

SUPREME COURT OF NIGERIA
FRIDAY 18TH JANUARY, 2002. SC. 22/1994
CORAM:- S. M. A. BELGORE, A. B. WALI,
E. O. OGWUEGBU, U. MOHAMMED, S. O. UWAIFO, JJSC

MRS. GLADYS ABIADE
MAJEKODUNMI & 5 ORS APPELLANTS
AND
MUTIU ABINA RESPONDENT

APPEALS - Concurrent findings - Supreme Court does not interfere
- Save if the findings are perverse (H1)

LAND LAW - First registration - Sufficiency of - Applicant brought
himself within circumstances which made first registration compul-
sory - Hence he was duly registered under the law (H2)

LAND LAW - First registration - Documents of title - Validity - Where
the registrar is not satisfied with the evidence of title - Application for
registration shall be dismissed (H3)

LAND LAW - First registration - Defective title - It is improper to
register such title - Because a registered document is indefeasible -
Except rectified under very restricted conditions (H4)

LAND LAW - Title - Claim by adverse possession - Basis - To succeed
claimant must establish - That the title holder has been dispossessed
- For the specified statutory period (H5)

LAND LAW - Title - Adverse possession - Limitation law - Right of an
owner becomes extinguished - After twelve years of clear adverse
possession - And he cannot seek declaration of title (H6)

LAND LAW - Adverse possession - What amounts to dispossession -
There must be an abandonment of the actual or legal possession -
And not mere non usage of the land (H7)

LAND LAW - Adverse possession - Proof - Onus is on claimant -To

2 Abiade v. Abina (2002) 1 KLR (pt. 132) 1

prove that title holder has been dispossessed - And not merely that claimant has been in possession for the requisite number of years (H8)

LAND LAW - Legal estate in fee - Obtained by adverse possession - Proof - Such possessor must prove that he has extinguished right of every other person - Challenging his absolute ownership in fee (H9)

LAND LAW - Possession - Proof - Apart from physical acts of possession - Demarcation of land with survey beacons or pegs - Is enough act of possession (H10)

LAND LAW - Established title - Evidence of possession - Title holder does not need to adduce evidence of physical acts of possession - To show that he is in possession of his land (H11)

LAND LAW - Registration - Duty of registrar - He registers title after investigation - And may refuse first registration when it involves decision as to ownership - Until parties resolve their claims in court (H12)

LAND LAW - Registration - Evidence registrar can act on - Such evidence must be incontrovertible - As registrar cannot listen to contending evidence (H13)

LAND LAW - Squatter - Interest of - Application - *Agboola v. Abimbola* - Such interest is applied in favour of a defendant - And not plaintiff claiming title thereby (H14)

LAND LAW - Adverse possessor - Right - *Agboola v. Abimbola* - Right of such possessor to register estate he had acquired - Was recognized in the case (H15)

FACTS

An application to register land was made to Registrar of Titles, Lagos State in respect of Title No. OM 11052 to No. 66 Karimu Street, Surulere – Lagos State by applicant/defendant/respondent. Objector/plaintiff/appellants raised an objection against the registration. Appellants also applied for registration of title in respect of Title No.

OM 11574 to both No. 66 and No. 68 Karimu Street. Whereas respondent traced his root of title to Oloto Chieftaincy family, appellants traced theirs to one Idris Ashaka and relied on evidence of physical possession of the disputed land.

The Registrar in his wisdom found that respondent has traced a good root of title. Registrar was equally of the view that his duty is confined to investigation of title and not conferment of same. Hence, the Registrar dismissed the objection and the application made in respect of title No. MO 11574. Being dissatisfied, appellants instituted this action at the High Court of Lagos State. After hearing, the court held that it cannot disturb the findings of the Registrar as to the documentary evidence in favour of title in respondent. As such, the court dismissed the suit. Aggrieved, appellants went on appeal at the Court of Appeal, Lagos Division. The appeal was dismissed and appellants have come on another appeal at Supreme Court.

ISSUES FOR DETERMINATION

(1) Whether the respondent was entitled to be registered upon his application as the first registered owner of No. 66 Karimu Street, Surulere, Lagos having regard to the evidence.

(2) Whether the appellants were not entitled to be registered as the first registered owners of Nos. 66 and / or 68 Karimu Street, Lagos upon the evidence.

(3) Whether the lower court properly considered the point of law raised by the appellants as to whether they qualify as adverse possessors of the land in dispute arising under section 21 of the Limitation Law of Lagos State, or in equity, and if so, whether such interest qualifies them under section 6 of the Registration of Titles Law to defeat the respondent's application and ground their own application.

(4) Whether the lower court was not wrong in its assessment of the manner of the appellants' attack on the judgment of the High Court.

HELD (Unanimously dismissing the appeal per
UWAIFO JSC)

Appeals - Concurrent findings

1. The Registrar of Titles was satisfied with the title shown by the applicant as per the deed of conveyance, exhibit A. The appellate High Court and the Court of Appeal upheld the finding of the Registrar. The finding is not perverse and this court is not entitled to make a contrary finding to that concurrent finding.

But in its implication, the issue in essence is a challenge to findings of fact of three courts below but framed differently. This court will not interfere with those findings unless under special circumstance in order to prevent a miscarriage of justice. No such special circumstances have been shown here.
(pp. 15 C/24 F)

LAND LAW - First registration - Sufficiency of

2. Under section 5(1)(a) of the Law, the applicant brought himself within circumstances in which first registration is compulsory and by virtue of section 9(2) he was registered. This latter subsection reads:

“If after investigation of an application for first registration the registrar is satisfied that the applicant is entitled to be registered as the owner of the whole or part of the land claimed, he shall be registered accordingly.” I accordingly answer issue No.1 in the affirmative. (p. 15 E)

LAND LAW - First registration - Documents of title - Validity

3. It is therefore plain that whether in terms of prior root of title, or known root of title, or proper documentation of title, the objector’s claim to first registration of title could not compare with that of the applicant; nor indeed could it be reasonably found satisfactory for first registration even in the absence of the applicant’s claim. Under section 9(2) of the Law, once the Registrar is not satisfied with the evidence of title, he shall dismiss the application for registration. Nothing has been shown that the Registrar was wrong in so dismissing the objector’s application for registration upon the basis of the document he presented. (p. 16 B)

LAND LAW - First registration - Defective title

4. Quite rightly, the two courts below upheld that decision. I think it was a good thing all three courts came to that decision because it is improper to accept first registration of title that is obviously defective since once registered it is indefeasible unless under very restricted conditions for rectification. (p. 16 E) B

Title - Claim by adverse possession - Basis

5. If a person claims that he has acquired possessory title to land by way of adverse possession under a relevant statute of limitation, his case will turn on whether or not he can establish that he has dispossessed the title holder or that the title holder discontinued possession for the statutory period. (p. 17 D) C
D

Title - Adverse possession - Limitation law

6. In Lagos, the Limitation Law does not apply to land which is subject to customary law: see section 68(1) of the Limitation Law. Other than that, there can be no doubt that the right of an owner of land becomes extinguished after twelve years adverse possession. E

The relevant provisions of the Limitation Law in question are principally about preventing a person from bringing action to recover land when his title to the land has been extinguished after twelve years of adverse possession by another. In other words, he will be unable to seek a declaration of title or an order to recover possession of land to which his title has been extinguished. (pp. 17 H/21 D) F
G

LAND LAW - Adverse possession

7. The fact of dispossession or discontinuance of possession must be beyond dispute before the limitation period can begin to run. It has been held that mere non-user does not amount to discontinuance of possession. It is also said that there must be an abandonment of the actual and legal possession of the land: see Norton v. London and North Western Railway Co. (1979-80) 13 Ch. D. 268 at 273. In the case of dispossession H

by an adverse possessor, Lord Denning M. R. has said: “There must be something in the nature of an ouster of the true owner by the wrongful possessor.” (p. 18 B)

LAND LAW - Adverse possession - Proof

- B 8. It is not enough that a claimant is able to show that he has been in possession of land for the requisite number of years. The burden on him is higher than that. He has to show something more. He is the one claiming that land owned by the title holder has now become his. It has become his because the owner has either been dispossessed or has discontinued possession. Therefore the claimant has the clear onus to prove that the title holder has been dispossessed, or has discontinued his possession.** (p. 19 D)

