

**SUPREME COURT OF NIGERIA**

1ST JUNE, 2001. SC. 56/1996

**CORAM:- A. G. KARIBI-WHYTE, I. L. KUTIGI, O. ACHIKE, S.  
O. UWAIFO, E. O. AYoola, JJSC.**

ALHAJI SARATU ADELEKE & ORS. .... PLAINTIFFS/APPELLANTS  
AND  
SANUSI IYANDA & 3 ORS. .... DEFENDANTS/RESPONDENTS

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***APPEALS** - Error of lower courts - Failure to appreciate the issue - Led to distortion of plaintiff's case - Even after he had made out a better case than the defendant (H 3)*

***APPEALS** - Error of trial court - The court misdirected itself - By putting into issue - A fact that was not contested by the parties - In their pleadings (H 2)*

***APPEALS** - Failure of lower court - As the lower court failed to correct error of trial judge - Supreme Court is bound to do so - And set aside the judgments (H 9)*

***APPEALS** - Issues - The issue complained of - Was properly considered - And pronounced on - By the lower court (H 1)*

***COURTS** - Decisions - Duty of trial judge - Is to reach a decision - Only upon the basis of what is in issue - And what has been demonstrated by evidence supported by law - Failure in this duty - Will make the appellate court to intervene (H 4)*

***COURTS** - Evidence - As the only vital evidence of pw2 was not contradicted by other evidence - The judge was bound to accept and act on it - Even if it were minimal (H 6)*

***EVIDENCE** - Proof - Land matters - Where a plaintiff produces evi-*

*dence - Entitling him to judgment - Defendant must lead evidence - To enable the court decide on which side the case preponderates (H 5)*

**EVIDENCE** - *Standard of proof - Declaration of title - Such cases are decided on balance of probability - As in all civil cases (H 7)*

**EVIDENCE** - *Standard of proof - Where as in this case the plaintiff has adduced satisfactory evidence - And none is available from the defendant - The case will be decided upon a minimum proof (H 8)*

### **FACTS**

The plaintiffs/appellants sued at the High Court Ibadan claiming against the defendants declaration that they are entitled to statutory rights of occupancy in respect of three parcels of land, damages for trespass and perpetual injunction.

The land in dispute located at Isebo was traced back to one undisputed owner Ogunlade Alao Laamo. It was the case of the plaintiffs that the said Laamo gave absolute grant of his land to his seven male children and they acquired the land through the share of one of Laamo's son Ariwoola. Ariwoola's share had been sold and repurchased by one Chief Yesufu Laamo Mogaji of Laamo's family whom the plaintiff claimed was her vendor. The defendant however averred that there was no absolute grant by the owner Alao Laamo to his children and that Chief Yesufu Laamo sold the same land as family land to the 4th defendant. They also claimed that part of the land in dispute was granted to their grandfather absolutely by the owner, Alao Laamo.

The learned trial judge in his judgment simply rejected the case of the plaintiffs based on his own personal understanding and without assessing the evidence adduced by both parties. On appeal the Court of Appeal unanimously dismissed the appeal of the plaintiffs/appellants who have finally appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“1. Whether the Court of Appeal was right to have held that there was a lacuna in the case of the appellants on the ground that there*

*was no corroboration of the testimony of 2 p.w. on the sale of the disputed land to him by Lawani when that Court failed to advert to the adequate submissions made in the appellants' brief on the issue in the court below.*

*2. Whether the failure of the Court below to consider and pronounce upon the second issue validly raised and argued by the appellants in their brief of argument before that Court did not occasion a miscarriage of justice."*

**HELD :** (Unanimously allowing the appeal per lead judgment of **UWAIFO JSC**)

***Appeals - Issues***

1. Going through the judgment of the lower court, it is clear that it considered the above issue at length. After quoting in extenso the relevant passage from the judgment of the trial judge, the lower court observed inter alia:

*"The trial judge again erroneously brought the personal knowledge he had acquired some 20 years earlier into the affair to determine whether the price at which 2<sup>nd</sup> p.w. had claimed he bought the land from Lawani was a reasonable one. This was most uncalled for, and irrelevant.*

I think this was an appropriate consideration of and pronouncement on that issue. I find no merit in issue 2. (p. 1984 H)

***Appeals - Error of trial court***

2. The learned trial judge not having properly examined the pleadings of the parties in which both agreed that they bought from p.w. 2 misdirected himself when he observed:

*"From my consideration of the evidence before me I am unable to say that the plaintiffs have discharged the onus required to establish title especially in view of the fact that the main roots of the same in p.w. 2 were his ipse dixit alone. I must bear in mind that the onus is on the plaintiff and his case must preponderate over that of the defendant. I am not satisfied that with the lacuna I have highlighted in the title claimed*

by p.w. 2 which he passed on to 1<sup>st</sup> plaintiff (in) respect of parcels (B) and (C) of exhibit 'A' the onus of preponderance has been discharged."

