

**SUPREME COURT OF NIGERIA**

23RD JUNE, 2000. SC. 37/95

**CORAM:- S. M. A. BELGORE, M. E. OGUNDARE,  
U. MOHAMMED, A. I. KATSINA-ALU, S. O. UWAIFO, JJSC**

FRIDAY ELEMA & ANOR. .... APPELLANTS  
AND  
PRINCESS CHRISTY A. AKENZUA ..... RESPONDENTS

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**EVIDENCE** - Proof - Burden of proof - While the burden of proof initially lies on the plaintiff - The proof or rebuttal of issues may shift as the case progresses

**JUDGMENTS** - Claim - Evidence - Uncontroverted evidence - Where the plaintiff's claim by the pleadings and evidence remained uncontroverted - He is entitled to judgment

**LAND LAW** - Equitable interest - Sale of land - Contract of - Where a person entered into a property under a contract of sale - He has acquired an equitable interest in the land - Which may be converted into a legal estate by specific performance

**LAND LAW** - Native law and custom - Sale of land - Requirements of a valid sale of land - Under native law and custom

**LAND LAW** - Sale - Contract of - Purchase receipt - Effect of - Purchase receipt is an acknowledgement of the payment of money - And coupled with the plaintiff being in possession - Raises a presumption that he entered into possession - Under a contract of sale.

**FACTS**

In the High Court of justice, Benin City, Edo State, the plaintiff/respondent claimed against the defendants/appellants jointly and severally:- a declaration that she is entitled to the grant of statutory right of

occupancy in respect of a piece of land situate at Elema Quarters, Benin City; damages for trespass; and perpetual injunction. The plaintiff gave evidence on her own behalf and called 6 witnesses to show that the parcel of land in question originally belonged to the late father of the defendants Chief Felix Owen Elema. At the death of Chief Felix Owen Elema the two defendants and their elder brother Jonathan Elema were given letters of administration to administer the estate of their deceased father. It was in this capacity that they transferred the land in dispute to the plaintiff as shown in the receipt Exhibit 'D' which was dated 2nd. November 1972. Sometime in 1981, the plaintiff discovered that some persons were trespassing on the land. She complained to Chief Jonathan Elema who gave her a hand-written note Exhibit "F" confirming her ownership of the land in question and directed that nobody should stop her from working on the land.

For their part, the defendants denied having any land transaction with the plaintiff. Although the defendants were administrators of the estate of the original owner of the land, they were sued in their personal capacity. They claimed in their pleadings that the land in dispute was transferred to them by certain deeds of conveyance. However they led no evidence in proof of these claims. They called 3 witnesses but did not themselves give evidence on their own behalf. The learned trial judge, in a reserved judgment, entered judgment in favour of the plaintiff for all the reliefs sought. The defendants' appeal to the Court of Appeal was dismissed. They have now further appealed to the Supreme Court raising 3 issues.

### **ISSUES FOR DETERMINATION**

*"(i) Were the learned Justices right in holding that Exhibits D & F constitute proof that Defendants had put plaintiff in possession of the land claimed by her?*

*(ii) Were the learned Justices right in holding that the onus of proof in this case was not wrongly put on the Defendant?*

*(iii) Were the learned Justices right in affirming the Judgment granting declaration of title to the plaintiff in this action?*

**HELD** (Unanimously dismissing the appeal per lead judgment of **KATSINA-ALU JSC**)

***Land law - Native law and custom***

1. From the evidence of the transaction I would say that there had been a valid sale of the land in dispute under native law and custom: See Cole v. Folami (1956) 1 FSC 66. All the requirements of a valid sale were present. She paid for the land and the land was handed over to her in the presence of witnesses. A valid sale of land by native law and custom is without the necessity for a conveyance as under English law. What is required is the handing over of the purchase money by the purchaser and the delivery of possession on the other hand by the vendor. Essentially this is what happened in this case. (p. 2360 D)

***Evidence - Proof***

2. The law in this regard is settled. In civil cases while the burden of proof initially lies on a plaintiff, the proof or rebuttal of issues which arise in the course of proceedings may shift from the plaintiff to the defendant and vice-versa as the case progresses. This is also referred to as the evidential burden. This is good law and good sense. For if a party calls evidence which reasonably satisfies the court that the fact sought to be proved is established, the burden would shift on his adversary against whom judgment would be give if no more evidence were adduced. See Osawaru v. Ezeiruka (1978) LRN 307; (1978) 6-7 SC 130) Adegoke v. Adibi (1992) 5 NWLR (pt. 242) 410; Sections 137 (1) and (2) Evidence Act Cap. 112 Laws of the Federation 1990.

