

SUPREME COURT OF NIGERIA

12TH MAY, 2000. SC. 127/1994

**CORAM:- A. G. KARIBI-WHYTE, A. B. WALI, U. MOHAM-
MED, A. I. KATSINA-ALU, A. O. EJIWUNMI, JJSC**

OKORIE ECHI & 4 ORS. APPELLANTS
(For themselves and on behalf of Isiagu Quarters
Ugwu-Aji Awkunanaw)

AND

JOSEPH NNAMANI & 5 ORS. RESPONDENTS
(For themselves and on behalf of Isiagu
Quarters Amechi Awkunanaw)

***APPEALS** - Concurrent findings of fact - For such findings to be inter-
fered with - Exceptional circumstances must be shown.*

***LAND LAW** - Title to land - Declaration of - Burden of proof - The bur-
den lies on the plaintiff who is seeking for declaration of title to land - To
prove his case on his evidence - And will fail if he fails to discharge that
burden.*

***PLEADINGS** - Proof - Burden - The burden of proof rests on the party
who alleges.*

FACTS

In the High Court of defunct Anambra State (now Enugu State) sitting at Enugu, the plaintiffs/appellants filed a suit against the defendants/respondents claiming a declaration of title to the land in dispute; general damages for trespass and an order of perpetual injunction. Plaintiffs are families of Isiagu Quarters, Ugwu-Aji Awkunanaw. Defendants are also of Isiagu Quarters of Amechi, Awkunanaw. The case of the plaintiffs is that the land in dispute was communally enjoyed by them and the two sets of defendants until 1943. Following a family meeting held that year between the parties, it was agreed that the defendants should be the exclu-

sive owners of Achara Ukwu (now Achara Layout in Enugu) and Owerre Agbai lands. While the plaintiffs were given to own exclusively Agbirrigba and Ogoye lands (the lands in dispute).

The plaintiff claimed that as owners of the said land, they enjoyed maximum acts of ownership over them by farming on them, reaped economic trees thereon, and leased/let out portions thereof. The 1st - 3rd defendants denied that there was any family meeting in 1943 with the plaintiffs and the 4th - 6th defendants when lands were shared as claimed by the plaintiffs. They claimed that the plaintiffs as well as the 4th - 6th defendants are strangers (Awbias) in Awkunanaw and as such do not own any land in common with the freeborns (Amadis). They denied that the plaintiffs exercised acts of possession over any part of the disputed lands. The only land that the plaintiffs are entitled to is the Ugwuaji settlement granted to them in 1928 by the freeborns. The 4th - 6th defendants, on their part, denied that the lands in dispute belonged to the plaintiffs. They claimed that the lands in dispute were jointly owned by them and the 1st - 3rd defendants.

With the conclusion of the hearing, the learned trial judge delivered a considered judgment in which the plaintiffs' claims were dismissed. Dissatisfied, the plaintiffs appealed to the Court of Appeal, Enugu division. They lost the appeal in that court and have now further appealed to the Supreme Court raising three issues. The appeal was determined on two issues.

ISSUES FOR DETERMINATION

- 1. whether the Court below appreciated the plaintiff's claim with regard to their root of title to the disputed lands.*
- 2. whether the onus of proof was wrongly placed by the Court below and the trial court.*

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

Pleadings - Proof

1. It is manifest from a perusal of the above pleadings that the appellants had the burden of establishing that the disputed lands were shared to them

in 1943, and they would have to also establish what relationship they had with the 1st - 3rd respondents with regard to the lands to entitle them to the lands allegedly shared to them. (p. 1695 C)

Land law - Title to land

2. In all cases where a plaintiff is seeking for declaration of title to land, the burden lies on such a plaintiff to prove his case on his evidence. And will fail if he fails to discharge that burden. See Kodilinya v Odu (1935) 2 WACA 336; Elufisoye v Alabetutu (1968) NMLR 298; Gankon v Ugochukwu Chemical Industries Ltd (1993) 6 NWLR (pt. 297) 55; The appellants in this appeal failed to discharge that burden as found both by the trial court and the court below. (p. 1697 D)

Appeals - Concurrent findings

3. These are concurrent findings against which the appellants have to advance any cogent argument for them to be disturbed. It must be borne in mind that for such findings to be interfered with by this court, exceptional circumstances must be shown by the appellants. See - Ntiaro v Akpan (1918) 3 NLR 10; Lawal v Dawodu (1972) 1 ALL NLR 707; Lengbe v Imade (1959) WNLR 325; Anaeze v Anyaso (1993) 5 NWLR (pt. 291) 1. (p. 1697 E)

NOTABLE POINTS OF INTEREST

KARIBI-WHYTE JSC

1. Root of title based on communal ownership

Appellants have predicated their sharing of the land on communal ownership of the land by all the parties. There is no pleading in the statement of claim tracing the title to any of the families in the community or how the land became communal land. It is well accepted that where the traditional history of a particular piece of land is given in support of the family, it is usually traced to an individual founder who first acquired the land. See Ngwo v. Onyejena (1964) 1 ALL NLR 352. Similarly where a community as a whole claims a piece of land, it is usually through inheritance or descent from a common ancestor acknowledged as the founder of the com-

munity or by conquest. See Mora v. Nwalusi (1962) 1 ALL NLR 681. Plaintiff has not pleaded how the land in dispute became communal land. (p. 1706 A)

B *2. Proof of single root of title is sufficient to sustain a claim for declaration of title*

There is no evidence that Appellants satisfied any of the five ways prescribed in Idundun v. Okumagba (1976) 1 NMLR for proving ownership of land in dispute. Appellant has submitted quite correctly that a party claiming declaration of title to a statutory or customary right of occupancy to land does not need to plead more than one of the prescribed methods to succeed. Proof of a single root of title being sufficient to sustain a claim for declaration of title to land. (p. 1706 C)

