court found that plaintiff established possession to the land in dispute and granted his claim for damages for trespass and injunction. Plaintiff's claim for title was dismissed.

The defendant appealed, and the plaintiff also appealed to the Court of Appeal on the issue of title. The Court of Appeal dismissed the defendant's appeal and found title in favour of the plaintiff. Being aggrieved, the defendant has further appealed to the Supreme Court. The appex Court dismissed plaintiff's claim for title but sustained the damages and injunction awarded in his favour by the two court below.

**ISSUES FOR DETERMINATION**

*(1) Whether the Court below was right in awarding title to the land in dispute to the plaintiff and (2) Whether the Court below was right in affirming the decision of the trial High Court on the issue of trespass and injunction.*

**HELD** (Unanimously allowing the appeal in part of the lead judgment of **OGUNDARE JSC**)

***Title - Where plaintiff traced to an original owner***

1. While I do not necessarily disagree with most of the observations made by Uwaifo JCA in his lead judgment it is with his conclusion that plaintiff proved his title to the land in dispute that I, with respect find myself unable to go along with him. It is pleaded in paragraph (4) of the amended Statement of Claim that "the land in dispute originally belonged to one Ugwu Mba....." but Mba's root of title was never pleaded. Could it now be said that in the circumstance plaintiff had discharged the onus on him? I think the law is settled on this point. A long line of cases beginning with Kodilinye v. Mbanefo Odu 2 W.A.C.A 336 has laid it down that in a claim for declaration of title the onus is on the plaintiff to prove his case. He must rely on the strength of his own case and not on the weakness of the defence: Jules v. Ajani (1980) 5/7 SC.96 - except of course where the weakness of the defendant's case tends to strengthen plaintiff's case - Nwagbogu v. Ibeziako (1972) Vol.2 (Pt.1) ECSLR 335, 338 SC or where the defendant's case supports his case - Akinola v. Oluwo (1962) 1 ALL NLR 224; (1962) (Pt.1) ANLR 225 all of which is not the case here. (p. 420 D)

***Title - Proof - What plaintiff must prove***

2. The plaintiff here must prove not only that Ugwu Mba who was claimed to be the original owner transferred title to Nwankwo who, in turn, transferred the same to him but must also establish how Ugwu Mba came about the ownership of the land, moreso when the defendant did not concede original ownership of the land to Ugwu Mba. See Mogaji v. Cadbury (1985) 2 NWLR, 393. The root of title of Ugwu Mba was not pleaded in this case nor was any evidence led on it. I think this is fatal to plaintiff's claim to title and his claim to title ought to have been dismissed. See Eboha v. Anakwenze (1967) FNLR 279. (p. 421 A)

***Trespass and injunction***

3. There are concurring findings of fact of the two courts below to the effect that plaintiff was in prior possession of the land in dispute and that the defendant came thereon to disturb that possessory right. There is overwhelming evidence on the record to support those findings. Although plaintiff failed in his claim for title, that failure does not necessarily mean that his claim in trespass must fail because trespass is a violation of possessory right and does not involve title to land - Aromire v. Awoyemi (1972) 2 SC. 1. Plaintiff's possession in this case is good title against the whole world except the true owner of the land. See Akano v. Okunade (1978) 3 SC. 129. The defendant admitted going on the land and building thereon. I think the two courts below were right in finding against him in trespass and injunction. (p. 421 D)

**NOTABLE POINT OF INTEREST****IGUHJSC*****1. Root of title - What plaintiff must prove***

It is beyond dispute that once a party pleads and traces the root of his title to a particular person or family, that party must establish how that person or family derived his or its title to such land. Accordingly, the plaintiff, to succeed in his claim for declaration of title to the land in dispute in the present action must not only plead and establish his title thereto but also the title of the person from whom he claims, for, as the maxim goes,

nemo dat quod non habet, meaning that no one can give that which he does not have. He cannot ignore the proof of his grantor's root of title and concentrate only on his own title to such land particularly where, as in the present case, the defendant did not concede the ownership of the land by the plaintiff's grantors but expressly denied the same. See Mogaji & others v. Cadbury Fry (Export) Ltd (1985) 2 N.W.L.R. (part 7) 393. (p. 430 C)

**REPRESENTATION**

C. H. C. Nwanya Esq, with A. N. Madu for the Defendant/Appellant  
F. C. Ofodile with I. F. Chude for the Respondent.

**CASES REFERRED TO**

- D Foko v. Foko (1968) NMLR 411  
Eric Ord r v. Nwosu (1974) 1 ALL NLR (Pt.2) 478  
Kaiyaija v. Egunla (1974) 12 S.C.55 at 61  
Aromine v. Awoyemi (1972) 2 SC.1 at 10-11 and sections 135, 136 and  
E 138  
Kodilinye v. Mbanefo Odu 2 W.A.C.A 336  
Jules v. Ajani (1980) 5/7 SC.96  
Nwagbogu v. Ibeziako (1972) Vol.2 (Pt.1) ECSLR 335, 338 SC  
F Akinola v. Oluwo (1962) 1 ALL NLR 224; (1962) (Pt.1) ANLR 225  
Mogaji v. Cadbury (1985) 2 NWLR, 393  
Eboha v. Anakwenze (1967) FNLR 279