In the face of the evidence adduced by the plaintiff, the Defendants had a duty to rebut the evidence that they issued Exhibit 'D' to the plaintiff and also that their deceased brother Jonathan Elema did write Exhibit 'F' to the plaintiff. This evidence did not come as a surprise. It was in line with the plaintiff's pleadings. The Defendants as has been shown did discharge this burden. The evidence they called was ridiculously weak. In fact it was silent on every material averment in the plaintiff's pleadings. I should imagine they considered they had a duty to explain the circumstances in which Exhibit 'D' and Exhibit 'F' were

issued to the plaintiff. In the absence of such an explanation, the inescapable conclusion is that they had put the plaintiff in possession and as against them she was entitled to the reliefs she claimed. (p. 2360 G)

**B Land law - Sale**

3. I agree with learned counsel for the Defendants that what the west African Court of Appeal decided in Ogunbambi v. Abowab (supra) was that a purchase receipt is an acknowledgement of the payment of money and coupled with the plaintiff being in possession, raised a presumption that he entered into possession under a contract of sale. So the Court of Appeal may not have put it exactly as the West African Court of Appeal did. But they need not. What the Court said should be understood with reference to the evidence. (p. 2362 C)

D

**Land law - Equitable interest**

4. Here the evidence is that the plaintiff paid one hundred pounds (N200.00) to the Defendants for the land in question. The Defendants issued a receipt Exhibit 'D'. They put him in possession through the 1st Defendant. When her peaceable possession was disturbed the elder brother of the Defendants wrote Exhibit. 'F' to the effect that nobody should disturb her and her workers. First, the plaintiff had Exhibit 'D' as an acknowledgement of the payment of money to the Defendants. Secondly, she was in possession. Exhibit 'F' falsifies the contention by the Defendants that she was not in possession. By these two factors it is to be presumed that she entered into the property not as a trespasser but under a contract of sale. This being so she has acquired an equitable interest in the land which may be converted into a legal estate by specific performance; it can only be defeated by a purchaser of the land for value without notice of the prior equity: See Ogunbambi v. Abowab (Supra). (p. 2362 E)

H

**Judgments - claim**

5. Exhibits 'D' and 'F' appeared to have knocked the bottom out of the Defendant's case they have shown by their evidence that they had noth-

ing to offer in their defence. The effect of this is that the plaintiff's claim by her pleadings and evidence remained uncontroverted. And in the absence of any evidence of rebuttal, the plaintiff was entitled to judgment - Nwabuoku v. Ottih (1961) (Reprint) ANLR 507. (p. 2363 G)

B

## NOTABLE POINT OF INTEREST

### UWAIFO.JSC

#### *1. Evidence that was not pleaded has no probative value*

The evidence of John Uwadiae (d.w 2) that it was part of his duties to show plots of land to persons the Elema transferred such plots of land to and that he did not do so in the case of the plaintiff has no probative value nor strictly speaking is it admissible. It was not pleaded by the defendants as part of the procedure by them for transferring land that they had someone given the duty to show any transferee such land; and that no one else could do that. Furthermore, the evidence that Prince Friday Elema himself took the plaintiff to the land in dispute has not been detracted from by that evidence of Uwadiae since Friday did not deny it. (p. 2365 E)

C

D

E

#### *2. When a person is a deemed holder of a statutory right of occupancy.*

In the circumstances, there was enough evidence before the lower court to come to the conclusion that the plaintiff had acquired an equitable interest in the land in question by virtue of the payment she made for it and the possession she was given thereof: see Ogunbambi v. Abowab (1951) 13 WACA 222. She said that she thereafter farmed on the land. This happened before the commencement of the Land Use Act. Therefore she was a holder of that land. At the commencement of the Land Use Act she was deemed to be a holder of a statutory right of occupancy. It is in respect of that she asked for a declaration to the effect that she is entitled to a grant of a statutory right of occupancy over the land in dispute, followed by damages and injunction. (p. 2365 G)

F

G

H

### REPRESENTATION

T. J. Onomigbo Okpoko. Esq (SAN) with Alfred O. Aburu Esq. for the

Appellants

A.N.A. Igbinovia Esq. with O, Okwuloye for the Respondent

**CASES REFERRED TO**

- B Obijuru v. Ozims (1985) 2 N. W. L. R. (pt. 6) 167  
Anaeze v Anyaso (1993) 5 N. W. L. R. (pt. 291) 1 at p. 25  
Fakoya v. St Paul's Church Shagamu 1966) 1 AII NLR 74  
Cole v. Folami (1956) 1 FSC 66  
Osawaru v. Ezeiruka (1978) LRN 307  
C Adegoke v. Adibi (1992) 5 NWLR (pt. 242) 410  
Ogunbambi v. Abowab 13 W.A.C. 222  
Nwabuoku v. Ottih (1961) (Reprint) ANLR 507

D **LEAD JUDGMENT BY KATSINA-ALU JSC**

The Appellant prince Friday Elema and prince Sunday Elema were the Defendants in this action filed at the High Court of Justice, Benin City Edo State. In the action, the Respondent who was the plaintiff, claimed against the Defendants jointly and severally as follows:-

"(a) A declaration that the plaintiff is entitled to the grant of Statutory right of occupancy in respect of a piece of land with an area of 12,183 acres situate and lying at ward 'A' Elema Quarters, Benin City within the jurisdiction of this Honourable Court which said piece of land is demarcated with beacons No. LM. 2559, LM. 2558, MA 1975, MA. 1976 and marked 'A' and LM. 2561, LM. 2562 and LM. 2549 and marked 'B' in plan No. ER. 511 of 10/10/73 prepared by chief G. C. O. Eriyamremu, Licensed Surveyor and filed in these proceedings.