D

Legal estate in fee - Obtained by adverse possession - Proof

- E 9. The fact of legal estate in fee being obtained through possession is subject to the adverse possessor proving that the title holder has been dispossessed, or has discontinued possession and that he has extinguished the right of every other person to challenge his having become the absolute owner in fee.** (p. 20 B)

LAND LAW - Possession - Proof

- F 10. Exhibit C (deed of conveyance) has a survey plan of the land showing beacons. In law, that is evidence of possession because apart from obvious physical acts of possession, demarcation of land with survey beacons, or even pegs is enough**
G act of possession. (p. 20 H)

LAND LAW - Established title - Evidence of possession

- H 11. In law, an owner of land based on established title need no evidence of physical possession to show that he is in possession, or, better still, that he had not been dispossessed or has not discontinued possession. He has no such burden of proving that he is still in possession of his land. As put by Oromrod L. J. in Wallis’s Ltd v. Shell-Mex and BP in the passage from his judgment already recited, the proper approach is whether**

the claimant has proved that the title holder has been dispossessed, or has discontinued his possession, and not that the claimant has shown that he has been in possession of the land for the requisite number of years. (p. 21 B)

LAND LAW - Registration - Duty of registrar

12. The Registrar of Titles does not declare title but merely registers it after investigation. His duty does not involve settling contentious evidence as to ownership of title between parties wishing for first registration but is confined to investigating evidence of title presented to him to ascertain if satisfactory for such registration. There must be cases, actually if not all cases, in which he will refuse first registration when it involves a decision as to ownership until the contending parties resolve their claims to title in court. (p. 21 F)

LAND LAW - Registration - Evidence registrar can act on

13. The evidence the Registrar can act on must be incontrovertible. He cannot act on evidence of adverse possession when the title holder shows up and a dispute as to the title claimed by the adverse possessor is raised. It seems to me the evidence he can accept must be such conclusive evidence to the effect that the rights of all other people to the land have invariably been extinguished. The Registrar cannot listen to contending evidence as to whether the title of a land owner has been extinguished or not. To do so is to undertake to declare title. (p. 22 A)

LAND LAW - Interest of squatter - Application

14. Learned counsel for the appellants has criticized the decision of this court in Agboola v. Abimbola (supra) saying that it was decided per incuriam on the ground that it did not take account of section 6(1) (a) of the Law. With due respect, I do not accept the contention of learned counsel.

As can be seen, the view expressed in which the Statutes of Limitations were denied to be applicable was on the basis that the tenure involved was under native law and custom. The further view later expressed in the judgment was that a squatter's

interest or title as acknowledged in such cases like Akpan Awo v. Cookey-Gam 2 N.L.R. 100 and Saidi v. Akinwunmi I F.S.C 107 had always been applied in favour of a defendant resisting the claim against him and not in favour of a plaintiff claiming title thereby. I cannot see in what way this view could
B *have been altered by the provisions of section 6(1) (a) of the Law the way it was expressed in the light of the facts of Agboola v. Abimbola as to hold that it was decided per incuriam.* (pp. 22 C/23 A)

C *LAND LAW - Adverse possessor - Right*

15. I think it is right to say that if these provisions, having regard to the compendious language in which they are couched, are to be seen to cover adverse possessor's interest, this is more easily comprehensible because it has been
D *judicially recognized that an adverse possessor is entitled to register the estate acquired thereby. It seems to me that the reading into those provisions the rights derived by an adverse possessor might well be incidental, and that the main intend-*
E *ment would likely be in regard to mortgages, settlements, trusteeship etc. where there is power to the fee simple in any land such as the equitable rights of a beneficiary or cestui que, or the legal rights of a trustee, an executor or administrator of*
F *an estate. I must say, however, that whether incidental or otherwise, when interpreting section 6(1) (a) of the Law it cannot now be denied that the estate created by adverse possession is recognized thereunder. It cannot therefore be rightly argued that the observation in Agboola's case was either in conflict*
G *or inconsistent with the provisions of section 6(1) (a) so as to conclude that it was detrimental to, or did not recognize the interest of the adverse possessor, having regard to the peculiar circumstances of that case, where the assertion of mere long possession to found title was the focus of consideration.*
H *Nor can it be said that had section 6(1) (a) been adverted to, that observation would not have been appropriate upon the facts of that case in reference to the two authorities of Akpan Awo and Saidi cited therein. I answer issue No. 3 on the basis of the facts of the present case as already discussed by me*

that a case under section 21 of the Limitation Law of Lagos State has not arisen to qualify the appellants as adverse possessors who have title to register. (p. 23 H)

REPRESENTATION

F. A. M. Fashanu for the appellants
M. A. Bashua for the respondent

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CASES REFERRED TO

Agboola v. Abimbola (1969) 1 All NLR 287
Otuedon v. Olughor (1997) 9 NWLR (pt. 521) 355
Odeniji v. Akinpelu (1998) 7 NWLR (pt. 557) 174
Nwokoro v. Onuma (1999) 9 K.L.R. (pt. 90) 2715
Onagoruwa v. Akinremi (2001) 13 NWLR (pt. 729) 38
Sosan v. Ademuyiwa (1986) 3 NWLR (pt. 27) 241
Littledale v. Liverpool College (1990) 1 Ch. 19
Walli's Ltd v. Shell-Mex & BP (1974) 3 All ER 575
Wuta Ofei v. Danquah (1961) 2 All ER 596
Akinwunmi v. Saidi (1956) SCNLR 339
Rihawi v. Aromashodun (1952) 14 WACA 204
Okeke v Agbodike (1999) 14 NWLR (pt. 638) 215
Nwadike v. Ibekwe (1987) 4 N.W.L.R. (pt 67) 718

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E

STATUTES REFERRED TO

Registration of Titles Law (Cap 166) Vol. 7 Laws of Lagos State 1994,
ss. 5(1)(a)(c) and 6(1)(a) and 9(1)
Limitation Laws of Lagos State ss. 17, 12 and 68(1)
Limitation Act 1939 of England ss. 4(3) and 5(1)

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LEAD JUDGMENT BY UWAIFO JSC

There was an application to register title to land. The application was made to the Registrar of Titles, Lagos State in respect of Title No. OM 11052 to No. 66 Karimu Street, Surulere, Lagos. An objection was taken. The objector also applied for the registration of title in respect of Title No. OM 11574 to both No. 66 and NO. 68 Karimu Street and accordingly objected to title to No. 66 being registered for the applicant.

H

The two applications along with the objection were heard to-

gether and a determination was made by the Registrar of Titles, Lands Registry Court. The present appellants were substituted for the objector, Williams Sanyaolu, now deceased, at the appellate High Court. The respondent was also substituted for the applicant, Babatunde Badaru Abina (deceased) in this court.

B The substance of the objection was that both No. 66 and No. 68 Karimu Street together formed a vacant parcel of land the objector bought from one Idris Ashaka in 1941 and a deed of conveyance was executed in his favour by him. The said Idris Ashaka was alleged
C to have bought the land at a public auction sale also in 1941. The objector said he erected a building on the portion now known as No. 68 Karimu Street in 1948. That building was said to have been rented out and used as a school from 1959 while the portion now known as No. 66 Karimu Street was used as play ground for the school children.
D

The applicant's case is that the land now known as No. 66 Karimu Street formed part of Oloto Chieftaincy family land. One Mr. J.M. Martins got a conveyance in respect of a large parcel of land from Oloto Chieftaincy family by a deed of conveyance dated 6 August, 1910 (exhibit C) of which the land in No. 66 Karimu Street was a part. After Mr. Martins' death, his executors sold this land to the applicant and he got a deed of conveyance from them dated 16 September, 1974 (exhibit A). Counsel for both the objector and the applicant addressed the court. The printed record of proceedings is
F full of typographical errors and omissions. I shall lift the substance of the submission by each counsel as can be found in the said printed record. Learned counsel for the objector was recorded to have said:

*"It will be unnecessary to go to question of facts because the
G question of law raised was sufficient for the court to discuss this action. It is a question of law which should be followed. The limitation Decree of 1966 is still the law of this country as it has not been revoked. He submitted that the application was brought after 21 years which is an infringement of the provisions of Limitation Decree of
H 1966. The Honorable Court has no jurisdiction to hear this case and should be dismissed."*

