

SUPREME COURT OF NIGERIA

14TH DECEMBER, 2001. SC. 10711996

**CORAM:- I. L. KUTIGI, U. MOHAMMED, U. A. KALGO,
A. O. EJIWUNMI, E. O. AYOOLA, JJSC.**

1. CHIEF SALAMI OLATUNDE

(The Are Alasa of Ogbomoso)

2. ADEGBOYEGA ADEFOWOPE APPELLANTS

(For Himself and other Members of

Jagun Alugbin of Ogbomoso)

AND

1. SALAMI AFOLABI ABIDOGUN

2. JOSEPH AJANI RESPONDENTS

(For Himself and Other Members of Jagun

Alasa Chieftaincy Family of Ogbomoso)

APPEALS - Competence - Supreme Court is only competent - To entertain appeals - From the Court of Appeal not the trial court (H3)

APPEALS - Concurrent findings - Appellant who desires court to upset them - Must show that the findings violate some principles of law or procedure (H 1)

APPEALS - Concurrent findings - The appellant has not advanced cogent reasons - To overturn the findings of the court below (H2)

APPEALS - Evaluation of evidence - Where the trial court had properly evaluated the evidence - The Court of Appeal cannot substitute Its own views for that of the trial court (H 4)

CHIEFTAINCY MATTERS - Conflicting traditional evidence - *Kojo II v. Bonsie* principle - Is not limited to ownership of land - But applies to other claims like chieftaincy dispute (H 6)

COURTS - *Principle in Kojo II v. Bonsie* - *Should not be applied* - *If the conditions for its application are not present (H5)*

FACTS

The appellants as defendants were sued by the respondents at the trial court for certain reliefs. The reliefs included a declaration that the respondents family is the only family entitled under their native law and custom to the Jagun Alasa chieftaincy Ogbomosho, a declaration that the 2nd defendant and his family are not entitled to the said chieftaincy, an injunction restraining the 1st defendant from recognizing the 2nd defendant as Jagun Alasa of Ogbomosho amongst other reliefs.

At the trial the respondents claimed that it is only the Jagun Alasa family - their family that has been providing exclusively, the persons appointed to the chieftaincy title of Jagun Alasa and further claimed that as the 2nd respondent was not a member of their family his appointment to the chieftaincy title was null and void. The appellants contended on their own part that the Jagun Alasa was selected in rotation from two separate families one of which was their family. And on the basis of this rotation the 2nd appellant laid claim to be conferred with the title of Jagun Alasa.

At the end of the trial the learned trial Judge preferred the case of the respondents and upheld their claims. The appellants being dissatisfied appealed to the Court of Appeal. Their appeal was dismissed and they have therefore appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. *Whether the Court of Appeal was right in holding that the origin or root of the chieftaincy of Jagun Alasa was not seriously in issue at the trial and that the resolution of the issue was essentially immaterial to either of the parties.*

2. *Where the principle enunciated by the Privy Council in Kojo II v. flonsie is applicable, would a judge of trial or indeed a Court of Appeal be duty bound to resolve traditional evidence he had declared conflicting and inconclusive?*

3. Whether the Court of Appeal was right to have confirmed the judgment of the trial court with the errors.

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

Concurrent findings - Appellant who desires court to upset them

1. An Appellant who desires that this Court should upset the concurrent findings of two lower Courts has the burden of showing in a clear and positive way that such findings violate some principles of law or procedure and therefore deserve to be overturned. (p.3662 F)

Concurrent findings - Cogent reasons not advanced

2. I have read and carefully considered the evidence in the printed record and also the argument of learned counsel to the Appellants. However, bearing in mind the settled principle that an Appellant who seeks to challenge the concurrent findings of fact of the High Court and Court of Appeal has to advance cogent reasons why this Court should accede to this challenge, I am of the view that the argument of counsel for the appellants have not persuaded me to overturn the findings of the Court below, I will therefore resolve this issue against the Appellants. (p. 3664 E)