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KATSINA-ALU JSC

3. *The plaintiff should have proved joint ownership with the defendants* the plaintiffs should have pleaded and led evidence as to how the two families i.e. the plaintiffs and defendants originally owned the lands in dispute. That in fact is the starting point. This I should imagine is elementary having regard to the nature of the claim. This is a pertinent starting point in the light of the denial by the defendants that both families owned land in common and further that the plaintiffs were strangers in Awkunanaw. It is only after the plaintiffs established the joint ownership that they would proceed to rely on sharing of the land. Clearly, in my view, the plaintiffs took off on a wrong footing by not pleading and leading evidence in proof thereof to first establish joint ownership with the defendants prior to the alleged sharing of the land. (p. 1709 B)

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4. *Where there is no appeal against a finding of fact upon which the entire claim depend*

H On the issue of sharing which is the plaintiffs' root of title, the learned trial judge disbelieved the plaintiffs and their witnesses on that issue. He held that the issue was not proved. There was no appeal against this finding of fact by the plaintiffs. At that point the plaintiffs' entire claim failed. It was

not necessary to go into the issue of acts of ownership since the acts were tied to the sharing of the land. (p. 1709 E)

REPRESENTATION

M. I. ONOCHIE WITH HIM C. ATU FOR THE APPELLANTS
P. M. B. ONYIA FOR THE 1ST - 3RD RESPONDENTS
E. A. IBEZIAKOR FOR THE 4TH - 6TH RESPONDENTS

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CASES REFERRED TO

Chief Balogun v. Akanji (1988) 2 SC (pt. 2) 199 at 239

C

Ofei v. Danguah (1961) 1 WACA 1238 at 1243

Osafire v Odi (1994) 2 NWLR (pt. 325) 125 at 141

Oluwa v Eniola (1967) NWLR 339 at 340

Adegbite v Ogunfaolu (1990) 4 NWLR (pt 146) 578 at 597

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Onwuka v. R. I. Omogui (1992) 3 SCNJ 98

Fashoro v. Beyioku (1988) 2 NWLR (pt. 76) 263

Incar (Nig) Ltd v. Benson Transport Ltd (1975) 3 SC 117

Solana v Olusanya (1975) 6 SC 55

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Kano v Oyelakin (1993) 3 NWLR (pt. 282) 399

LEAD JUDGMENT BY EJIWUNMI JSC

The action that led to this appeal was commenced by the appellants at the High Court of the defunct Anambra State High Court presided over by Okadigbo J. The appellants had in that action sued the respondents claiming the following reliefs:-

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"(a) Declaration of title to the piece and parcel of land known as and called Agbirigba and Ogoye situate at Awkunanaw in this Judicial Division.

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(b) N200.00 being general damages for trespass.

(c) An order of perpetual injunction to restrain the defendants their agents and assigns from further trespass into the said land."

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Pleadings were filed, exchanged and amended with the leave of the trial court. Though, the respondents were sued jointly by the appellants, the suit was defended upon two separate Statements of Defence.

The 1st - 3rd respondents filed their own Statements of Defence. The 1st - 3rd respondents filed their own Statement of Defence, and the 4th - 6th respondents also filed their own separate Statement of Defence.

At the hearing, both sides, i.e. the appellants and the 1st - 3rd respondents, called witnesses in support of their respective cases. The 4th - 6th respondents offered no evidence at the trial in the High Court. Exhibits were also admitted in evidence in the course of the trial. The case for the appellants was that the land in dispute was communally enjoyed by them and the two sets of respondents until 1943. The appellants claimed that at a family meeting held that year between the parties, it was resolved that the respondents should be the exclusive owners of Achara Ukwu (now Achara Layout in Enugu) and Owerre Agbai lands. And that the appellants, was given to own exclusively Agbirigba and Ogoye lands. In their capacity as owners of the said lands, the appellants claimed that as owners of the said land, which are now in dispute, they enjoyed maximum acts of ownership over them by farming on them, reaped economic trees thereon, and leased/let out portions thereof.

The 1st - 3rd respondents denied that no family meeting was held in 1943 with the appellants and the 4th - 6th respondents when lands were shared as claimed by the appellants. They claimed that the appellants as well as the 4th - 6th respondents were strangers (Awbias) in Awkunanaw and as such do not own any land in common with the free borns (Amadis). They denied that the appellants exercised acts of possession over any part of the disputed lands. The only land that the appellants are entitled to is the Ugwuaji settlement granted to them in 1928 by the freeborns. The 4th - 6th respondents, were according to the 1st - 3rd respondents, equally Awbias whom they also granted land.

The 4th - 6th respondents by their pleadings also, on their part, denied that the lands in dispute belonged to the appellants. They claimed that the lands in dispute were jointly owned by them and the 1st - 3rd respondents. Also pleaded was suit No. E/165/71 where it was allegedly held that Achara Ukwu land is jointly owned by the 1st - 3rd respondents and the 4th - 6th respondents. With the conclusion of the hearing of evidence, and addresses by learned counsel for the parties, the learned trial

judge delivered a considered judgment. By that judgment the appellants' claims were dismissed. Dissatisfied with that judgment, the appellants appealed to the Court of Appeal, Enugu Division. They lost again in that Court, and have now further appealed to this Court, following the leave granted to them. At the hearing before this Court, the learned counsel B appearing for the parties plead reliance on their respective briefs, and also addressed the court thereon. The appellants in their brief raised three issues for the determination of the appeal. Also three issues were raised in the brief filed for the 1st - 3rd respondents. For the 4th - 6th respondents, C two issues were raised in their brief.