It was contended by learned counsel that the objector had been on the land for over 25 years. He further said that the objector obtained his deed of conveyance in 1940 (sic) while the applicant

got his in 1974. The essence of the objectors counsel's submission was that the applicant did not seek to register his title within the limitation period stated in the said limitation Decree of 1966 and that since he himself had been in possession for more than that period, the applicant was debarred thereby from being registered as the title holder. Therefore, he added, he the objector had obtained title by adverse possession which should be registered. B

The record shows that learned counsel for the applicant submitted that the deed of conveyance by which the applicant got title was executed on 16 December, 1974 and that immediately thereafter he applied for registration of the title. He said the title is traced to Oloto Chieftaincy family who are the original or radical owners. He further made the following submission: C

"The application before the court is to register the property at No 66 Karimu Street, Surulere and not an action for a declaration of title. The Limitation Decree of 1966 applies in respect of declaration of title in the High Court. The submission in its entirety is misconstrued and should be discountenanced. This Honorable Court has jurisdiction to hear this application under section 5 of the Register (sic) of Titles law Cap. 121 Laws of Lagos State." D E

In his judgment delivered on 4 August 1980, the Registrar of Titles found that the applicant traced his root of title to the radical owners. Namely Oloto Chieftaincy family whereas the objector was unable to do so. He held the view that the duty and power of the Registrar were confined to the investigation of title to be satisfied before registering the same and not to declare or confer title on any applicant who applies for registration. He further held that the interest which he could register under first registration were as set out in section 5 of the Registration of Titles Law (the law) which came into effect on 4 April, 1935, now in Cap. 166, vol. 7 Laws of Lagos State, 1994. He then observed as follows: F G

"After careful consideration of the legal authorities cited by the learned counsel for the objector including the section of Limitation Law which he referred to, I have to state in clear terms that they are not in any way appropriate to the present issue of registration under section 5(1)(a) to (c) of the R.T.L. (i.e. Registration of Titles Law) now before the court. The proceedings before this court were not an action for a Registration of Title, and even if they were, long posses- H

sion will only be available as a weapon of defence against ostensibly clear title but not by itself constitute a basis of title."[parenthesis supplied)

The Registrar came to the conclusion that going by the documentary evidence tendered before him, the applicant was the person entitled to be registered as the owner of No. 66 karimu Street, Surulere. He overruled the objection made by the objector and at the same time dismissed the application in respect of title No. MO 11574. He finally made orders as follows:

"The land registry should proceed with the applicant's application for 1st registration of 66 Karimu Street, Surulere. The application should not be processed until the expiration of 30 days with effect from today, allowing period of appeal. The application is No. MO 11052.. MO 11574 and the objection in MO 11052 are hereby dismissed."

In essence, the application to register Title No. 11052 was granted after the objection to it was overruled. The application by the objector to register Title No. MO 11574 (which would have conversed both No. 66 and No. 68 Karimu Street) was dismissed.

The objector appealed to the High Court, Lagos. He died before the appeal was heard and was substituted by order of court with the present six appellants. The learned Chief Judge who heard the appeal (J. A. Adefarasin, C.J) dismissed the same on 14 March, 1985. He held that he was unable to disturb the findings of the Registrar as to the documentary evidence in favour of title in the applicant / respondent which he accepted and the evidence of long possession relied on by the objector / appellants with which he was not satisfied.

The appellants then took their case on appeal to the Court of Appeal, Lagos Division, upon five issues for determination, one of which, issue 3, was stated as follows:

"Whether a party with interest in land that arises by adverse possession under section 21 of the Limitation Law (Lagos State) is entitled at law or in equity to an estate in fee simple in the land under section 6 of the Registration of titles Law (Lagos State) and whether the appellants so qualify as such adverse possessors of the land in dispute."

I have specifically referred to this issue because (1) it has raised in these proceedings the matter as to the registrability under section 6

of the Law, and adverse possessor's title derived by virtue of section 21 of the Limitation Law; (2) it was extensively canvassed in the court below as it has now been done before this court; (3) it involves a consideration of the decision of this court in *Agboola v. Abimbola* (1969) 1 All N.L.R 287; (1969) N.S.C.C. (vol. 6) 263 to which attention was drawn as having been decided *per incuriam*. B

The court below dismissed the appeal. It did not appear to have dealt sufficiently with the said issue 3. The Registrar of Titles, as already shown in a passage from his judgment, made reference to the Limitation Law and said it was inappropriate to the issue of registration before him, and that long possession was only a weapon of defence against clear evidence of title but would not of itself be a basis for title to be registered. The court below per Babalakin JCA, who read the leading judgment, said *inter alia*: C

"On issue No. 3 it is erroneous on the part of the counsel for the appellants to argue as he did that the Chief Judge failed to answer the question whether an interest in land which arises by adverse possession under section 21 of the Limitation Law is within the expression 'owner in law or in equity' in section 6 of the Registration of Titles Law..." E

The Registrar of Titles carefully considered the intendment of section 5 and 6 of the Registration of Titles Law and found that long possession relied upon by the appellants under section 21 of Limitation Law is not applicable to the facts of this case.

He then relied on the cases of Agboola v. Abimbola (1969) 1 All N.L.R. 287 and Atunrase v. Olugbile CCHCJ/3/73 page 55 which cases deal with first registration and supported his contention. F

He further found that all other cases cited by the counsel for the appellants dealt with recovery of possession of land and are not applicable to application for first registration. The learned Chief Judge agreed with this reasoning in his judgment. G

I must re-affirm that long possession can only be used as a shield not as a sword."

In their appeal against the judgment of the court below to this court, the appellants have set down four issues for determination, namely: H

"(1) Whether the respondent was entitled to be registered upon his application as the first registered owner of No. 66 Karimu Street,

Surulere, Lagos having regard to the evidence.

(2) Whether the appellants were not entitled to be registered as the first registered owners of Nos. 66 and / or 68 Karimu Street, Lagos upon the evidence.

(3) Whether the lower court properly considered the point of law raised by the appellants as to whether they qualify as adverse possessors of the land in dispute arising under section 21 of the Limitation Law of Lagos State, or in equity, and if so, whether such interest qualifies them under section 6 of the Registration of Titles Law to defeat the respondent's application and ground their own application.

(4) Whether the lower court was not wrong in its assessment of the manner of the appellants' attack on the judgment of the High Court."

D Issue No. 1

Although the appellants' counsel argued issues Nos. 1, 2 and 3 together in the appellants' brief of argument, I shall take them separately. Issue 1 asks whether the applicant was entitled to be registered as the first registered owner of No. 66 Karimu Street. The argument is that the land in the deed of conveyance (exhibit A) relied on by the applicant was not shown to have fallen within the land in the deed of conveyance (exhibit C) obtained from the Martins family who trace their title to Oloto Chieftaincy family. At the Registrar of Titles Court, the applicant gave evidence that Oloto Chieftaincy family, the radical owners of a larger parcel of land, sold part to Mr. J.M. Martins as per exhibit C. and that the Martins family sold part of the said land to him as per exhibit A, which land is now No. 66 Karimu Street. It was the title to that land he sought to register.

It was at no stage raised as an issue that the land was not traceable to Oloto Chieftaincy family land. When the deed of conveyance between Oloto Chieftaincy family and Mr. Martins (exhibit C) was tendered as evidence, the objection raised by the learned counsel for the objector was that no proper foundation was laid for its production and further that the document was not from proper custody. The Registrar in his ruling said:

"I am of the view that it will not be proper for this Honorable Court to refuse the acceptance of the deed of conveyance between Oloto Chieftaincy Family and J.M. Martins in that the applicant told

the court that he bought the land from martins family, who had earlier bought from Oloto Chieftaincy family. The document has also been certified by the Land registry as coming from their custody which in effect makes it a public document."

The applicant was cross-examined. It was mainly on the point as to how Martins family were able to execute the deed of conveyance on the strength of the probate order obtained from the court and the court order made later in 1939. The applicant added that he was put on the land in 1972 before the deed of conveyance was executed. There was no suggestion made to him that the land covered by the said deed did not fall within the land Martins got from Oloto Chieftaincy family.