Appeals - Competence of Supreme Court

3. The thrust of the argument of learned counsel was directed at the evidence before the learned trial judge, and not on the conclusions and decision of the Court of Appeal in respect of these points. Perhaps, it is necessary for counsel to bear in mind that this Court is only competent to entertain appeals from the Court of Appeal and not from the trial Court (p, 3665 B)

Appeals - Evaluation of evidence

4. It is now settled that where a court of trial had clearly evaluated the evidence and appraised the facts, it is not the business of a Court of Appeal to substitute its own view's for that of the trial Court in Victor

Woluchem & Ors v. Chief Gudi & Ors (1981) 5 S.C. 291 at p. 326. Nnamani JSC, stated the principles lucidly, thus:-

“The principles under which an Appeal Court would interfere with findings of a lower Court have been laid down by several authorities of this Court and Courts in Common law jurisdictions. It is now settled law that if there has been a proper appraisal of the same evidence by a trial Court, a Court of Appeal ought not to embark on afresh appraisal of the same evidence in order merely to arrive at a different conclusion from that reached by the trial Court. Furthermore, if a Court of trial unquestionably evaluated the evidence, then it is not business of a Court of Appeal to substitute its own views for the views of the trial Court. (p. 3665 E)

D Courts - Principle in Kojo II v. Bonsie

5. However, with regard to the first part of the question, a trial Court or indeed the Court of Appeal would be wrong to apply the principle enunciated in Kojo II v. Bonsie (supra) if the conditions set down for its application are not present in the case under consideration. (p. 3666 B)

Conflicting traditional evidence

6. Before concluding, I think it must also be said that the principle enunciated in Kojo II v. Bonsie (supra) is not inapplicable in the instant case merely because the contest between the parties is not predicated on land as in Kojo II v. Bonsie (1957) 1 W. L.R.1223. What led to the formulation of that principle, was how to arrive at a just decision when a Court is faced with conflicting traditional evidence. The resolution of conflicting traditional evidence is certainly not limited to the resolution of conflicting claims with regard to ownership or title to land. As has been shown in the instant case, it may occur in claims such as the one in the instant appeal. Therefore, I am of the view that the lower courts were right to have resolved the conflicting traditional history led by the parties by resorting to the principle enunciated in the case of Kojo II v. Bonsie (supra). (pp. 3666 H/3667 E)

NOTABLE POINTS OF INTEREST

EJIWUNMI JSC

1. Issues are not to be formulated on each ground of appeal

It is manifest from the above, that seven issues were raised upon seven grounds of appeal filed on behalf of the Appellants. This is contrary to the principle already established in the decisions of this Court that issues are meant to be formulated, not on each ground of appeal, but raised out of a combination of the essential complaints of the Appellants in the ground of appeal. It is my view that three issues or at most four, would have sufficiently covered the complaints of the Appellants in this appeal.
(p. 3660 A)

2. Issues raised must relate to facts decided or the law thereon

Perhaps, I may add that issues must relate to the [acts decided or the la". D thereon. It is for the Appellants to raise such facts or law in the case on appeal as a poser for the Court to answer upon established legal principles.
(p. 3660 D)

REPRESENTATION

S. Jawondo for the Appellant S. B.

Ajayi for the respondent.

CASES REFERRED TO

Ibanga v. Usanga (1982)5 S. C. 103

Kuforiji v. V.Y.B. Ltd. (1981) 6-7 S.C. 40

Awoyale v. Ogunbiyi (1986)2 NWLR (Pt.24) 626

Olaloye v. Balogun (1990) 5 NWLR (Pt. 148) 24 at 38

U.B.A. Ltd. v. Achoru (1990) 6 NWLR (Pt.156) 254

Motunwase v. Sorungbe (1988) 5 NWLR (Pt.92) 90

Kojo II v. Bonsie (1957) 1 W.L.R. 1223 at 1226

Ogoyi v. Umagba (1959) 9 NWLR (pt.419) 283.293

Oduntan v. General Oil Ltd (1995) 4 NWLR (pt. 387) 1

Ogundare v. Ogunlowo (1997) 6 NWLR (pt. 509) 360.