After due consideration of the issues so raised in the briefs filed on behalf of the parties, it is my view that the issues set down in the various briefs, are similar in terms of their purport and intent. I will, however, consider this appeal on the basis of the issues identified in the appellants' D brief. They read thus:-

"1. Were the learned Justices of the Court of Appeal right when they held that the failure of the plaintiffs to lead evidence on how the two families (Plaintiffs and Defendants) acquired title to the lands in dispute E was fatal to their claim when the plaintiffs did not rely on traditional evidence in proof of their title?"

2. Were the learned Justices of the Court of Appeal right when they held that the plaintiffs did not rely on acts of possession in proof of F their title but rather on the alleged sharing of the land in dispute in 1943? If answered in the negative, were the learned Justices of the Court of Appeal right when they failed to investigate the plaintiffs' complaint that they have proved the ownership of the land in dispute by adducing acts G of possession sufficient and numerous to warrant the inference that they were the exclusive owners of the lands in dispute.

3. Were the learned Justices of the Court of Appeal right when they failed to pronounce on issue No. 2 raised by the plaintiffs before H them on the ground that a resolution of the said issue is not material for determining the live issue in controversy in this case?"

On a proper appraisal of issues 1 & 2 raised in the appellants' brief, I think that they could be conveniently considered together. This is

because the argument proffered in their brief and during the oral hearing before us is concerned with whether the Court below appreciated the plaintiff's claim with regard to their root of title to the disputed lands. It is therefore argued for the appellants that as the court below had rightly held that the trial court was in error when it held that the appellants relied on traditional history in proof of their title, the court below, however, fell into error by holding that the appellants did not lead evidence of traditional history in support of their case. It was therefore submitted that as the court below contradicted itself by demanding that evidence of traditional evidence should have been led to support appellants' case, having already held that their case was not based on traditional history, their appeal should be allowed

On issue 2, it is contended for the appellants that the Court below misdirected itself when it held that the appellants did not rely on acts of possession in proof of their title to the land. But rather on the alleged sharing of the lands in dispute in 1943. It is the further contention of learned counsel for the appellants that as sharing of land is not one of the five methods of proving title to land, the appellants are not required to lead evidence in that regard. Their counsel has therefore argued for the appellants that as their root of title is based on possession, the Court below should have accepted their evidence on acts of possession as given in relation to the use to which the disputed land was put by them. In support of all the arguments advanced for the appellants in respect of the two issues, reference was made to the following cases; Nelson Nwosu Onwugbufor & 2 ors v. Herbert Okoye & 3 ors (1996) 1SCNJ page 1 at pages 20-21; Chief Oyelakin Balogun & 2 ors v. Oladosu Akanji & Anor (1988) 2 SC (pt. 2) 199 at 239; Wuta Ofei v. Danguah (1961) 1 WACA 1238 at 1243; Osafire v Odi (1994) 2 NWLR (pt. 325) 125 at 141; Oluwa v Eniola (1967) NWLR 339 at 340; Adegbite v Ogunfaolu (1990) 4 NWLR (pt 146) 578 at 597.

The response of the 1st - 3rd respondents as could be gathered from their brief may be put thus - The Court below was right to have observed that the appellants ought to have in the first place pleaded traditional history and led evidence to establish that they were joint own-

ers of the disputed land with the 1st - 3rd respondents. This point, it is argued must first be established for the appellants to prove their claim that the disputed land was shared or partitioned to them in 1943. If on the other hand it is held that the Court below was wrong in that regard, that observation is not enough to conclude that there was a miscarriage of justice to entitle the appeal to be allowed. Moreso, as the dismissal of the appellants' appeal was based on the ground that they failed to establish their claim as per their pleadings. B

On issue (2) the argument proffered for the 1st - 3rd respondents is simply to the effect that the appellants cannot be complaining about the failure of the Court below to acknowledge and accept their evidence of acts of ownership on the disputed land, when they had failed to establish their claim to the possession of their disputed land by sharing. It is therefore urged that the appeal be dismissed. The arguments offered for the 4th - 6th respondents in their brief is not dissimilar to that which have been noted above for the 1st - 3rd respondents. I therefore do not consider it necessary to relate them. D

In support of their submission, the following authorities were brought to our attention - Linus Onwuka & Anor. v. R. I. Omogui (1992) 3 SCNJ 98; Fashoro & Anor v. Beyioku & ors (1988) 2 NWLR (pt. 76) 263. E

Having regard to the argument proffered for the parties, it seems to me that the primary question which falls for determination in respect of this issue is whether the onus of proof was wrongly placed by the Court below and the trial court. To properly determine this question, I must refer to the pleadings. It is undoubtedly trite that parties are bound by their pleadings. See Incar (Nig) Ltd v. Benson Transport Ltd (1975) 3 SC 117; Solana v Olusanya (1975) 6 SC 55; Metal Construction (W.A.) Ltd v Migliore (1979) 6-9 SC 163; Kano v Oyelakin (1993) 3 NWLR (pt. 282) 399. F G

For this purpose I will reproduce paragraphs 4, 4(a), 5 and 6 of the appellants Amended Statement of Claim, and also paragraphs 3, 5, 6 & 7(a) of the 1st - 3rd respondents Statement of Defence. Paragraphs 4, 4(a), (5) and 6 of the appellants Amended Statement of claim read thus:- H

"4. About 1943 the members of the plaintiffs family and those of the defendants at a family meeting resolved that Nduno Isiagu should own exclusively the Achara Ukwu and Owerre Agbai lands and while the plaintiffs should take exclusively Ogoye land and Agbirigba land with the Ayo stream forming a common boundary.