G (b) N1,000.00 (One thousand naira) damages for trespass on the said land.

(c) perpetual injunction restraining the Defendants, privies, their servants and Agents from further trespassing on the said land."

H The plaintiff gave evidence on her own behalf and called 6 witnesses to show that the parcel of land in question originally belonged to the late father of the Defendant Chief Felix owen Elema. At the death of Chief Felix Owen Elema the two appellants and their elder brother

Jonathan Elema were given letters of administration to administer the estate of their deceased father. It was in this capacity that they transferred the land in dispute to the plaintiff as shown in the receipt Exhibit 'D' which was issued as far back as 2 November 1972.

It was not until 1981 that the plaintiff discovered that some people were trespassing on the land. She complained to Chief Jonathan Elema who gave her a hand-written note Exhibit 'F' confirming her ownership of the land in question and directing that nobody should stop her from working on the land.

For their part, the Defendants denied having any land transaction with the plaintiff. They called three (3) witnesses but did not themselves give evidence on their own behalf. As will be shown later in this judgment, the evidence of these witnesses did nothing to enhance the defence of the Defendants.

The learned trial judge, in a reserved judgment, delivered on 11 April 1990 entered judgment in favour of the plaintiff for all the reliefs sought. The Defendants' appeal to the Court of Appeal was dismissed. They have now further appealed to this Court.

The Defendants at page 2 of their brief of argument, submitted three issues for determination in this appeal. They read:

*"(i) were the learned Justices right in holding that Exhibits D & F constitute proof that Defendants had put plaintiff in possession of the land claimed by her?"*

*(ii) Were the learned Justices right in holding that the onus of proof in this case was not wrongly put on the Defendant?*

*(iii) Were the learned Justices right in affirming the Judgment granting declaration of title to the plaintiff in this action?"*

For her part, the plaintiff in her brief of argument formulated two issues for determination which read as follows:

*1. Whether Exhibits D and F raised a legal presumption in favour of the respondent which cast an onus on the appellants which onus they had a duty to discharge but failed to do so.*

*2. Whether the court below ought to have dismissed the appeal of the appellants having regard to the pleadings and the evidence led*

*particularly the findings of the trial court and the court below on Exhibits D and F.*

The issues formulated by the parties are substantially identical although differently couched . Plaintiff's issue 1 covers Defendants' issues 1 and 2.

B Her issue 2 corresponds with Defendants' issue 3. I shall however adopt the issues formulated by the Appellants in the determination of this appeal.

I think the defendants' three issues can be conveniently treated together. It was pointed out on behalf of the Defendants that the principal relief sought by the plaintiff in this case is a declaration that the plaintiff is entitled to the grant of a right of occupancy to the land. The onus lies on such a claimant to establish the title which he claimed and he would in that process rely on the strength of his own case and not on the weakness of the Defendant's case. Learned counsel for the Defendants relied on Vincent Bello v. Magnus Eweka (1981) 17 SC. 101 at 117; Kodilinye v. Mbanefo Odu (1935) 2 WACA 336.

It was further said for the Defendants that this being a case tried on the pleadings, the issues and therefore what a plaintiff in the case must prove is settled on the pleadings. Reference was made to paragraph 7 of the Statement of Claim where the plaintiff pleaded that the Defendants excised a portion of the larger part of the land in question measuring 12.183 acres and transferred same to her for a consideration of 100 (one hundred pounds). It was pointed out that the Defendants denied this averment and pleaded in paragraphs 14 and 15 of their Statement of Defence that they did not transfer any land to the plaintiff and that in fact that they had no transaction with her.

G Learned counsel for the Defendants submitted that the onus is on the plaintiff to prove the transfer or transaction between the plaintiff and the defendants. It was contented that the plaintiff did not discharge this onus.

H For the plaintiff, it was conceded that the onus lies on the plaintiff to satisfy the court that she is entitled, on the evidence brought by her, to a declaration of title. It was submitted that she discharged the burden placed upon her . It was said that the plaintiff called evidence in



line with her averments in the statement of claim that when she approached the Defendants, they excised a portion of the larger part of land measuring 12,183 acres and transferred same to her for a consideration of 100 (one hundred pounds) or N200.00 (two hundred naira). She tendered the purchase receipt issued to her by the Defendants - Exhibit 'D' she also tendered a latter of authority given her by Chief Jonathan Elema the elder brother of the Defendants - Exhibit 'F'. It was the submission of the plaintiff that Exhibits 'D' and 'F' created a legal presumption in favour of the plaintiff which cast on the defendants an evidential burden which they failed to discharge.