LEAD JUDGMENT BY EJIWUNMI JSC

This is a further appeal to this court from the judgment of the court below. The appellants' appeal to that court having been dismissed by the court below. In suit No. HOG/51/89, the appellants who were the defendants in the trial court were sued by the respondents as plaintiffs for the following reliefs:-

"(i) A declaration that the Jagun Alasa family is the only family entitled under the native law and custom to the lagun Alasa Chieftaincy of Ogbomoso.

(ii) A declaration that the 2nd defendant and/or his family, are not entitled under the native law and custom governing the chieftaincy to the Jagun Alasa chieftaincy title of Ogbomoso.

(iii) A declaration that the appointment of the 2nd defendant by the 1st defendant as the Jagun Alasa of Ogbomoso is invalid, null and void.

(iv) Injunction restraining the 1st defendant from recognising the 2nd defendant as lagun Alasa of Ogbomoso and the 2nd defendant from parading himself as the Jagun Alasa of Ogbomoso.

(v) N2,000.00 general damages."

Pleadings having been filed and exchanged, the parties called witnesses in support of their respective claims. The respondents, who commenced the action, gave evidence and called four witnesses. The appellants also gave evidence in their own behalf and called one witness who gave evidence in support of their case. However, at the end of the trial, and after hearing addresses by their learned counsel, the learned trial Judge preferred the case of the respondents. The claims of the respondents were therefore upheld save for the claim for the sum of N2,000.00 damages.

Being very dissatisfied with the judgment and orders of the trial court, the appellants appealed to the court below. Their appeal was dismissed by that court, hence they have appealed to this court. Pursuant thereto, they filed a notice of appeal which was amended with the leave of this court. The appellants also when confronted with a preliminary objection with regard to several of the grounds of appeal in the

amended notice of appeal, sought and were granted by this court, leave to appeal upon grounds of mixed law and facts. It follows that this appeal proceeded quite properly on seven grounds of appeal including the additional ground of appeal for which leave was also granted by this court. B

In accordance with the rules of this court, briefs of argument were filed and exchanged. The appellants in their brief identified seven issues for the determination of the appeal. For this part, learned counsel for the respondents raised four issues for the determination of the appeal. I must however observe that the sets of issues identified for the parties in their respective briefs are not satisfactory as they are not in accordance with the intendment of the rules of this court with regard to the setting down of issues for the determination of an appeal (see Order 6 Rule 5(i)(b) of the Supreme Court Rules (as amended) in 1999). In order to appreciate my observation with regard to the issues set down in the two briefs, they would be reproduced herein:- C D

The issues in the appellants' brief read thus:-

"1. Whether the Court of Appeal was right in holding that the origin or root of the Chieftaincy of Jagun Alasa was not seriously in issue at the trial and that the resolution of the issue was essentially immaterial to either of the parties. E

2. Whether having regard to the state of pleadings and evidence, the principles in Kojo II v. Bonsie apply to the case. F

3. Assuming that the answer to issue No (ii) above is in the affirmative, was the Court of Appeal right in holding that the trial Judge rightly applied the principles in Kojo II v. Bonsie? G

4. Whether the Court of Appeal was right in holding that the lack of protest by the 2nd appellant's family on the appointment of Oluside as Jagun Alasa implies that the chieftaincy was never that of the 2nd appellant's family. H

5. Was the Court of Appeal right in holding as mere obiter dictum the holding of the trial Judge, that "the 2nd defendant's family name is Alugin family and not Jagun Alugin family. The appointment of the 2nd defendant was therefore wrongful. ...?"

6. Whether the Court of Appeal was right to have confirmed the

judgment of the trial court with the errors and misdirections manifest in the judgment.

7. Have the respondents proved their case as required by law?"

B It is manifest from the above that seven issues were raised upon seven grounds of appeal filed on behalf of the appellants. This is contrary to the principle already established in the decisions of this court that issues are meant to be formulated, not on each ground of appeal, but raised out of a combination of the C essential complaints of the appellants in the ground of appeal. It is my view that three issues or at most four, would have sufficiently covered the complaints of the appellants in this appeal.