B 4(a) The land in dispute is bounded as follows:-

(a) On the East by the land of Umuagwuata family of Ndiaga and the land of Umuna-Ugwu family which are separated from the land in dispute by the Ngene-Ekwe stream.

C (b) On the West by the land of Ununa-Ugwu family and the lands of Umuzeoha.

(c) On the North by the land of Umuewonkwu-Ochio family of Umunnaji Ngene now Army Barracks and separated from the land in D dispute by the Enugu to Ugwaji road.

(d) On the South by the land of Umuezeoha family and Owerri Abai, the land of Isiagu Ndiuno people separated by the Ndem Nde Stream on the plaintiffs boundary with Umuezeoha and the Ayo Stream on the E plaintiffs boundary with Owerri Abai land of Isiagu Ndiuno people.

(5) By 1958 the economic value of Achara Ukwu land increased considerably. The defendants granted base and sold various parts of the said land and enjoyed all the proceeds exclusively

(6) As the said owners in possession of the said Ogoye and F Agbirigba lands the plaintiffs have since the family resolution which led to the partition, enjoyed maximum rights of ownership and possession over the area by farming the land and enjoying the economic trees without let or hindrance. The plaintiffs also allowed farming tenants who G paid tribute to them.

Paragraphs 3, 5, 6 and 7(a) of the 1st - 3rd respondents, Statement of Defence read thus:-

"(3) The 1st, 2nd and 3rd defendants deny paragraphs 4 and H 4(a) of the Statement of Claim and will put the plaintiffs to the strictest proof of the allegation therein. The 1st, 2nd and 3rd defendants further say that their families had held no meeting with the plaintiffs since 1928 when the plaintiffs together with other Awbias, (Strangers) from Amechi

and Okeagu were given the Ugowe settlement where they now live.

(5) As regards paragraph 5 of the Statement of Claim, the families of the 1st, 2nd and 3rd defendants had been enjoying Achara Ukwu land from time immemorial

(6) The 1st, 2nd and 3rd defendants deny paragraph 6 of the Statement of Claim and will put the plaintiffs to the strictest proof of the allegations therein. B

7(a) The 1st, 2nd and 3rd defendants deny paragraph 7 of the Statement of Claim. The 1st, 2nd and 3rd defendants further say that their families had been farming on the lands in dispute from time immemorial and various sections of the families had planted pillars in their own portion before 1970." C

It is manifest from a perusal of the above pleadings that the appellants had the burden of establishing that the disputed lands were shared to them in 1943, and they would have to also establish what relationship they had with the 1st - 3rd respondents with regard to the lands to entitle them to the lands allegedly shared to them. D

In its consideration of the appeal, the court below noted that although issues were joined in the pleadings, the issues so joined did not include traditional history. The learned trial judge was therefore wrong to that extent. But having said that, the court below then considered the evidence relied upon by the appellants to ground their claim to the disputed land. In this regard reference was made to paragraph 4 of the appellants Amended Statement of Claim wherein they had alleged that they became owners in possession of the disputed lands following the grant made to them by the 1st - 3rd respondents. Then upon that pleading of the appellants, the Court below observed thus:- E F G

"This seems to assume that the two families previously owned the entire land involved. How they came to own the land was in no way pleaded. They ought to have pleaded clearly in what way the two families became exclusive owners of the land originally, that is to say, their root of title and led evidence in support. When Nwobodo Agu gave evidence as P.W. 1, he said:- H

"I know the land in dispute which is the property of the plaintiffs.

About the year 1943 the plaintiffs' family and the defendants' family held a meeting in which it was agreed that the defendants' family should own exclusively Achara Ukwu and Owerre Abias lands while the plaintiffs should own exclusively Ogoye and Agbirigba land."

B When cross-examined, he said inter alia:-

"It is not true the Ugwuaji land was originally owned exclusively by the Amechi people. It was jointly owned by Amechi and Obuagu people There are some land communally owned by the families in Amechi."

C Thereafter, the Court below, per Uwaifo JCA (as he then was) said:-

"It was this bare evidence that the plaintiffs' relied on as root of title. I cannot see how this can avail them in support of a declaration of title. In Mogaji & Ors. v. Cadbury (Nigeria) Ltd and Anor (1985) 2 NWLR (pt. 7) 393, the Supreme Court held that a person who traces his title to a particular person or family must establish the root of title of that person or family. Without the plaintiffs in the present case establishing how the two families mentioned by them acquired the land said to have been shared, they can never rely on the alleged sharing to obtain a declaration of title."

The appellants' have attacked the judgment of the Court below on the ground that having held earlier that the trial court was wrong to have in their judgment faulted the appellants for not leading evidence on traditional history. This complaint of learned counsel for the appellants is a total misconception of the judgment of the court below. At the risk of repetition, it must be said that what the court below emphasised in its judgment was that the appellants were required to prove how they became entitled to be granted the disputed lands as they have claimed. They, certainly as they have sought to argued, pleaded that they suddenly found themselves on the land, and have remained in undisturbed possession since they found themselves on the land in 1943. They have not as found by the H court established their claim to the disputed land, upon the evidence led at the trial. It is also noteworthy that though the trial court found against them on the sharing of the land, as they have alleged; they did not a rightly observed by the court below, appeal against that finding. It is manifest

that there is no merit in respect of the two issues and I so hold.

The appellants have by their issue 3, complained that the court below was wrong to have failed to consider, issue 2 in the course of the judgment of that court. I think that complaint was misconceived by their learned counsel. The question raised before the appellate court was duly B considered. But because the court below having considered that the failure of the trial court to make a finding as to whether the appellants could hold land with the 1st - 3rd respondents is not crucial for the success of the appeal since they have not established or led evidence to establish that they enjoyed such a historical right with the 1st - 3rd respondents, then C went on to consider the other issues raised in the appeal.