**LEAD JUDGMENT BY OGUNDARE JSC**

- G By a Writ of Summons issued in November 1977, Chinyelugo  
Sylvester Omenagu Igbo sued Prince Ngene, now Appellant before us,  
claiming declaration of title to a piece or parcel of land known as and  
called "Onuagu" in Ogui Urban Area of Enugu, N5,000.00 general dam-  
H ages for trespass and an injunction. Pleadings having been filed and  
exchanged and by leave of Court amended, the case proceeded to trial  
before P.K. Nwokedi J. (as he then was) at the conclusion of which the  
learned trial judged found for the plaintiff Chinyelugo S. O. Igbo in tres-

pass and Injunction but dismissed his claim for title. He awarded to the plaintiff N2,680.00 special and general damages for trespass committed by the defendant on the said land and an injunction restraining the defendant, his servants etc. from committing further acts of trespass on the said land which is delineated on the Plan No. 1513/77 filed along with the Statement of Claim. B

The defendant was dissatisfied with the said judgment and appealed to the Court of Appeal. The plaintiff was also dissatisfied with the dismissal of his claim for title; he too cross-appealed against that part of the decision of the trial High Court. Both appeals came before the Court of Appeal Enugu Division and after hearing learned counsel for the parties, that Court dismissed the defendant's appeal and allowed the plaintiff's cross-appeal. The Court of Appeal awarded title to the land in dispute to the plaintiff in addition to damages for trespass and injunction earlier awarded to him by the trial High Court. With leave of this Court, the defendant has now further appealed to us upon three original and three additional grounds of appeal. Learned counsel for the parties, pursuant to the rules of this Court, filed and exchanged their respective briefs of argument. While the appeal was pending in this Court the plaintiff Chinyelugo S. O. Igbo died and on the applications of both the defendant/appellant on the one hand and Chike Igbo and Dr. Onyechi Igbo the other hand, both Chike Igbo and Dr. Onyechi Igbo were substituted for the deceased plaintiff/respondent. C D E F

The facts are simple enough. For the plaintiff, the land in dispute known as and called "Onuagu" is situate in Ogui renewal Layout Enugu. The land was said to belong originally to one Ugwu Mba who together with his two sons Nnamani Ugwu Mba and Ngwu Ugwu Mba granted the same in 1951 to one D.O.C. Nwankwo for farming purposes. In 1961, the said land was conveyed to Nwankwo by Ugwu Mba - Nnamani Ugwu Mba had died by then. The Deed of Conveyance was registered. Nwankwo remained in possession until August 1977 when he, by deed of assignment, transferred his interest in the land to the Plaintiff Chinyelugo S. O. Igbo who immediately went into possession. It must be stated at this stage that Nwankwo had been in possession of G H

the land prior to the transfer of his interest to the plaintiff and indeed in 1976 Nwankwo sought and obtained the approval of the Enugu Planning Authority to develop the land. Following the purchase of the land by the plaintiff, he caused building materials, blocks and sand, to be deposited on the land with a view to building thereon. He was however, disturbed on the by the defendant in October 1977 who without the permission of the plaintiff came on the land and commenced building thereon. The action of the defendant resulted in the plaintiff taking this action.

The defendant denied the ownership of Ugwu Mba of the land in dispute and claimed that the land belonged to Umunamalum family to which Nnamani Ugwu Mba and Ngwu Mba belonged. It is part of defendant's case that Umunamalum family in a High Court suit challenged the grant made to the plaintiff; he claimed title to the land in dispute. The defendant claimed that the land was granted to him by the family and admitted he was building on the land.

As stated earlier in this judgment the learned trial judge dismissed plaintiff's claim to title on the ground that the document in favour of Nwankwo in 1951 by Ugwu Mba and his sons which document was attached to the deed of Conveyance made in 1961 to Nwankwo was inadmissible and consequently the 1961 Deed of Conveyance conveyed no title. The learned trial judge however found that the Umunamalum family was an invention of the defendant and that such family did not exist nor own the land in dispute. On the issue of trespass and Injunction, the learned trial judge found that the Plaintiff in this case was in possession of the land in dispute before the defendant arrived and chased plaintiff's workers away from the land. He also found that the plaintiffs deposited blocks and sand on the land and that the defendant had built on the land. He found that the defendant had no title to the land.

The Court below affirmed the findings of fact made by the learned trial judge on the issue of possession to the land but held that the learned judge was wrong on the issue of title to the land. I shall say more on this later in this judgment.

The parties placed before this Court four questions though differently worded. The questions as placed by the defendant/appellant

read:

*"1. Whether the irregular procedure adopted by the trial judge and as condemned by the Court of Appeal did not amount to a denial of the parties' right to fair hearing under section 33 of the Constitution and whether such a violation does not vitiate the whole proceedings.* B

*2. Whether the trial court and the Court of Appeal ought to have ordered that Umunamalum family be given a hearing before making such a serious and far-reaching declaration against them.*

*3. Whether the Court of Appeal was right in holding that mere production of an instrument of grant without more is absolute proof that the land in dispute was conveyed to the Respondent and whether the Respondent pleaded and proved native law and custom governing grant.* C

*4. Having upheld the decision of the trial judge that Umunnamalum family is non-existent is the Court of Appeal entitled to hold too that the Respondent had established a prima facie case as regards the family from whom he bought the land.* D