Now, it has long been established that in a case seeking a declaration of title to land the onus lies on the plaintiff to satisfy the court that he is entitled on the evidenced brought by him to a declaration of title claimed. In this regard the plaintiff must rely on the strength of his own case and not on the weakness of the defendant's case, if this onus is not discharged, the weakness of the defendant's case will not help him and the proper judgment will be for the defendant. See Kodilinye v. Odu (1935) 2 WACA 336; Bello v. Eweka (1981) 17 SC .101.

It seems convenient at this stage to turn to the pleadings of the parties. In paragraphs 4, 5,6,7,8,9,10 and 11 of the Further Amended Statement of Claim the plaintiff pleaded thus:

4. *The land in dispute forms part of a larger piece of Bini Communal land previously granted to late Chief Felix Owen Elema pursuant to his application for building plot dated 25/6/62 and approved on 5/7/62 by His Royal Highness, Akenzua II, (now late ) the Oba of Benin.*

5. *Plaintiff avers that upon the demise of the said Chief Elema intestate on 14/2/66, his administrators namely Jonathan Elema (now deceased) Sunday Elema and Friday Elema became siezed of his interest in and over the land pursuant to a grant to them of letters of administration by the High Court of Justice, Benin City on 29/10/66.*

6. *Plaintiff states that sometime in 1972, consequent upon her request for a piece of land for Commercial purposes, her father, His Royal Highness, Akenzua II, Oba of Benin (now late) directed her to the defendants with instructions to exercise portion of the larger part of land*

heretofore referred previously granted to late Chief Owen Elema for plaintiff's use.

7. The plaintiff having approached the Defendants, they exercised a portion of the said larger part of land measuring 12,183 acres and transferred same to the plaintiff for a consideration of 100 (one hundred pounds) or N200,00 (Two hundred naira). Plaintiff will found on the purchase receipt.

8. Thereafter, plaintiff was put in possession by the defendants and assured that the land was free from incumbrances.

9. The plaintiff caused the land to be surveyed by Chief G. C. O. Eriyamremu, Licensed Surveyor; Survey plan No. ER. 511 of 10/10/73 produced by the said Chief Eriyamremu and Counter-signed by the Surveyor-General, Midwest State now Bendel State shall be relied upon at the trial.

10. The plaintiff having been put in possession and taken possession thereof exercised various acts of ownership and possession in and over the land now in dispute including clearing the land, causing it to be farmed and harvested, inspecting from time to time and warding off trespassers.

20. Plaintiff also transferred a portion of the said land measuring 100ft. by 100ft to Chief G. C. O. Eriyamremu, Licensed Surveyor. The portion transferred is verged Yellow in plan No. ER. 3263 of 5/6/84 filed in these proceedings.

11. Plaintiff avers that she was in continuous and undisturbed possession of the land in dispute until the demise of her father, late Oba Akenzua II on or about 1978 whereat the defendants ceased the opportunity of plaintiff's engagement in her father's funeral ceremonies to assert spurious claims over the land in dispute.

In answer to the above averments, the Defendants pleaded in paragraphs 10, 10A, 11, 12, 13, 14 , 15, 16 and 17 as follows:

10. In answer to paragraph 4 of the plaintiff's Further Amended Statement of Claim the Defendants deny that the land therein referred to is Bini Communal land. The land once already granted to Defendants' late father by the Oba of Benin ceased to be a communal land and

*became the bona fide property of their late father.*

*10A In further answer to paragraph 4 of the plaintiff's Further Amended Statement of Claim, the Defendants will rely at the trial on the photo copies of the said Oba's approvals dated 25/6/62 and 5/7/62, the originals having been burnt when Elema Palace was set on fire by some Airforce personals in 1988.* B

*11. The Defendants deny paragraph 6 of plaintiff's Further Amended Statement of Claim and put the plaintiff to the strictest proof thereof.*

*12. In further denial of the said paragraph 6 of plaintiff's Further Amended Statement of Claim the Defendants aver that once the Oba has approved a piece or parcel of land for an individual he can not again direct that individual to transfer part of it to another individual including the Oba's children .The Defendant will contend at the trial that the Oba only grants vacant land to individuals including his children and not land already granted to an individual by the Oba.* C D

*13. The defendants vehemently deny paragraph 7 of the plaintiff's Further Amended Statement of Claim and will at the trial put the plaintiff to the strictest proof of the allegations contained therein.* E

*14. In further denial of the said paragraph 7 of the plaintiff's Further Amended Statement of Claim the Defendants aver that they, including their late brother never sold or transferred any land to the plaintiff neither was any receipt issued to the plaintiff. Indeed the Defendants aver that they including their late brother have never had any land transaction with the plaintiff.* F