As I do not find any merit in the complaint of the appellants on this issue. I must resolve it against them. Before concluding, I must allude to the settled principle that **in all cases where a plaintiff is seeking for D declaration of title to land, the burden lies on such a plaintiff to prove his case on his evidence. And will fail if he fails to discharge that burden. See Kodilinyia v Odu (1935) 2 WACA 336; Elufisoye v Alabetutu (1968) NMLR 298; Gankon v Ugochukwu Chemical Industries Ltd (1993) 6 NWLR (pt. 297) 55; The appellants in this appeal failed to discharge that burden as found both by the trial court and the court below. These are concurrent findings against which the appellants have to advance any cogent argument for them to be dis- F turbed. It must be borne in mind that for such findings to be interfered with by this court, exceptional circumstances must be shown by the appellants. See - Ntiaro v Akpan (1918) 3 NLR 10; Lawal v Dawodu (1972) 1 ALL NLR 707; Lengbe v Imade (1959) WNLR 325; Anaeze v Anyaso (1993) 5 NWLR (pt. 291) 1.** G

In this appeal, no such circumstance have been shown to persuade me to interfere with the concurrent findings of the Court below and the trial court. In the result this appeal is dismissed, and I affirm the judgment of the court below. N10,000 costs are awarded to the two sets of H respondents.

KARIBI-WHYTE JSC

I have read in draft the judgment of my learned brother A. O. Ejiwunmi, JSC in this appeal. I agree with him that there is no merit in this appeal, and that it ought to be dismissed.

B This appeal is against the unanimous judgment of the Court of Appeal dated 30th March, 1993 dismissing the appeal against the judgment of Okadigbo J of the High Court of Anambra, sitting at Enugu on the 5th May, 1983. The facts of this case are quite simple and may be stated as follows.

C Plaintiffs are families of Isiagu Quarters, Ugwu-Aji Awkunanaw Defendants are also of Isiagu Quarters of Amechi, Awkunanw. The contention of the Plaintiffs is that following a family meeting in 1943 in which the communal lands of Isiagu was shared among the constituent families, D the land nearest to them namely the Agbirigba and Ogoye lands fell to them exclusively. At the same meeting it was agreed that defendants should own Achara Ukwu and Owerre Agbai lands exclusively. In pursuit of their claim they filed a suit against the defendants claiming (a) a declaration of title to the Agbirigba and Ogoye lands (b) N200 being general E damages for trespass, and (c) order of perpetual injunction to restrain the defendants, their agents and assigns from further trespass into the said land.

F In their amended statement of claim Plaintiffs pleaded that as owners of the lands, they have been enjoying maximum acts of ownership over the lands in dispute, by farming on the lands, reaping economic trees thereon, and letting out portions to farming tenants.

G The Defendants denied that there was any family meeting in 1943 in which the lands in dispute were shared among the families. The 1st - 3rd Defendants claimed that plaintiffs and the 4th-6th Defendants were strangers (awbias) who according to their tradition could not own land in Awkunanaw. They contended being Amadis they cannot hold lands in H common with the plaintiffs and the 4th - 6th Defendants who are Awbias (strangers). On the claim by plaintiffs to have exercised acts of possession the 1st - 3rd Defendants contend was limited to the Ugwuaji settlement granted them in 1928 by the Amadis.

The 4th - 6th Defendants denying that the land in dispute belonged to plaintiffs, claim that the land in dispute were jointly owned by them and the 1st - 3rd Defendants. Like the 1st - 3rd Defendants they also deny the 1943 sharing of the lands in dispute claimed by the plaintiffs.

Plaintiffs who are now the Appellants in this Court called five witnesses in support of their claims. The 4th - 6th Defendants called on witness and relied for their defence on the case of the plaintiffs. The 1st - 3rd Defendants called five witnesses.

The parties led evidence on the issue of whether or not the Amadis and Awbias can own land in common.

The learned trial Judge dismissed the claims of the plaintiffs in their entirety. In so holding he found -

(i) that plaintiffs relied on traditional evidence and acts of possession in proof of their title.

(ii) That Plaintiffs having failed to plead or lead evidence of the founding of the land, the devotion of the land before the alleged sharing of 1943, their traditional evidence of title is defective. These omissions were fatal to the claim.

(iii) It was not the claim of the Plaintiffs that the four pieces of land were originally communally owned by both the Plaintiffs and the Defendants.

(iv) Plaintiffs failed to prove that there was a sharing of the four pieces of land, and that this was done after the alleged family meeting in 1943.

Plaintiffs appealed to the court below. In their judgment, the Court below held that the learned trial Judge was in error in presuming that plaintiffs relied on traditional history and acts of possession for the root of their title. It was held that plaintiffs root of title was the alleged sharing of the lands in dispute in 1943.

It was held that a resolution of the issue whether Amadis and Awbias can own lands in common was not necessary in resolving the real issue in controversy in this case, which is, whether Plaintiffs became execulsive owners of the lands in dispute by virtue of the alleged sharing by the family meeting in 1943.

It was held that the plaintiffs failed to discharge the onus of proof, because of their failure to prove that they acquired ownership by the alledged sharing by the family meeting of 1943, not because of the failure to adduce proof of act of ownership.

B The Court of Appeal went further to hold that on the pleading in paragraph 4 of the amended statement of claim, assumes that the two families are owners originally of the entire land involed in the dispute. This being so, the Court held that Plaintiffs ought to have pleaded clearly in what way the two families became original owners of the entire land. The
C plaintiffs should have led evidence in support of their root of title.

