

**SUPREME COURT OF NIGERIA**  
FRIDAY 13TH DECEMBER, 2002 SC. 154/1998  
**CORAM:- S. M. A. BELGORE, A. I. IGUH,**  
**S. O. UWAIFO, A. O. EJIWUNMI, E. O. AYOOLA, JJSC**

BENNETH UDEAGU ..... APPELLANT  
AND  
MAXWELL NNADI ..... RESPONDENT  
Substituted for Ozo Moses Nnadi  
(deceased)

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LAND LAW - Title - How to put in issue - Title can be put in issue expressly by pleading ownership - Or impliedly by claiming damages for trespass and injunction (H1)

APPEALS - Issues for determination - Value of - Value of an issue lies in the effect of its resolution in judgment - As same is valueless if the resolution - Will not affect result of an appeal (H2)

LAND LAW - Title - Root of - Proof - Appellant must plead how the land devolved on his father and subsequently to him - To the exclusion of others (H3)

JUDGMENTS - Ratio decidendi - Failure to set out seriatim - Judgment is not bad because judge fails to set out - Reasons on each complaint (H4)

APPEALS - Concurrent findings - Supreme Court will not interfere - Since no exceptional circumstances are shown - To justify such interference (H5)

***FACTS***

Plaintiff/appellant sued defendant/respondent at the High Court of Anambra State claiming a declaration that appellant was entitled to redeem the land in dispute from respondent, an order compelling respondent to accept from appellant the sum of N25.00 being redemption money of the said land and a perpetual injunction restraining respondent from remaining on the land. It is common ground

from the pleadings of the parties at trial court that the land in question originally belonged to Ude Agu Ude (appellant's grand father). It is also common ground that appellant's father and Chime Nwagu were brothers, both being sons of Ude Agu Ude. It is not in dispute that the land was at a certain time pledged to Ozo Ukwuani Nwachime. Both parties agreed that it was Chime Nwagu who redeemed the land from Ozo Nwachime with money borrowed from respondent. It is also not in dispute that land was in the possession of respondent as at the time of action.

However, while appellant contended that Chime Nwagu, acting as his guardian and trustee, had pledged the land to respondent in consideration for the money borrowed from him redeemed same from Ozo Nwachime, respondent maintained that the land, which was Chime Nwagu's own by inheritance from Ude Agu Ude, was granted to him as a gift by Chime Nwagu in the presence of Chime Nwagu's wife and son. Respondent further maintained that in 1946, he commenced the erection of a permanent building on the land, openly, and to the knowledge of Chime Nwagu and several other persons, following the said grant. After due consideration of the evidence at the trial, the trial judge found that appellant had not discharged the burden of proof on him and so dismissed his claim. Appellant's appeal to the Court of Appeal, Enugu was also dismissed. He has brought a further appeal to the Supreme Court.

### ***ISSUES FOR DETERMINATION***

*"1. Whether the Court of Appeal misdirected itself by holding that the plaintiff/appellant joined claim for injunction and trespass with the declaration that he was entitled to redeem the pledged property.*

*2. Whether the Court of Appeal was right to have failed to consider some of the Issues for Determination formulated and argued by the plaintiff/appellant, and whether such failure to consider those Issues occasioned a miscarriage of justice.*

*3. Whether the Court of Appeal was right in concluding that the trial Court was correct in rejecting the evidence of P.W.1, (Michael Chime), on trusteeship by Ngwo Native Law and Custom.*

*4. Whether the Court of Appeal was right to ignore, (as the trial Judge did), the evidence of a dead witness, Ozo (Jones Ozougwu in Exhibit B, which (inter alia) exhaustively dealt with Trusteeship by*

*Ngwo Native Law and Custom, and which evidence clearly supported the plaintiff/appellant's case.*

*5. Whether the Court of Appeal was right to have concluded that the plaintiff/appellant failed to prove that his grand-father's half brother, Chime Nwagu Ude, was his trustee under Ngwo Native Law and Custom.*

*6. Whether the Court of Appeal was right in concluding that the plaintiff/appellant did not prove this case."*

**HELD** (Unanimously dismissing the appeal per  
**AYOOLA JSC**)

*LAND LAW - Title - How to put in issue*

**1. Title can be put in issue in a suit by pleading expressly that the plaintiff's claim is based on his title or implied by claiming damages for trespass and injunction. The appellant chose the former when he averred in paragraph 6 of his statement of claim that "The said land in dispute is the property of the said Ude Agu." Furthermore, the basis of the defence was that the title in the property had passed not to the appellant but to Chime Nwagu Ude. It was on this state of pleadings and evidence that the trial Judge regarded ownership of the land as the prime issue. The error as to how title came to be in issue was inconsequential.**

**Salami, JCA., adverted to and gave comprehensive consideration to the question of title expressly pleaded by the appellant. In agreement with the trial Judge, the Court of Appeal held that the appellant totally failed to prove his claimed ownership of the land. (p. 3144 A)**