The plaintiff in his Brief objected to Issue (1) on the ground that it is not predicated on any ground of appeal. I think learned counsel for the plaintiff is right. I have examined the six grounds of appeal and I can find none to support Question (1) raised in the Appellant's Brief. In respect of Questions (2) and (4) to which objection is taken in Respondent's Brief and in oral argument of learned counsel for the Plaintiff/Respondent, I think there are grounds of appeal to support those questions. I strike out Question (1) as not being competent. E F

As to the remaining questions put before this Court, I am of the view that they fall under two broad issues - (1) Whether the Court below was right in awarding title to the land in dispute to the plaintiff and (2) Whether the Court below was right in affirming the decision of the trial High Court on the issue of trespass and injunction. It is on these two broad issues that I intend to determine this appeal. The issue of Umunnamalum family which is also raised in this appeal does not seriously affect the conclusion I will reach in this appeal. Whatever was said by the two Courts below on the existence or otherwise of this family would not be binding on the family (if it exists at all) as the family was G H

not a party to these proceedings. The defendant did not plead the root of title of this family to the land in dispute. As such the finding that the defendant did not prove title to the land in dispute would still not be affected. Consequently I do not consider it necessary to say more on the existence or otherwise of Umunnamalum family.

(1) TITLE: On the issue of title the trial High Court observed as follows:

*"The plaintiff predicates his title to the land in dispute on his deed of assignment of lease dated 10th August, 1977 and registered as No.41 at page 41 in Volume 958 of the Lands Registry, Enugu - Exh. 4. This assignment was granted to him by the PW2. The necessary point to resolve is whether the PW2 had any interest legal or equitable to assign. The title of the PW2 is stated to be founded on Exh.2. According to the PW2, he acquired his title by two stages. In 1951, he obtained a farming grant of the said land from the original owner, 'one Ugwu Mba who together with his two sons Nnamani Ugwu Mba and Ngwu Ugwu Mba granted the same under native law and custom to one D.O.C. Nwankwo for farming in June, 1951' -see paragraph 4 of the statement of claim. The said customary grant was stated to have been later reduced into writing. The document in question is attached to Exh.2. There are many things unacceptable as regards the said (sic) dated 9th June, 1951, attached to Exh.2. First, it is not an agreement between Ugwu Mba, the alleged original owner of the land and the PW2. Rather it is an agreement between the son of the said original owner, Nnamani Ugwu Mba and the PW2. Though the document seems thumbprinted by the said Ugwu Mba and his second son Ngwu Ugwu Mba, the capacity in which they were executing the agreement was not given. Since they are not stated to be parties to the agreement, one can only surmise that they were witnesses. There is no mention in the said document of any customary grant of which the document was the evidence thereof. The document was not witnessing anything. It was an outright sale of the land intended to be conveyed by the said document subject to the payment of a rent charge. The piece of land in question was stated to have been 'sold' and subject to the yearly rent reserved the land was to 'belong' to the PW2 'indefi-*

nitely'. The instrument was therefore, a registrable instrument under the land Instrument Registration Law, then applicable in 1951. If the instrument had showed a pre-existing title to the land in dispute as in the present allegation, found in customary grant, it would have needed no registration. See Paul v. Laba (1937) ALL E.R. 737. Furthermore, the document was far from a farming grant. In consequence of the above objections, the document was inadmissible in evidence as proof of title. The position is not altered by the fact that it was attached to Exh.2 for it was *ab initio* inadmissible in evidence.

As regards Exh.2 itself, certain valid objections can still be raised. This document was pleaded in paragraph 5 of the amended statement of claim. Both paragraphs 5 and 6 of the amended statement of defence traversed the said paragraphs 5 of the amended statement of claim and averred that the document was a forgery. The plaintiff was put to the strictest proof of the said document. The evidence of the execution of the document by the alleged Ngwu Ugwu Mba was, to say the least, unsatisfactory. PW2 admitted that Ngwu Ugwu Mba was an illiterate and could neither read nor write. This was further confirmed by Exh.6 tendered by the plaintiff in evidence. Exh.2 showed that Ngwu Ugwu Mba signed the document. Pressed under cross-examination to explain how the alleged illiterate signed the document, the PW2 was quite forthcoming in stating that he did not know who inserted or signed the said name and that someone he could not remember may have done it for them. This is a clear admission that Ngwu Ugwu Mba did not execute Exh.2. There is what appears to have been an ink smudge where Ngwu Ugwu Mba was supposed to have thumbprinted Exh.2. An argument arose as to whether it was a thumbprint or not. I had therefore, to call for the original document from the land Registry. It was examined in the open court by the court and both counsel for the parties. I was satisfied that there was no thumbprint at the said spot or anywhere in the said document. What appeared in the certified photocopy (Exh.2) as an ink smudge or thumb impression was a smudge made by the gum or adhesive used in affixing the legal seal. Furthermore, the circumstances of the execution of Exh.2 as related by PW2 lend support to doubts as to the genuineness of the

said document. The two sons of the lessor were present yet none even signed as a witness. The same party witnessed for the grantor and the grantee. There was a jurat to the agreement which was cancelled yet it was admitted that Ngwu Ugwu Mba was an illiterate.

and concluded:

B "The said document besides other irregularities, could not have conveyed or ratified any previous agreement as it purported to do. It cannot bind Ngwu Ugwu Mba since he did not execute same even if he was the owner of the land in dispute. If Nnamani Ugwu Mba was the C head of the family and was alive until the civil war, why did he not convey the land to the PW2? As a matter of fact, this renders the conveyance void *ab initio*. It is my view that the Exh.2 did not convey the land therein stated by the PW2. It did not also convey any interest in the land D to the PW2. Assuming that there was a previous grant by customary law which the 1951 agreement was evidencing, the said customary law together with its incident should have been specifically pleaded and evidence led to establish same. These have not been done in the present E case.

