

SUPREME COURT OF NIGERIA

15TH JUNE, 2001. SC. 30/1997.

**CORAM:- S. M. A. BELGORE, A. B. WALI, A. I. IGUH, A. I.
KATSINA-ALU, E. O. AYoola, JJSC.**

OZO JOHN NWADIOGU & 3 ORS. APPELLANTS
(For themselves and as representatives
of the members of Enugwu-Ukwu
Community Development Union (ECDU)

AND

1. PHILIP NNADOZIE & 2 ORS. RESPONDENTS

*APPEALS - Findings of trial judge - Were wrongly disturbed - By the
court below - As they were supported by the evidence (H 5)*

*LAND LAW - Title - Claim for trespass - Puts title in issue - And plain-
tiff must prove ownership and or exclusive possession - In line with Idundun
v. Okumagba (H 1)*

*LAND LAW - Title - Judgment - Where the plaintiff fails - To satisfy the
court - On the strength of his case - That he is entitled to declaration of
title - The proper order is a dismissal of his claim (H 4)*

*LAND LAW - Title - Proof of ownership - Where the title of the plaintiff's
vendor is denied - The origin of the vendor's title - Has to be pleaded
and proved by evidence (H 2)*

*PLEADINGS - Joinder of issues - Appeals - The lower courts - Were in
error - To have held that issue of title - Did not arise for determination -
When issues had been joined in the pleadings - On that point (H 3)*

FACTS

The plaintiff at the Awka judicial division of the Anambra State
High Court claimed against the defendants jointly and severally, N60,000.00

special and general damages for trespass and perpetual injunction to restrain further trespass.

At the trial the plaintiff's case was that he had bought the land in question in 1944 in accordance with customary law and had built a small house on the land before returning to his base as a soldier. He had obtained a memorandum of the sale in 1947 and claimed that the house which he built was demolished by the defendants. The plaintiff however failed to prove the root of title of the vendors. The defendants on their own part claimed that the land in dispute is the communal property of the Enugwu-Ukwu Community Development Union formally Enugwu-Ukwu Progressive Union and traced their title from a grant to the District Officer in 1930 by the Oji Community and subsequent sales up to the Enugwu-Ukwu Progressive Union. The defendants finally denied that they trespassed on the land in dispute as alleged by the plaintiff.

The trial judge in a reserved judgment, held that the plaintiff did not establish that the demolished house stood on the land sold to him and so dismissed his claim. The plaintiff's appeal was allowed and his claims were awarded him. The appellants were granted leave to appeal to the Supreme Court as persons having interest in the matter.

ISSUES FOR DETERMINATION

1. Whether, on the facts and circumstances of this case, the learned Justice of the Court of Appeal were right when they held that the plaintiff /appellant/respondent was entitled to the reliefs sought and awarded judgment to him in respect thereof.

2. Whether the learned Justice of the Court of Appeal rightly interfered with the findings of fact made by the learned trial judge? For his part the plaintiff/respondent raised two issues which read as follows:

1. Whether the Court of Appeal was right in holding as it did that the land in dispute was properly identified by plaintiff/respondent in proof of his case in the High Court.

2. Whether the Court of Appeal was right in disagreeing with the conclusion the learned trial Judge finally came to in his judgment based on his evaluation and findings of fact.

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

Title - Claim for trespass

1. The law is now settled that in a claim for trespass to land and injunction, as in the instant case, title is put in issue. See Ekennia v. Nwapakara & Ors. (supra). The onus in such a case is on the plaintiff to prove ownership and /or exclusive possession. He can do this in any of the five ways or methods of proving or establishing ownership of land as laid down by this court in Idundun v. Okumagba (1976) 9-10 SC 277. (p. 2089 B)

Title - Proof of ownership

2. The question to be resolved is whether the plaintiff should have pleaded the origin of title of his vendors i.e. Umugagwo family. It can be seen clearly on the defendants' pleadings that there was no admission by them that the said land originally belonged to Umugagwo family, Enugwu-Ukwu. In other words, an issue has been raised as to the title of Umugagwo family. Two situations may arise. Where there has been an admission of the title of the grantors or vendor, as the case may be, it will suffice if the plaintiff pleads the document of grant or sale and produces them at the trial. Where however title is denied, then the onus is on the plaintiff to plead and prove the origin of the title of his grantor/ vendor: In the present case, the title of the plaintiff's vendor was denied. Thus, an issue had been raised as to the title of the Umugagwo family the plaintiff's vendor. In these circumstances the origin of the Umugagwo family title has to be pleaded and proved by evidence. This the plaintiff failed to do. In my judgment, this failure is fatal to the plaintiff's claim. (p. 2091 F)