*APPEALS - Issues - Value of*

**2. It needs be said that, ultimately, the value of an issue for determination lies in the effect of its resolution on the judgment. When the resolution of an issue in favour of the party who raised it will not affect the result of an appeal, the issue has no value. To assess the value of an issue it is the totality of the judgment that has to be considered. It will not be of much**

*value to the result of an appeal to resort to a complaint about a statement here and another there in the judgment appealed from it, at the end of the day, on a holistic reading of the judgment appellate court is able to say that the court below had come to a correct decision, notwithstanding erroneous statements here and there. In Olubode & Ors. v. Salami (1985) 16 NSCC (Pt. 1) 392, 396 this court said (per Coker, JSC.);*  
*"It is not every error that would lead to a reversal by an appeal court. Such error must have substantially affected the result of the decision."*

*In this case, notwithstanding that there may have been error in stating that the appellant had claimed trespass and injunction, that error was inconsequential since the court below rightly considered the issue of appellant's ownership of the land as basis of his claim to right to redeem the land and decided the issue against him. (p. 3144 D)*

*LAND LAW - Title - Root of - Proof*

*3. Assuming that, as the appellant alleged, the appellant's grandfather Ude Agu Ude pledged the land, on the evidence that Ude Agu Ude's children were the appellant's father and his half-brother, Chime Nwagu Ude, the appellant would still have had to plead and prove how the land devolved on his father alone to the exclusion of Chime Nwagu and, subsequently, to him in the personal interest in which he claimed. The findings of the trial Judge that the appellant did not plead that he inherited the land in dispute or prove that he inherited the land were enough to knock the bottom out of the appellant's case. It is for the appellant who based his claim on exclusive right to Ude Agu Ude's land to aver and prove such exclusive right. (p. 3145 E)*

*JUDGMENTS - Ratio decidendi - Failure to set out seriatim*

*4. The stress placed by the appellant on the contention that the court below did not consider certain issues was certainly misplaced. Perhaps the appellant would have found less cause for complaint had the court below set out the issues for determination and dealt with each of them seriatim. Granted that*

***there is no rule of law or practice that dictates the form of a judgment or prescribes that a judgment is flawed unless it is in a particular form, a judgment is flawed if a vital issue in the case is left unresolved. Whether a vital issue has been left unresolved, however, depends on what the essential issues in the case are and how the court has dealt with them. A judgment is not bad because the judge had not set out seriatim his reasons on each of the specific complaints.*** (p. 3146 C) B

*APPEALS - Concurrent findings*

***5. At the end of the day, before this court are concurrent findings of fact by the trial Judge and the Court of Appeal. Apart from the complaint of the appellant clothed as inadequacies in how the court below had handled the issues for determination before it, the substance of the appeal is all on facts. The principle is now well established, elementary and long standing and does not need citation of authorities, that this court will not interfere with concurrent findings of fact unless there are shown exceptional circumstances. It is not an exceptional circumstance to show that another court may have come to a different conclusion on the same set of evidence. No exceptional circumstances are shown why this court should interfere with the concurrent findings of fact of the trial court and the court below.*** (p. 3147 C) C  
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## NOTABLE POINT OF INTEREST

### UWAIFO JSC

***1. Plaintiff must show prima facie case before defendant's case need be considered*** G

It is true that the plaintiff by himself alone testified as to his version of ownership and inheritance. It is not enough that such evidence exists. Other factors will be taken into account by the trial court such as whether the evidence was unchallenged or whether it was supported in any way by other evidence. The defendant put forward a different version. That was enough challenge. As said earlier, even though the learned trial court did not specifically prefer the defendant's version, it rejected the plaintiff's case. In law, a plaintiff must show a prima H

facie case before the need to consider the defendant's case can arise. This is a pre-test that the burden is on a plaintiff to prove his case, and when the defendant adduces evidence the case is then decided on the balance of probabilities. (p. 3154 G)

B **REPRESENTATION**

Dr. G. C. Oghuagha, for the Appellant  
Mrs. A. J. Offiah, for the Respondent

C **CASES REFERRED TO**

- Ifeanyi Chukwu Osondu Co Ltd v. Solel Boneh Nig Ltd (2000) 3 SC 42  
Olubode v. Salami (1985) 16 NSCC (Pt. 1)  
Atuanya v. Onyejekwe (1975) NSCC 90  
D Enang v. Adu (1981) 11-12 SC 25  
Mora v. Okonkwo (1987) 3 NWLR (Pt. 60) 314  
Adebayo v. Ighodalo (1996) 5 NWLR (Pt. 450) 507  
Oladele v. Anibi (1998) 9 NWLR (Pt. 567) 559  
Ivienagbor v. Bazuaye (1999) 6 SC (Pt. 1) 149  
E Aromire v. Awoyemi (1972) 2 SC 1  
Mogaji v. Odofin (1978) 4 SC 91  
Kaiyaoja v. Egunla (1974) 12 SC 55  
Onwuama v. Ezeokoli (2002) 5 NWLR (Pt. 760) 353

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**LEAD JUDGMENT BY AYoola JSC**

- On 18<sup>th</sup> May, 1998, the Court of Appeal, Enugu Division, dismissed the appeal of the appellant, Benneth Ude Agu, from the decision of the High Court of Anambra State which had on 25<sup>th</sup> June, 1990, dismissed his claim. He now appeals to this court.