Since Exh.4 is based on Exh.2, and derives its sustenance from it, this necessarily implies that Exh.4 conveyed no title to the land in dispute to the plaintiff. This court cannot therefore, grant the plaintiff the declaration sought for in the first arm of his claim."

F The Court of Appeal, on the other hand in the lead judgment of Uwaifo, JCA (as he then was) commenting on the learned trial judge's observation remarked:

G "As regards the plaintiff's case, the learned judge was of the view that the conveyance (exhibit 2) which the plaintiff's vendor, Dickson Okorie Chukwuemeka Nwankwo, who testified as PW2, relied on was not executed by Ngwu Ugwu Mba stated therein as the owner. This is because Ngwu Ugwu Mba was said to be an illiterate but his name was H written on the conveyance and it was not clear who did. The learned judge then, at the close of final addresses of counsel, called for the Lands Registry copy of the conveyance and said he found that it was not thumb-impressed. He came to the conclusion that the conveyance was void.

*I have my strong reservation if the learned judge was right no that point. No issue was specifically joined by the parties that Ngwu Ugwu Mba did not sign or thumb-impress the conveyance. What the defendant pleaded in regard to the conveyance was: (1) That Ngwu Ugwu Mba onged to Umunnamalum family of which one Lawrence Mba was the head. As has been shown already the learned judge found that such family never existed. (2) That Ngwu Ugwu Mba, was incapable of conveying family land. This of course would also be destroyed by the finding of the learned judge as the family referred to is the non-existent Umunnamalum family. (3) That Ngwu Ugwu Mba did not know what he was doing being an illiterate. I cannot see the sense in this.*

*An illiterate is not necessarily foolish nor is he to be regarded as insane. In any event, since the defendant is not a member of Ngwu Ugwu Mba family nor did he derive title from that same family, he cannot be heard to challenge the act of Ngwu Ugwu Mba in relation to the conveyance. He cannot rely on the alleged fact that the conveyance was not signed or executed by Ngwu Ugwu Mba and argue that it is void. He is a stranger to the deed. This is implicit in the principle that a stranger to a deed cannot seek to have it set aside or avoided: see Foko v. Foko (1968) NMLR 411; Eric Ord r v. Nwosu (1974) 1 ALL NLR (Pt.2) 478. A fortiori, a court cannot undertake to do it for such a stranger."*

Uwaifo, JCA, then referred to paragraphs 4, 5 and 6 of the amended Statement of Claim and paragraph 4 of the amended Statement of Defence and remarked:

*"Therefore, the basis upon which the defendant could challenge the capacity in which Ugwu Mba, Nnamani Ugwu Mba and Ngwu Ugwu Mba acted (in their own family) at any stage in relation to the land in the dispute no longer existed."*

The learned Justice went on to consider other pleas raised by the defendant and the evidence on the issue of title and concluded as follows:

*"With this evidence, and having regard to the true trend of the case whereby the learned judge himself found that the so-called vendors of the defendant never existed, that plaintiff must be seen to have established a prima facie case as regards: (1) The family from whom he bought*

the land. (2) *The prominent role played by Ngwu Ugwu Mba.* (3) *The connection of Ngwu Ugwu Mba with the said family.* (4) *The root of title of the said family not having been disputed even by the defendant who merely tried to assert that those who took part in the transaction were not*  
 B *duly authorized. In land matters, as in other civil matters, proof is on the balance of probabilities: see Kaiyaija v. Egunla (1974) 12 S.C.55 at 61. It is the law that once a plaintiff in a civil matter shows a prima facie case, the balance of probabilities will be in his favour unless the*  
 C *defendant's case tilts that balance. This is implicit in the case of Aromine v. Awoyemi (1972) 2 SC.1 at 10-11 and sections 135, 136 and 138 of the Evidence Act as to burden of proof in civil cases."*

The learned Justice then considered the effect of the documents of title relied upon by the plaintiff and finally came to the conclusion that title  
 D ought to be declared in the plaintiff. The other Justices of the Court below who sat on the appeal agreed with the observations and conclusion of Uwaifo JCA.

While I do not necessarily disagree with most of the obser-  
 E vations made by Uwaifo JCA in his lead judgment it is with his conclusion that plaintiff proved his title to the land in dispute that  
 I, with respect find myself unable to go along with him. It is placed in paragraph (4) of the amended Statement of Claim that "the land  
 F in dispute originally belonged to one Ugwu Mba....." but Mba's root of title was never pleaded. Could it now be said that in the circumstance plaintiff had discharged the onus on him? I think the law is settled on this point. A long line of cases beginning with  
 G Kodilinye v. Mbanefo Odu 2 W.A.C.A 336 has laid it down that in a claim for declaration of title the onus is on the plaintiff to prove his case. He must rely on the strength of his own case and not on the weakness of the defence: Jules v. Ajani (1980) 5/7 SC.96 - except of  
 H course where the weakness of the defendant's case tends to strengthen plaintiff's case - Nwagbogu v. Ibeziako (1972) Vol.2 (Pt.1) ECSLR 335, 338 SC or where the defendant's case supports his case - Akinola v. Oluwo (1962) 1 ALL NLR 224; (1962) (Pt.1) ANLR 225 all of which is not the case here.