This is a conclusion which should never have been arrived at because neither of the parties put in issue nor contested the fact that p.w. 2 was in a position to sell, at least by the relevant averments in their respective pleadings which I have reproduced above. (p. 1987 E)

### ***Appeals - Error of lower courts***

3. The learned trial judge in a sense observed that the plaintiffs made a better case than the defendants but because of the failure on his part to grasp that simple issue, he kept falling into error when he observed and concluded as follows:

*"I must express great difficulty in resolving the cases of both sides on the evidence before me. There is no doubt that counsel marshalled, in so far as that was possible, the case of the plaintiffs with better cogency but I cannot say that there has been satisfactory proof before me of the grant of land to the children of Laamo, the sale by Akinleye of the land in dispute to one Osuntola and the repurchase back of the same by p.w. 2 from the child of Osuntola. If I were to dwell alone on the user of the land by p.w. 2 directly and through others during the past 10 years that cannot be inconsistent with any right he may have in relation to it if it were family land."*

The last sentence seems to imply that if p.w. 2 had purported to sell family land as if it were his own (and the true position here is that he sold the land in dispute as his own) that could not be "inconsistent with any right he may have in relation to it if it were family land." This is an unfortunate erroneous pronouncement by anyone familiar with Yoruba Native Law and Custom relating to how to deal with family property. I must say, with due respect, that the learned trial judge misconstrued (perhaps it is more appropriate to say bungled) the plaintiffs' case right from the beginning. The lower court merely corrected him partially, and then itself perpetuated part of the error which is that there was no proof that the land was repurchased by p.w. 2. (p. 1990 B)

### ***Courts - Decision - Duty***

4. A trial judge has a primary duty to receive admissible evidence, assess the same, give it probative value and make specific findings of fact thereon. He must not impair the evidence either with his personal knowledge of matters not placed and canvassed before him, or by inadequate evaluation and should endeavour to avoid vitiating the case presented by the parties through his own wrongly stated or applied principle of law. He must carefully examine the evidence and clearly understand and appreciate the issues he has to resolve in the case, and then proceed to resolve them. His duty is to reach a decision only upon the basis of what is in issue and what has been demonstrated upon the evidence by the parties and is supported in law. When he fails in this regard, it is an invitation to the appellate court to intervene and if the appellate court can make its own findings from the evidence available, it will interfere with the findings of the trial judge since it is in as good a position as the trial court on that score: see *Fatoyinbo v. Williams alias Sanni* (1956) SCNLR 274 at 275. (p. 1990 H)

### ***Evidence - Burden of proof - Land matters***

5. It is true that the burden is on a plaintiff to prove his case in a land matter and when he fails to do this he cannot rely on the weakness of the defendant's case. In that sense the defendant bears no burden to adduce any evidence or satisfactory evidence: see *Kodilinye v. Mbanefo Odu* (1935) 2 WACA 336. But where a plaintiff has produced evidence in support of his case which *prima facie* will entitle him to judgment, the defendant will need to lead some evidence to enable the court to consider on whose side the case preponderates: see *Aromire v. Awoyemi* (1972) 2 SC 1 at 10-11, reiterating this court's observation in *Godwin Egwuh v. Duro Ogunkhin*, SC.529/66 decided on 28 February, 1969 (unreported). Civil cases are not decided upon proof beyond reasonable doubt but on the balance of probabilities. (p. 1992 F)

### ***Courts - Evidence - Vital evidence***

6. The only evidence of value before the trial court as to the sale of this

land in dispute was that of p.w. 2 and the 1<sup>st</sup> plaintiff. In his evidence, p.w. 2 said he sold the land to the 1<sup>st</sup> plaintiff and that it was his personal land. The evidence of the 1<sup>st</sup> plaintiff can be aligned with that. I do not think it is difficult to accept that p.w. 2 is the vital witness who can say to whom he sold his land having regard to the relevant averments of the parties. He has accordingly given that evidence which has not in fact been contradicted by any other admissible evidence. The trial judge was bound to accept and act on that evidence, even if it had been minimal evidence, that p.w. 2 sold the land in dispute to the appellant: see *Kosile v. Folarin* (1989) 3 NWLR (pt.107) 1 at 12; *Buraimoh v. Bamgbose* (1989) 3 NWLR (pt.109) 352 at 363-364. (p. 1993 H)

***Evidence - Standard of proof - Declaration of title***

7. It is a principle of law that civil cases generally are decided on the balance of probabilities. This principle applies even where a declaration of title to land is involved. As said by this court per Ibekwe JSC in *Kaiyaoja v. Egunla* (1974) NSCC (Vol.9) 606 at 609:

*“This court has always held that what is required of a plaintiff in an action for declaration of title is at least to establish his claim by preponderance of evidence. It is often enough that he has produced sufficient and satisfactory evidence in support of his claim. The test is, whether the plaintiff has been able to prove to the satisfaction of the court that he has a better title than the defendant. We think that it is relevant to draw attention to the fact that subject to the well-known rule as was laid down in Akpan Awo v. Cookey Gam, 2 NLR 100, and a host of other cases that followed it, the standard of proof in a claim for declaration of title is not different from that which is required in civil cases generally. The only difference, if we may say so, rests on the fact that the burden of proof is on the plaintiff who is claiming title, and that it never shifts to the defendant throughout the trial. The difference therefore, lies, not in the standard of proof, but on the burden of proof.”*

(p. 1994 C)

***Standard of proof - Minimum proof***

8. This burden of proof takes cognizance, of course, of the imaginary scale to determine to what side the evidence tilts the scale. Where the plaintiff has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the defendant, the case will be decided upon a minimum of proof. This makes the burden lighter. In the present case there is no admissible evidence adduced by the defendants to compete with that of the plaintiffs as to the party entitled to the land in dispute. Therefore the scale naturally tilts in favour of the plaintiffs. (p. 1994 H) C

***Appeals - Failure of lower courts***

9. The lower court failed to appreciate this and to correct the situation by doing what the trial judge ought to have done. This court is entitled, and indeed bound, to accept that evidence. In the result, it must be held that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs proved their claim to the land in dispute, namely, the parcels of land verged red and marked B and C on survey plan No. LL 9282. I therefore allow the appeal and set aside the judgments of the lower courts. I make a declaration that the plaintiffs concerned are entitled to a statutory right of occupancy in respect of the said parcels of land. (p. 1995 B) D E

**REPRESENTATION** F

Olaseni Okunloye, Esq. for the Appellants.  
Alaji A. Isola-Gbenla for the Respondents.