D With regard to the respondents, it seems to me that their first issue is simply not right. It is indeed a novel way of identifying an issue by asking the court for its attitude in respect of concurrent findings of facts of two lower courts. Perhaps, I may add that issues must relate to the facts decided or the law thereon. It is for the appellants to raise such facts or law in the case on appeal as a E poser for the court to answer upon established legal principles.

Now, returning to this appeal, it is I think sufficient to determine this appeal on the following issues:

1. Whether the Court of Appeal was right in holding that the origin or root of the chieftaincy of Jagun Alasa was not seriously F in issue at the trial and that the resolution of the issue was essentially immaterial to either of the parties.

2. Where the principle enunciated by the Privy Council in *Kojo II v. Bonsie* is applicable would a Judge of trial or indeed a G Court of Appeal be duty bound to resolve traditional evidence he had declared conflicting and conclusive?

3. Whether the Court of Appeal was right to have confirmed the judgment of the trial court with the errors.

H Before considering the above issues, a brief resume of the facts that gave rise to this appeal would be slated for a better appreciation of the arguments that would be considered. The dispute between the parties is concerned with the chieftaincy title of Jagun Alasa of Ogbomoso.

The dispute came to the fore when the 1st appellant appointed the 2nd appellant to this chieftaincy. The respondents then instituted the action leading to this appeal. It is their claim that it is only the Jagun Alasa family that have been providing exclusively the persons appointed to the chieftaincy title of Jagun Alasa. They, by their pleadings traced their right to this title to Olusidi. This Olusidi was recognised for his valour and prowess by Ogunbi when the said Olusidi settled in Ogbomoso. Ogunbi, as a result of the friendship with Olusidi, then invited Olusidi to settle at a place variously called Isale Alasa or Abogunde today.

Later Kumapayi, the son of Ogunbi, became the Aare Alasa of Ogbomoso and conferred on Olusidi, the chieftaincy title of Jagun Alasa. Since that appointment, it is the claim of the respondents that the descendants of Olusidi have been exclusively entitled to and succeeded to the Jagun Alasa chieftaincy. And according to them, the following persons, namely, Bamigboye, Olaniya, Abidogun Alamu, Oyeleye and Samuel Oyewo had at various times been Jagun Alasa. It was after the death of Samuel Oyewo that the dispute arose. This was because the 1st appellant chose to appoint the 2nd appellant as the Jagun Alasa. It is the contention of the respondents that the 2nd appellant not being a member of their family is not entitled to be conferred with the chieftaincy of Jagun Alasa.

For the appellants, their case is structured upon the proposition that the Jagun Alasa chieftaincy is a chieftaincy under the Aare Alasa, which they claim, is a traditional title under the prescribed authority of Soun of Oshogbo. They further claimed that the ancestor of the 2nd appellant was one Ogbagba-Inkagun who migrated into Ogbomoso in company of Ogunbi, the 1st Aare of Alasa of Ogbomoso. They claim, that the appellants became entitled to the Jagun chieftaincy through their ancestor, Ogbagba-Inkagun, who was conferred with the title by Soun Teyeje of Ogbomoso. It is claimed that after the death of Ogbagba-Inkagun, Kwari Onibonteje was installed as the Jagun Alasa. They then claimed that after the death of Ogunbi, Kumapayi became the Jagun Alasa. They also claimed that Olusidi, the ancestor of the respondents settled at lie Ogubo and became friendly with Jekayinfa. They further claimed

that before the death of Fatolu, a predecessor in office of the 2nd appellant, there was only one family from which the Jagun Alasa was appointed, the Alugbin compound. They then alleged that as Olusidi became a friend of Jekayinfa, the Aare Alasa, Jekayinfa then used his prerogative to confer the title of Jagun Alasa on Olusidi.

B And that, since then, a custom developed wherein Jagun Alasa was selected in rotation from two separate families:-

(a) Jagun Alasa Olusidi and

(b) Jagun Alasa Alugbin

C It is upon the basis of this tradition of rotation that the appellants have laid claim to be conferred with the title of Jagun Alasa, following the death of Samuel Oyewo.