The Registrar of Titles was satisfied with the title shown by the applicant as per the deed of conveyance, exhibit A. The appellate High Court and the Court of Appeal upheld the finding of the Registrar. The finding is not perverse and this court is not entitled to make a contrary finding to that concurrent finding: See Otuedon v. Olughor (1997) 9 N.W.L.R. (pt. 521) 355; Odeniji v. Akinpelu (1998) 7 N.W.L.R. (pt. 557) 174; Ifeanyi Chukwu Osondu Co. Ltd. v. Akhigbe (1999) 11 N.W.L.R (pt. 625) 1. ***Under section 5(1)(a) of the Law, the applicant brought himself within circumstances in which first registration is compulsory and by virtue of section 9(2) he was registered. This latter subsection reads:***

"If after investigation of an application for first registration the registrar is satisfied that the applicant is entitled to be registered as the owner of the whole or part of the land claimed, he shall be registered accordingly."

I accordingly answer issue No.1 in the affirmative.

Issue No. 2

This issue wants to know whether the objector was not entitled to be registered as the owner of No. 66 and / or No. 68 Karimu Street upon the documentary evidence admitted by the Registrar. The deed of conveyance (exhibit G) upon which the objector relied was pitted against those relied on by the applicant (exhibit A and C). Exhibit C dates back to 1910 and was traced to Oloto Chieftaincy family as the root, whereas exhibit G was executed in 1948 and the root of title is unknown. When the objector was cross-examined, he said inter alia:

“I bought directly from Ashaka and I paid him. I spoke to Ashaka that I want to buy land and he told me that he has one to sell. I made enquiry as to how he Ashaka got the land he told me that he bought it from public auction. It was Moshalewa Thomas the auctioneer who sold to Ashaka. Ashaka being the highest bidder bought the land when it was auctioned. I do not know the original owners of the landAshaka did not give me any documents from Thomas to him he only gave me a receipt of his to me. He did not show me any of his paper from Thomas to him.”

It is therefore plain that whether in terms of prior root of title, or known root of title, or proper documentation of title, the objector’s claim to first registration of title could not compare with that of the applicant; nor indeed could it be reasonably found satisfactory for first registration even in the absence of the applicant’s claim. Under section 9(2) of the Law, once the Registrar is not satisfied with the evidence of title, he shall dismiss the application for registration. Nothing has been shown that the Registrar was wrong in so dismissing the objector’s application for registration upon the basis of the document he presented. Quite rightly, the two courts below upheld that decision. I think it was a good thing all three courts came to that decision because it is improper to accept first registration of title that is obviously defective since once registered it is indefeasible unless under very restricted conditions for rectification: see *Onagoruwa v. Akinremi* (2001) 13 N.W.L.R. (pt. 729) 38. I therefore answer issue No. 2 in the affirmative.

Issues No. 3

This issue is about the registrability of title obtained by adverse possession as a result of the operation of sections 17 and 21 of the Limitation Law of Lagos State, having regard to the provision of section 6(1)(a) of the Registration of Title Law. The appellants’ counsel’s contention is that the objector had been in adverse possession of the land in question for over 12 years and therefore that the applicant’s title to the said land had become extinguished. As a result he could not be registered as the owner of title. He also submits that by section 6(1)(a) of the Law, the objector became thereby a person who was entitled, at law or in equity, to an estate in fee simple’, in the said land

and who may apply to be registered in the registry as the owner of the fee simple of that land'. His further submission is that *Agboola v. Abimbola* (supra) was decided per incuriam having not considered the said section 6(1)(c) of the Law and is therefore not binding.

First, it is important to consider sections 17 and 21 of the Limitation Law of Lagos State in order ultimately to be able to decide in what way they are appropriate to an application to register title to land. The sections read thus:

"17. Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof and has while entitled thereto been dispossessed or has discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance."

21. On the expiration of the period fixed by this law for any person to bring an action to recover land, the title of that person to the land shall be extinguished."

If a person claims that he has acquired possessory title to land by way of adverse possession under a relevant statute of limitation, his case will turn on whether or not he can establish that he has dispossessed the title holder or that the title holder discontinued possession for the statutory period. This is what the authorities can be found to have laid down.

Let me refer to similar provisions of the Law of Limitation as contained in the Limitation Act 1939 of England. Sections 4(3) and 5(1) provide:

"4(3) No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person..."

5(1) Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and has while entitled thereto been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance."

It is to be noted that ***in Lagos, the Limitation Law does not apply to land which is subject to customary law: see section 68(1) of the Limitation Law. Other than that, there can be no doubt that the right of an owner of land becomes extinguished***

after twelve years adverse possession: see *Sosan v. Ademuyiwa* (1986) 3 N.W.L.R (pt. 27) 241, a decision of this court. This follows when it is clear that the owner has been dispossessed or has discontinued possession.

Whether a person has been dispossessed of land or he has positively discontinued possession has been an interesting subject of pronouncements in many authorities. ***The fact of dispossession or discontinuance of possession must be beyond dispute before the limitation period can begin to run. It has been held that mere non-user does not amount to discontinuance of possession: see Littledale v. Liverpool College (1990) 1 Ch. 19 at 22. It is also said that there must be an abandonment of the actual and legal possession of the land: see Norton v. London and North Western Railway Co. (1979-80) 13 Ch. D. 268 at 273. In the case of dispossession by an adverse possessor, Lord Denning M. R. has said: "There must be something in the nature of an ouster of the true owner by the wrongful possessor": see Walli's Ltd v. Shell-Mex and BP (1974) 3 All ER 575 at 580. It is useful to quote from the judgment of Oromrod L. J., in regard to the interpretation of section 5(1) of the Act of England (similar to section 17 of the Law of Lagos State), in that same case at page 589 as follows:***

"The qualifying word in my opinion, are of crucial importance, for it appears to me that the word, 'possession' in this section and its predecessors has acquired a special and restricted meaning. The overall impression created by the authorities is that the courts have always been reluctant to allow an encroacher or squatter to acquire a good title to land against the true owner, and have interpreted the word 'possession' in this context very narrowly, it is said to be a question of fact depending on all the particular circumstances of the case (Blight v. Martins (1968) 1 All ER 1157, (1968) 1 WLR 804) but, to the relatively untutored eye, it has acquired all the appearances of a difficult question of law.

The general principle appears to be that, until the contrary is proved, possession in law follows the right to possess: Kynoch Ltd. v. Rowlands (1912) 1 Ch 527 at 534. Lord Lindley MR in Littledale v. Liverpool College (1900) 1 Ch. 19 at 21 put it in these words:

'In order to acquire by the Statute of Limitations a title to land

which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it.'

The same point was made by Branwell LJ in Leigh v Jack (1879) 5 Ex D 264 at 272 where he said, referring to the Statute of Limitations: 'Two things appear to be contemplated by that enactment, dispossession and discontinuance of possession. If this is the right way to approach the problem, the question becomes: 'Has the claimant proved that the title holder has been dispossessed, or has discontinued his possession, of the land in question for the statutory period?' Rather than: 'Has the claimant proved that he (through himself or others on whose possession he can rely) [has] been in possession for the requisite number of years?' It certainly makes it easier to understand the authorities if one adopts the first formulation.'

From the above, it seems to me that **it is not enough that a claimant is able to show that he has been in possession of land for the requisite number of years. The burden on him is higher than that. He has to show something more. He is the one claiming that land owned by the title holder has now become his. It has become his because the owner has either been dispossessed or has discontinued possession. Therefore the claimant has the clear onus to prove that the title holder has been dispossessed, or has discontinued his possession.**

Although sections 17 and 21 of the Limitation Law [as also sections 4(3) and 5(1) of the Limitation Act of England] are about the person bringing an action to recover land, the manner in which they can possibly, in their effect, provide an estate in favour of an adverse possessor is somehow reflected in the observation of Cozens-Hardy M. R in re Atkinson and Horsell's Contract (1912) 2 Ch. 1 at page 9 as follows:

"We have had a great deal of discussion as to the effect of the Statute of Limitations in a matter of this kind. As I indicated in the course of Mr. Macnaghten's reply, my present view is that the phrase 'statutory conveyance', and so on, is a loose metaphorical term, and that the true view is this, that whenever you find a person in possession of property that possession is prima facie evidence of ownership in fee, and that prima facie evidence becomes absolute when once you have extinguished the right of every other person to challenge it.