The appellant who was the plaintiff in the High Court claimed as follows:-

- H *“(a) A declaration that the plaintiff is entitled to redeem the pledged land verged pink in the plaintiff's plan No. FCO/09/82 and thereon described as the land in dispute.*  
*(b) An order of court that the defendant do accept from the plaintiff sum of Twenty Five Naira (N25.00) being the redemption money in respect of the said land.*  
*(c) A perpetual injunction restraining the defendant and/or his*

*agents or servants or privies from remaining on the said land or remaining in possession of the said land.'*

The appellant's case at the trial by his statement of claim was that the land which is subject-matter of the action was pledged by his grandfather, one Ude Agu (Or Ude Agu Ude) to the father of one Michael Chime, called Ozo Nnadi Ukwuani Nwachime, for a gun called "Ngeno". On the death of the pledgor and the pledgee the land passed to the pledgee's son. One Chime Nwagu who was half-brother of the appellants' grandfather and the trustee of the plaintiff by native law and custom redeemed the land with money he borrowed from the respondents and pledged the land to the respondent. By native law and custom the appellant is entitled to redeem the pledge. It was by reason of his tender age that Chime Nwagu became his trustee. Chime Nwagu died without redeeming the land and the appellant is entitled to redeem the land. The parties to this appeal have voluntarily referred this matter to several conciliation and each of the conciliators have decided that the transaction was a pledge and that the pledge was redeemable by the appellant. The respondent accepted these settlements. However, sometime in 1982 the respondent started to erect a building on the land and refused the tender by the appellant of the redemption money.

The respondent's case by his further amended statement of defence was that the land was property of Chime Nwagu Ude, it being his share of Ude Agu Ude's property by inheritance. Chime Nwagu Ude pledged the land to Ozo Ukwuani Nwachime, Chime Nwagu Ude redeemed the land in 1943 with money (N25) which he borrowed from the respondent and the land reverted to Chime Nwagu Ude. A few months after the land was redeemed Chime Nwagu Ude in the presence of his wife and son granted him a half of the redeemed land. In 1946, the respondent commenced to erect a permanent building on the land, openly, and to the knowledge of Chime Nwagu Ude and several other persons. The respondent averred that the land was his by gift from Chime Nwagu Ude. A few years after he had erected a building on the land, Chime Nwagu Ude pledged the remaining half of the redeemed land for £8 to one Ude and one Oji Agu. At the request of Chime Nwagu Ude that the pledged land was redeemed by Chime Nwagu Ude in 1975 with money provided by

the respondent. Upon redemption, Chime Nwagu's son, Richard Ude took possession of the land undisturbed. While admitting that there were several efforts at settlement of the dispute, the respondent denied that the decision of the bodies mentioned by the appellant were against him.

B The issue joined by the parties at the trial were put clearly by the trial Judge in several passages of his judgment as follows:-

C *"The case for the plaintiff therefore is that since the land in dispute was originally the property of his grandfather as his father had pre-deceased his grandfather; he is now entitled to redeem the land from the defendant. In short, his case is that Chime Nwagu Ude acted throughout as his trustee because he was at that state a minor and that it was in his capacity as a trustee that he pledged the land in dispute to the defendant."*

D *"The case of the defendant briefly is that Chime Nwagu Ude came to him alone and borrowed the sum of N25 with which he redeemed the land in dispute from P.W.1. and that thereafter Chime Nwagu Ude pledge the land in dispute to him. It is also the case for the defendant that Chime Nwagu Ude told him that the land in dispute*  
 E *was the portion of the land which he inherited from his father. It is also the case for the defendant that Chime Nwagu Ude finally gave the land in dispute to him as a gift in consideration of services which he rendered to him"*

F *"As I observed earlier what is in issue in this case is who in fact pledged the land in dispute to the defendant- was it Chime Nwagu Ude in his capacity as the owner of the land in dispute or was it in his capacity as a trustee."*

G *A further issue to be decided before the first one is who was the owner of the land allegedly pledged to the defendant - was it the grandfather of the plaintiff or was it Chime Nwagu Ude who was the half brother of the plaintiff's grandfather. Here again I would like to refer to paragraph 6 in the plaintiff's amended pleadings where he alleged that the land in dispute was the property of his grandfather. It*  
 H *is also my view that onus is on the plaintiff to establish the fact that the land in dispute was the property of his grandfather which he inherited after the death of his grandfather."*

After considering the evidence adduced in support of the parties respective cases the trial judge found that the appellant had not



discharged the burden of proving that either his great grandfather or his grandfather was the owner of the land in dispute or that he inherited the land. Indeed he rejected the main aspect of the appellant's case, that is to say that Chime Nwagu Ude acted as his trustee in his (Ude's) dealings with the land. He dismissed the claim.