Pleadings - Joinder of issues

3. I have already shown that the defendants denied paragraphs 8 and 9 of the plaintiff's statement of claim wherein he averred that he purchased the land from Umugagwo family. The defendants also pleaded their roof of title in paragraphs 6 and 7 of their statement of defence. They were

therefore two parallel roots of title pleaded by the parties. An issue was therefore joined. Issues are said to be joined on the pleadings when an averment in opponent's pleading has been denied or traversed. The learned judge was in error when he held that this issue did not arise for determination .

The court below did not fare better in this regard. It made passing remarks in its judgment acknowledging the fact that the plaintiffs title was rooted in purchase. It should have found from the pleadings and evidence before it that the plaintiff did not establish his claim to the land as required by law. (p. 2092 F)

Judgment - Failure of plaintiff

4. As I earlier indicated, the proper order after the evidence of PW 1 should have been one of dismissal of the plaintiff's claim. In a claim of this nature the onus lies on the plaintiff to satisfy the court that he is entitled on the evidence brought by him to a declaration of title. 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 defence will not help him, and proper judgment is for the defendant. The plaintiff herein has clearly not discharged the onus placed on him. His claim must therefore fail. (p. 2094 B)

Appeals - Findings of facts

5. Suffice it to say that the findings of the learned trial judge were amply supported by the evidence before him. The position of the law is this, that an appellate court should not interfere with the findings of the trial court unless the findings are not supported by the pleadings and/or evidence or are perverse. The court below was clearly in error when it disturbed the findings of fact by the trial Judge which were born out by the evidence on record. (p. 2094 E)

NOTABLE POINT OF INTEREST

IGUHJSC

1. *Need for purchaser to prove the title of a vendor in a land dispute*

Once, in a land dispute, a party pleads and traces the root of his title to a particular person or family, that party, to succeed, must establish how that person or family derived his or its title to such land. In other words, that party must not only plead and establish his title to the land, he must also plead and prove the title of the person from whom he derived his alleged ownership of the land in dispute pursuant to the maxim, nemo dat quod non habet, meaning that no one can give that which he does not have. It is only if the person from whom he derived his title has a valid title to such land that he may lawfully pass on such title to any one else. If the title of his vendor or grantor is defective and non-existent, then obviously, he will have no valid title to pass to any body. See Sanyaolu v Coker (1983) 3 S.C. 124 at 163 – 164. (p. 2096 D)

REPRESENTATION

Rob Iweka Esq. With him A.N. Iweka (Mrs) and Emeka Okoye Esq. for the Appellants

C.O. Anah Esq. for the respondents

CASES REFERRED TO

Okorie v. Udom (1960) SC NLR 326

Kareem v. Ogunde and another (1972) 1S.C 182

Elias v. Chief Omo-Bare (1982)5 S.C. 25 at 54-55

Abdul Hamid Ojo v. Primate Adejobi (1978)3 SC. 65

Talabi v. Adeseye (1973) N.M.L.R. 8

The Registered Trustees of the Apostolic Church v. Olowoleni (1990)6 N.W.L.R. (Pt.158) 514

Samuel Nelson v. Ammah and another (1940)6 W.A.C.A. 134

Aromire v. Awoyemi (1972)1 All N.L.R (Part 1) 105

Sanyaolu v. Coker (1983)3 S.C.124 at 163-164

Ugo v. Obiekwe (1989)1 N.W.L.R. (Pt.99) 566

Okafor Egbuche v. Chief Idigo 11 N.L.R. 140

Ngene v. Chike Igbo and another (2000)4 NWLR (Pt.651) 131

Mogaji and others v. Cadbury (1985)2 NWLR (Pt.7) 393

Ogunleye v. Oni (1990)2 NWLR (Pt.135) 745

Eboade v. Atomesin (1997)5 NWLR (Pt.506) 490

LEAD JUDGMENT BY KATSINA-ALU JSC

This appeal is from a judgment of Uyanna J. (as he then was) sitting at Awka in the Awka Judicial Division of the High Court of Anambra State. In that Court, the Plaintiff claimed against the Defendants jointly and severally the following reliefs:-

"1. =N=60,000.00 Special and General damages for trespass; and the plaintiff shall rely on receipts dated 5/1/78, 11/11/78 and 20/2/79 and document dated 2/1/78 in proof thereof.