That is the effect of s. 34 of the Real Property Limitation Act, and explains how the person who has been in possession for more than the statutory period does get an absolute legal estate in the fee, there is nobody who can challenge the presumption which the possession of the property gives.”

B I think I ought to say here that ***the fact of legal estate in fee being obtained through possession is subject to the adverse possessor proving that the title holder has been dispossessed, or has discontinued possession and that he has extinguished the right of every other person to challenge his having become the absolute owner in fee.***

C Following the reasoning in the above observation, learned counsel for the appellants has argued in their brief of argument that the objector was entitled to be registered on the ground, first, that from
D *“all the evidence adduced before the learned Registrar, the objector proved by cogent and uncontroverted evidence that he had been in open and adverse possession of the land in dispute for over 30 years which ought to be preferred to that of the respondent who led no evidence of his predecessors-in-title’s possession of the land before*
E *1972”*, and, second, that a legal owner whose title or interest has been extinguished by virtue of the Limitation Law, cannot successfully claim first registration under the Registration of Titles Law against such adverse claimant.

F Forceful as the submission would appear to be, I have to say it has not taken account of the following: (1) It is not correct that the objector proved by cogent and uncontroverted evidence, as claimed, that he had been in open and adverse possession of the land for the period alleged. The applicant said when the objector was about to
G fence round the land, he wrote a letter of protest, exhibit B. This was sometime in 1973. He further said: -

“At the time I wrote exhibit B I went to no. 66 Karimu Street, Surulere, there was no building there at all when I went there in 1973, there was no building on the land.”

H This shows disputed evidence of possession by the objector as alleged by him for the relevant period. (2) It is not strictly correct to say there was no evidence of the applicant’s predecessors-in-title’s possession of the land before 1972. ***Exhibit C (deed of conveyance) has a survey plan of the land showing beacons. In law,***

that is evidence of possession because apart from obvious physical acts of possession, demarcation of land with survey beacons, or even pegs is enough act of possession: See Wuta Ofei v. Danquah (1961) 2 All E.R. 596; Alatishe v. Sanyaolu (1972) 2 S.C. 97; Ajero v. Ugorji (1999) 10 N.W.L.R. (pt. 621) 1. Assuming that to be somehow technical, it must be realized that **in law, an owner of land based on established title need no evidence of physical possession to show that he is in possession, or, better still, that he had not been dispossessed or has not discontinued possession. He has no such burden of proving that he is still in possession of his land. As put by Oromrod L.J. in Wallis's Ltd v. Shell-Mex and BP in the passage from his judgment already recited, the proper approach is whether the claimant has proved that the title holder has been dispossessed, or has discontinued his possession, and not that the claimant has shown that he has been in possession of the land for the requisite number of years. The relevant provisions of the Limitation Law in question are principally about preventing a person from bringing action to recover land when his title to the land has been extinguished after twelve years of adverse possession by another. In other words, he will be unable to seek a declaration of title or an order to recover possession of land to which his title has been extinguished.**

But what is the effect of this in regard to the first registration of title? This becomes of moment when there is dispute about the adverse possession claimed since **the Registrar of Titles does not declare title but merely registers it after investigation. His duty does not involve settling contentious evidence as to ownership of title between parties wishing for first registration but is confined to investigating evidence of title presented to him to ascertain if satisfactory for such registration. There must be cases, actually if not all cases, in which he will refuse first registration when it involves a decision as to ownership until the contending parties resolve their claims to title in court.**

Section 9(1) of the Law says:

"In investigating a title with a view to first registration, the registrar shall accept and act on legal evidence or evidence ordinarily required by conveyancers."

As section 6(1) is subject to section 9(1), ***the evidence the Registrar can act on must be incontrovertible. He cannot act on evidence of adverse possession when the title holder shows up and a dispute as to the title claimed by the adverse possessor is raised. It seems to me the evidence he can accept must be such conclusive evidence to the effect that the rights of all other people to the land have invariably been extinguished: see In re Atkinson (supra) at page 9 per Cozens-Hardy M. R. and page 17 per Fletcher Moulton L.J. The Registrar cannot listen to contending evidence as to whether the title of a land owner has been extinguished or not. To do so is to undertake to declare title.*** In the present case, the Registrar rightly stated he had no such power.

Learned counsel for the appellants has criticized the decision of this court in Agboola v. Abimbola (supra) saying that it was decided per incuriam on the ground that it did not take account section 6(1) (a) of the Law. With due respect, I do not accept the contention of learned counsel. In Agboola's cases, the appellant sought to register the title to land he acquired from Oloto Chieftaincy family. This was refused on the ground that that family had in one way or another, their title to the parcel of land extinguished in that, among other things, the family had "*acquiesced in the adverse title and possession (of the respondent) as far back as 1942.*" It was in this connection this court observed per Coker Ag. C.J.N., as follows [1969] N.S.C.C, (vol. 6) at pp. 266-267

"...the Registrar held in this case that the English Statutes of Limitations 1833 and 1834 applied so as to bar the interest of the Oloto Chieftaincy family in the land. The reason he gave for this was that as far back as the year 1913 Kanyinde, an Egba refugee had assumed a form of possession over the land which was obviously adverse to that of the Oloto's. With respect, this is not a correct exposition of the legal situation. Assuming – and this fact was not proved and was in fact later jettisoned – that Kanyinde was an Egba refugee at the time that he purported to sell the land, he had no more than an interest under native law and custom. We do not consider that any authorities are now needed to show the inapplicability of statutes of Limitations to such tenures. It is therefore not possible to support the use made herein by the Registrar of Title of the Statutes of Limitations"

tion 1833 and 1834.”

As can be seen, the view expressed in which the Statutes of Limitations were denied to be applicable was on the basis that the tenure involved was under native law and custom. The further view later expressed in the judgment was that a squatter’s interest or title as acknowledged in such cases like Akpan Awo v. Cookey-Gam 2 N.L.R. 100 and Saidi v. Akinwunmi I F.S.C 107 had always been applied in favour of a defendant resisting the claim against him and not in favour of a plaintiff claiming title thereby. I cannot see in what way this view could have been altered by the provisions of section 6(1) (a) of the Law the way it was expressed in the light of the facts of Agboola v. Abimbola as to hold that it was decided per incuriam. It is true that that was the connection in which long possession was used in those cases cited in which the defendants’ long and undisturbed possession was protected. The rationale behind Akpan Awo v. Cookey Gam (supra) was approved by the Federal Supreme Court in Akinwunmi v. Saidi (1956) S.C.N.L.R. 339; and also in the Privy Council case of Oshodi v. Balogun 4 W.A.C.A I at p. 6 where Lord Maugham said, having regard to the peculiar circumstances of Lagos, that:

“.....it may well be just and equitable, in the absence of a statute of limitation, to hold it inequitable to deprive persons of property of which they have held undisputed possession for many years, and to decide that the knowledge and acquiescence of the native family who originally owned the land may be fairly presumed....”

Perhaps, I should recite the provisions of section 6(1) (a) here as follows:-

“6(1) Subject to the provisions of this Law –

(a) Any person who has power to sell, or is entitled, at law or in equity, to an estate in fee simple, in any land, whether subject or not to encumbrances, or not, may apply to be registered in the registry as the owner of that land.”

I think it is right to say that if these provisions, having regard to the compendious language in which they are couched, are to be seen to cover adverse possessor’s interest, this is more easily comprehensible because it has been judicially recognized that an adverse possessor is entitled to

register the estate acquired thereby: See *Rihawi v. Aromashodun* [1952] 14 W.A.C.A 204. ***It seems to me that the reading into those provisions the rights derived by an adverse possessor might well be incidental, and that the main intendment would be likely to be in regard to mortgages, settlements, trusteeship etc where there is power to the fee simple in any land such as the equitable rights of a beneficiary or cestui que, or the legal rights of a trustee, an executor or administrator of an estate. I must say, however, that whether incidental or otherwise, when interpreting section 6(1) (a) of the Law it cannot now be denied that the estate created by adverse possession is recognized thereunder. It cannot therefore be rightly argued that the observation in Agboola's case was either in conflict or inconsistent with the provisions of section 6(1) (a) so as to conclude that it was detrimental to, or did not recognize the interest of, the adverse possessor, having regard to the peculiar circumstances of that case where the assertion of mere long possession to found title was the focus of consideration. Nor can it be said that had section 6(1) (a) been adverted to that observation would not have been appropriate upon the facts of that case in reference to the two authorities of Akpan Awo and Saidi cited therein. I answer issue No. 3 on the basis of the facts of the present case as already discussed by me that a case under section 21 of the Limitation Law of Lagos State has not arisen to qualify the appellants as adverse possessors who have title to register.***

Issue No. 4 taken literally is not such as can affect the result of this appeal and I find it of no consequence. ***But in its implication, the issue in essence is a challenge to findings of fact of three courts below but framed differently. This court will not interfere with those findings unless under special circumstance in order to prevent a miscarriage of justice:*** see *Enabulele v. Agbonlahor* (1999) 4 N.W.L.R (pt. 598) 166; *Ifeanyi Chukwu Osondu co. Ltd. v. Akhigbe* (1999) II N.W.L.R. (pt. 625) 1; *Okeke v Agbodike* (1999) 14 N.W.L.R. (pt 638) 215. ***No such special circumstances have been shown here.***

I have therefore come to the conclusion that this appeal has no merit and dismiss it with N10,000.00 costs to the respondent against

the appellants.