In the ensuing appeal to the Court of Appeal all the five issues B raised came to a criticism of the learned trial Judge's evaluation of the evidence and his findings of fact. This was manifest in the conclusion in the brief that: "*The plaintiff has proved both in the pleadings and evidence all that the law requires of him in order to succeed in the case in the court below.*" Salami, JCA., who delivered the leading C judgment of the Court of Appeal held as the only issue in the appeal "*whether Chime Nwagu Ude held the land in dispute as beneficial owner or as trustee for the appellant.*" He concluded that the appellant having failed to establish his ownership of the land in dispute the D issue of who was it that pledged the land "*fades into obscurity*". Furthermore, he held that "*the appellant having failed to show that he has a better title than the respondents his claim of right to redeem the pledged property predicted or pegged upon title to the land fails.*" He confirmed the findings of the trial Judge on the question of E trusteeship. On his appeal to this court, the appellant's attack on these solid findings was that the statement by the court below that he had joined claims for injunction and trespass with his claim was erroneous, as was the consideration of only some and not all of the issues for F determination argued by counsel for the appellant. It was argued that the court below was not right on the trusteeship issue.

It may be true that the court below may have erred when it was stated in the leading judgment that the appellant joined claims for injunction and trespass with the declaration that he was entitled to G redeem the pledged property. However, there was no doubt that the appellant did put his title in issue. The question is whether the misconception as to the reliefs sought by the appellant had occasioned a miscarriage of justice. The appellant contends that it has because, as put in the appellant's brief, "the Hon. Court of Appeal by this misdirection on the plaintiff/appellant's 3<sup>rd</sup> prayer ultimately misconceived H the appellant's entire case, and wrongly held that he had to prove ownership or root of title (by traditional evidence); whereas in law what the plaintiff was required to prove was pledge (not title)." The

respondents went into a rather elaborate but unnecessary argument to justify the statement that there was a claim for trespass. However, the issue can be resolved much shortly.

***Title can be put in issue in a suit by pleading expressly that the plaintiff's claim is based on his title or implied by claiming damages for trespass and injunction. The appellant chose the former when he averred in paragraph 6 of his statement of claim that "The said land in dispute is the property of the said Ude Agu." Furthermore, the basis of the defence was that the title in the property had passed not to the appellant but to Chime Nwagu Ude. It was on this state of pleadings and evidence that the trial Judge regarded ownership of the land as the prime issue. The error as to how title came to be in issue was inconsequential.***

***Salami, JCA., adverted to and gave comprehensive consideration to the question of title expressly pleaded by the appellant. In agreement with the trial Judge, the Court of Appeal held that the appellant totally failed to prove his claimed ownership of the land. It needs be said that, ultimately, the value of an issue for determination lies in the effect of its resolution on the judgment. When the resolution of an issue in favour of the party who raised it will not affect the result of an appeal, the issue has no value. See Ifeanyi Chukwu Osondu Co. Ltd. v. Solel Boneh (Nig.) Ltd. (2000) 3 S.C. 42; (2000) SCNJ 18. To assess the value of an issue it is the totality of the judgment that has to be considered. It will not be of much value to the result of an appeal to resort to a complaint about a statement here and another there in the judgment appealed from it, at the end of the day, on a holistic reading of the judgment appellate court is able to say that the court below had come to a correct decision, notwithstanding erroneous statements here and there. In Olubode & Ors. v. Salami (1985) 16 NSCC (Pt. 1) 392, 396 this court said (per Coker, JSC.);***

***"It is not every error that would lead to a reversal by an appeal court. Such error must have substantially affected the result of the decision."***

In this case, notwithstanding that there may have been error in stating that the appellant had claimed trespass and

***injunction, that error was inconsequential since the court below rightly considered the issue of appellant's ownership of the land as basis of his claim to right to redeem the land and decided the issue against him.***

It is evidence that the following facts were not in controversy in the case:

- (i) That Ude Agu Ude (appellant's grandfather) owned the land.
- (ii) That appellant's father and Chime Agu were brothers.
- (iii) That Chime Nwagu redeemed the land from the said Ozo

Ukwuani Nwadike.

(iv) That the land was in the possession of the respondent from whom the appellant sought to recover it by redemption.

The following were the main questions in the case:

(i) Who pledged the land to Ozo Ukwuani Nwadike? The appellant said that it was his grandfather Ude Agu Ude but the respondent said it was Chime Nwagu Ude.

(ii) Was Chime Nwagu acting as trustee for the appellant when he redeemed the pledge? The appellant said he was so acting because Ude Agu Ude was the owner of the land. The respondent said Chime Nwagu was owner and redeemed the land as pledgor in his own right.