2. Perpetual injunction to restrain the defendants, their servants or agents from further acts of trespass on the said land.

Particulars of Special Damage

Cost of building =N=20,000.00 "

At the trial the plaintiff gave evidence as PW 3 and called three witnesses. Briefly the case for the plaintiff is that sometime in 1944 when he came home on leave as a soldier during the second world war he bought the land in question in accordance with the customary law of Enugwu-Ukwu from Umugagwo family of Oji Village. He subsequently built a small house on the land. Thereafter he returned to his base as a soldier. On his discharge from the Army in 1947, he returned home. Later that year he went back to those who sold the land to him and demanded a receipt or some evidence in writing of the sale of the land to him. A memorandum of the sale of the land was then made out. The plaintiff, at the trial, said he lost the original during the civil war. However that court admitted a photocopy of the memorandum as Exhibit "B". He also tendered certain receipts in connection with the building allegedly demolished by the defendants. Also tendered in evidence were Exhibits "E" and "E1" being the photograph with negative of the said building before it was demolished. The demolition of the plaintiff's house was the cause of action.

For the defendants, their case is that the land in dispute is the communal property of the Eungwu-Ukwu Community Development Union formerly know as Enugwu-Ukwu Progressive Union. It was their case

that the land in question formed part of Ajo Ofia land of Oji Village, Enugwu-Ukwu and it extends to the present compound of St. Anthony's Parish Enugwu-Ukwu. They claim that in 1930, part of the land in dispute was granted to Mr. Brigid the District Officer by the Oji Community for the building of the Umunri Native Court House. In 1932, at Mr. B Brigid's request the land was further extended. When the court was phased out in 1945 Mr. Brigid's successor sold the buildings and land which formed part of the land in dispute to one Richard Chinwuba Okafor of Enugwu- Ukwu for the sum of #60 and who in turn sold the land and buildings to the Eungwu-Ukwu Progressive Union for the sum of #60. C It is their case that on a part of the land so sold stands the Enugwu-Ukwu Post Office. This was further extended in 1962 for the construction of the Town Hall. The defendants denied that they trespassed on the land in dispute as alleged by the plaintiff. D

In a reserved judgment, the trial court held that the plaintiff failed to establish his claim to the land in dispute. He also held that the plaintiff did not establish that the demolished house stood on the land sold to him by the Umugagwo family of Oji Village, Enugwu-Ukwu. E

The plaintiff's appeal to the court of Appeal was allowed. The plaintiff was awarded the sum of =N=50, 000.00 in special damages, and the sum of =N=50,000.00 in general damages. The defendants, their servants, agents and/or privies were restrained from entering or carrying F out any further acts of trespass on the land in question.

This appeal against the judgment of the Court of Appeal is by the appellants who were granted leave by this court on 20th October, 1997 to appeal as persons having interest in the matter. G

The appellants formulated two issues for determination in this appeal. These are: H

1. Whether, on the facts and circumstances of this case, the learned Justice of the Court of Appeal were right when they held that the plaintiff /appellant/respondent was entitled to the reliefs sought and awarded judgment to him in respect thereof.

2. Whether the learned Justice of the Court of Appeal rightly interfered with the findings of fact made by the learned trial judge?

For his part the plaintiff/respondent raised two issues which read as follows:

1. *Whether the Court of Appeal was right in holding as it did that the land in dispute was properly identified by plaintiff/respondent in proof of his case in the High Court.*
2. *Whether the Court of Appeal was right in disagreeing with the conclusion the learned trial Judge finally came to in his judgment based on his evaluation and findings of fact.*

I shall consider first, the Appellants issue No.1. The plaintiff's claim is for trespass and injunction. It was argued for the appellants, that in a claim for trespass and injunction title is put in issue. The onus is on the plaintiff to plead and prove his title and/or exclusive possession of the land in question. Learned Counsel for the Appellants relied on the following case:

Ekennia v. Nnkpakara & Ors [1997] 5 NWLR (Pt.504) 152; Okorie v. Udom [1960] SC NLR 326, Mrs. S.A. Kareem & Ors. v.David Ogunde Bare & Another [1972] All NLR 75, Ojo v. Adejobi [1978] 3 SC 65, Talabi v. Adeseye [1973] NMLR 8.