**CASES REFERRED TO** G

Cole v. Folami (1956) 1 FSC 66 at 68  
Bornu Holdings Ltd. v. Bogoco (1971) 1 All NLR 324 at 330  
Adeniyi v. Adeniyi (1972) 4 SC. 10 at 17  
Shodeinde v. Ahmadiyya Movement-in-Islam (1983) 2 SCNLR 284 H  
Fatoyinbo v. Williams alias Sanni (1956) SCNLR 274 at 275  
Lawal v. Dawodu (1972) 1 All NLR (pt. 2) 270 at 286  
Okpaloka v. Umeh (1976) NSCC (vol. 10) 519 at 533

Woluchem v. Gudi (1981) NSCC (vol. 12) 214 at 227

Kodilinye v. Mbanefo Odu (1935) 2 WACA 336

Aromire v. Awoyemi (1972) 2 SC 1 at 10-11

Kosile v. Folarin (1989) 3 NWLR (pt. 107) 1 at 12

B Buraimoh v. Bamgbose (1989) 3 NWLR (pt. 109) 352 at 363-364

### **LEAD JUDGMENT BY UWAIFO JSC**

The plaintiffs (now appellants) sued at the High Court, Ibadan claiming against the defendants a declaration that they are entitled to statutory rights of occupancy in respect of three parcels of land verged red and marked A2, B and C respectively in plaintiffs' survey plan No.LL 9282, damages for trespass and perpetual injunction. It is common ground between the parties that the said parcels of land are located at a place called Isebo. It is also common ground that they form part of a large piece of land originally owned by Ogunlade Alao Laamo and that the said Laamo had seven male children, namely, Ajayi, Omokebe, Ariwoola, Taiwo, Osuntala, Fabiyi and Olusingbin; and five female children, namely, Tinuomi, E Ajibabi, Osunjinmi, Binutu and Osuntola.

From the pleading of the defendants, it does not appear parcel A2 is in dispute. I shall for the purpose of this judgment confine myself to parcels B and C. I should mention here that none of the parties to this case claims to be a descendant of Laamo. The case of the plaintiffs is that Laamo shared his land in Isebo and gave absolute grant to each of his seven male children. It was thereafter, in the course of inheritance and alienation which transpired from that absolute grant, that the plaintiffs claim to have acquired by purchase the lands in dispute, traced through the share of Ariwoola who was one of the children of Laamo.

The plaintiffs pleaded that Laamo in his life time granted portions of his land at Isebo to each of his seven sons absolutely for farming. He also granted land to his war lieutenants who included Efunwole H Okesina and Areja, and also his domestics who included Fuleso. The area covered by the parcels marked B and C in the survey plan was part of the land granted to Ariwoola absolutely. He farmed it and when he died his son Akinleye inherited the land. When Akinleye was Mogaji he



sold the areas marked B and C to one Madam Osuntola to defend a case he was involved in. Madam Osuntola's son called Lawani sold the land back to Chief Yesufu Itanola Laamo who took possession thereof some 50 years back from the time pleadings were settled in 1985. In 1977, Chief Itanola Laamo sold the land to the 1<sup>st</sup> plaintiff. The 1<sup>st</sup> plaintiff later granted portions to 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs, her children. The 4<sup>th</sup> and 5<sup>th</sup> plaintiffs are concerned with the parcel marked A2 which, as I said, does not appear to have been put in issue. The learned trial judge himself (Olowofoyeku, J.) said so as follows:

*"In regard to area (A2) of exhibit 'A' I have no evidence from the plaintiffs' side complaining of any trespass or claim to the same by any of the defendants. Also the defence case as presented before the court did not lay any claim by any of the defendants (to) that area."*

On the other hand, the defendants aver that there was no absolute grant by Laamo to his children but that he merely permitted some of his children to farm on his land at Isebo and that after his death, the land became family property. But they admitted, as pleaded by the plaintiffs, that Laamo made absolute grant to his war lieutenants and domestics. As regards the area covered by parcels B and C, the defendants pleaded that Omokebe and Ariwoola (children of Laamo) merely farmed on them and that after they died, Akinleye and another farmed on the land. Their pleading is that while that land was family property, it was sold by Yesufu Itanola Laamo and his children to 4<sup>th</sup> defendant in 1977 and that sometime later 4<sup>th</sup> defendant sold a portion to 3<sup>rd</sup> defendant. It is also pleaded that Laamo granted a portion of the area of parcels B and C to one Dada, the grandfather of 1<sup>st</sup> defendant absolutely. When Dada died, his children who included the 1<sup>st</sup> defendant's father inherited his land; the 1<sup>st</sup> defendant and his brother later inherited the land. The 1<sup>st</sup> defendant built on part of the land and sold part to 2<sup>nd</sup> defendant who has also erected a building thereon.