Having regard to facts about which there was no dispute the material gap in the appellant's case should have led a quicker determination of the case. ***Assuming that, as the appellant alleged, the appellant's grandfather Ude Agu Ude pledged the land, on the evidence that Ude Agu Ude's children were the appellant's father and his half-brother, Chime Nwagu Ude, the appellant would still have had to plead and prove how the land devolved on his father alone to the exclusion of Chime Nwagu and, subsequently, to him in the personal interest in which he claimed. The findings of the trial Judge that the appellant did not plead that he inherited the land in dispute or prove that he inherited the land were enough to knock the bottom out of the appellant's case. It is for the appellant who based his claim on exclusive right to Ude Agu Ude's land to aver and prove such exclusive right.*** (See *Atuanya v. Onyejekwe & Anor* (1975) NSCC 90).

The argument by the Appellant that the court below neglected

to consider some issue raised before it is of no significance in view of the fundamental flaw in the appellant's case. The question (1) who pledged the land? (2) if it was the appellant's grand father who pledged it, whether it was not the appellant who was entitled to redeem it; (3) whether or not the trial Judge was right to have glossed over the evidence of Ozo Jones Ozougwu, the appellant's deceased witness and (4) whether or not from the state of pleadings and the evidence before the trial Judge the appellant was entitled to judgment, are rather inconsequential, the appellant having failed to prove his succession to the property.

***The stress placed by the appellant on the contention that the court below did not consider certain issues was certainly misplaced. Perhaps the appellant would have found less cause for complaint had the court below set out the issues for determination and dealt with each of them seriatim. Granted that there is no rule of law or practice that dictates the form of a judgment or prescribes that a judgment is flawed unless it is in a particular form, a judgment is flawed if a vital issue in the case is left unresolved. Whether a vital issue has been left unresolved, however, depends on what the essential issues in the case are and how the court has dealt with them. A judgment is not bad because the judge had not set out seriatim his reasons on each of the specific complaints.*** (See: Olubode & Ors. v. Salami (supra) at p. 396). The second of the issues which the appellant submitted was not answered by the court below was contingent on the answer to the first of the issues. Once it was found that it was not the appellant's grandfather who pledged the land, the second of the issues would not arise. As to the third and fourth of the issues said to have been ignored by the court below, a careful reading of the judgment of the trial court, confirmed by the court, below, shows that the appellants claim was rejected by reason of the deficiency in his pleading of his root of title. On this appeal the appellant persisted in his error that he did not need to prove his root of title. There were conflicting claims to ownership of the land. The respondent who was in possession having set up a rival title to that on which the appellant relied, both in regard to the pledge he alleged and to his right to redeem the pledge as a successor in title of Ude Agu Ude, the trial court and the court below were right in their opinions that title was in

issue and that there was inadequacy in the appellant's pleadings and in the evidence in regard to that issue.

It was manifest from the judgment of the trial Judge and that of the court below that the question of trusteeship would be of no consequence, other than, probably, of a tenuous academic interest, once it had been held that the appellant had failed to establish his succession to Ude Agu Ude's land. In this regard, the evidence of the deceased's witness as to the fact of ownership of the land or the fact of trusteeship would not rescue the appellant's case from total collapse. Beside, the argument that the trial Judge ignored the evidence of the deceased witness is not convincing. The trial Judge stated that he made his findings on "the pleading and evidence" in the case. Nothing shows that he had excluded the evidence of the deceased witness.

***At the end of the day, before this court are concurrent findings of fact by the trial Judge and the Court of Appeal. Apart from the complaint of the appellant clothed as inadequacies in how the court below had handled the issues for determination before it, the substance of the appeal is all on facts. The principle is now well established, elementary and long standing and does not need citation of authorities, that this court will not interfere with concurrent findings of fact unless there are shown exceptional circumstances. It is not an exceptional circumstance to show that another court may have come to a different conclusion on the same set of evidence. No exceptional circumstances are shown why this court should interfere with the concurrent findings of fact of the trial court and the court below.***

In the result, this appeal must fail. I accordingly dismiss the appeal with N10,000.00 costs to the respondent.

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### **BELGORE JSC**

The trial court as well as the Court of Appeal found the claim of plaintiff unproved. These decisions were based entirely on the clear evidence of the parties on the record. The plaintiff/appellant has not indicated where the findings of facts perverse or contrary to evidence or illegal. As these are clear concurrent findings of fact this Court cannot disturb them and I therefore for the fuller reasons in the

judgment of my learned brother, Ayoola, JSC., dismiss this appeal. I award to the respondent against the appeal costs of N10,000.00 in this appeal.

B

### IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ayoola, JSC., and I totally agree that this appeal is without substance and ought to be dismissed.

