

SUPREME COURT OF NIGERIA
FRIDAY 31ST JANUARY, 2003. SC.65/1997
CORAM:- M. L. UWAI S CJN, M. E. OGUNDARE, S. U.
ONU, A. I. KATSINA-ALU, N. TOBI, JJSC

1. ALHAJI ARAFAT AKIBU
2. ALHAJI SURAJUDEEN AKIBU APPELLANTS
3. ALHAJI SURAJUDEEN YINUSA
DAVIES (Substituted for Alhaji Abdul
Razaq Laguda deceased)
4. ALHAJA M. A. AKIBU
AND
1. SHEDRIFATU AZEEZ
2. MUNIRA AZEEZ (Substituted for
Taofik Aremu Azeez, deceased) RESPONDENTS

EVIDENCE - Land Law - Exhibits Q R & T - Value - While the Exhibits are not binding on instant plaintiff - They are nevertheless evidence of facts - Of ownership & possession by 1st defendant (H1)

LAND LAW - Extinguishing of title - Conditions - Lagos State Limitation Law - Knowledge of true owner of land - Held under adverse possession - Is not material under the Limitation Law (H2)

LAND LAW - Sale - Validity of - The sale is invalid as Dawodu family lost title to the land in 1971 - Hence administrators of Dawodu's estate had nothing to sell in 1977 (H3)

LAND LAW - Possession - Trespasser - Right of action - Trespasser in possession can maintain action in trespass - Against the whole world - Except true owner of the land (H4)

FACTS

Plaintiffs/respondents sued defendants/appellants at the High Court of Lagos State, claiming declaration of title to the land in dispute, damages for trespass and injunction. Respondents' contention is that the land originally belonged to one Cardoso who subsequently sold to one Dawodu. Thereafter, administrators of estate of Dawodu

sold a portion of the land to respondents. On the other hand, appellants claim that they bought the land from one Makinde. Although, the said Makinde did not possess the land lawfully in 1936, yet he remained in possession undisturbed until 1959 when he sold to appellants. Appellants have been in possession since then until 1977 when respondents purportedly claimed to have bought the land from the administrators of Dawodu's estate.

At the hearing, appellants inter alia, pleaded laches, acquiescence and Limitation law of Lagos State. After hearing, the trial court gave judgment to respondents on the ground that Makinde's title was not satisfactorily established and further that appellants did not prove that respondents were aware of adverse possession of the land by appellants over the years so as to ripen the adverse possession into title on grounds of any of the special defences pleaded. Appellants appeal to the Court of Appeal, Lagos was dismissed. This is a further appeal by appellants to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the lower Court was not wrong in holding that for the appellants to successfully rely on the defences under the Limitation Law, laches and acquiescence, their open possession must be something of which the adverse parties were aware of?”

2. Whether the respondent's claim of title to the land was not broken and defective having purportedly obtained his title from Administrators of the Estate of his predecessor-in-title who obtained Letters of Administration in respect of only the predecessor's personal estate and not real estate?”

3. Whether the Lower Court was not wrong in holding that the respondent, as plaintiff, was entitled to judgment having regard to:

- (a) the respondent's claim being that of declaration of title;*
- (b) evaluation of evidence adduced for the respondent with respect to identity of the land in dispute and/or land claimed by him;*
- (c) the respondent's root of title and his nexus to it;*
- (d) admission by the respondent and findings by the lower Courts of the appellants' long possession of the land in dispute?”*

HELD (Unanimously allowing the appeal per **OGUNDARE JSC)**

Land Law - Exhibits Q R & T - Value

1. What all these court proceedings establish is that the 1st Defendant, Alhaji Akibu had been defending his ownership and possession of the land in dispute since 1959 right through 1971. While Exhibits Q, R and T are not binding on the Plaintiff in this case, they are nevertheless evidence of acts of ownership and possession by the 1st Defendant. The Court below found that “his presence and possession of the land in dispute can be that of a mere trespasser.” That may be so in the light of the concurrent findings of the two courts below that he had no title to the land in dispute. What is important is that he had been in possession of the land since 1959 and remained on it until 1978 when the Plaintiff came to disturb him. If the 1st Defendant was in physical possession of the land farming thereon during that period, the Dawodu family could not have been in possession; they only had a right to possession which they could have asserted against him but did not. (p. 107 F)