Finally, the Court of Appeal held that Plaintiffs have not complained against the finding of fact made by the trial Judge on the sharing of the land in dispute. Plaintiffs who were the Appellants in the Court below,
D have further appealed to this Court, alleging three grounds of error. The grounds of appeal are as follows -

"GROUNDS OF APPEAL

ERROR-IN-LAW: The learned Justices of the Court of Appeal
E *erred in law when they held as follows:-*

*This seems to assume that the two families previously owned the entire land involved. How they came to own the land was in no way pleaded. They ought to have pleaded clearly in what way the two families became exclusive owners of the land originally, that is to say, their
F root of title and led evidence in support.*

PARTICULARS OF ERROR:

*(i) The complaint of the plaintiffs/Appellants in the Court below is that they never relied on traditional history in proof of their case and
G that the learning trial Judge relied on same to enter judgment against them without giving the parties opportunity to address him on that issue.*

*(ii) The court below found that the learned trial Judge was in error to have presumed at all that the plaintiffs/Appellants relied on
H traitional history but failed to enter judgment for the plaintiffs/Appellants.*

(iii) Despite the finding above, the court below like the learned trial judge derailed by holding that the plaintiffs/Appellants failed to plead

how they came to own the land originally. The court of Appeal did not invite Counsel to address it on this point.

(iv) The plaintiffs/Appellants relied on acts of possession and not on traditional history.

FOUNDATIONS 2

B

MISDIRECTION IN LAW:

The learned Justices of the Court of Appeal misdirected themselves in law when they held:-

"..... He was also, in my view, wrong to have gone on the basis that they relied on acts of ownership. From the way they pleaded in paragraph 4 and 6 of their amended statement a claim, the alleged acts of enjoyment and ownership followed and flowed from the alleged sharing done in 1943."

D

PARTICULAR OF MISDIRECTION

(i) Both parties relied on various acts of ownership and possession in proof of their respective cases.

(ii) The plaintiffs pleaded specifically that they farm the land in dispute, reap economic trees thereon.

E

PARTICULARS OF MISDIRECTION:

(i) Both parties relied on various acts of ownership and possession in proof of their respective cases.

(ii) The plaintiffs pleaded specifically that they farm the land in dispute, reap economic trees thereon and allow farming tenants to farm thereon

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(iii) The acts of ownership and possession pleaded by plaintiffs were denied by the Defendants who themselves claimed that they are the people exercising acts of ownership and possession on the land in dispute.

G

(iv) Evidence of both parties on acts of ownership and possession were divergent as both claimed to be enjoying the land to the exclusion of the others.

H

(v) Apart from holding that the plaintiffs did not call any farming tenants to testify for them, the learned trial Judge failed to evaluate the evidence of the parties on the said various acts of ownership and to

make findings of fact in respect of same, this was the complaint of the plaintiffs/Appellants in the court below.

(vi) *The Court below instead of pronouncing on this issues as raised before it, went on a frolic of its own to hold that the learned trial judge was rong to have gone on the basis that the plaintiffs/Appellants relied on acts of ownership which finding has occasioned a miscarriage of justice against the plaintiffs/Appellants.*

GOUND 3

ERROR IN LAW:

The learned justices of the Court of Appeal erred in law when they held as follows:-

The irony, however, of this appeal is that in whatever way the three issues raised by the appellants are answered, it does not help them issue 2 would be answered either in the negative if an exercise in such evaluation and finding on the point would be material and necessary for resolving the real controversy or in the positive if it would be uncalled for. In the particular circumstance of this case it was uncalled for." and thereby failed to pronounce on issue No. 2 raised before them.

PARITUCLARS OF ERROR:

(i) Issue No. 2 raised by the Plaintiffs/Appellants in the Court below was that the learned trial Judge failed to evaluate the evidence and make findings on whether or not the plaintiffs/Appellants and 4th-6th Defendants/Respondents are strangers which disentitled them to own land and share land including the land in dispute with the 1st-3rd Defendants/Respondents who call themselves free borns (Amadis).

(ii) Finding one way or the other on this issue would have resolved the following:-

(a) the relationship between the plaintiffs and the Defendants (i.e. whether they are blood relations or not).

(b) who owns the land in dispute.

(iii) The Court below failed to pronounce on issue No. 2.

(iv) failure of the court below to pronounce on issue No. 2 occasioned a miscarriage of justice on the plaintiffs/Appellants.

(v) The issues raised in the court below were sufficient for the

appeal to be allowed."

Learned Counsel to the Appellants has formulated three issues for determination. These issues have been adopted by learned Counsel to the 1st-3rd Respondents. These issues are:-

"ISSUES FOR DETERMINATION

3.01. *Were the learned justices of the Court of Appeal right when they held that the failure of the plaintiffs to lead evidence on how the two families (plaintiffs and defendants) acquired title to the lands in dispute was fatal to their claim when the plaintiffs did not rely on traditional evidence in proof of their title?*

3.02. *Were the learned justices of the Court of Appeal right when they held that the plaintiffs did not rely on acts of possession in proof of their title but rather on the alleged sharing of the land in dispute in 1943? If answered in the negative, were the learned justices of the Court of Appeal right when they failed to investigate the plaintiffs' complaint that they have proved the ownership of the land in dispute by adducing acts of possession sufficient and numerous to warrant the inference that they were the exclusive owners of the lands in dispute.*

3.03. *Were the learned justices of the Court of Appeal right when they failed to pronounce on issue No. 2 raised by the plaintiffs before them to the ground that a resolution of the said issue is not material for determining the live issue in controversy in this case?"*

On the other hand, learned Counsel to the 4th-6th Respondents have formulated the following two issues.