D On the 1st issue, it is argued for the appellants that the court below was wrong in holding that the origin or root of Jagun Alasa was not seriously in issue at the trial and that the resolution of the issue was essentially immaterial to either of the parties. Learned counsel for the appellants then proceeded to attack the judgment of the court below upon the grounds that it did not advert to the evidence led at the trial. And then argued that if the court below had adverted to the evidence led at the trial by the respondents in conjunction with their pleadings, it would have been manifest to the court below that the pieces of evidence given for the respondents were at variance with their pleadings. Apart from referring to paragraphs 4 and 7 of the respondents' statement of claim, no effort was made to identify the pieces of evidence, which are claimed to be at variance to, or contradict the pleadings of the respondents. ***An appellant who desires that this court should***

G ***upset the concurrent findings of two lower courts has the burden of showing in a clear and positive way that such findings violate some principles of law or procedure and therefore deserve to be overturned.*** See *Ibanga v. Usanga* (1982) 5 SC 103; *Kuforiji v. V. Y.B. Ltd.* (1981) 6-7 SC40; *Awoyale v. Ogunbiyi* (1986) 2 NWLR (pt.24) 626; *Olaloye v. Balogun* (1990) 5 NWLR (pt.148) 24 at 38; *U.B.A. Ltd. v. Achoru* (1990) 6 NWLR (Pt.156) 254; *Motunwase v. Sorungbe* (1988) 4 NWLR (pt.92) 90.

Having stated the principle upon which this court would interfere

with the concurrent finding of fact of the trial court and the court below, I think it is desirable to refer to the portion of the judgment of the court below relevant to the complaint of the appellants:-

At pages 197-198, the court below, per SALAMI, JCA (and endorsed by Oguntade & Nsofor JJCA) did say as follows:- B

“On appellants’ first issue which is not related to any ground of appeal, the crux of the appellants’ complaint is that the court below failed to resolve the issue of the origin of the chieftaincy. In my respectful opinion, it is doubtful if the origin of the chieftaincy was seriously in dispute at the trial of the action”. C

But he then went on to say thus:-

“The two parties to the proceedings are ad idem about the institution of Jagun Alasa chieftaincy. What is in dispute, it appears to me, is the question as to whether it is exclusive to one of the parties as postulated by the respondents or rotational as proffered by the appellants. D

“It is, therefore, essentially immaterial to either party the institution of the title which they merely consider as a means to an end and not the end itself. There is no disagreement, in my respectful opinion, about the existence or otherwise of the Jagun Alasa chieftaincy. What is causing the wrangling is the family which is entitled to the chieftaincy out of the two feuding families and if both the order of rotation amongst the ruling houses.” E

And commenting on how the learned trial Judge considered the evidence, Salami JCA said:- F

“The learned trial Judge was very much alert to his responsibility when he rightly, in my humble view, identified the issue or issues calling for determination in the judgment as follows:”. G

“Two main intertwined issues that arise for determination in this case are

(1) whether the title is the exclusive property of the plaintiffs’ family or it belongs to both families and

(2) whether it was a rotational title between the two families H
....”

Thereafter the court below continued its judgment by examining in some detail the complaints of the appellants with regard to the evidence of some of the witnesses for the respondents. Based upon such

evidence as were reviewed, the court below, being satisfied with the evidence considered by the trial court, the court below then upheld the view of the trial court rejecting the appellants' traditional history. The court below thereafter made the following pertinent conclusion

B on the judgment of the trial court:-

"In unequivocal terms, he found that the appellants' history was not credible and cogent, hence he refused to accept that Ogbagbalnkagun, Kauri Onibante-eje and Fatolu were never Jagun Alasa and the only one, id est second appellant's appointment and installation he found established is being litigated upon. He, however, found that it was common ground that Olusidi was appointed Jagun Alasa family. He rejected the three people posited by the appellants as the first three Jagun Alasa. He is of the firm view that the three persons were never appointed, not to talk of being so installed. If these three people, Ogbagbalnkagun, Kauri Onibante-eje and Fatolu were never honoured with the preferments, it clearly follows, as morning follows the night, that, on the issue joined in this action, Olusidi was the first and, therefore, the origin of the Jagun Alasa chieftaincy. It is therefore idle to contend that the learned trial Judge did not decide the origin of the chieftaincy."