LAND LAW - Extinguishing of title - Conditions

2. With profound respect to their Lordships of the Court below, they were in error in holding that the Dawodu family must be aware of the presence of the 1st Defendant on the land before their title could be extinguished by the Limitation Law; they erroneously read into *Sosan & Ors. v. Odemuyiwa* (supra) what was not there. While knowledge of the true owner of land of the adverse possession of another is essential to the success of the equitable defences of laches and acquiescence, this is not material under the Limitation Law. (p. 111 B)

LAND LAW - Sale - Validity of

3. On the welter of evidence on record I must hold that the Dawodu family lost their title to the land in 1971 and when in 1977 the administrators of the estate of late Dawodu sold the

land to the Plaintiff, they had nothing, to sell and the Plaintiff bought nothing. The two Courts below were, therefore, in error to hold that Plaintiff had title to the land in dispute. In the circumstance, Plaintiff's claim (1) fails and it is accordingly dismissed by me. (p. 111 F)

B

LAND LAW - Possession - Trespasser - Right of action

4. At the time the dispute in this case arose, 1st Defendant was in possession even though, on the concurrent findings of the two Courts below (which findings I have no reason to disturb), he had no valid title to it when he first went on the land in 1959. 1st Defendant's possession in itself is, nevertheless, a good title against the whole world except the true owner of the land. As the plaintiff was not in possession and had no right to it since he had no title to that land, he could not sue in trespass, his claim, therefore, must fail and it is accordingly dismissed by me. A fortiori, his claim (3) for injunction must equally fail and it is dismissed. (p. 111 H)

E **REPRESENTATION**

M. I. Igbokwe, Esq., for the Appellants

A. O. Adefala, Esq., for the Respondents

F **CASES REFERRED TO**

Akano v. Okunade (1978) 3 S.C. 129

Odubeko v. Fowler (1993) 7 NWLR (Pt. 308) 637

Ajibona v. Kolawole (1996) 10 NWLR (Pt. 476) 22

Odekilekun v. Hassan (1997) 12 NWLR (Pt. 531) 56

G Sosan v. Odemuyiwa (1986) 3 NWLR (Pt. 27) 241

Mail v. Shafi (1965) NMLR 33

Eboigbe v. NNPC (1994) 5 NWLR (Pt. 347) 649

STATUTE REFERRED TO

H Limitation Law of Lagos State Cap 70 Laws of Lagos State 1973
(Now Cap 118 Laws of Lagos State, 1994) ss. 16, 17, 19 & 21

LEAD JUDGMENT BY OGUNDARE JSC

The original Plaintiff, Taofik Aremu Azeez, now deceased but

whose substitutes are the Respondents in this appeal, by a writ of summons issued on 13th June, 1978 sued Alhaji A. W. Akibu, now deceased and Alhaja Mutaitu Adunni Akibu, as 1st and 2nd Defendants respectively claiming –

“(1) A declaration that the Plaintiff is the owner of the piece or parcel of land situate, lying and being at Apesin Street, Idi-Araba, Surulere, Lagos covered by a Deed of Conveyance dated the 16th day of June, 1977 and registered as No.68 at page 68 in volume 1720 of the Register of Deeds kept at the Lands Registry, Lagos and the person entitled to the statutory right of occupancy in respect of same.

(2) N1,000 as damages for trespass committed by the 1st and 2nd defendants against the plaintiff in respect of the said land between the months of April and June, 1998.

(3) An Injunction restraining the 1st and 2nd Defendants, their servants or agents from committing further acts of trespass against the Plaintiff in respect of the said land.”