It was pointed out that the plaintiff in paragraphs 8 and 9 of his further amended statement of claim pleaded that he purchased the land in dispute from Umugagwo family, Oji Village, Enugwu-Ukwu. The defendants (2nd and 3rd respondents), it was said, vehemently denied the said averments in paragraphs 9 and 10 of their Amended Statement of Defence and demanded strictest proof of same from the plaintiff.

It was submitted that the root of title pleaded by plaintiff is defective in that he did not plead and prove the origin of the the title of his vendors- that is Umugagwo family. It was submitted that this failure was fatal to the plaintiff's claim with the result that the case of the plaintiff should have been dismissed summarily without calling upon the defendants to enter a defence as no prima facie case had been made out against them. Reliance was placed on the case of Aromire v.Awoyemi [1972] 7 NSCC 112. The Appellants further pointed out that this issue was raised both in the trial court and in the court below.

For the plaintiff/respondent it was submittdd that the trial court

effectively dealt with the issue of proof of the origin of the title of his vendors. The trial court held that there was no challenge to the title of Umugagwo family and therefore the contention that the plaintiff did not plead and prove the root of title of Umugagwo family is without legal basis. It was pointed out that there was no appeal to the Court of Appeal against the finding that there was no challenge to the title of the Umugagwo family.

The law is now settled that in a claim for trespass to land and injunction, as in the instant case, title is put in issue. See Ekennia v. Nwakpakara & Ors. (supra); Kponuglo v. Kodadja 2 WACA 24; Ajani v. Ladepo [1986] 3 NWLR (Pt.28) 276. The onus in such a case is on the plaintiff to prove ownership and /or exclusive possession. He can do this in any of the five ways or methods of proving or establishing ownership of land as laid down by this court in Idundun v. Okumagba (1976) 9-10 SC 277. See also Onwugbufor v. Okoye & Ors. (1996) 1 NWLR (Pt. 424) 252 at 279-280.

The case of the plaintiff is that he purchased the land in dispute from the Umugagwo family, Oji Village, Enugwu-Ukwu. In paragraphs 8 and 9 of his pleadings, the plaintiff averred how and when he purchased the land and his acts of ownership thereon. Paragraphs 8 and 9 read as follows:

"8. The Plaintiff had been in undisturbed possession of the land since he bought it in 1944, at #10 and customary incidents and as owner in possession he had exercised various acts of ownership over the same including building thereon, planting economic trees therein and reaping same without any let or hindrance.

9. The plaintiff purchased the said parcel or piece of land in 1944 in accordance with the customary law of Enugwu-Ukwu from Umugagwo Family Orji Village and this sale was later evidenced by a Memorandum in 1947. A photocopy of the said memorandum will be founded upon at the trial."

The defendants on the other hand vehemently denied the plaintiff's said averment in paragraphs 9 and 10 of their Amended Statement of Defence which read as follows:

"9. The defendants deny paragraph 8 of the Statement of Claim and will at the trial put the plaintiff to the strictest proof thereof. Further that between 1964/65, some Oji people engineered by disgruntled Enugwu-Ukwu people, including the plaintiff trespassed on the land in dispute but was quickly rebuffed. Further the plaintiff and his group did not trespass on the land in dispute or raise any objection to the community project contemplated on the land in dispute till 1974."

10. The defendants deny paragraph 9 of the Statement of Claim and will at the trial put the plaintiff to the Strictest proof thereof. Further the defendants aver that any memorandum of agreement produced at the trial by the plaintiff will be a forgery and an act done without authority:

(a) In that the said vendors have no authority to alienate land already vested in the Town Union;

(b) the contents of the said memorandum are hardly decipherable;

(c) that a photocopy of the same is not admissible by reason of the inter-lineations, cancellations etc:

(d) made for the purposes of the present action. In further answer to paragraph 9 of the statement of claim, the defendants aver that in 1974 when the foundation of the Town Hall on the land in dispute was laid by Osita Agwuna, Igwe of Enugwu-Ukwu, the plaintiff raised an objection to the siting of the said Town Hall. The defendants will at the trial put the plaintiff to the strictest proof of the said memorandum in terms of its execution, and compliance with the requirements of the Lands Instruments Registration Law."