I have read and carefully considered the evidence in the printed record and also the argument of learned counsel for the appellants. However, bearing in mind the settled principle that an appellant who seeks to challenge the concurrent findings of fact of the High Court and the Court of Appeal has to advance cogent reasons why this court should accede to this challenge, I am of the view that the argument of counsel for the appellants have not persuaded me to overturn the findings of the court below. I will therefore resolve this issue against the appellants.

The 2nd issue will now be considered. By this issue, the appellants are questioning whether a trial Judge or indeed a Court of Appeal, are duty bound to apply the principles enunciated by the Privy Council in *Kojo II v. Bonsie* (1957) 1 WLR 1223 at 1226, in order to resolve traditional evidence he had declared conflicting and inconclusive.

It was first argued for the appellants in their brief, that having

regard to the state of pleadings and evidence, that the principles enunciated in *Kojo II v. Bonsie* (supra) are not applicable in respect of the instant case. He next conceded that though the learned trial Judge stated correctly the principle in *Kojo II v. Bonsie* (supra), he applied them incorrectly. ***The thrust of the argument of learned counsel was directed at the evidence before the learned trial Judge and not on the conclusions and decision of the Court of Appeal in respect of these points. Perhaps, it, is necessary for counsel to bear in mind that this court is only competent to entertain appeals from the Court of Appeal and not from the trial court. See Ogoyi v. Umagba (1995) 9 NWLR (Pt.419) 283, 293; Oduntan v. General Oil Ltd. (1995) 4 NWLR (Pt.387) 1; Ogundare v. Ogunlowo (1997) 6NWLR(Pt.509) 360. Having regard to the extensive review of the evidence led during this trial in the appellants' brief, as part of the argument of learned counsel for the appellants, for this issue to be resolved in favour of the appellants, it is necessary to repeat the settled principle that guides an appellate court before it can interfere with findings of facts found by a lower court. It is now settled that where a court of trial had clearly evaluated the evidence and appraised the facts, it is not the business of a Court of Appeal to substitute its own views for that of the trial court. In Victor Woluchem & Ors v. Chief Gudi & Ors. (1981) 5 SC 291 at p. 326, Nnamani JSC, stated the principles lucidly, thus:***

"The principles under which an Appeal Court would interfere with the findings of a lower court have been laid down by several authorities of this court and courts in common law jurisdictions. It is now settled law that if there has been a proper appraisal of evidence by a trial court, a Court of Appeal ought not to embark on a fresh appraisal of the same evidence in order merely to arrive at a different conclusion from that reached by the trial court. Furthermore, if a court of trial unquestionably evaluates the evidence, then it is not the business of a Court of Appeal to substitute its own views for the views of the trial court. See Folorunso v. Adeyemi (1975) NMLR 128 CAW; A.M. Akinloye v. Bello Eyiola & others (1968) NMLR 92

at 95; Balogun v. Agboola (1974) 10 SC 111.”

It follows that in the instant case, the Court of Appeal cannot properly substitute its own views for the views of the trial court. In order to reverse the findings of the trial court, the appellant has to show that the appraisal of the evidence was wrongful, or that the findings of the trial court was wrong in law. This, the appellants have not been able to establish in this case. It is not now profitable for the appellants to repeat the same argument in this court.