C

The findings made by the trial court in the suit are copiously against the plaintiff/appellant. Said the learned trial Judge:-

*“It is therefore my view that the plaintiff has failed to prove:-*

D

*a. that his grandfather was the owner of the land in dispute consequent on the sharing by his great grandfather of all the lands he had as at the time of his death.*

*b. that the plaintiff has also failed to prove that he is the owner of the land in dispute by inheritance from his grandfather.*

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*c. that he had failed to prove that on the death of his grandfather, Chime Nwagu Ude became the trustee of the land in dispute for and on behalf of the plaintiff.*

*d. that the plaintiff has also failed to prove that it was in his capacity as a trustee for the plaintiff that Chime Nwagu Ude pledge the land in dispute to the defendant.*

F

*Having held as above, I do not see how I can make any of the declaration sought by the plaintiff in paragraph 23 in his amended pleadings.”*

The above findings were affirmed by the court below.

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It is trite law that this court will not interfere with the concurrent findings of both the trial court and the Court of Appeal on essential issues of fact except there is established a miscarriage of justice or violation of some principles of law or procedure. See *National Insurance Corporation of Nigeria v. Power and Industrial Engineering Co. Ltd.* (1986) 1 NWLR (Pt. 14) 1 at 36, *Enang v. Adu* (1981) 11-12 S.C. 25 at 42, *Mora v. Okonkwo* (1987) 3 NWLR (Pt. 60) 314 at 321 etc. No miscarriage of justice or violation of any principles of law or procedure has been established by the applicant in this case and I have no reason to disturb these concurrent findings by both courts below.

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It is for the above and the more detailed reasons contained in the judgment of my learned brother, Ayoola, JSC., that I, too, dismiss this appeal with N10,000.00.

### **UWAIFO JSC**

I read in advance the judgment of my learned brother, Ayoola, JSC, with which I agree for the reason he has given. Having fully familiarized myself with the rather interesting facts of the case and the arguments canvassed, I wish to say a few words of mine.

The plaintiff/appellant claimed to be entitled to a parcel of land close to his house at Enugwu Ngwo in Udi Local Government Area of Enugu State. He averred in his statement of claim that his grandfather, Ude Agu, being the owner initially pledged it to the father of one. Michael Chime named Ozo Nnadi Ukwuani Nwachime for a gun. The pledge was not redeemed before both pledgor and pledgee died. One Chime Nwagu, (same as Chime Nwagu Ude), a half-brother of Ude Agu, (plaintiff's grandfather), redeemed the land from Michael Chime for £12:10- Chime Nwagu as head of Ude Agu family and said to have acted as the plaintiff's trustee, the plaintiff's father having predeceased his own father Ude Agu, later pledged the land to the defendant/respondent. Chime Nwagu has also died without redeeming the pledge. The plaintiff has been making efforts to redeem the pledge without success despite the settlement brokered by a body known as Ubere Nze Society of Ngwo which the defendant accepted. In 1982, the defendant commenced a house on the land.

The defendant's version as pleaded is that the great great grandfather of the plaintiff was called Ude Agu. He begat Agu Ude (the plaintiff's great grandfather) who begat Ude Agu (plaintiff's grandfather) and Chime Nwagu Ude, plaintiff's grandfather's half-brother. During the life time of Agu Ude (the plaintiff's great grandfather), he shared his landed property between his two sons Ude Agu (plaintiff's grandfather) the older and Chime Nwagu Ude, the younger. Chime Nwagu Ude built his dwelling house on part of his own share of the land and pledged the unbuilt portion to one Ozo Ukwuani Nwachime. In 1943, Chime Nwagu Ude sought the help of the defendant to redeem the land. The defendant advanced him the sum of £12:10/- for that purpose. A few months later, Chime

Nwagu in the presence of his wife and son gave hold of the land to the defendant. The defendant erected his house on the land in 1946. A few years later, Chime Nwagu Ude pledged the remaining half to Okwubanego Ude and Oju Agu for £8. In 1975, Chime Nwagu Ude again sought help from the defendant to redeem the land which he gave by providing the said £8 (as N16). Thereafter, Richard Agu Ude, son of Chime Nwagu Ude, erected a building on that portion of land. When dispute arose between the plaintiff and the defendant as to who owned the land, the Umuozonshi sub-family, the Umuishingwu family and the Ubere Uze Society of Ozo titled men in Ngwo in turn and at the different times settled ownership in favour of the defendant.

The evidence led by the plaintiff was such that the learned trial Judge (B. O. Okadigbo, J.) observed as follows:-

D “All the facts which are necessary for the proper determination of the ownership of the land in dispute are not provided by the sweeping assertion as in paragraph 6 in the amended statement of claim where the plaintiff stated as follows:-

E “The said land in dispute was the property of the said Ude Agu’  
I am therefore satisfied that the plaintiff has not discharged the onus of proving that either his great grandfather or his grandfather was the owner of the land in dispute. I am further satisfied that the plaintiff has not proved in the circumstances that he inherited the land in dispute.”