At the hearing of the case, Yesufu Itanola Laamo whom the defendants pleaded sold part of the land in dispute testified as p.w. 2. He said he was the Mogaji of Laamo family. He gave evidence in support of the absolute grant made by Laamo to his seven sons and his war lieuten-

ants and domestics. He described the 4<sup>th</sup> defendant as a land speculator. He said in cross-examination: “I have never sold family land to 4<sup>th</sup> defendant. The land I sold to 4<sup>th</sup> defendant is my father’s land at Ipolo on Egbeda road beyond Isebo.” Other witnesses, p.w. 3 Alhaji Nafiu Adesiyan, p.w.4 David Ayoade Anisoro, p.w.5 Saka Aremu, p.w.6 Basiru Yusuf B Itanola Laamo (p.w.2’s son) and p.w.7 Saka Lawal, testified as to who they know own the land in dispute. Of course, they all spoke in favour of the plaintiffs. Witnesses also testified on behalf of the defence apart from the 1<sup>st</sup> and 4<sup>th</sup> defendants who testified. The witnesses for the C defence connected with Laamo are d.w.2 Karimu Adegoke Taiwo, d.w.3 Alhaji Ganiyu Faoye and d.w.4 Jimoh Bolarinwa Laamo. Surprisingly, d.w.4 said it was Ismaila Laamo who first settled on the land in dispute at Isebo contrary to what was understood to have been pleaded as Ogunlade D Alao Laamo. He then went to give evidence of genealogy which was not pleaded. He seemed to have confused most of the facts.

As it turned out in substance, it became a vital issue whether Laamo made to each of his sons absolute grant *inter vivos* (and some of E his war lieutenants and domestics) as pleaded by the plaintiffs and given in evidence or that there was no such grant to his sons thereby leaving the bulk of his property including the land in dispute as family property as pleaded and given in evidence by the defendants. If there was such absolute grant and the land in dispute was part of what Akinleye inher- F ited, the mode of sale and repurchase alleged as to whether it was in conformity with native law and custom will be of little or no importance in reaching a decision whether the present plaintiffs have proved a case that will entitle them to their reliefs vis-à-vis the defendants’ case that the G land was part of Laamo family property.

The learned trial judge seemed to have appreciated the basis of each party’s case. He said:

“Now it seems to be common ground that Laamo was the origi- H nal owner of lands including the areas in dispute. It is also common ground that Laamo granted land to his war lieutenants and domestics some of whom were Efunwole, Areja and Fuleso. The area of issue lies in regard to what happened between Laamo and his children as regards

*his land. The plaintiffs' case is predicated on grants during his life time by Laamo to his children whilst the defence maintained that the children of leave (sic: Laamo) were merely permitted to farm on the land and from the defence stand emerges the contention that the areas of Laamo's land which his children were permitted to farm belonged to the Laamo family."* B

The learned trial judge without assessing the evidence adduced by both parties before him simply rejected the case of *inter vivos* grant presented by the plaintiffs based on his own personal understanding or perhaps personal knowledge. He said it was not usual, to use his words, "*that a land owner would have during his life time divested himself of title to his land by a grant of the same to his children. Children usually succeeded to land after the death of the parent and could thereafter appropriate specific areas to each of them by partition or otherwise the land would remain family land which they could always use.*" C D

There was also the evidence that Akinleye the son of Ariwoola sold the land which he inherited from the absolute grant made to Ariwoola by Laamo. The said land was sold to one Osuntola. Osuntola's son E desired to part with the land and so p.w.2, Yesufu Itanola Laamo, repurchased the land for an amount of 55 pounds about 50 years back at the time evidence was adduced in 1986. The parcels of land B and C in dispute are said to be part of that land that was sold and later repurchased. The learned trial judge had two reservations against this evidence. F First, he said there was no corroborative evidence in regard to the sale of the land by Akinleye and the purchase back of the same by p.w.2. Second, he said it was improbable that such land would have cost 55 pounds at that time. He then referred to what he said he knew G from personal recollection of a parcel of land about that same time (1931) which cost 1 pound per acre in Ibadan to the Government of Nigeria.

On appeal, the Court of Appeal deprecated the manner in which the learned trial judge treated the evidence led by the plaintiffs by using H his personal or private knowledge of some facts, and in some aspects his personal views not derived from the evidence before him. The Court of Appeal corrected that obvious misdirection. But unfortunately the lower

court held the same view as the trial court that no evidence was led to corroborate the evidence of p.w.2 as to the sale of land by Lawani to him. It regarded that as “the great locunae (sic) in the plaintiffs’ case.” It was virtually on that ground that the judgment of the trial court was upheld.

The plaintiffs have further appealed to this court and have raised two issues for determination as follows:

1. *Whether the Court of Appeal was right to have held that there was a lacuna in the case of the appellants on the ground that there was no corroboration of the testimony of 2 p.w. on the sale of the disputed land to him by Lawani when that Court failed to advert to the adequate submissions made in the appellants’ brief on the issue in the court below.*
2. *Whether the failure of the Court below to consider and pronounce upon the second issue validly raised and argued by the appellants in their brief of argument before that Court did not occasion a miscarriage of justice.”*

#### Issue 2

I wish to dispose of issue 2 first. The complaint here is that the lower court failed to pronounce on one of the issues raised before it by the appellant and that this occasioned a miscarriage of justice. The said issue alleged not to have been considered was as follows:

*“Whether it was proper for the trial judge to hold that the appellants’ assertion that their vendor bought the land in dispute for 55 pounds fifty five years ago could not be correct, and whether he could base his rejection of the evidence on:-*

- (a) *the fact that there was no corroboration of the evidence led by the 2<sup>nd</sup> p.w. on the point;*
- (b) *his personal knowledge borne out of his research into compensation paid in respect of other pieces of land acquired elsewhere about the same time which knowledge he gained as state counsel in Western Region Ministry of Justice, about 25 years ago.”*

**Going through the judgment of the lower court, it is clear that it considered the above issue at length. After quoting in extenso the**

relevant passage from the judgment of the trial judge, the lower court observed *inter alia*:

*“The trial judge again erroneously brought the personal knowledge he had acquired some 20 years earlier into the affair to determine whether the price at which 2<sup>nd</sup> p.w. had claimed he bought the land from Lawani was a reasonable one. This was most uncalled for, and irrelevant. I have no doubt that the learned trial judge was wrong to have relied on his private knowledge of what lands sold for some 20 years earlier to determine whether or not the evidence of 2<sup>nd</sup> p.w. in the current case was credible. I regret to say that the lower court had by so stating unnecessarily descended into the arena and taken up the fight of one of the contestants. The defendants had not pleaded or sought to show that 55 was not a fair price to pay for the land in dispute at the time 2<sup>nd</sup> p.w. claimed he bought the land. No questions had been asked of 2<sup>nd</sup> p.w. as to why he bought for such high price. It could well be that the land at the time contained Iroko trees or other valuable crops. The trial judge had through the mistake which was clearly avoidable exposed his judgment to a deserved criticism.”*

**I think this was an appropriate consideration of and pronouncement on that issue. I find no merit in issue 2.**

Issue 1

This issue rests largely on the case of *inter vivos* grant by Laamo to his seven sons. Once that issue received proper consideration and were it to be resolved in favour of the plaintiffs, then the mode by which Akinleye sold the land in dispute (as his personal property) and by which p.w.2 eventually purchased it back (as his personal property) would be of little consequence. It must be realised that there is nothing to show that the family of Osuntola, the person to whom the land was sold by Akinleye, is disputing the fact that the land was repurchased by p.w.2, Yesufu Itanola Laamo. It must also be acknowledged that both parties claim that the land was eventually bought from the said p.w.2. In support of that assertion, reference may be made to the relevant averments. In para.19 of the amended statement of claim, it is averred as follows:

*“Sometime in 1977, the said Chief Yesufu Itanola Laamo sold*

*the area marked ‘B’ and ‘C’ to the 1<sup>st</sup> plaintiff under the Native Law and Custom and later executed documents of sale in 1977 with his children in favour of the 1<sup>st</sup> plaintiff to confirm the sale.”*

This evidently is a claim that the said Yesufu Itanola Laamo sold the land as his personal property (merely joining his own children as vendors and not the principal members of Laamo family were it family property be it noted). In the same manner, the defendants averred in para. 12A of the amended statement of defence as follows:

*“Sometimes (sic) in 1977, Yesufu Itanola Laamo and his children sold a portion (measuring approximately 3 acres) of the area marked ‘B’ and ‘C’ in survey plan No.LL 9282 to the 4<sup>th</sup> defendant who was also given a purchase receipt.”*

It seems obvious here too that the same Yesufu Itanola Laamo was alleged to have sold the land as his personal property in conjunction with his children.

Having regard to the above, it would not have presented any difficulty for the two courts below to hold that the said p.w.2 sold the land in dispute as his personal property either by virtue of the consequences of the *inter vivos* grant by Laamo to his male children or in any case by virtue of the repurchase made by p.w.2 as presented by the plaintiffs. It is reasonable to accept that any of those two alternative sources of power to sell would certainly support the sale of the land in question as personal property by Yesufu Itanola Laamo. In further support of the *inter vivos* grant, there is some evidence coming from the defendants from which this can at least be inferred. First, is the evidence of d.w.2, Karimu Adegoke Taiwo, as follows:

*“I have heard of my grandfather and Laamo are brothers. I know Ajayi, Omokebe and Ariwoola, Taiwo Osuntala, Fabiyi-Olusingbin. They are children of Laamo. I know land at Isebo. At the time of Bale of Maya, Laamo acquired land at Isebo. I know the parcel of land in dispute. They are at Isebo. They were part of Laamo’s land, Laamo farmed on the land in dispute. During his (sic) reign of Iba Oluyola, Laamo gave Ariwoola part of the land. Ariwoola and Omokebe farmed on the land in dispute. Laojo was Omokebe’s son. Akinleye was the son*

of Ariwoola. After the time of Omokebe and Ariwoola, the children succeeded to the land in dispute farming the same.” [Italics mine for emphasis]

Second, d.w.4, Jimoh Bolarinwa Laamo, testified thus:

“I know the land in dispute at Isebo Area Ibadan . Ariwoola B and Omokebe were Laamo’s children. They farmed the bigger parcel of the land in dispute planting food crops. Laamo granted them the land.”

I think this is enough evidence coming from witnesses presented by the defendants which goes to strengthen the case of the plaintiffs on the very point that Laamo shared or granted land to his male children. That then contradicts the case of the defendants that Laamo’s land (including the land in dispute) remained unshared family property. If the land in dispute was family property of Laamo, it could only be sold by the Mogaji with the concurrence of the principal members of the family: see *Coker v. D Oguntola* (1985) 2 NWLR (pt.5) 87; *Folami v. Cole* (1990) 2 NWLR (pt.133) 445; *Ayanbode v. Balogun* (1990) 5 NWLR (pt.151) 392. The real issue in this case, therefore, must be to whom did p.w.2 sell the property and in what capacity. E

**The learned trial judge not having properly examined the pleadings of the parties in which both agreed that they bought from p.w.2. misdirected himself when he observed:**

“From my consideration of the evidence before me I am unable to say that the plaintiffs have discharged the onus required to establish title especially in view of the fact that the main roots of the same in p.w.2 were his ipse dixit alone. I must bear in mind that the onus is on the plaintiff and his case must preponderate over that of the defendant. I am not satisfied that with the lacuna I have highlighted in the title claimed by p.w.2 which he passed on to 1<sup>st</sup> plaintiff (in respect of parcels (B) and (C) of exhibit ‘A’ the onus of preponderance has been discharged.” F G