BELGORE JSC

I read in advance the judgment of Uwaifo, J.S.C., with which I am in complete agreement. These are matters of concurrent findings of the lower tribunals on facts which this court has always refused to interfere with unless there are clearly circumstances to do so. No special circumstance had been advanced in this appeal to warrant disturbing the findings of the courts below. *Nwadike v. Ibekwe* (1987) 4 N.W.L.R. (pt 67) 718, *Onwuka v. Ediala* (1989) 652, *Ivienagbor v. Bazuaye* (1999) 6 K.L.R 1987, *Nwokoro v. Onuma* (1999) 9 K.L.R. 2715. The respondent proved clearly the root of his title so that the lower courts believed him as to plot 66 Karimu Street. I have no reason to interfere with the findings of the lower courts and also find no merit in this appeal and I dismiss it with N10,000.00 costs to respondent.

WALI JSC

I have had a privilege of reading before now, the lead judgment of my learned brother Uwaifo, J.S.C, and I agree with the reasoning and conclusions contained therein for dismissing the appeal and affirming the decisions of the Registrar's lower court and the courts below.

The respondent who was the applicant applied to the Registrar of title on 21/9/74 to be registered as the owner of the freehold interest of the property No. 66 Karimu Street, Surulere, Lagos., the application for first registration was duly advertised in compliance with the law. After the due advertisement, the appellant who was the objector, raised an objection against the application on the following grounds.

(i) that the objector is the absolute owner of Nos. 66 and 68 Karimu Street, Surulere through purchase in 1941 from Imom Idris Ashaka; that he had obtained the deed of conveyance which had been registered as No 17 at page 47 in volume 720 of the Lagos Land Registry and

(ii) That the objector took up possession of the premises as

from 1941 and built a house on it and had let both premises to tenants who regularly paid him the agreed rents.

To facilitate speedy disposal of the two applications in respect of titles No. MO 11052 i.e. 66 Karimu Street and title No. MO 11574 i.e. No. 68 Karimu Street respectively, the parties and the subject matter (partially) being the same the two applications were consolidated.

Both oral and documentary evidence in support of the respective applications and objections was adduced by the parties before the Registrar of titles. After the Registrar's meticulous assessment and consideration of the evidence and the authorities cited, he arrived at the following decisions: -

"From the evidence before the court there is no dispute to the radical owner of the land which is the subject matter of the application. The original owner were the Oloto Chieftaincy Family as the objector himself could not tell the court the original owners in fact he did, not make any investigation about who were the original owner. All he did as to seek a confirmation from Thomas whether he sold land to Ashaka and the Thomas confirmed this. That was the end of his investigation. The applicant in this case through oral and documentary evidence carefully traced his root of title to the radical owners in the Oloto Chieftaincy Family. He produced Exhibit 'A' Deed of conveyance from the Martins Family to him, the applicant. He produced Exhibit 'C' a large area of land including Karimu Street and the present land forms portion the large area of land sold to Martins in 1910".

After careful consideration of the legal authorities cited by the learned counsel for the objector including the section of Limitation law which he referred to I have to state in clear terms that they are not in any way appropriate to the present issue of registration under section 5(1) (a) to (c) of the R.T.L. (i.e. Registration of Titles Law) now before the court. The proceedings before this court were not an action for a Registration of title, and even if they were, long possession will only be available as a weapon of defence against ostensibly clear title but not by itself constitute a basis of title. The objector cannot say categorically who was the original owner of the land as established by the applicant and went unchallenged through evidence then objector must have admitted by implication that the title was origi-

nally vested in the Oloto Chieftaincy Family and must trace his title to them through evidence. Long possession will not avail him the right to first registration under title.

“In the circumstance of this case I hold that the applicant has established through parcel, and documentary evidence that he is the person entitled to be registered as the proprietor of 66 Karimu Street, Surulere and I find that the objection of the objector cannot be sustained his objection to this application is hereby dismissed. Equally his application in title No. MO 115574 is hereby dismissed under section 9(1) and 92) of the Registration of titles law, Cap. 121 vol. 6 Laws of Lagos State. B C

I hereby make the following orders:-

The land Registry should proceed with the applicant’s application for 1st registration of 66 Karimu Street, Surulere (1) the application should not be processed until the expiration of 30 days with effect from today.” D

An appeal to the High Court from the decisions of the Registrar of Titles was lodged. The High Court presided over by Adefarasin, Chief Judge, considered the appeal and in dismissing it, the learned Chief Judge concluded as follows:- E

“It seems to me that the evidence showed that there was no dispute as to the identity of the land sought to be registered. It seems also to be clear that the respondent had satisfied the provisions of the combination of sections, 5, 6, 8, and 9 of the Registration of Titles law, particularly section 6. The provisions of section 63 of the Registration of Titles Law cannot apply in the case in hand as the interest of the Oloto Chieftaincy Family and that of Martins could not have been extinguished by means of the position of the objector. F

It should be explained that by the time the appeal was heard the appellant had died and by order dated 11th June, 1984, the names of the six persons listed above were established for him. The duties of the Registrar of Titles under section 6 of the Registration of Titles Law are very clear. The applicant in the lower court satisfied the provisions of the section and the Registrar was entitled to direct that this names be placed on the registrar. In the light of the evidence, oral and documentary before the court, I am unable to disturb the findings of the Registrar forceful though I consider the arguments adduced by the learned senior Advocate of Nigeria representing the H

appellant.”

Still dissatisfied with the decision of the two courts below, they appealed to the Court of Appeal. The complaints before the Court of Appeal are in substance, the same with the complaints before the High Court sitting in its appellate jurisdiction, and the Court of Appeal after considering the appeal, arrived at the conclusion:

“I must re-affirm that long possession can only be used as a shield not as a sword.

The Registrar of Title using his powers under Section 9 of the Registration of Title Law which provides that:-

(a) (1) In investigating a title with a view to first registration the registrar shall accept and act on legal evidence or evidence ordinarily required by conveyancers.”

(2) If after investigation of an application for first registration the registrar is satisfied that the applicant is entitled to be registered as the owner of the whole or part of the land claimed he shall be registered accordingly. In every other case the application shall be dismissed.”

I found that the respondent proved his title by production of documents – Deeds of conveyance exhibits ‘A’, ‘C’ and ‘H’. That the respondent traced his root of title to the radical owners of the land i.e. the Oloto family.

That the respondent had been in possession of the land in dispute. Since the land was conveyed to him.

That the appellants have failed to prove that they are entitled to registration of the land in dispute.

These findings are also confirmed by the learned trial Chief Judge on appeal.

The appellants have not succeeded in dislodging the above findings of fact and I too am of the view that the two concurrent findings of fact by the Registrar and the Chief Judge are correct.

On the identity of and certainty of the parcel of land in dispute, the Court of Appeal opined thus-

“That the respondent tendered the plan attached to exhibit A the deed of conveyance he took from the Martins family his vendors and plan attached to exhibit C the deed of conveyance of Martins family from Oloto Chieftaincy family who are their own vendors. The relevant portions of land conveyed in the two deeds of conveyance is the land edged red in both plans. The respondent gave evi-

dence that this was the area of land he sought to register.