*15. In answer to paragraph 8 of plaintiff's Further Amended Statement of Claim the Defendants aver that the land though free from incumbrances was never given to the plaintiff nor was she ever put in possession.* G

*16. The Defendants deny paragraph 10 of plaintiff's Further Amended Statement of Claim and will put plaintiff to the strictest proof thereof.* H

*In Further denial of the said paragraph 10 of Plaintiff's Further Amended Statement of Claim the Defendants aver that they paid for the rubber*

*trees and bull dozed the land. Plaintiff has never been on the said land has never Claimed ownership of same. The land purported to have been transferred by plaintiff to Chief Eriyamremu is the property of 2nd Defendant and 2nd Defendant sold and transferred that land to some persons long ago. Some of such persons have built and others fenced their land.*

The plaintiff testified and called witnesses who also gave evidence in line with her pleadings. She testified as PW 5. part of her evidence reads:

*"The land is situate at Elema Quarters ward A, Benin City. It measures about 12.183 acres. It belongs to Me. Sometime ago when I came to Benin I wanted a piece of land for Commercial purposes in this area. I approached my father if I could have land in the area - my father is the late Oba Akenzua II. He told me that the land belong to Chief Felix Owens Elema then late but that he would ask the children who were the administrators of the estate to give me a portion of the area which he had already given to their father. The three surviving children then were - Jonathan Elema, now late, Friday Elema and Sunday Elema the two defendants in the case. My father spoke to them and directed me to meet (sic) them. I met all the three and I was taken to the land. All three of them agreed and asked Friday Elema to take me to the site. He took me there and showed me round the land, They asked me to pay the sum of \$100 at the time. I paid and I was issued with a receipt. I took a surveyor, Chief Eriyamremu to the land and has it surveyed, that is, the portion given to me. He produced a plan. This is the plan he gave to me when he surveyed it - It is Plan No. ER. 511 of 10/10/75 - Exhibit B. I cleared the land and saw to it that people do not trespass on the land. I gave a portion of my own to the said chief Eriyamremu. The portion I gave him was 100' x 100', this was the consideration for the survey for me. I also know Jonathan Elema he was the senior of the three Administrators. I reported the trespass to him. He gave me a handwritten letter of authority to the effect that I should not be disturbed on the land. This is the note dated 4/5/81. I tender it. - admitted and marked as exhibit F."*

Chief Gabriel Eriyamremu whom she alleged she gave a portion

of the land to also testified. He was PW 1. He testified inter alia as follows:

*A licensed Surveyor. I know the plaintiff. In 1984 I prepared a litigation plan for her. Plaintiff took me round the piece of land in dispute and showed me the boundaries. She showed me the features which I saw and reflected on the plan. This is the plan which I made. It is No. ER. 3263 of 5/6/84 - I seek to tender it; no objection, admitted and marked as Exhibit B.*

*At the time I was carrying out the survey she told me she had no money to pay to me as survey fees; she therefore transferred a portion of the land to me in payment of my fees. She transferred to me approximately 100ft x 100ft. I surveyed the portion in my name.*

PW 2. was Christopher Obonor. His evidence runs thus:

*I know the land in dispute. It belongs to the plaintiff sometime in 1976 I was the Security/pointer to the then Oriokpa plot Allotment Committee. The late Oba Akenzua called on me and instructed me to oversee the land now in dispute for his daughter, princess Christy, the plaintiff. I Complied with the instructions. Some time in 1984 I met some development going on, on the land. In 1978 the signboards placed on the land by the plaintiff were removed by unknown persons. I reported the matter to the plaintiff. When I saw the developments on the land in 1984 I reported to the plaintiff and we both went to the site. we learned that Iyayi Efonayi was the person working on the land. we also gather that the land was transferred to him by Friday Elema. The plaintiff introduced herself as the rightful owner of the land and asked the people to stop work."*

PW 3. Olabor Aigbedion gave similar evidence.

The Defendants also called evidence in their defence. As I have already indicated the Defendants Friday Elema and Sunday Elema did not testify on their own behalf. But they called 3 witnesses. The first was D.W. 1 Francis Useghese Iyawe, a licenced surveyor. He said that he was commissioned by the Defendants to carry out a litigation survey of the land in question He did so.

The second witness was DW 2 John Uwadiae. His evidence was to the effect that he worked for the late Chief Elema and also for his

late son Jonathan. He knew the whole of Elema's Estate. He disclosed that it was part of his duties to show plots of land to persons the Elemas transferred land to. But he do not at any time show any plot of land to the plaintiff.

B The third witness for the Defendants was D.W. 3 Owens Okoro who had earlier testified for the plaintiff as P.W. 4. His evidence on this occasion was that he qualified as a surveyor in 1971.