This is a conclusion which should never have been arrived at because neither of the parties put in issue nor contested the fact that p.w.2 was in a position to sell, at least by the relevant averments in their respective pleadings which I have reproduced above. H

The lower court appeared also to have misconceived the real essence of the case. It quoted from the evidence-in-chief of p.w.2 that:

*“The land I sold to the plaintiff was not my family land. I bought the land I sold.”*

B It then observed:

*“It is to be noted here in parenthesis that the sale of land from Lawani, Madam Osuntola’s son to 2<sup>nd</sup> p.w. was not an event falling within living memory. Indeed the 2<sup>nd</sup> p.w. who testified on the point had given the evidence as an event in which he personally took part. The 2<sup>nd</sup> p.w. did not tender any document or receipt as to the transaction or sale between him and Lawani. No person who had witnessed the handing over of money between 2<sup>nd</sup> p.w. and Lawani was called to testify and no witness who had witnessed the handing over of the land being sold was called to testify although the plaintiffs had pleaded that the sale was one done under native law and custom.”*

I have just shown above that, even from the relevant averments in the pleadings of the parties in which both claimed to have bought from p.w.2, it was not an issue in the case requiring proof that p.w.2 had the land in dispute available to him for sale. Both parties are agreed as to that.

Having misunderstood the case, the lower court quoted the observation of Jibowu Ag. F.C.J. in *Cole v. Folami* (1956) 1 FSC 66 at 68; (1956) SCNLR 180 at 183, as to the requirements of sale of land under native law and custom (an observation wholly inapplicable here), and said:

*“The above observation applies to the case of the plaintiffs before the lower court. Since they had pleaded that Akinleye who inherited the land in dispute sold the land to Madam Osuntola, they had the duty to prove that their vendor Chief Yesufu Itanola Laamo (2<sup>nd</sup> p.w.) had a valid title derived from Madam Osuntola’s heir, Lawani which he could transfer to them. But as it turned out, the plaintiffs failed to prove the ingredients of a valid sale under native law and custom between Lawani as vendor and 2<sup>nd</sup> p.w. as purchaser. The result is that even if the lower court had found that Laamo in his lifetime made absolute grants of his land to his children including Ariwoola, the plaintiffs would still have*



*failed as they did not prove satisfactorily that the land was sold by Madam Osuntola's heir to their vendor 2<sup>nd</sup> p.w."*

This conclusion is clearly a hangover from the misconception I have endeavoured to explain. It must be added here that Madam Osuntola's family are not party to this case and there is nothing to indicate that they deny having sold back the land to p.w.2. The defendants' case is not that they themselves bought the land in dispute from that family so as to put in issue whether there was indeed such land then available for repurchase from that family by p.w.2. I consider it is drawing a red herring in the circumstances to require the plaintiffs to prove that Lawani sold the land back to p.w.2. This is more so because in addition to the averments of the parties, the story of sale by Akinleye and repurchase by p.w.2 could have been treated as a purely internal matter of Ariwoola Laamo/Yesufu Itanola Laamo families which, advisedly, could safely have been avoided in pleading without doing injustice. If the property was enjoyed by Akinleye's father as land granted to him by Laamo from what has been shown so far, to insist on proof of repurchase from Lawani would initially require *proof* that the land was ever sold out, beyond what p.w.5, Saka Aremu, said in evidence in support of p.w.2's evidence, as follows:

*"I know the land in dispute. My mother's father was called Akinleye. Lasupo Alamu was Akinleye's son. I know p.w.2. He used to give out the land in dispute for farming purposes. Akinleye my grandfather owed money and sold the land to an Ijesha man who when he was going to his town offered the land for repurchase. 2<sup>nd</sup> p.w. repurchased it and thereafter exercised control over it. My mother and Lasupo Alamu my mother's senior brother told me about the transaction. There was no dispute between Akinleye's descendants and p.w.2 after he repurchased the land."*

There can be no justification for the observation made by the lower court on the question of repurchase of the land by p.w.2. Also, Laamo's family are not party to this case and there is nothing to prove convincingly that p.w.2 sold what is family property as his own; which sale the family could take steps to set aside but have not done so! Rather, what can be seen from the evidence (and the relevant aspects of the pleadings) is that

he sold the land in dispute as his personal property. Therefore, in reality the issue before the court was a very simple one having from the foregoing been narrowed down to one inquiry, namely: to whom did p.w.2 sell the land in dispute?

**B The learned trial judge in a sense observed that the plaintiffs made a better case than the defendants but because of the failure on his part to grasp that simple issue, he kept falling into error when he observed and concluded as follows:**

**C “I must express great difficulty in resolving the cases of both sides on the evidence before me. There is no doubt that counsel marshalled, in so far as that was possible, the case of the plaintiffs with better cogency but I cannot say that there has been satisfactory proof before me of the grant of land to the children of Laamo, the sale by D Akinleye of the land in dispute to one Osuntola and the repurchase back of the same by p.w. 2 from the child of Osuntola. If I were to dwell alone on the user of the land by p.w.2 directly and through others during the past 10 years that cannot be inconsistent with any right he E may have in relation to it if it were family land.”**

**F The last sentence seems to imply that if p.w.2 had purported to sell family land as if it were his own (and the true position here is that he sold the land in dispute as his own) that could not be “inconsistent with any right he may have in relation to it if it were family land.” This is an unfortunate erroneous pronouncement by anyone familiar with Yoruba Native Law and Custom relating to how to deal with family property. I must say, with due respect, that the learned trial judge misconstrued (perhaps it is more appropriate to G say bungled) the plaintiffs’ case right from the beginning. The lower court merely corrected him partially, and then itself perpetuated part of the error which is that there was no proof that the land was repurchased by p.w.2.**