F The learned trial Judge also found among other things that the pledges, pleaded, particularly that the land was pledged to the defendant, was not proved. The claim was accordingly dismissed.

G The appeal to the Court of Appeal Enugu Division was fought by the appellant on three issues namely:-

“1. Whether Chime Nwagu Ude held the land in dispute as beneficial owner or as trustee for the appellant.

2. Whether the transaction between Chime Nwagu Ude and the respondent was a pledge or an outright gift.

H 3. Whether the trial court was right in dismissing the appellant’s case.”

The court below held that title was in issue which ought to be proved. Salami, JCA., who read the leading judgment observed:

“The appellant having failed to establish his ownership of the



*land in dispute, the issue of who was it that pledged the land fades into obscurities since the learned counsel for appellant, rightly, in my view, conceded in the appellant's brief that no one can pledge what does not belong to him. This appears to dispose of the appeal."*

The learned Justice also rejected the claim by the plaintiff that Chime Nwagu Ude was his trustee who held the land in trust for his. As the evidence adduced in proof was inadequate, the appeal was dismissed.

The appellant has again appealed and seeks in this court a resolution of six issues. On the face of those issues, three of them are no questions of fact which the two courts below found. They therefore are issues of concurrent findings. They are issues 3, 5, and 6. Let me reproduce all the six issues as follows:-

*"1. Whether the Court of Appeal misdirected itself by holding that the plaintiff/appellant joined claim for injunction and trespass with the declaration that he was entitled to redeem the pledged property.*

*2. Whether the Court of Appeal was right to have failed to consider some of the Issues for Determination formulated and argued by the plaintiff/appellant, and whether such failure to consider those Issues occasioned a miscarriage of justice.*

*3. Whether the Court of Appeal was right in concluding that the trial Court was correct in rejecting the evidence of P.W.1, (Michael Chime), on trusteeship by Ngwo Native Law and Custom.*

*4. Whether the Court of Appeal was right to ignore, (as the trial Judge did), the evidence of a dead witness, Ozo (Jones Ozougwu in Exhibit B, which (inter alia) exhaustively dealt with Trusteeship by Ngwo Native Law and Custom, and which evidence clearly supported the plaintiff/appellant's case.*

*5. Whether the Court of Appeal was right to have concluded that the plaintiff/appellant failed to prove that his grand-father's half brother, Chime Nwagu Ude, was his trustee under Ngwo Native Law and Custom.*

*6. Whether the Court of Appeal was right in concluding that the plaintiff/appellant did not prove this case."*

The law is well settled that this court will not interfere with concurrent findings of fact by the two courts below unless special circumstances have been shown why it should do so. It is either that

the findings are perverse or there have been procedural or substantive errors committed by those courts which has led to a miscarriage of justice: see Adebayo v. Ighodalo (1996) 5 NWLR (Pt. 450) 507; Oladele v. Anibi (1998) 9 NWLR (Pt.567) 559; Ivienagbor v. Bazuaye (1999) 6 S.C. (Pt.1) 149; (1999) 9 NWLR (Pt.620) 552. I do not see  
 B that the findings are perverse nor were errors of law or procedure committed by the courts below.

The plaintiff testifying as P. W. 1 relied largely on his own evidence to prove his case. The defendant did the same. The learned  
 C trial Judge did not accept the evidence of the plaintiff, giving reasons why. Indeed at a point he observed as follows:

*“Having carefully gone through the evidence of PW. 1, I must say that I have no hesitation in saying that I regard him as a very unreliable witness and in support of this view I would like to refer to  
 D his evidence where he said inter alia as follows:”*

The learned trial Judge then reproduced an aspect of his evidence and held that he did not believe it. In particular, he proceeded further to say:

*“I am satisfied that the plaintiff has failed to prove the alleged  
 E customary law of his people on trusteeship. In other words, that the plaintiff has failed to prove that after the death of his grandfather, Chime Nwagu Ude became the trustee of the landed property of his late grandfather in accordance with their customary law.”*

The plaintiff had sought to show that Chime Nwagu Ude was  
 F not the owner of the land in dispute by inheritance but was a trustee holding the land in trust for him but the defendant testified to the contrary. The learned trial Judge rejected the plaintiff’s version. There is no way an appellate court can justifiably say that the finding was  
 G wrong upon the nature of evidence produced by either side. Issues 3, 5 and 6 must be resolved against the appellant in the circumstances.