What is this onus on the plaintiff in this case? **The plaintiff here must prove not only that Ugwu Mba who was claimed to be the original owner transferred title to Nwankwo who, in turn, transferred the same to him but must also establish how Ugwu Mba came about the ownership of the land, moreso when the defendant did not concede original ownership of the land to Ugwu Mba. See Mogaji v. Cadbury (1985) 2 NWLR, 393. The root of title of Ugwu Mba was not pleaded in this case nor was any evidence led on it. I think this is fatal to plaintiff's claim to title and his claim to title ought to have been dismissed. See Eboha v. Anakwenze (1967) FNLR 279.**

The grant of declaration is at the discretion of a court. The Court below must not only satisfy itself, of plaintiff's root of title from Ugwu Mba but must also satisfy itself as to the proof of Ugwu Mba's title, that is, Mba's original ownership must be established. That not having been done in this case, his claim to title was rightly dismissed by the learned trial judge, though for different reason.

(2). TRESPASS AND INJUNCTION: **There are concurring findings of fact of the two courts below to the effect that plaintiff was in prior possession of the land in dispute and that the defendant came thereon to disturb that possessory right. There is overwhelming evidence on the record to support those findings. Although plaintiff failed in his claim for title, that failure does not necessarily mean that his claim in trespass must fail because trespass is a violation of possessory right and does not involve title to land - Aromire v. Awoyemi (1972) 2 SC. 1; Omoni v. Biriya (1976) 6 SC. 49. Plaintiff's possession in this case is good title against the whole world except the true owner of the land. See Akano v. Okunade (1978) 3 SC. 129. The defendant admitted going on the land and building thereon. I think the two courts below were right in finding against him in trespass and injunction. The defendant in this appeal has not satisfied me that that verdict is perverse. I too affirm it.**

In conclusion I allow this appeal as regards the claim for title. I set aside the judgment of the court below granting to the plaintiff title to the land in dispute. I dismiss the appeal as regards the claim in trespass

and injunction. I affirm the judgment of the Court below on this. The defendant is entitled to half the costs of this appeal which I assess at N5,000.00.

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B

**WALI JSC**

I have read before now the lead judgment of my learned brother Ogundare JSC and I agree with his reasoning and conclusion that the appeal should partially succeed.

C

For the same reasoning contained in the lead judgment I also partially allow the appeal as regards the plaintiffs' claim for title to the land in dispute and set aside the judgement of the court below granting title to them. The defendant's appeal against the claim in trespass and

D

injunction is dismissed. I abide by the consequential order as to costs.

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**ONU JSC**

E

Having been privileged to read in draft form before now the judgment of my learned brother Ogundare, JSC just delivered, I am in complete agreement with him that the appeal partly succeeds; it is otherwise accordingly dismissed for lacking in substance.

F

I wish to expatiate briefly on the case as follows:-

By the Court of appeal granting the Plaintiffs/Respondents' the first of his three reliefs as outlined in paragraph 20 of the Amended Statement of Claim, to writ:

G

*"(a) A declaration that the plaintiff is entitled to the right of Occupancy to the parcel of land situate at Onuagu, Ogui Renewal Layout, Enugu, as is more particularly shown and verged blue in plan No. 1513/77 filed with the Statement of Claim."*

H

that court, in my view, ostensibly founded its decision on the assertions contained in paragraphs 3, 4 and 5 of Respondent's Amended Statement of claim thereof in which it was averred as follows:-

*"3. The land in dispute in this case is known and called "Onuagu" situate at Ogui Urban Area, Enugu, otherwise known as Ogui*

*Renewal layout, and is more accurately and particularly delineated on Survey plan No. 1513/77, filed with this Statement of Claim and therein verged yellow. The said land in dispute at all material times to this case is the bona fide property of the plaintiff. The total area of plaintiff's land is verged blue on the said plan.*

*4. The land in dispute originally belonged to one Ugwu Mba who together with his two sons Nnamani Ugwu Mba, and Ngwu Ugwu Mba granted the same under Native Law and Custom to one D.O.C. Nwankwo for farming in June, 1951. The said grant was evidenced in writing by a Memorandum dated 9th June, 1951 and duly signed by the said parties.*

*5. Subsequently, on or about the 12th day of April 1961 after the death of the aforesaid Nnamani Ugwu Mba, one Ngwu Ugwu Mba as the head of the family of the deceased Nnamani Ugwu Mba formally conveyed the land in dispute to Mr. D.O.C. Nwankwo." (Underlining is mine for comments anon.)*

The Appellant as Defendant joined issues with the Respondent in paragraphs 4, 5 and 6 respectively of their Amended Statement of Defence.

In his Amended Statement of Defence the issues joined by the Appellant took the following form:-

- (a) That the land never belonged to Ugwu Mba.
- (b) That Ugwu Mba, Nnamani Ugwu Mba and Ngwu Mba had no right to sell to D.O.C. Nwankwo.
- (c) That Ugwu Mba never married nor had sons.
- (d) That Nnamani Ugwu Mba, and Ugwu Mba were illiterates.
- (e) That both Nnamani Ugwu Mba, and Ugwu Mba belonged to UMUNNAMALUM Family of which LAWRENCE MBA is the head, and
- (f) The Nullity or forgery of the conveyance vide paragraphs 4, 5, 6 and 7 of the Statement of Defence.