Earlier in paragraphs 6 and 7 of the Amended Statement of Defence, the defendants averred thus:

"6. As early as 1930, and in consonance with Villages granting out lands to Divisional Officers or the Town's Union for development project, Oji Village in 1930 granted to Divisional Officer a Mr. A.W. Briggs, Divisional Officer in-charge Awka part of the land in dispute and particularly the present site of Nkwo (Enugwu-Ukwa) motor park where the said Divisional Officer erected thatched houses that housed the

Umunri Native Court. Further the defendants aver that on or about 1932 in its expansion programme, the said Divisional Officer requested for more land and was granted by Oji village (as represented by its elders) other parts of the land in dispute, wherein more permanent buildings were erected. The said part of the land in dispute was the site of Umnuri Native Court, quarters for court clerks etc where the latter notably Nnatuanyan Nwabueze (deceased) cultivated lands surrounding lands granted to the said Divisional Officer. Nkwo Motor park reverted to Oji village which now is the property of Enugwu-Ukwu community."

"7. Around 1945, when the native court members were phased out some of whom included Nwankwo Okwunka (deceased) from Awovu, Okeke Okoye deceased (from Akiyi) Nwaokonkwo Ezeuno (dead) from Enugu, Ajegbu Mgbaka from Urunnebo and others, and its place a new Court popularly known as Okachamma, represented by Issac Okolo (deceased), then Paul Okeke Mba (deceased) then William Okafor (deceased) with the Court now sitting at Abagana. Further on the cessation of Court sessions in Enugwu-Ukwu, Mr. Briggs successor, sold the buildings standing on part of the land in dispute and the land to late Richard Chinwuba Okafor for #60. Further that the latter in turn sold the land and the buildings thereon to Enugwu-Ukwu Progressive Union for #60 under the then Chairmanship of Frederick Nkenke and G.C. Nwaafia as Secretary. Part of the land given to the Enugwu-Ukwu progressive Union stands the present Enugwu-Post Office built by communal effort between 1962/63."

The question to be resolved is whether the plaintiff should have pleaded the origin of title of his vendors i.e. Umugagwo family. It can be seen clearly on the defendants' pleadings that there was no admission by them that the said land originally belonged to Umugagwo family, Enugwu-Ukwu. In other words, an issue has been raised as to the title of Umugagwo family. Two situations may arise. Where there has been an admission of the title of the grantors or vendor, as the case may be, it will suffice if the plaintiff pleads the document of grant or sale and produces them at the trial. Where however title is denied, then the onus is on the plain-

tiff to plead and prove the origin of the title of his grantor/ vendor:
In the present case, the title of the plaintiff's vendor was denied.
Thus, an issue had been raised as to the title of the Umugagwo
family the plaintiff's vendor. In these circumstances the origin of
B the Umugagwo family title has to be pleaded and proved by evidence.
This the plaintiff failed to do. In my judgment, this failure
is fatal to the plaintiff's claim. In Ogunleye v. Oni [1990] 2 NWLR
(Pt. 135) 745 this court held as follows:

C *"But it would be wrong to assume as the learned Judge obviously did in this case that all that a person who resorts to a grant as a method of proving his title to land needs do is to produce the documents to grant and rest his case. Rather, whereas depending upon the issues that emerged on the pleadings, it may suffice where the title of the grantor*
D *has been admitted. A different situation arises in a case like this when an issue has been raised as to the title of the grantor. In such a case the origin of the grantor's title has to be averred on the pleadings and proved by evidence. This is fatal to the plaintiff's case." (Underlining mine).*

E The learned Judge was clearly in grave error when he held that:

"... since there was no challenge to the title of PWI's family and there could have been now the contention that the plaintiff did not plead and prove the root of title of P.W.I's family is without legal basis."
F **I have already shown that the defendants denied paragraphs 8 and 9 of the plaintiff's statement of claim wherein he averred that he purchased the land from Umugagwo family. The defendants also pleaded their roof of title in paragraphs 6 and 7 of their statement of defence. They were therefore two parallel roots of title pleaded**
G **by the parties. An issue was therefore joined. Issues are said to be joined on the pleadings when an averment in opponent's pleading has been denied or traversed. See Akose & Ors. v. Nwosu & Ors. [1997] 1 NWLR (Pt.482) 478, Lewis & Peat (N.R.I.) Ltd. v. Akhimien**
H **(1976) SC 57. The learned judge was in error when he held that this issue did not arise for determination .**

The court below did not fare better in this regard. It made passing remarks in its judgment acknowledging the fact that the

plaintiffs title was rooted in purchase. It should have found from the pleadings and evidence before it that the plaintiff did not establish his claim to the land as required by law.