**H A trial judge has a primary duty to receive admissible evidence, assess the same, give it probative value and make specific findings of fact thereon. He must not impair the evidence either with his personal knowledge of matters not placed and canvassed**

before him, or by inadequate evaluation and should endeavour to avoid vitiating the case presented by the parties through his own wrongly stated or applied principle of law. He must carefully examine the evidence and clearly understand and appreciate the issues he has to resolve in the case, and then proceed to resolve B them. His duty is to reach a decision only upon the basis of what is in issue and what has been demonstrated upon the evidence by the parties and is supported in law: see *Bornu Holdings Ltd. v. Bogoco* (1971) 1 All NLR 324 at 330; *Adeniyi v. Adeniyi* (1972) 4 SC 10 at 17; *Shodeinde v. Ahmadiyya Movement-in-Islam* (1983) 2 SCNLR 284 at C 320. When he fails in this regard, it is an invitation to the appellate court to intervene and if the appellate court can make its own findings from the evidence available, it will interfere with the findings of the trial judge since it is in as good a position as the trial D court on that score: see *Fatoyinbo v. Williams alias Sanni* (1956) SCNLR 274 at 275; *Lawal v. Dawodu* (1972) 1 ALL NLR (pt.2) 270 at 286; *Okpaloka v. Umeh* (1976) NSCC (vol.10) 519 at 533.

When therefore p.w.2, claimed by both parties as their vendor, E gave evidence as to what he sold and to whom, the only relevant evidence which the trial court had to consider came from p.w.2 himself having regard to the crucial averments in para.19 of the amendment statement of claim and para.12A of the amended statement of defence already F reproduced. The evidence of p.w.2. on the point, as given in evidence-in-chief, is as follows:

*“The land in dispute is not family land. The land I sold to the plaintiff was not family land. I bought the land I sold.”*

Later, he said in cross-examination:

*“4<sup>th</sup> defendant is a land speculator. I do not know whether or not 4<sup>th</sup> defendant has sold to others the parcels of land my family sold to him. I have never sold family land to 4<sup>th</sup> defendant. The land I sold to 4<sup>th</sup> defendant is my father’s land at Ipolo on Egbeda Road beyond Isebo. H Basiru Akangbe and Sali are my children. Safanitu is not my child. I did not join these three persons in selling land to 4<sup>th</sup> defendant.”*

It is apparent that the defendants’ counsel asked a question to which the

last answer above was given in the hope of laying the foundation for establishing para.12A of the amended statement of defence which is that the p.w.2 together with his children sold the land in dispute to the 4<sup>th</sup> defendant but he failed to achieve that. On the other hand, d.w.2, Karimu

B Adegoke Taiwo, testified thus:

*“In 1977 the children of Laamo sold part of the land in dispute to 4<sup>th</sup> defendant. Those who sold the land include Olupoju, Tijani Oludiran Ajayi, Arasi Ibikunle. It was sold for N32,000.00. 2<sup>nd</sup> p.w. was amongst those who sold the land to the 4<sup>th</sup> defendant.”*

C Then d.w.3, Alhaji Ganiyu Faoye, said:

*“In 1977 my family sold land to 4<sup>th</sup> defendant one of the land in dispute. 2<sup>nd</sup> p.w. participated in the sale, others who signed the document prepared are S. Olupoju Oyewole Laamo, Tijani Oludiran Ajayi D Laamo, Alhaji Karimu Olukunle Laamo, Arasi Oladosu Ibikunle Laamo and Alhaji Yesufu Badiru.”*

The evidence of these two witnesses for the defence is at variance with para. 12A of the amended statement of defence which says E p.w.2 and his children sold the land to 4<sup>th</sup> defendant. Whereas these witnesses indicate by their evidence that it was the family of Laamo that sold the land. The evidence therefore goes to no issue and ought to be discountenanced: see *Woluchem v. Gudi* (1981) NSCC (vol.12) 214 at F 227 where Nnamani JSC said:

*“It is also trite law that parties are bound by their pleadings and any evidence which is at variance with the averments in the pleadings goes to no issue and should be disregarded by the court.”*

**It is true that the burden is on a plaintiff to prove his case in a land**  
 G **matter and when he fails to do this he cannot rely on the weakness of the defendant’s case. In that sense the defendant bears no burden to adduce any evidence or satisfactory evidence: see *Kodilinye v. Mbanefo Odu* (1935) 2 WACA 336. But where a plaintiff has**  
 H **produced evidence in support of his case which *prima facie* will entitle him to judgment, the defendant will need to lead some evidence to enable the court to consider on whose side the case preponderates: see *Aromire v. Awoyemi* (1972) 2 SC 1 at 10-11, reiterat-**

**ing this court's observation in *Godwin Egwuh v. Duro Ogunkhehin*, SC.529/66 decided on 28 February, 1969 (unreported). Civil cases are not decided upon proof beyond reasonable doubt but on the balance of probabilities.**

In the present case none of the persons mentioned as having participated in selling the land to 4<sup>th</sup> defendant was called to testify. The 4<sup>th</sup> defendant herself who testified said in cross-examination: "I bought land from Laamo family individuals who were interested in selling land. I bought land from Mogbonjubola at Isebo. I bought land from Lasupo Alamu." This is a person whose case is that Laamo children did not own individual land which they could sell as their own but that Laamo's land was retained as family land. Yet she admitted in cross-examination that she bought land from individuals of Laamo family who were interested in selling land. That tends to support the plaintiffs' case that Laamo shared his land to his male children, and that this one in dispute was bought from p.w.2 as his personal property.