The appellants then objected to the area being registered as belonging to them, they also sought to register the other portion of the land which the respondent so claimed as his own. Could the appellants then have been seeking to register another piece or parcel of land other than those claimed by the respondent? B

If they did, then this case would not have arisen: to my mind, for the appellants to claim that the identity of the land in dispute was not proved is idle and unreasonable. The Registrar of Title found as a fact that the piece or parcel of land sought to be registered by the respondent was the land the respondent bought from his vendors and therefore falls within the land owned by the said vendors. C

There was no contrary evidence to dispute this finding of fact."

The appellants have now further appealed to this court with the leave of this court. In the course of the proceedings both the original applicant/respondent and the objector/appellant were substituted with the following: D

A1. Mrs. Gladys Abiade Majekodunmi

2. Mrs. Elizabeth Abiola Orioye

3. Bolaji Akanji Sanyaolu

4. Oluwemimo Adewale Sanyaolu

5. Adebayo Adebawale Sanyaolu

6. Adebola Sanyaolu

were substituted for Williams Sanyaolu as appellants. B. Mutiu Abina was substituted for Babatunde Badaru Abina as respondent. F

In the appeal before this court both parties filed and exchanged briefs of argument in compliance with Rules of this court.

In the amended brief filed by the appellants on 13/7/2000 the following issues were raised for consideration and determination by this court: G

"1 Whether the respondent was entitled to be registered upon his application as the first registered owner of No. 66 Karimu Street, Surulere, Lagos having regard to the evidence.

2. Whether the appellants were not entitled to be registered as the first registered owner of Nos. 66 and/or 68, Karimu Street, Surulere, Lagos upon the evidence. H

3. Whether the Lower Court properly considered the point of law raised by the appellants as to whether they qualify as adverse

possessors of the land in dispute arising under section 21 of the Limitation Law of Lagos State, or in equity, and if so, whether such interest qualifies them under section 6 of the Registration of Titles Law to defeat the respondent's application and ground their own application.

B 4. *Whether the Lower Court was not wrong in its assessment or the manner of the appellants' attack on the Judgment of the High Court."*

C In the amended brief filed by the respondent on 8/11/2000, three issues which read thus were formulated:

ISSUE ONE

"Did the appellants prove their legal title in respect of first registration under Section 5 of the Registration of Title Law. This issue is divided into subsidiary issues as follows:

D (a) *Satisfaction of legal title under first Registration*

(b) *Ownership*

(c) *Can long possession be requisite to be registered Under Registration of Title Law.*

(d) *Identity of the land;*

E (e) *Is the case of Agboola v. Abimbola (1969) All N.L.R. 287 wrongly decided;*

ISSUE TWO

F *Can the appellants attack the manner the learned Chief Judge wrote his judgment or what he ought to put in his judgment as to show the understanding of the appeal.*

ISSUE THREE

G *Is there any miscarriage of justice or the violation of some principles of law or procedure that will allow the Supreme Court to interfere with concurrent findings of facts made by the three lower courts."*

The three issues in the respondent's brief have been subsumed in and adequately covered by the appellants' issues.

H Issues 3 and 4 are the main issues in this appeal and the determination of which will resolve Issues 1 and 2. I shall take issues 3 and 4 together as they are inter-related.

It is the submission of learned counsel for the appellants in his brief in paragraphs A1.8-A1.10 that –

"A1.8 It is submitted that in an action as to title, (title is relevant under the RTL) the onus is squarely on the party who asserts to

prove his title relying on the strength of his own case and not on the weakness of the defendant's case, see Kodilinye v. Odu (1935) 2 W.A.C.A. 336 and Mogaji v. Cadbury Nig. Ltd (1985) 2 M.N.L.R. (pt. 7) 393. In fact, the 1st PW. denied that the land in dispute originally belonged to the Oloto in cross-examination (at p. 35)

A1.9. In this, the respondent failed woefully as there no evidence of the mode of "original" ownership of the Oloto Chieftaincy family and if it can be presumed to be traditional ownership, evidence of Oloto Chieftaincy family to establish the customary ownership and corroboration of the same was a sine-qua-non but no witness was called from the Oloto Family to establish this.

A1.10 it is submitted, therefore that the respondent, who relied mainly on paper title, did not prove his ownership of plot 66, and consequently, did not satisfy the requirements of either Section 5 or 6 of the RTL and his application ought to have been dismissed."

It was also further contended that the lower court came to a wrong decision and misdirected itself in law and fact with respect to –

“(a) proof of ownership of the land in dispute by the respondent as it relied on hearsay evidence in proof of respondent’s predecessors’ title and that the respondent failed to prove ownership of No. 66 Karimu Street as the respondent did not relate his conveyance, Exhibit ‘A’, as being covered by the conveyance of his predecessor-in-title, Exhibit ‘C’.

(b) evaluation of the evidence in proof of the respondent’s title when he adduced no evidence at all in respect of one half of the land in dispute (i.e. No. 68 Karimu Street Surulere, Lagos)

3. The lower courts wrongly held that interest arising under the Limitation Law, long, adverse possession or by laches and acquiescence is not registerable or cannot be used as a defence to an application for registration as a proprietor under the Registration of the Titles Law when that interest comes under owner “in law or in equity” prescribed as registerable under section 6 of the Registration of Titles Law.

4. The lower court wrongly followed the supreme Court case of Agboola v. Abimbola (1969) All N.L.R 287, when that case is distinguishable from this one, and if not, it was decided per-incuriam.

5. The appellants proved long, open and adverse possession which, at least, is a shield that defeats the respondent’s application

for registration of No. 66, Karimu Street but which the lower courts held to be irrelevant and failed to consider.”

The complaints in these two issues were raised before both the court of the Registrar of Title, the appellate high Court and the Court of Appeal. These courts adequately considered these issues and in my view came to the right conclusions on them. The issue of long possession was considered and rejected by the Registrar of Titles in his judgement on page 60 lines 14 – 35 of the record which I have already reproduced in this judgment. So also the question of proof by the respondent to entitle him to be registered as proprietor of No. 66, Karimu Street, Surulere.

These findings of both fact and law by the courts below were adequately considered by the Court of Appeal and affirmed. For the sake of repetition I reproduce here below the relevant part of the Court of Appeal judgment:-

“Counsel for the appellants contends that decision of the Supreme Court in Agboola v. Abimbola’s case was given per incuriam without giving convincing details why he held this view. I must re-affirm that long possession can only be used as a shield not as a sword.

The Registrar of Titles using his powers under Section 9 of the registration of Titles Law which provides that:-

“9. (i) In investigating a title with a view to first registration, the registrar shall accept and act on legal evidence or evidence ordinarily required by conveyancers.

If after investigation of an application for first registration the registrar is satisfied that the applicant is entitled to be registered as the owner of the whole or part of the land claimed, he shall be registered accordingly. In every other case the application shall be dismissed.”
- found that the respondent proved his title by production of documents – Deeds of conveyance exhibits ‘A’, ‘C’ and ‘H’.

That the respondent traced his root of title to the radical owners of the land i.e. the Oloto family.

That the respondent had been in possession of the land in dispute. Since the land was conveyed to him.

That the appellants have failed to prove that they are entitled to registration of the land in dispute. These findings are also confirmed by the learned trial Chief Judge on appeal.

The appellants have not succeeded in dislodging the above findings of fact and I too am of the view that the two concurrent findings of fact by the Registrar and the Chief judge are correct."

The trial court of Registrar of Titles made findings of fact and law which are not perverse and are justified by the oral and documentary evidence before it. The appellate High Court as well as the Court of Appeal were equally justified in affirming these findings.

An appellate court like this court will not ordinarily interfere with concurrent findings of fact unless special circumstances are shown that such findings are perverse: See *Nwadike v. Ibekwe* [1987] 4 NWLR (pt. 67) 718; *Onwuka v. Ediala* [1989] 1 NWLR (pt. 96) 182; *Onu v. Agu* [1996] 5 NWLR (pt. 451) 652; *Ivienagbo v. Bazuaye* [1999] 6 KLR (pt. 86) 1897 and *Nwokoro v. Onuma* [1999] 9 KLR (pt. 90) 2715.

No such special circumstances have been demonstrated in this appeal to warrant me interfering with these findings.