I now turn to the evidence of PW1 Ugochukwu Okofar, a member of Umugagwo family that allegedly sold the land to the plaintiff. In his evidence under cross-examination this witness testified thus:

"It was not on the land sold to the plaintiff that Enugwu-Ukwu patriotic Union demolished a structure put on it. Our land is large; we sold portion of it to the plaintiff..." (Underlining mine)

This piece of evidence is crucial to the claim of the plaintiff especially when it came from a member of the vendor family. It must not be forgotten that the cause of action in this case was the demolition of the plaintiff's building. In paragraph 5 of the statement of claim the plaintiff averred thus:

"5. On or about the 31st day March 1979, on Nkwo Market day the defendants acting in concert unlawfully broke and entered a piece of land situate at Oji Village which is in possession of the plaintiff and damaged a house under construction verged yellow in plaintiff's Plan No. MEC/175/79 and also bulldozed many economic trees planted by the plaintiff. The said Plan No. MEC/175/75 is filed with this statement of claim. The said land in dispute is clearly delineated and verged pink in the said plan."

The evidence of PW1 was to prove the alleged acts of trespass pleaded in paragraph 5 of the statement of claim reproduced above. This witness, as I have already shown, testified that:

"It was not on the land sold to the plaintiff that Enugwu-Ukwu Patriotic Union demolished a structure put on it ..."

The witness knew what he was talking about. He is a member of the Umugagwo family that allegedly sold the land to the plaintiff. The proper order at that stage, should have been one of dismissal of the plaintiff's claim.

In this regard, the trial court was justified when it held:

"It is strange but true that the PW1 said that it was not on the land that his family sold to the plaintiff that the demolished building

stood. Clearly this knocks bottom off the plaintiff's case as regards his claim to the demolished structure he put on the land. The evidence of PW1 is quite crucial on this point ...PW1's evidence is final on the point as to where the demolished structure stood. If this is so, then the plaintiff cannot succeed in his claim for damages for house demolished by the defendants."

As I earlier indicated, the proper order after the evidence of PW 1 should have been one of dismissal of the plaintiff's claim. In a claim of this nature the onus lies on the plaintiff to satisfy the court that he is entitled on the evidence brought by him to a declaration of title. 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 defence will not help him, and proper judgment is for the defendant: see Mogaji v. Odofin (1978) 4 SC; Akunyili v. Ejidike (1996) 5 NWLR (Pt. 449) 381; Kodlinye v. Odu (1935) 2 WACA 336; Eboade v. Atomesin (1997) 5 NWLR (Pt.506) 490. The plaintiff herein has clearly not discharged the onus placed on him. His claim must therefore fail.

ISSUE NO. 2

In view of the conclusion I have reached on issue No.1 a consideration of the second issue becomes unnecessary. Suffice it to say that the findings of the learned trial judge were amply supported by the evidence before him. The position of the law is this, that an appellate court should not interfere with the findings of the trial court unless the findings are not supported by the pleadings and/or evidence or are perverse. See Olorunfemi v. Asho [1999] 1 NWLR (Pt. 585) 1, Lengbe v. Imale [1959] NWLR 325. The court below was clearly in error when it disturbed the findings of fact by the trial Judge which were born out by the evidence on record.

In the result this appeal succeeds. I allow it and set aside the judgment of the Court of Appeal, Enugu Division, dated 11th day of December, 1995. I award =N=10,000.00 costs to the appellants against the plaintiff/ respondent.

BELGORE JSC

I agree that this appeal has merit. My learned brother, Katsina-Alu JSC has painstakingly dealt with the issues and I agree with all reasonings and conclusions.

I also allow the appeal and award against the respondents costs of N10,000.00 in favour of the appellants.