The learned trial judge in the course of his judgment observed as follows:

C *It is clear from the state of the pleadings that the parties joined issue on a number of points. The plaintiff pleaded and led evidence to show that she became owner of the land in dispute by virtue of a transfer from the defendants and his deceased elder brother, Jonathan. The defendants on their part, claim to be the owner of the land in dispute by virtue of certain conveyances but they have led no evidence as to this. Again, they denied that they ever transferred any land to the plaintiff but again offered no evidence in support of this denial. Plaintiff particularly stated*  
D *that she was take to the site by Friday Elema, yet, Friday Elema did not brother to offer any evidence to refute the allegations. Instead, D. W. 2, John Uwadiae, was called to state that he never showed any plot to the plaintiff which was not the plaintiff's case. Defendants as noted earlier,*  
E *averred in their pleadings that Jonathan Elema could not have given any plan to the plaintiff and that she became possessed of documents through his (sic) former husband. This was denied by Mr. Evbuomwan in evidence yet, defendants could not offer any evidence on the point. Again, Mr. Evbuomwan and his clerk, Mr. John Adodo testified as to the receipt*  
F *Exhibit 'D' for #100 but again defendants had nothing further to say about this inspite of their pleadings that the transaction never took place. There is also the note, Exhibit 'F' which the late Jonathan Elema gave to the plaintiff and which reads-*

H *' I Chief J. E. Elema, hereby give the authority to princess A. Akenzua to start work on her parcel of land which lies within Elema Layout. Nobody should prevent or molest her workers from carrying out their job.*

Sgd.

4/5/1981'.

*There was no evidence from the defendants to counter this document despite their pleadings that neither themselves nor their late brother ever had any land transaction with the plaintiff.*

*The sum total of all that I have stated is that whilst the plaintiff has established all the averments in her statement of claim by evidence as to the averments in their statement of defence.*

He then proceeded to grant the three reliefs sought by the plaintiff.

The Court of Appeal affirmed the decision of the court of trial. The Court below said:

*"From the facts of this case, the respondent tendered Exhibit 'D' in which the appellants together with their deceased elder brother Jonathan Elema acting as administrators of the estate of the late Chief Felix Owen Elema issued a receipt purporting to transfer the land to the respondent as far back as the 2nd of November, 1972. When the respondent had problems over the land in 1981, the appellants' elder brother Chief Jonathan Elema gave her a letter of authority Exhibit 'F' to commence work on the land and directed that nobody should disturb her workers from carrying on work on the land.*

*It is not disputed that these documents are not documents that transfer title to land. They are, however, evidence to show that the appellants had put the respondent in possession of the land on payment of consideration of N200.00 as shown in Exhibit 'D' and the trial court is enjoined by law to give effect to all personal contracts which are tendered in respect of subject matter of the litigation. See for example, the case of Ogubambi Vs. Abowab 13 W. A. C. A. 222 in which the West African Court of Appeal held that a purchase receipt being an unregistered instrument was not admissible to prove title but admissible as an acknowledgement of the payment of money and coupled with the plaintiff being in possession raised the presumption that he entered into possession under a contract of sale and from these arose an equitable interest capable of being converted into a legal estate by specific performance. See also the cases of Obijuru v. Ozims (1985) 2 N. W. L. R. (pt. 6) 167,*

Anaeze v Anyaso (1993) 5 N. W. L. R. (pt. 291) 1 at p. 25 and Fakoya v. St Paul's Church Shagamu 1966) 1 All NLR 74.

The question I have to resolve is whether the plaintiff established the title she claims. As I have already show, the plaintiff called evidence in line with her pleadings. As her evidence clearly shows, the plaintiff paid the Defendants and their deceased elder brother Jonathan Elema as administrators of the estate of the late Chief Felix Owen Elema for the land in dispute. They issued her a receipt Exhibit 'D'. The Defendants put her in possession of the land, Specifically she said it was the 1st Defendant who was mandated to take her to the piece of land in question. She exercised control over the land. For example, she gave out a portion of the land measuring 100' x 100' to P. W. I Chief G. Enyamremu. When the plaintiff's possession was disturbed in 1981, the Defendants elder brother Chief Jonathan Elema gave her a letter to show that they had transferred the land to her and therefore nobody should disturb her workers from carrying on work on the land.