Evidence was led by both parties following strictly pleadings. The learned trial Judge P.K. Nwokedi, J. (as he then was) found for the Respondent in trespass and injunction, while dismissing his claim for title by holding inter alia as follows:-

"The plaintiff predicates his title to the land in dispute on his deed of assignment of lease dated 10th August, 1977, and registered as No. 41 at page 41 in volume 958 of the lands Registry, Enugu - Exhibit 4. This assignment was granted to him by PW2. The necessary point to resolved is whether the PW2, had any interest legal or equitable to assign. The title of PW.2 is stated to be founded on Exhibit 2. According to the PW.2, he acquired his title by two stages. In 1951, he obtained a farming grant of the said land from the original owner, "One Ugwu Mba, who together with his two sons Nnamani Ugwu Mba, and Ngwu Ugwu Mba granted the same under Native Law and Custom to one D.O.C. Nwankwo for farming in June, 1951" - See paragraph 4 of the Statement of Claim. The said customary grant was stated to have been later reduced into writing. The document in question is attached to Exhibit 2. There are many things unacceptable as regards the said (sic) dated 9th June, 1951, attached to Exhibit 2. First, it is not an agreement between Ugwu Mba, the alleged original owner of the land and the PW.2. Rather, it is an agreement between the son of the said original owner, Nnamani Ugwu and the PW.2. Though the document seems thumb-printed by the said Ugwu Mba and his second son Ngwu Ugwu Mba, the capacity in which they were executing the agreement was not given. Since they are not stated to be parties to the agreement, one can only surmise that they were witnesses. There is no mention in the said document of any customary grant of which the document was the evidence thereof. The document was not witnessing anything. It was an outright sale of the land intended to be conveyed by the said document subject to the payment of a rent charge. The piece of land in question was stated to have been "sold" and subject to the yearly rent reserved the land was to "belong" to the PW.2, indefinitely." The instrument was therefore, a registrable instrument under the land Instruments Registration Law, then applicable in 1951. If the instrument had showed a pre-existing title to the land in dispute as in the present allegation, founded in customary grant, it would have needed no registration. See Paul v. Laba (1937) All E.R. 737.....

In consequence of the above objections, the document was inadmissible as proof of title. The position is not altered by the fact that it

was attached to Exhibit 2, for it was *ab initio* inadmissible in evidence." (Underlining above is mine for emphasis).

When therefore in the light of the above extract the court below for the wrong reasons reversed the trial court on declaration of title, much against the grain of the pleading and evidence by holding, inter alia, B that:-

*"The law is settled that a plaintiff claiming that land was sold to him under native law and custom needs to prove the payment of the purchase price and show that the land was handed to him in the presence of witnesses. Nothing prevents the court from looking for evidence of possession in support of the fact that the land was handed over. See Cole v. Folami (1956) S.C. NLR 180; Anazodo Nwosu v. Chukwumanjo Udeaja (1990) 1 NWLR (part 125) 188 at 210. It seems to me that principle applies to this case. It is also not in doubt that there is evidence in support. In my view, even this fact alone would have, in the circumstances of this case, entitled the plaintiff to a declaration as to right of occupancy to the land in dispute. The trial court ought to have made that declaration....." and when it proceeded to conclude that" ..... At the same time I must say that the evidence is such that he was clearly wrong to have dismissed the said claim for a declaration. I allow the plaintiff's cross-appeal and set aside the judgment of the lower court in respect thereof. The Plaintiff's claim that he is entitled to the right of Occupancy over the land situate at Onuagu Ogui Renewal Layout, Enugu, and more particularly verged blue in Plan No.MG1513/77 admitted as Exhibit 1 in this action succeeds," it was, with due respect, wrong.*

This is because it is trite and settled law that in an action for a declaration of title to land, the Plaintiff must succeed on the strength of his own case and not on the weakness of the defence. See Kodilinye v. Mbanefo Odu (1935) 2. W.A.C.A. 336; Nwankwo Udegbe & Ors. v. Anachuna Nwokafor (1963) 1 ALL NLR. 417 at 418; Woluchem v. Gudi (1981) 5 H S.C. 291 at 309 and Sunday Piaro v. Chief Wopnu Tenalo & Anor. (1976) 12 S.C. 31 at 37. Be it noted that in this court an application was later made to substitute the original Plaintiff/Respondent with the present two

respondents.

As this court pointed out in the case of David Fabunmi v. Abigail Agbe (1985) 1 NWLR (Part 2) 299, "where the evidence was that the Defendant was in possession of a disputed land, the onus was on the Plaintiff to show that he had a better right to possession which was disturbed and unless that onus was discharged, the plaintiff cannot succeed by canvassing a title which was itself demonstrated to be defective."