WALI JSC

I have had the preview of the lead judgment of my learned brother Katsina-Alu, JSC, and I entirely agree with his reasoning and conclusion for allowing the appeal.

For these same reasons ably stated in the lead judgment, I also hereby allow the appeal, set aside the judgment of the Court of Appeal Enugu Division and restore the judgment of the trial court. N10,000.00 costs is awarded to the Appellants against the Respondents.

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Katsina-Alu, JSC and I agree entirely that there is merit in this appeal and that the same ought to be allowed.

The plaintiff's claims against the defendants are for N60,000.00 special and general damages for trespass and perpetual injunction restraining the defendants, their servants and agents from further acts of trespass on the land in dispute which is delineated on the plaintiff's survey plan, Exhibit A, and is therein verged pink.

In a claim for trespass to land and perpetual injunction, a claim for title is automatically raised or put in issue and the onus is one the plaintiff to establish his ownership and exclusive possession of such land in dispute. See Okorie v Udom (1960) SCNLR 326, (1960) 5 FSC 162 at 165, Kareem v Ogunde and Another (1972) 1 SC 182, Elias V Chief Omo-Bare (1982) 5 S.C. 25 at 54 – 55, Abdul Hamid Ojo v. Primate

Adejobi (1978) 3 S.C. 65 etc. See too Talabi v. Adeseye (1973) NMLR 8 and The Registered Trustees of the Apostolic Church v. Olowoleni (1990) 6 NWLR (Part 158) 514. Similarly, where a plaintiff's action is simply that of trespass but the pleading reveal that the real issue between the parties is one of the title to such land, the plaintiff, to succeed, must establish his title to the land and his exclusive possession thereof. See Samuel Nelson v. Ammah and Another (1940) 6 WACA 134, Aromire and others v. Awoyemi (1s972) 1 All NLR (Part 1) 105 etc.

The plaintiff's root of title to the land in dispute, as pleaded, is through purchase. He claimed that the land was purchased by him under customary law from the Umugagwo family of Orji Village, Enugwu Ukwu in 1944. The defendants, for their part, vigorously denied these averment's in the plaintiff's Statement of Claim. It is thus plain from the state of the pleadings that the defendants did not admit the alleged ownership of the land in dispute by the plaintiff or the said Umugagwo family.

Once, in a land dispute, a party pleads and traces the root of his title to a particular person or family, that party, to succeed, must establish how that person or family derived his or its title to such land. In other words, that party must not only plead and establish his title to the land, he must also plead and prove the title of the person from whom he derived his alleged ownership of the land in dispute pursuant to the maxim, nemo dat quod non habet, meaning that no one can give that which he does not have. It is only if the person from whom he derived his title has a valid title to such land that he may lawfully pass on such title to any one else. If the title of his vendor or grantor is defective and non-existent, then obviously, he will have no valid title to pass to any body. See Sanyaolu v Coker (1983) 3 S.C. 124 at 163 – 164, Ugo v Obiekwe (1989 1 NWLR (Part 99) 566, Okafor Egbuche v Chief Idigo 11 NLR 140 etc. The position will of course be different where the defendant has conceded ownership of the land by the plaintiff's grantor. In such a case the plaintiff needs only establish his title and exclusive possession to such land. See Ngene v. Chike Igbo and Another (2000) 4NWLR (Part 651) 131, Mogaji and others v Cadbury (1985) 2 NWLR (Part 7) 393 etc.

In the present case, the plaintiff's root of title was vigorously

challenged by the defendants. It therefore became incumbent on the said plaintiff to establish not only his title but also the title of his vendors, the Umugagwo family. This, he failed to do. In my view, this is fatal to his case. See Ogunleye v Oni (1990) 2 NWLR (Part 135) 745.

Turning to the various parcels of land in and around the area of the land in dispute, the learned trial Judge had this to say:

"It is to be noted that part of the land which Mr. Okafor sold or donated to Enugu-Ukwu community is the ground on which the Post Office and post Master's quarters now stand. With all the confusion which envelop the defendants' case as to how the Enugu-Ukwu Progressive Union acquired the land in dispute, there is little doubt that it was likely that Mr. Okafor might have donated or sold the portion of the land where the Post Office and Post Master's quarters now stand. Defendants have described this land as part of the land in dispute in this case. But the plaintiff is not claiming this portion as clearly indicated on the plan Exhibit A on which the land in dispute is verged pink. The land in dispute is similarly verged pink on Exhibit F – defendants' plan in this proceeding."