In regard to issue 1, I think the appellant has looked at what the Court of Appeal said from a narrow point of view. I agree that the court below may have put the question of the consequences of joining  
 H a claim for injunction and trespass with a claim for a declaration to a right to redeem in the circumstances rather awkwardly or that it was wrong to have even put it at all in the circumstances of this case. The court said as follows:

*“.....the appellant having joined claims for injunction and*

*trespass with declaration that he was entitled to redeem the pledged property has put his title in issue. His claim for trespass and for an injunction to restrain further act or acts of trespass postulates that the ownership of the disputed area is his, either by gift or inheritance or exclusive possession. The principal question to be tackled in the appeal would accordingly appear to be whether the appellant had discharged the onus placed on him to show that ownership of the land in dispute rested in him.”*

It was not the reliefs sought by the plaintiffs that raised the issue of title as the court below erroneously held. Those reliefs did not prima facie do that. What led to the joining of issue as to title was the way the defendant pleaded in which he alleged that Chime Nwagu Ude inherited the land rather than plaintiff's grandfather, and that the said Chime made a gift of it to him and not by pledge. This therefore placed the burden on the plaintiff to prove (1) that the land was the property inherited by him as an infant (but held on his behalf by Chime Nwagu Ude as his trustee); (2) that Chime Nwagu Ude pledged the land in that capacity to the defendant. It is obvious from the issues joined in this case that the paramount question that must be resolved was whether the land in question devolved to his grandfather by inheritance which would entitle him (plaintiff) to inherit the same as the eldest son of this father who predeceased his said grandfather. It was clear issue of title at that point. There was no proof, according to the two courts below. If there had been such proof, or if the courts below had accepted his evidence to that effect, then the question that Chime Nwagu Ude, his father's half-brother, held the land not as owner but as trustee would have arisen. But the defendant testified that Chime Nwagu Ude inherited the land from his father. The two courts though not specifically finding for the defendant on the point did not disbelieve him but rejected the plaintiff's evidence. The plaintiff was therefore unable to discharge that burden placed on him. He did not even call evidence to establish the allegation as to how some people looked into the matter and settled ownership of the land in his favour.

The learned trial Judge summarized the case made by either side before proceeding to reject the plaintiff's version. In his summary he said as follows:-

*“The case for the plaintiff therefore is that since the land in*

dispute was originally the property of his grandfather which he inherited on the death of his grandfather as his father had predeceased his grand father; he is now entitled to redeem the land from the defendant. In short his case is that Chime Nwagu Ude acted throughout as his trustee because he was at that stage a minor and that it was in his capacity as a trustee that he pledged the land in dispute to the defendant.

The case for the defendant briefly is that Chime Nwagu came to him alone and borrowed the sum of N25 with which he redeemed the land in dispute from PW.1 and that thereafter Chime Nwagu Ude pledged the land in dispute to him. It is also the case for the defendant that Chime Nwagu told him that the land in dispute was the portion of the land, which he inherited from his father. It is also the case for the defendant that Chime Nwagu Ude finally gave the land in dispute to him as a gift in consideration of services which he rendered him.

As I have observed earlier the facts of this case are not very much in dispute. What seems to be in dispute however is whether the land in dispute was the property of the plaintiff's grandfather or the property of Chime Nwagu Ude."

The burden of establishing that the property was that of plaintiffs grandfather rested squarely, as I have said, on the plaintiff. Without discharging that burden his case was bound to collapse. The learned trial Judge unequivocally found as follows.

"I am therefore satisfied that the plaintiff has not discharged the onus of proving that either his great grandfather or his grandfather was the owner of the land in dispute. I am further satisfied that the plaintiff has not proved in the circumstances that he inherited the land in dispute."

Learned counsel for the plaintiff argued that there was evidence given by the plaintiff as to inheritance which he said the learned trial Judge could have acted on. It is true that the plaintiff by himself alone testified as to his version of ownership and inheritance. It is not enough that such evidence exists. Other factors will be taken into account by the trial court such as whether the evidence was unchallenged or whether it was supported in any way by other evidence. The defendant put forward a different version. That was enough challenge. As said earlier, even though the learned trial court

did not specifically prefer the defendant's version, it rejected the plaintiff's case. In law, a plaintiff must show a prima facie case before the need to consider the defendant's case can arise: See: *Aromire v. Awoyemi* (1972) 2 S.C. 1 at 10-11. This is a pre-test that the burden is on a plaintiff to prove his case, and when the defendant adduces evidence the case is then decided on the balance of probabilities: see *Mogaji v. Odojin* (1978) 4 S.C. 91; *Kaiyaoja v. Egunla* (1974) 12 S.C. 55; *Onwuama v. Ezeokoli* (2002) 5 NWLR (Pt. 760) 353. B

Issues 2 and 4 depend largely on whether the two courts below would possibly have found ownership of the land proved by the plaintiff upon the evidence available. Once ownership was not established, the question of pledge on the part of the plaintiff and that of trusteeship under Ngwo Native Law and Custom by which the evidence about Chime Nwagu Ude being a trustee to the Appellant could have been assessed would become non-issues. C

On the state of the evidence particularly in regard to the crucial issue whether the burden of proving ownership of the land has been discharged by the plaintiff to lead to the consideration of the alleged pledge, I am satisfied that there is no basis upon which I am entitled to interfere with the concurrent findings of the two courts below. Having regard to all other circumstances to which consideration has been given in this judgment, I find no merit in this appeal. I dismiss it with N10,000.00 costs to the Respondent. D

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