Thus, in the instant case where the facts are not dissimilar in that the appellant in the trial court as plaintiff is found to be in possession of a disputed land and his contesting opponent or opponents cannot show a better title, it is better to protect that possession by an order of injunction if asked for. As Obaseki, J.S.C. pointed out at pages 318-319 in the Fabunmi Case (supra) -

*"The plaintiff cannot succeed by canvassing a title which itself was demonstrated to be defective. (See Aromire v. Awoyemi (1972) 1 ALL NLR. 101 at 112; Alhaji Adeshoye v. Siwoniku (1952) 14 W.A.C.A. 86 at 87. Lyell v. Kennedy (1882) 20 Ch.D. 484 at 490; Asher v. Whitlock (1865) L.R.1 Q.B.1. at 5."*

It must be realized that in law one of the recognized ways of proving title to land is by the production of valid documents evidencing grant. See Idundun v. Okumagba (1976) 9-10 S.C. 246; Piaro v. Tenalo (supra) (1976) 12 S.C. 31 at page 37 and Nwadike v. Ibekwe (1987) 4 NWLR (Part 67) 718. This, however, does not mean that once a registered instrument is tendered in court, it automatically proves that the property sought to be conveyed by that instrument belongs to the grantee. For, as stated by Nnemeka-Agu, J.S.C. in Romaine v. Romaine (1992) 5 S.C.N.J. 25 at 36:

*"But it does not mean that once a claimant produces what he claims to be an instrument of grant he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather production and reliance upon such an instrument inevitably carries with it the need for the court to inquire into some or all of a number of questions, including:-*

- (i) Whether the document is genuine and valid;
- (ii) Whether it has been duly executed, stamped and registered;
- (iii) Whether the grantor has the capacity and authority to make the grant;
- (iv) Whether the grantor had in fact what he purported to grant, B and
- (v) Whether it had the effect claimed by the holders of the instrument."

In the instant case, the appellant sought to raise the above questions in respect of Exhibit 2 - the Deed of Conveyance made the 12th day of April, 1961 and in respect of which in paragraph 7A of his Amended Statement of Defence, he pleaded thus:- C

*"The Umunnamalum family in the Enugu High Court Suit No.E/ 7/78, instituted an action against the plaintiff challenging the grant made to him and claiming a declaration of title to the land in dispute, damages for trespass and injunction. The pleadings filed in the said case which is pending will be founded upon."* D

The claim, the Statement of Claim, the Motion for Extension of time to file a defence, the Statement of defence were all put in as Exhibits 25 and 28 at pages 167-175 of the record. The purpose was ostensibly to enable the court make inquiry into a number of questions since the production of an instrument in court as herein-before stated, does not automatically prove that the property sought to be conveyed belongs to the grantee vide Romaine v. Romaine (supra). The Respondent gave evidence that would have enabled the court decide whether the document was genuine and valid and whether the grantor had the capacity and authority to make the grant. This is more so since earlier, the trial court had posed the following double-barrelled question, to wit:- E F G

*"Court to Counsel - The plaintiff traces his root of title to Ngwu Ugwu Mba, and the Defendant traces his root of title to the land vested on Umunnamalum family from whom he derived his title, the issue involved is who actually has the lawful radical title to the land in dispute. Do you think that the family pleaded by the Defendant should be a party to this case, since they will be affected by the result?" (Underlining sup-* H

plied).

Be it noted that the Umunnamalum family was not made a party to the case by being joined as a party to this action. In fact the learned trial judge held that it was appellant's invention. The principle of law stated by this court in Dosunmu v. Joto (1987) 4 NWLR (Part 65) 297 - that where a plaintiff in a land case relies and proves a conveyance as his root of title, he does not need to go beyond his vendor and then proceed to prove the Vendor's root of title as well unless, the title of his or her vendor has become an issue in the case. In such a case, those vendors will be joined as parties to prove or defend such title. This principle appears to me here to be pertinent and inevitable in view of the questions posed above in the instant case to which answers ought to be provided. See also Mogaji v. Cadbury (Nig) Ltd. (1985) 2 NWLR. 393 at 395. If those questions were inquired into and resolved, it is my firm view that the court below would not have held that the instrument of grant automatically entitled the Respondent declaration that the property which such an instrument purports to grant is its own. Thus, when the learned trial judge held that the Native Law and Custom together with its incidence was not specifically pleaded or proved by evidence, he was perfectly right. Said he:-

*"Assuming that there is a previous grant by customary law which the 1957 agreement was evidencing, the said customary law together with its incident should have been specifically pleaded and evidence led to establish same. These have not been done in the present case."*

When however the Court of Appeal, held inter alia that:-

*"This evidence of custom was in no way challenged. It was also not controverted that such a transaction took place. It is evidence supported by the pleading. It is by its nature not incredible. The trial court had no option than to have accepted it."*

it was palpably wrong since it is the law that a party who relies on a known root of title must prove that root of title and cannot rely on acts of possession in proof thereof. See Chief Oyelakin Balogun v. Oladosun Akanji (1988) 1 NWLR (Part 70) 301 and Ehimare v. Emhonyon (1985) 1 NWLR (Part 2) 177 at 183. Indeed, where as in the instant case, the

root of title is defective as the respondent demonstrated before the trial court, the court ought to so find. See Okon Udufe v. Chief Akpan Aquasisua (1973) 3 E.C.S. 404 at 405; and Ogbechie v. Onochie (1988) 1 NWLR (Part 70) 370; and C. F. Akintola v. Solano (1986) 2 NWLR (Part 24) 598.