ISSUES FOR DETERMINATION

1. *Were the learned justices of the Court of Appeal right in dismissing the plaintiffs' case as did by the trial judge because the plaintiffs/appellants have failed to prove their case.*

2. *Was the issue No.2 raised by the plaintiffs/appellants effective enough to warrant the reversal of the judgment of the court below by the learned justices of the court of appeal."*

I regard the issues formulated by learned Counsel to the 4th-6th Respondents as covering the three grounds of appeal filed and relied upon by the Appellants in this appeal. I have come to this view because grounds

1 and 2 of the grounds of appeal which relate to the root of title and proof thereof, are adequately covered by the formulation in issue 1. Issue 2 which concerns the effect of the resolution of issue 2 is sufficient for the purpose of ground 3.

B It is convenient to begin with the first issue, the determination of which in my opinion, determines this appeal. Learned Counsel to the Appellant has in his brief of argument submitted that the Court below was wrong to have held that the failure of plaintiffs to prove how they had title originally vested in them was fatal to their claim. After setting out the five methods prescribed in Idundun v. Okumagba (1976) 1 NMLR. 200 for establishing title to land, submitted that a party claiming a declaration of title to a statutory or customary right of occupancy to land need not plead more than one of the five prescribed methods to succeed. Proof of one root of title sufficient to sustain the claim - Onwugbufor & ors. v. Okoye & ors. (1996) 1 SCNJ.1, 20-21.

It was argued relying on s. 146 of the Evidence Act, that a person in possession is presumed to be the owner, and the onus is on proving that he is not the owner is on the person who affirms that he is not the owner. - Balogun & 2 ors. v. Akanji & ors. (1988) 2 SC. 199. Learned Counsel submitted that the Court of Appeal agreed with Appellants that the trial Judge was in error to have held that Plaintiffs relied on traditional history in proof of their title. It was conceded that the Court of Appeal also held that plaintiffs failed to prove how they come to own the land and how the two families became exclusive owners of the land originally. Learned Counsel to the Appellant submitted that only a party who relied on traditional evidence in proof of his title is required to plead and lead evidence relating to the founding of the land in dispute and the person on whom the land devolves thereafter. It was submitted that the principle in Mogaji & ors. v. Cadbury Nig. Ltd. & ors. (1985) 2 NWLR at p. 393 is not applicable to the facts of this case.

H On their part, the 1st-3rd Respondents and the 4th -6th Respondents in their separate briefs of argument, relying on the pleadings in paragraphs 4 and 6 of the amended statement of claim, and paragraphs 4, 5, 6, 10 and 11 of the statement of defence of the 1st-3rd Defendants, and

paragraphs 4,7 and 8 of the 4th - 6th Defendants, that Appellants ought to have pleaded and led evidence on how the two families jointly acquired and held the four lands prior to the alleged sharing.

It is the contention of the Respondents that the case of the Appellants is predicated on a prior common ownership of the four lands constituting the lands in dispute and a subsequent sharing in 1943 by the constituent families of the communal lands. These have been denied by the Respondents. The plaintiffs did not plead nor lead any evidence to establish the joint ownership with the Defendants prior to the alleged sharing of the four pieces of land, allegedly communally owned prior to the sharing. The claim to exclusive ownership of the lands in dispute is founded on this disputed sharing.

Respondents contend that the view of the Court of Appeal that the trial court was in error to have considered traditional history as one of the ways Appellants relied upon to established their root of title on the 1943 sharing of the communal lands. Respondents contend, and I agree that there is no contradiction between that view and the subsequent observation by the Court of Appeal that Plaintiffs ought to have pleaded and proved how the two families originally acquired the lands in dispute to establish a joint ownership which would be the basis for the sharing of lands between the parties.

It is clear from the pleadings of the parties that issues were joined on the fundamental and critical issues whether there was exclusive ownership by the plaintiffs of the land in dispute and whether there was a sharing of the communal land. Indeed issue was joined as between the plaintiff and 1st-3rd defendants whether they can own land jointly.

It is an elementary and fundamental principle of law that where issues are joined, the onus of proof rests on the person who would fail if no evidence was adduced. See Odiye v. Okotie (1972) 6 SC. 83, also s. 135 of the Evidence act. Are v. Adisa (1967) 1 ALL NLR. 148. The plaintiff/Appellant who asserts that there is a common ownership of the land between the parties and that there was a sharing of the land in 1943 has the burden of establishing these facts which have been vigorously denied by the Defendants.

Appellants have predicated their sharing of the land on communal ownership of the land by all the parties. There is no pleading in the statement of claim tracing the title to any of the families in the community or how the land became communal land. It is well accepted that where the traditional history of a particular piece of land is given in support of the family, it is usually traced to an individual founder who first acquired the land. See Ngwo v. Onyejena (1964) 1 ALL NLR 352. Similarly where a community as a whole claims a piece of land, it is usually through inheritance or descent from a common ancestor acknowledged as the founder of the community or by conquest. See Mora v. Nwalusi (1962) 1 ALL NLR 681. Plaintiff has not pleaded how the land in dispute became communal land.

There is no evidence that Appellants satisfied any of the five ways prescribed in Idundun v. Okumagba (1976) 1 NMLR for proving ownership of land in dispute. Appellant has submitted quite correctly that a party claiming declaration of title to a statutory or customary right of occupancy to land does not need to plead more than one of the prescribed methods to succeed. Proof of a single root of title being sufficient to sustain a claim for declaration of title to land.