The 1<sup>st</sup> plaintiff gave evidence pointedly in support of and in accordance with para.19 of the amended statement of claim. He said *inter alia* in evidence-in-chief:

*"I know the 2<sup>nd</sup> p.w. and 1<sup>st</sup> defendant and the land in dispute. I bought the land in dispute 9 years ago from 2<sup>nd</sup> p.w. I know Safuratu Gbadamosi. She too bought out of the land in dispute then. I bought the bigger parcel, Safuratu bought the smaller one ..... It was after we paid for the parcels of land that we were put in possession in accordance with native custom. At the handing over of the land our witnesses and those of 2<sup>nd</sup> p.w. were present. 2<sup>nd</sup> p.w. - his children made the document for me in respect of the bigger parcel of land."*

The relevant certificates of occupancy that were thereafter obtained by the 1<sup>st</sup> plaintiff (exhibit F) and by the 2<sup>nd</sup> plaintiff (exhibit H) were tendered and admitted. That obtained by 4<sup>th</sup> plaintiff (exhibit G) was also admitted although that is in respect of the land marked A2 in the survey H plan which as already indicated has not really been put in issue.

**The only evidence of value before the trial court as to the sale of this land in dispute was that of p.w.2 and the 1<sup>st</sup> plaintiff. In**

his evidence, p.w.2 said he sold the land to the 1<sup>st</sup> plaintiff and that it was his personal land. The evidence of the 1<sup>st</sup> plaintiff can be aligned with that. I do not think it is difficult to accept that p.w.2 is the vital witness who can say to whom he sold his land having regard to the relevant averments of the parties. He has accordingly given that evidence which has not in fact been contradicted by any other admissible evidence. The trial judge was bound to accept and act on that evidence, even if it had been minimal evidence, that p.w.2 sold the land in dispute to the appellant: see *Kosile v. Folarin* (1989) 3 NWLR (pt.107) 1 at 12; *Buraimoh v. Bamgbose* (1989) 3 NWLR (pt.109) 352 at 363-364. It is a principle of law that civil cases generally are decided on the balance of probabilities. This principle applies even where a declaration of title to land is involved. As said by this court per Ibekwe JSC in *Kaiyaoja v. Egunla* (1974) NSCC (Vol.9) 606 at 609:

*“This court has always held that what is required of a plaintiff in an action for declaration of title is at least to establish his claim by preponderance of evidence. It is often enough that he has produced sufficient and satisfactory evidence in support of his claim. The test is, whether the plaintiff has been able to prove to the satisfaction of the court that he has a better title than the defendant. We think that it is relevant to draw attention to the fact that subject to the well-known rule as was laid down in Akpan Awo v. Cookey Gam, 2 NLR 100, and a host of other cases that followed it, the standard of proof in a claim for declaration of title is not different from that which is required in civil cases generally. The only difference, if we may say so, rests on the fact that the burden of proof is on the plaintiff who is claiming title, and that it never shifts to the defendant throughout the trial. The difference therefore, lies, not in the standard of proof, but on the burden of proof.”*

H This burden of proof takes cognizance, of course, of the imaginary scale to determine to what side the evidence tilts the scale. Where the plaintiff has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the defen-

dant, the case will be decided upon a minimum of proof. This makes the burden lighter. In the present case there is no admissible evidence adduced by the defendants to compete with that of the plaintiffs as to the party entitled to the land in dispute. Therefore the scale naturally tilts in favour of the plaintiffs. B

The lower court failed to appreciate this and to correct the situation by doing what the trial judge ought to have done. This court is entitled, and indeed bound, to accept that evidence. In the result, it must be held that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs proved C their claim to the land in dispute, namely, the parcels of land verged red and marked B and C on survey plan No. LL 9282. I therefore allow the appeal and set aside the judgments of the lower courts. I make a declaration that the plaintiffs concerned are entitled to a statutory right of occupancy in respect of the said parcels of land. D I award damages of N1,000.00 against each of the defendants in favour of the said plaintiffs. I order perpetual injunction against all the defendants whether by themselves, their privies, agents and servants, or howsoever described from further trespassing or remaining on the parcels of land in E question. I award costs as follows: N2,500.00 as costs at the trial court, N5,000.00 as costs at the lower court and N10,000.00 as costs in this appeal against the defendants jointly and severally.

F

### KARIBI-WHYTE

I have had the privilege of reading in its draft form the leading judgment in this appeal of my learned brother Uwaifo, JSC. I am in G entire agreement with his reasoning leading to the conclusion allowing the appeal. I have nothing to add in amplification. I therefore will and hereby also allow the appeal.

I also abide by the orders in the leading judgment and the costs awarded against the defendants jointly and severally. H

**KUTIGI JSC**

I read in advance the judgment just delivered by my learned brother Uwaifo, J.S.C. I agree with his reasoning and conclusions. I will also allow the appeal and set aside the judgments of the lower courts. I enter judgment in favour of the Plaintiffs as settled in the said judgment. I endorse the order for costs.

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C

**ACHIKE JSC**

I have had the privilege of reading the leading judgment of my learned brother Uwaifo, JSC just delivered. I agree entirely with the reasoning and conclusion that this appeal has merit and ought to succeed. Accordingly, I too, would allow the appeal and set aside the judgment of the lower court. I abide by the orders made in the leading judgment, including the orders as to costs.

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E

**AYOOLA JSC**

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Uwaifo, JSC. I agree with it and for the reasons which he has given, I too, would allow this appeal and I abide by all the consequential orders and orders as to costs which he has made.

G

H