However, with regard to the first part of the question, a trial court or indeed the Court of Appeal would be wrong to apply the principle enunciated in Kojo II v. Bonsie (supra) if the conditions set down for its application are not present in the case under consideration. In the instant case, the Court of Appeal duly considered whether the learned trial Judge was right to have resorted to the principle in Kojo II v. Bonsie (supra) to resolve the conflict in the traditional evidence led by the parties. And after recognising that there was indeed a conflict in the traditional evidence led by the parties. It is useful to recall that the dispute was, to which of the contending parties was entitled to have their respective nominee, that is, the 1st respondent for the respondents’ family, and the 1st appellant, for the appellants’ family to be appointed as the Jagun Alasa. The traditional history led by the parties are in conflict, because as far as the appellants are concerned, the chieftaincy title has always been taken in rotation between the contending parties, whereas the case for the respondents is that that has never been the position. Their claim is that appointments to the chieftaincy title of Jagun Alasa are exclusive to their family only. The conflict was resolved by the learned trial Judge by the application of the principle developed in Kojo II v. Bonsie. That resolution of the conflict was upheld by the court. The argument of learned counsel for the appellants has not in my view, given me any reason to depart from that decision of the Court of Appeal. Before concluding, I think it must also be said that the principle enunciated in Kojo II v. Bonsie (supra) is not inapplicable in the instant case merely because the contest between the parties is not predicated on land as in Kojo II v. Bonsie (1957) 1 WLR 1223, I think it is useful to repeat here what

was said by their Lordships of the Privy Council at pages 1226-1227. *“Their Lordships notice that there was no dispute as to the primary facts, that is, the facts which the witnesses actually observed with their own eyes or knew of their own knowledge in their own lifetime. The dispute was all as to the traditional history which had been handed down by word of mouth from their forefathers. In this regard, it must be recognised that, in the course of transmission from generation to generation, mistakes may occur without any dishonest motives whatsoever. Witnesses of the utmost veracity may speak honestly but erroneously as to what took place a hundred or more years ago. Where there is a conflict of traditional history, one side or the other must be mistaken, yet both may be honest in their belief. In such a case, demeanour is little guide to the truth. The best way is to test the traditional history by reference to the facts in recent years as established by evidence and by seeing which of two competing histories is the more probable.”*

It seems to me manifest from a careful reading of the above quoted principle that **what led to the formulation of that principle, was how to arrive at a just decision when a court is faced with conflicting traditional evidence. The resolution of conflicting traditional evidence is certainly not limited to the resolution of conflicting claims with regard to ownership or title to land. As has been shown in the instant case, it may occur in claims such as the one in the instant appeal. Therefore, I am of the view that the lower courts were right to have resolved the conflicting traditional history led by the parties by resorting to the principle enunciated in the case of *Kojo II v. Bonsie (supra)*.**

The last issue that remains to be considered in this appeal is whether the lower court was right to have upheld the judgment of the trial court. From all I have said above in this appeal, I am in no doubt that the court below was right to have upheld the judgment of the trial court. In the result, this appeal must be dismissed as it is entirely lacking in merit.

The appellants having lost, they must be mulcted in costs. They are therefore hereby ordered to pay the sum of N10,000 to the respondents.

KUTIGI JSC

I read before now the judgment just delivered by my learned brother Ejiwunmi, JSC I agree with him that the appeal lacks merit. The appellants completely failed to show why this court should interfere with the concurrent finding of facts of the two lower courts in this case. The appeal therefore fails. It is dismissed with N10,000.00 costs in favour of the plaintiffs/respondents.

MOHAMMED JSC

I entirely agree that this appeal from two concurrent findings of fact has failed. I have had the privilege of reading the judgment of my learned brother, Ejiwunmi. JSC, in draft, and for the reasons given in that judgment I find no merit in this appeal. It is accordingly dismissed. I award N10,000.00 costs in favour of the respondent.

KALGO JSC

I have read in advance the judgment just delivered by my learned brother Ejiwunmi, JSC in this appeal and agree with him that there is no merit in the appeal. My learned brother has carefully and clearly dealt with the issues raised in the appeal having regard to the evidence and the applicable law and I do not intend to repeat that in this judgment. Suffice it to say that I entirely agree with his reasoning and conclusions. In the circumstances, I also dismiss the appeal and affirm the decision of the Court of Appeal confirming that of the trial court. I abide by the order of costs made in the leading judgment.

AYOOLA JSC

I have had the privilege of reading in advance the judgment delivered by my learned brother, Ejiwunmi, JSC. I agree that this appeal should be dismissed. For the reasons he gives I too would dismiss the appeal. Appeal dismissed.