In this case Appellants are relying on acts of possession as their root of title. It seems to me that acts relied upon are predicated on the alleged sharing of the communal lands out of which the lands in dispute is claimed. In view of the concurrent findings of facts in the courts below that there was no sharing of the communal land in any family meeting in 1943, against which finding there is no appeal, there can be no basis for the claim. Appellants cannot therefore rely on the acts of possession, claimed. This court has not been given reasons why it should disturb the concurrent findings of facts of the two courts below, which have not been shown to be perverse. - See Omoborinola II v. Military Governor, Ondo State (1998) 14 NWLR (pt. 584) 89 SC. Adimora v. Ajufo (1988) 3 NWLR (pt. 80) 1. Appellants have not satisfied any of the five methods stated in Idundun v. Okumagba (supra). They cannot therefore be entitled to the declaration sought.

The second issue is whether the issue No. 2 of the plaintiffs/App-

pellants is effective enough to warrant a reversal of the judgment of the Court of Appeal. The issue No. 2 complained of raises the question of the failure of the court below to decide the issue whether Plaintiffs/Appellants were Awbias or Amadis, i.e. Strangers or freeborns which I refer to as indigenes.

Learned counsel to the Appellants submitted that a court is bound to consider all the issues properly raised before it. The issue of the failure of the trial judge to make a finding whether or not plaintiffs who are awbias and the 1st - 3rd defendants who claim to be Amadis or indigenes, can ever own lands in common. Appellants claim that a resolution of the issue in favour of the plaintiffs would have knocked the bottom off the case of the 1st-3rd defendants by lending credence to the case of the plaintiffs that the land in dispute was communally owned until it was shared in 1943. Learned counsel relied on the evidence of d.w. 5 under cross-examination who admitted that Achara Ukwu land is owned jointly by the 1st-3rd defendants (who claim to be Amadis) and the 4th-6th defendants (who they claim are Awbias). This admission they contend would have been sufficient to resolve the issue in favour of the plaintiffs. The failure to resolve this issue raised before the Court of Appeal is a denial of fair hearing. Counsel cited Okonji & 4 Ors. v. Njokanma & 2 Ors. (1991) 7 N.W.L.R. 131 and Ezeoke v. Nwagbo (1988) 1 N.W.L.R. 616.

It is important to appreciate the claim of the plaintiffs. They are seeking a declaration of title to the two pieces of land in dispute. Their claim is based on the fact that the two pieces of land are their own share from the division of the communal lands. Furthermore they have exercised several acts of possession with respect to the lands in dispute. These being the basis of the claim of the appellants, they have the onus to prove by credible evidence that they are entitled to the declaration of title sought. They must succeed on the strength of their case.

The submission by the respondents that any specific finding whether plaintiffs and 4th - 6th defendants are Awbias (strangers) and the 1st-3rd defendants are Amadis (free born) (indigenes) would not have made any difference to the claim of the plaintiffs who are asserting that they are exclusive owners of the lands in dispute by virtue of the sharing exercise

of 1943 and acts of possession by farming and putting farming tenants on payment of annual rents on the land is quite sound. This is because the resolution of issue whether or not the plaintiffs and the 1st to 3rd defendants can own land in common will not answer the question whether there was a sharing of the communal lands in 1943 which is still denied. The resolution of the issue cannot in my opinion decide the exclusivity of possession and acts of possession necessary for the declaration sought. The plaintiffs have not appealed against the finding rejecting the claim of sharing of the lands in dispute and cannot now raise the issue on appeal - See Obioha & ors. vs Duru (1994) 10 S.C.N.J. 48.

I agree entirely with the court below that non-resolution of the issue is immaterial and unnecessary for a mention of the real issue in controversy, namely the of title to the lands in dispute.

For the reasons given above in addition to the reasons in the leading judgment of my learned brother A. O. Ejiwunmi, JSC I also will and hereby dismiss of the Appellants.

Appellants shall pay N10,000.00 as costs to of Respondents.

WALI JSC

I have had the privilege of reading in advance a draft copy of the lead judgment of my learned brother Ejiwunmi, JSC and I agree with his reasoning and conclusion for dismissing the appeal.

For the same reasons ably advanced in the lead judgment, I also hereby dismiss the appeal and adopt the order of costs made in the said judgment.

MOHAMMED JSC

This appeal is from concurrent findings of the High Court and the Court of Appeal. The appellants have failed to establish any convincing reason warranting the interference with the decisions of the two courts below. I agreed with my learned brother, Ejiwunmi J.S.C., that this appeal is without any meirt. I therefore dismiss it. I award N10,000.00 to

each set of the respondents

KATSINA-ALU JSC

I agree that this appeal lacks substance and should be dismissed. B
From the outset the case of the plaintiffs was bound to fail. Let me explain.
First, the plaintiffs should have pleaded and led evidence as to how the two
families i.e. the plaintiffs and defendants originally owned the lands in
dispute. That in fact is the starting point. This I should imagine is elemen- C
tary having regard to the nature of the claim. This is a pertinent starting
point in the light of the denial by the defendants that both families owned
land in common and further that the plaintiffs were strangers in Awkunanaw.
It is only after the plaintiffs established the joint ownership that they would D
proceed to rely on sharing of the land. Clearly, in my view, the plaintiffs
took off on a wrong footing by not pleading and leading evidence in proof
thereof to first establish joint ownership with the defendants prior to the
alleged sharing of the land.

On the issue of sharing which is the plaintiffs' root of title, the E
learned trial judge disbelieved the plaintiffs and their witnesses on that
issue. He held that the issue was not proved. There was no appeal against
this finding of fact by the plaintiffs. At that point the plaintiffs' entire claim
failed. It was not necessary to go into the issue of acts of ownership since F
the acts were tied to the sharing of the land.

I am therefore in complete agreement with my learned brother
Ejiunmi JSC that this appeal be dismissed. I also would dismiss it with
costs of N5,000.00 to each set of Defendants.

G

H