He next proceeded to consider on which land the alleged trespass by the defendants took place. Said he:-

"The plaintiff's evidence is that he built on the land in dispute, according to his plan, a house in 1944 long before the Nigerian Civil War. That building was destroyed during the war. At the end of the War he was building a house on the land when, according to him, the defendants on record demolished that building... Defendants do not deny that they demolished the building put up by the plaintiff on the land in dispute. Their defence was and is that the plaintiff was a trespasser on the land, that it is not his land."

He went on:-

"I now come to the locus on which the building demolished by the defendants stood. The plaintiff is clearly and unmistakably saying that the building he put up was on the land in dispute verged pink on his plan Exhibit A. Defendants' case is that the building put up by the plaintiff was on the land of the defendants described by them as "land in

dispute”.

He continued:-

“However, the crucial factor is where did the house built by the plaintiff stand before it was demolished. It is strange but true that the
B PW1 said that it was not on the land that his family sold to the plaintiff that the demolished building stood. Clearly this knocks the bottom off the plaintiff’s case as regards his claim to the demolished structure he put on the land. The evidence of PW1 is quite crucial on this point. Even
C if I could discount the evidence of PW2 as to where the demolished structure stood because he, PW 2 truly said he did not visit the locus where the demolished house stood, yet the PW1’s evidence is final on the point as to where the demolished structure stood. If that is so, then plaintiff cannot
D succeed in his claim for damages for the house demolished by the defendants.”

The learned trial Judge then concluded:-

“Finally I must say that in the light of the evidence led in this case, the plaintiff has not established that the demolished house stood on
E the land sold to him by the Gagwo Family of Oji Village, Enugwu-Ukwu. Accordingly, his claim must fail and it is hereby dismissed.”

On the finding of the learned trial Judge, therefore, the subject matter of the alleged trespass was in respect of an area of land outside the land claimed by the plaintiff and verged pink in his plan Exhibit A.
F This finding, apart from the evidence of the defendants, is fully supported by the evidence of PW1, Ugochukwu Okafor who came from the family that allegedly sold the land in dispute to the plaintiff and PW2, the Traditional Ruler of Enugwu-Ukwu. Both witnesses testified in no un-
G certain terms that the demolished building of the plaintiff stood on land that belonged to the defendants, that is to say, the Enugwu-Ukwu community and that it was not erected within the land in dispute verged pink in the plaintiff’s plan, Exhibit A. The same evidence was given by the
H defendants and their witnesses.

The Court of Appeal, in its judgment, faulted the above decision of the trial court. It claimed that this is because of the earlier finding of the learned trial Judge that the plaintiff duly purchased the disputed land

from the family of PW1.

With profound respect to the Court of Appeal, the finding of the trial court which, having regard to the position of the law as adumbrated earlier on in this judgment appears faulty, is that the Umugagwo family might have sold the land in dispute to the plaintiff. But the land in dispute as clearly pleaded by the plaintiff and accepted by the trial court is the piece or parcel of land verged pink in the plaintiff's plan, Exhibit A. No where in the judgment of the trial court did it find that the plaintiff's building which the defendants demolished was erected within the land in dispute verged pink in the said plaintiff's plan. It's clear finding is that the plaintiff's building which is the cause of action in this suit was erected on the defendants' land outside the land claimed by the plaintiff verged pink in Exhibit A. I think, with respect that the Court of Appeal was in error to have interfered with the above finding of the trial court when there is sufficient evidence in support thereof.

It is for the above and the more detailed reasons contained in the judgment of my learned brother, Katsina-Alu, JSC that I, too, allow this appeal, set aside the judgment and orders of the Court of Appeal and restore those of the trial court. I abide by the same order as to costs made in the leading judgment.

AYOOLA JSC

I have had the privilege of reading in draft the judgment delivered by my learned brother, Katsina-Alu, JSC. For the reasons he gives I too would allow the appeal and set aside the judgment of the court below. The consequence of this is that the judgment of the High Court dismissing the plaintiff/respondent's claim is restored. I abide by the order for costs made by my learned brother Katsina-Alu, JSC.