**From the evidence of the transaction I would say that there had been a valid sale of the land in dispute under native law and custom: See Cole v. Folami (1956) 1 FSC 66. All the requirements of a valid sale were present. She paid for the land and the land was handed over to her in the presence of witnesses. A valid sale of land by native law and custom is without the necessity for a conveyance as under English law. What is required is the handing over of the purchase money by the purchaser and the delivery of possession on the other hand by the vendor. Essentially this is what happened in this case.**

Be that as it may, in the light of the evidence adduced by the plaintiff, I think the Defendants had a duty to rebut it, if they were to carry the day. This is moreso when they pleaded that they had no land transaction with the plaintiff. **The law in this regard is settled. In civil cases while the burden of proof initially lies on a plaintiff, the proof or rebuttal of issues which arise in the course of proceedings may shift from the plaintiff to the defendant and vice-versa as the case progresses. This is also referred to as the evidential burden.**



This is good law and good sense. For if a party calls evidence which reasonably satisfies the court that the fact sought to be proved is established, the burden would shift on his adversary against whom judgment would be given if no more evidence were adduced. See Osawaru v. Ezeiruka (1978) LRN 307; (1978) 6-7 SC 130 Adegoke v. Adibi (1992) 5 NWLR (pt. 242) 410; Sections 137 (1) and (2) Evidence Act Cap. 112 Laws of the Federation 1990. B

In the face of the evidence adduced by the plaintiff, the Defendants had a duty to rebut the evidence that they issued Exhibit 'D' to the plaintiff and also that their deceased brother Jonathan Elema did write Exhibit 'F' to the plaintiff. This evidence did not come as a surprise. It was in line with the plaintiff's pleadings. The Defendants as has been shown did discharge this burden. The evidence they called was ridiculously weak. In fact it was silent on every material averment in the plaintiff's pleadings. I should imagine they considered they had a duty to explain the circumstances in which Exhibit 'D' and Exhibit 'F' were issued to the plaintiff. In the absence of such an explanation, the inescapable conclusion is that they had put the plaintiff in possession and as against them she was entitled to the reliefs she claimed. C D E

Learned counsel for the Defendants had made heavy weather of Exhibits 'D' and 'F'. The court below in its judgment said: F

*"It is not dispute that these documents are not documents that can transfer title to land. They are, however, evidence to show that the appellants had put the respondent in possession of the land on payment of consideration of N200.00 as show in Exhibit 'D' and the trial court is enjoined by law to give effect to all personal contracts which are tendered in respect of the subject matter of the litigation. See for example the case of Ogunbambi v. s Abowab 13 W.A.C. 222 in which the west African Court of Appeal held that a purchase receipt being an unregistered instrument was not admissible to prove title but admissible as an acknowledgement of the payment of money AND COUPLED with the plaintiff being in possession raised the presumption he entered into possession under a contract of sale."* G H

It has been submitted for the Defendants that the Court of Appeal was gravely in error in its view that Exhibit 'D' is evidence to show that the Defendants had put the plaintiff in possession of the land. It was said that the Court of Appeal rightly held that the documents are not documents that can transfer title to land. It was contended that a document which cannot transfer title to land cannot at the same time be "Evidence to show that the appellants had put the Respondent in possession. " Receipt by its nature, it was argued, is an acknowledgement of payment of money and not an acknowledgment of possession of any land.

**I agree with learned counsel for the Defendants that what the west African Court of Appeal decided in Ogunbambi v. Abowab (supra) was that a purchase receipt is an acknowledgement of the payment of money and coupled with the plaintiff being in possession, raised a presumption that he entered into possession under a contract of sale. So the Court of Appeal may not have put it exactly as the West African Court of Appeal did. But they need not. What the Court said should be understood with reference to the evidence.**

Let me explain. Here the evidence is that the plaintiff paid one hundred pounds (N200.00) to the Defendants for the land in question. The Defendants issued a receipt Exhibit 'D'. They put him in possession through the 1st Defendant. When her peaceable possession was disturbed the elder brother of the Defendants wrote Exhibit. 'F' to the effect that nobody should disturb her and her workers. First, the plaintiff had Exhibit 'D' as an acknowledgement of the payment of money to the Defendants. Secondly, she was in possession. Exhibit 'F' falsifies the contention by the Defendants that she was not in possession. By these two factors it is to be presumed that she entered into the property not as a trespasser but under a contract of sale. This being so she has acquired an equitable interest in the land which may be converted into a legal estate by specific performance; it can only be defeated by a purchaser of the land for value without notice of the prior equity: See Ogunbambi v. Abowab (Supra); Obijuru v. Ozims (1985) 2 NWLR (pt. 6) 167. Were the Defendants such purchases for value without

notice of the plaintiff's equitable interest in the land?

The Defendants averred in paragraphs 26 and 27 of the Amended Statement of Defence as follows:

*By another Deed of Conveyance dated 17th December 1975 and registered as instrument No. 48 at page 48 in Volume 345 of the lands Registry in the Office at Benin City, part of the land comprised in the Conveyance referred to in paragraphs 24 and 25 herein was conveyed to 1st Defendant as a Beneficiary. 1st Defendant's land is shown on Survey Plan No. ISO/BD/263/85 dated 5th March, 1985 drawn by F. U. Iyawe, Licensed Surveyor. The said plan is filed herewith. The Defendants shall rely on the said Survey Plan and the Deed of Conveyance at the trial of this action.*