Issue 3 is resolved in the affirmative while issue 4 is resolved in the negative and both are in favour of the respondent. It is for these and the reasons contained in the lead judgment of my learned brother, Uwaifo, JSC., that I also hereby dismiss this appeal with N10,000.00 costs to the respondent.

OGWUEGBU JSC

I have had a preview of the judgment just delivered by my learned brother Uwaifo, JSC, and I agree with him that the appeal has no merit and that it should be dismissed.

The facts of this case briefly stated are that the respondent's predecessor in title, Babatunde Badaru Abina applied to be registered as the 1st proprietor of No. 66, Karimu Street, Surulere, Lagos State, 1973. One Williams Sanyaolu objected to the registration and in addition applied for first registration of Nos. 66 and 68 Karimu Street, Surulere, Lagos.

The grounds of the objection of Williams Sanyaolu are:-

(i) that the objector is the absolute owner of Nos. 66 and 68 Karimu Street, Surulere through purchase in 1941 from Imam Idris Ashaka; that he had obtained the deed of Conveyance which had been registered as No. 17 at page 47 in volume 720 of the Lagos

land Registry; and

(ii) that the objector took up possession of the premises as from 1941 and built a house on it and had let both premises to tenants who regularly paid him the agreed rents.

The Registrar of Titles consolidated both applications and after trial, entered judgment for the respondent. Williams Sanyaolu, the objector appealed to the High Court of Lagos State. Adefarasin, C.J. (as he then was) dismissed his appeal. His further appeal to the Court of Appeal, Lagos Division was dismissed on 11-9-89. Not satisfied with the judgment of the court below, he has further appealed to this court.

The appellants were by the order of court substituted for Williams Sanyaolu (deceased). From the grounds of appeal, the following issues were submitted for determination in the appeal:

“1. Whether the respondent was entitled to be registered upon his application as the first registered owner of No. 66, Karimu Street, Surulere, Lagos having regard to the evidence.

2. Whether the appellants were not entitled to be registered as the first registered owner of Nos. 66 and/or 68, Karimu Street, Surulere, Lagos upon the evidence.

3. Whether the Lower Court properly considered the point of law raised by the appellants as to whether they qualify as adverse possessors of the land in dispute arising under section 21 of the Limitation law of Lagos State, or in equity, and if so, whether such interest qualifies them under section 6 of the Registration of Titles Law to defeat the respondent’s application and ground their own application.

4. Whether the Lower Court was not wrong in its assessment of the manner of the appellants’ attack on the Judgment of the High Court.”

In the light of the concurrent findings of the court below, on issues 1 and 2. I do not consider it worthwhile to make any useful comments on them. I will therefore consider issue (3) which to my mind, raises an important issue of law. How did the courts below deal with the issue of section 21 of the Limitation Law of Lagos State raised by the objector vis-à-vis section 6 of the Registration of Titles Law?

The learned Registrar of Title observed as follows:

‘The objector’s counsel in his address relied on long possession. This (sic) is not for the Land Registry is (sic) to investigate and not to confer title. The interest which the Land Registry could register under first registration are set out in section 5(1) (a) to (c) of the R.T.L. Adverse possession and long possession are not within the provisions. There must be a lawful title to enable the registrar of title to register under RTL. Acquisition of interest under Limitation Act heavily canvassed upon by the learned counsel for the objector is outside the provisions of section 5(1)(a) to (c) of the RTL... After careful consideration of the legal authorities cited by the learned counsel for the objector including the section of Limitations Law which he referred to I have to state in clear terms that they are not in any way appropriate to the present issue of registration under section 5(1)(a) to (c) of the RTL now before the court... Long possession will not avail him the right to first registration under title.’ B C D

The High Court per Adefarasin, C. J. (as he then was) said:

“The objector’s counsel in his address relied on long possession. This to (sic) for Land Registry (sic) this is for the High Court when dealing with a case for declaration of title. The Land Registry is to investigation (sic) and not in (sic) confer title. The interests which the Land Registry could register under first registration are set out in section 5(1)(a) to (c) of the RTL Adverse possession and long possession are not within the provisions. There must be lawful title to enable the Registrar of Title to register under RTL...” E F

On the issue of long possession, the court below held thus:

“That both the Registrar of Title and the learned trial (sic) Chief Judge considered the purport of sections 5, 6 and 7 of the Registration of Titles Law and rightly came to the conclusion that long possession by the applicants (sic) which the respondent denied, cannot confer title. G

That all the cases relied upon by the counsel to support his argument about long possession are cases dealing with declaration of title and recovery of possession of land in the High Court. That only the cases of Agboola v. Abimbola [1969] 1 All NLR 287 and Atunrase v. Olugbile CCHUJ/3/73 dealt with Limitation Law in first registration and are the only ones relevant to the appeal before the learned trial Judge.” H

Mr. Fashanu learned counsel for the appellants at page 6 of the appellants’ brief submitted as follows in respect of issue (3):-

“It is respectfully submitted that the relevant question for the lower courts to answer and which is very germane to this case was whether an adverse possessor who had been in possession of land for more than 12 years could be a person ‘entitled, at law or in equity to an estate in fee simple’ in the land so as to be able to successfully object to an application for registration under the Law by another person or apply to be registered himself.”

He concluded his submission by saying that the lower courts wrongly held that the interest arising under the Limitation Law, long, adverse possession or by laches and acquiescence is not registerable or cannot be used as a defence to an application for registration as a proprietor under the Registration of Titles Law when that interest comes under owner “in law or in equity” prescribed as registerable under section 6 of the Registration of Titles Law.

Section 6(1) of the Registration of Titles Law of Lagos State makes provision for the following categories of persons who may apply to be registered as owners of the respective interests:-

(a) any person who has power to sell or is entitled at law or in equity to an estate in fee simple in any land whether or not subject to encumbrances.

(b) Any person entitled at law or in equity to a lease of any land for an unexpired term less than 5 years whether subject to encumbrances or not.

Relying on sections 16, 17 and 21 of the Limitation Law, the appellants’ counsel argued that on the expiration of the period fixed by this Law the respondent is prevented from asserting his title to the land against the appellants and by virtue of section 6(a) of the Registration of Titles Law, the appellants are entitled to judgment being person entitled in law or in equity to an estate in fee simple in the land.

The duty of the Registrar is to investigate the title of the applicant and in investigating the title of an applicant, he is required to act strictly on legal evidence or evidence ordinarily required by conveyancers. His power is confined to acceptance or refusal of the application for registration and he cannot be expected to decide the question as to ownership of land arising from long possession which is a decision on the Limitation Law.

Sections 17 and 21 of the Limitation Law of Lagos State pro-

vide:

“17. Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof and has while entitled thereto been disposed or has discontinued his possession, the right of action shall be deemed to have accrued on the date of dispossession or discontinuance.” B

21. On the expiration of the period fixed by this Law for any person to bring an action to recover land, the title of that person to the land shall be extinguished.”

There is no doubt that an adverse possessor of land who establishes his title under section 21 of the Limitation Law is a person entitled, at law or in equity to an estate in fee simple, in that land and may apply to be registered in the registry as owner in fee simple of that land. However, it does not come within the powers of the Registrar to make a declaration of title to land under section 9 of the Registration of Title Law. That section limits him to the investigation of an application and to be satisfied that the applicant is entitled to be registered as the owner of the whole or part of the land claimed. In order to acquire title by the Limitation law a title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed or by having discontinued his possession of it. The onus is on the intruder (adverse possessor) to establish it in an action. The cases of *Ajibona v. Kolawole & or.* [1996] 10 NWLR (pt. 476) 22, *Odekilekun v. Hassan & Or.* [1997] 12 NWLR (pt. 531) 56 and *Sosan & ors. v. Ademuyiwa* [1986] 3 NWLR (pt. 27) 241 referred to by learned counsel for the appellants are situations where actions were instituted by the real owners against the adverse possessors for declaration of title to land or for possession and defendants raised the plea of Limitation Law. C D E F G

In my view, an investigation of title with a view to registration by the Registrar is not an appropriate forum for a determination as to whether the title of the real owner of land has been extinguished by dispossession or discontinuation of possession under sections 17 and 21 of the Limitation Law of Lagos State. The objectors (appellants) need to go a step further in establishing that the title of the respondent had been extinguished under sections 17 and 21 of the Limitation Law before they can take the benefit of section 6(1)(a) of the Registration of Titles Law. H