As a matter of fact, in the instant case whereby their pleadings exchanged, the parties joined issues and evidence was led thereon, the trial court was obliged to compare the parties' roots of title before determining which of them was entitled to its judgment. See Kaiyaoja & Ors. v. Lasisi Egunla (1974) 12 S.C. 55 at 60-61; (1974) 1 ALL NLR (Part 11) 426). While the trial court's decision in this respect would appear to me to be unimpeachable, in my opinion erred, the court below when having condemned the trial court's attitude, itself proceeded to do exactly what it said that court should not do. For instance, of Exhibit 2A, which it did not see to be able to make a comparison, it held at page 261 of the Record that:-

*"There was in fact no difference between Exhibit 2, and that Land Registry copy as I shall seek to demonstrate later....."*

Since the trial court had allowed the Registrar of Deeds to take away the Registry Copy after it had been marked Exhibit 2A, the pronouncement of the Court below to the effect that:

*"I would say, in the first place that it may well be that Ngwu Ugwu Mba, asked some one to write his name on the document....."*

in my view, amounts to mere speculation which a court is not entitled to make. See Panalpina World Transport Nig Ltd v. Wariboko (1975) 1 ALL NLR 24; (1975) 2 S.C. 29. (Underlining above is mine for emphasis).

It is for the above reasons and the fuller ones contained in the leading judgment of my learned brother Ogundare, J.S.C. that I allow the appeal in part only. I too will dismiss the appeal and make the same consequential orders inclusive of costs contained in the leading judgment.

IGUH JSC

I had the privilege of reading in draft the judgement just delivered by my learned brother, Ogundare, J.S.C., and I entirely agree with the reasoning and conclusions therein.

B                      On the strength of the pleadings as settled by the plaintiff, it is clear that the original owner of the land in dispute was one Ugwu Mba who in 1951 granted the same to one Nwankwo. By a deed of assignment, the said Nwankwo transferred his interest in the land to the plaintiff in 1997. Thereupon the said plaintiff went into possession thereof  
C until he was disturbed by the defendant, hence this action. The original ownership of the land by the said Ugwu Mba was vigorously denied by the defendant in his Statement of defence.

D                      It is beyond dispute that once a party pleads and traces the root of his title to a particular person or family, that party must establish how that person or family derived his or its title to such land. Accordingly, the plaintiff, to succeed in his claim for declaration of title to the land in dispute in the present action must not only plead and establish his title  
E thereto but also the title of the person from whom he claims, for, as the maxim goes, nemo dat quod non habet, meaning that no one can give that which he does not have. He cannot ignore the proof of his grantor's root of title and concentrate only on his own title to such land particularly  
F where, as in the present case, the defendant did not concede the ownership of the land by the plaintiff's grantors but expressly denied the same. See Mogaji & others v. Cadbury Fry (Export) Ltd (1985) 2 N.W.L.R. (part 7) 393.

G                      In the present case the root of title of Ugwu Mba was neither pleaded nor did the plaintiff attempt to establish the said root of title. This without doubt, is fatal to the plaintiff's claim in declaration of title to the land in dispute and the appeal with regard to the grant of title to the plaintiff in respect of the land in dispute accordingly succeeds.

H                      The appeal against the decision of the Court of Appeal in respect of damages for trespass and perpetual injunction is without substance as there is ample evidence on record, accepted by both courts below, in support of those two arms of the plaintiff's claims.

In the final result, I too, allow this appeal on the issue of title to the land in dispute and set aside the judgement of the court below in that regard. The appeal against the award of damages for trespass and perpetual injunction against the defendant is without substance and is accordingly dismissed. I abide by the order for costs contained in the leading judgement with which I am in full agreement.

### AYOOLA JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ogundare JSC. In the final analysis, this appeal turns on facts in respect of which there were concurrent findings by the High Court and the Court of Appeal. The Court below, in the face of well established authorities, was in error in holding that the plaintiff, who had not pleaded any root of title, has proved his title.

Where in a claim for declaration of title, the plaintiff relies on derivative title, he must not only plead and prove how he derived his title but also the title of the person from whom he claims to have derived title. It is only if such plaintiff can establish the title of the person from whom he claims, that the burden of proving title would have been discharged. These principles can be deduced from cases such as Thomas v. Holder 12 WACA 78, Chuku v. Wuche (1976) 9 - 10 SC 173 Oronsaye v. Osula (1976) 6 SC 21 to mention but a few cases.

In the often cited case of Idundun v. Okumagba (1976) 9/10 SC 277, in discussing the five ways in which ownership of land may be proved this court [per Fatayi-Williams JSC (later CJN) ] said of proof of ownership by production of documents:

*"Secondly, ownership of land may be prove by production of documents of title which must, of course be duly authenticated in the sense that their due execution must be proved, unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case documents twenty years old or more at the date of the contract....."*

However, that passage cannot be interpreted as dispensing with

the need to prove the title of the person conveying the property where such title has not been admitted. When the root of a claimed derivative title is challenged, mere production of documents of title of the plaintiff may not suffice.

B In the present case, omission by the plaintiff to plead the root of title of his alleged grantor is fatal to the claim for a declaration of title.

C The claim for trespass and injunction is not dependent on the claim for declaration of title. Clear and exclusive possession is sufficient to sue in trespass (See Oluwi v. Eniola (1967) NMLR 339. The two courts below have found that the plaintiff was in prior exclusive possession. That is sufficient to justify the judgment against the defendant in trespass and for injunction.

D In the result, for these reasons and the fuller reasons in the judgment of my learned brother Ogundare, JSC, I too would allow the appeal as regards the claim for declaration of title and dismiss it in regard to the claim for trespass and injunction. I abide by the consequential orders and order for costs made in the leading judgment.

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