*By another Deed of Conveyance dated 20th April 1976 and registered as Instrument No. 49 at page 49 in Volume 345 of the Lands Registry in the Office at Benin City, part of the Land referred to in Paragraphs 24 and 25 herein was conveyed to the 2nd Defendant as a Beneficiary. The Defendants shall rely on this Conveyance at the trial. The said 2nd Defendant's land is also shown on Survey Plan No. ISO/BD/263/85 referred to in paragraph 26 herein.*

It must be observed that although the Defendants were administrators of the estate of the original owner of the land they were sued in their personal capacities because they claimed the land in dispute for themselves by deed of conveyance made to them personally as evidence by their averments reproduced above. Although they asserted in their pleadings that the said land was transferred to them by certain deeds of conveyance, they led no evidence whatsoever in proof of these assertions. I think the reason is obvious. **Exhibits 'D' and 'F' appeared to have knocked the bottom out of the Defendant's case. They have shown by their evidence that they had nothing to offer in their defence. The effect of this is that the plaintiff's claim by her pleadings and evidence remained uncontroverted. And in the absence of any evidence of rebuttal, the plaintiff was entitled to judgment - Nwabuoku v. Ottih (1961) (Reprint) ANLR 507.**

I am satisfied that the findings of the learned trial judge were

amply supported by the evidence before him. He was justified in entering judgment for the plaintiff. The Court of Appeal, lightly in my view, affirmed that judgment. I see no merit whatsoever in this appeal which I hereby dismiss with N10,000.00 costs to the plaintiff

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**BELGORE JSC**

C I agree that this appeal, virtually based on findings of fact by the two lower courts, has no merit. There is hardly anything raised in this appeal that can impugn the concurrent findings of fact of the two lower Courts. For the reasons fully set out in the judgment of Katsina- Alu JSC, which I adopt as mine I also dismiss this appeal with N10,000.00 costs to the respondent.

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**OGUNDARE JSC**

E I agree entirely with the judgment of my learned brother, Katsina-Alu JSC delivered. For the reasons given by him, which reasons I hereby adopt as mine, I, too, dismiss this appeal as totally bereft of any merit. The concurrent findings of the two courts below are abundantly supported by the evidence led at the trial.

F I abide by the order for costs made by my learned brother, Katsina-Alu, JSC

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**MOHAMMED JSC**

G I entirely agree that this appeal has no merit and for the reasons given by my learned brother Katsina-Alu, J.S.C, in his judgment, I too agree to dismiss the appeal. The appeal is against concurrent findings of two lower courts and the appellant has advanced no convincing reason H for the reversal of those findings. The appeal is dismissed. I also award N10,000.00 costs in favour of the respondent.

**UWAIFO JSC**

I had the opportunity to read in advance the judgment of my learned brother, Katsina-Alu, JSC. I agree with him that the appeal fails for the reasons he has given. I shall merely add a few words.

The plaintiff copiously pleaded facts of the transaction in respect of the land in dispute in which she alleged that it was directly between her and Chief Jonathan Elema (now deceased) Prince Sunday Elema and Prince Friday Elema as Administrators of the estate of late Chief Felix Owen Elema. Evidence was given in line with the pleading in which the plaintiff said that all three Administrators agreed to sell her the land in dispute and then mandated Prince Friday Elema to take her to the site. He did so and showed her the extent of the land. She eventually paid the agreed price of 100 pounds and was given a receipt exhibit D, by all three. She was put in possession of the land, exhibit F issued to her by Chief Jonathan Elema (the eldest of the three) being some evidence supporting this.

This evidence directly affecting the defendants remains uncontradicted. The defendants did not testify to give their own version either in denial or explanation. Exhibit F has not been disowned by evidence. The evidence of John Uwadiae (d.w 2) that it was part of his duties to show plots of land to persons the Elema transferred such plots of land to and that he did not do so in the case of the plaintiff has no probative value nor strictly speaking is it admissible. It was not pleaded by the defendants as part of the procedure by them for transferring land that they had someone given the duty to show any transferee such land, and that no one else could do that. Furthermore, the evidence that Prince Friday Elema himself took the plaintiff to the land in dispute has not been detracted from by that evidence of Uwadiae since Friday did not deny it.

In the circumstances, there was enough evidence before the lower court to come to the conclusion that the plaintiff had acquired an equitable interest in the land in question by virtue of the payment she made for it and the possession she was given thereof: see Ogunbambi v. Abowab (1951) 13 WACA 222. She said that she thereafter farmed on the land. This happened before the commencement of the Land Use Act.

Therefore she was a holder of that land. At the commencement of the Land Use Act she was deemed to be a holder of a statutory right of occupancy. It is in respect of that she asked for a declaration to the effect that she is entitled to a grant of a statutory right of occupancy over the land in dispute, followed by damages and injunction. I think the learned trial judge rightly gave her judgment. The lower court properly dismissed the appeal against that judgment.

I, too, find no merit in this appeal. Accordingly I dismiss it with N10,000.00 costs.

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