Pleadings were filed and exchanged and subsequently, with leave of court, amended. The Plaintiff filed a reply to the defendants’ statement of defence. The action proceeded to trial at which evidence was led on both sides and after addresses by their respective counsel, the trial Judge, Desalu, J., in a reserved judgment, found for the plaintiff and entered judgment in his favour in the following terms with costs:

“(i) for a declaration the Plaintiff is the party entitled to a statutory right of occupancy in respect of all that piece or parcel of land situate, lying and being at APESIN STREET, IDI-ARABA, SURULERE, LAGOS STATE and covered by deed of conveyance, EXHIBIT ‘A’ as delineated by the plan attached thereto and which land is edged RED on the composite plan, EXHIBIT ‘D’ EXCEPT a small portion to the south-east thereof bounded by Pillars Nos. CP.24; KD 295; KD 294; KD 293 and CP 59.

(ii) for N50.00 general damages for TRESPASS against the 1st Defendant and

(iii) for an INJUNCTION restraining the 1st and 2nd Defendants, their servants or agents from committing further acts of trespass on the said land for the Plaintiff.”

Being dissatisfied with the said judgment, the 2 Defendants

appealed unsuccessfully to the Court of Appeal.

In the course of the proceedings in the Court of Appeal the 1st Defendant died and was by order of that Court, substituted by Alhaji Abdul Razaq Laguda. During the pendency of the appeal in this Court both the Plaintiff and Alhaji Laguda died and were, by orders of court, substituted by Sherifatu Azeez and Munira Azeez for the deceased Plaintiff; Taofik Aremu Azeez AND Alhaji Arafat Akibu, Alhaji Surajudeen Akibu and Alhaji Surajudeen Yinusa Davies for the deceased, Alhaji Abdul Razaq Laguda. The present parties to this appeal are as indicated in the caption above.

Following the dismissal by the Court of Appeal of their appeal to that Court, Alhaji Laguda and Alhaja Akibu appealed further to this Court, having obtained the leave of this Court to appeal. In their amended notice of appeal the appellants relied on 11 grounds of appeal. In their Appellants' Brief of Argument, however, they set out three issues as calling for determination in this appeal, to wit:

"1. Whether the lower Court was not wrong in holding that for the appellants to successfully rely on the defences under the Limitation Law, laches and acquiescence, their open possession must be something of which the adverse parties were aware of?"

2. Whether the respondent's claim of title to the land was not broken and defective having purportedly obtained his title from Administrators of the Estate of his predecessor-in-title who obtained Letters of Administration in respect of only the predecessor's personal estate and not real estate?"

3. Whether the Lower Court was not wrong in holding that the respondent, as plaintiff, was entitled to judgment having regard to:

- (a) the respondent's claim being that of declaration of title;*
- (b) evaluation of evidence adduced for the respondent with respect to identity of the land in dispute and/or land claimed by him;*
- (c) the respondent's root of title and his nexus to it;*
- (d) admission by the respondent and findings by the lower Courts of the appellants' long possession of the land in dispute?"*

The Plaintiff, for his part, raised the following three issues in their Respondents' Brief, that is to say:

"(i) Whether the learned Justices of the Court of Appeal were right in upholding the decision of the High Court Lagos that the

plaintiff had proved his title to the land in dispute.

(ii) Whether the Lower Court was right in rejecting the defences under the Limitation law, laches and acquiescence put up by the appellants in the trial court.

(iii) Whether the learned Justices of the Court of Appeal were right in holding that the respondent had correctly proved the identity of the land in dispute at the trial court.”

Issue 1 in the Appellants’ Brief is identical with Issue (ii) in the Respondents’ Brief. And it is this I shall consider first. Before doing so, however, I need to state the facts, how-be-it in a nutshell.

It is accepted on both sides that the land in dispute situate at Ojuwoye Mushin forms a portion of a large area of land once belonging to one Lawrence A. Cardoso, deceased under and by virtue of a deed of conveyance dated 23rd March, 1915 and registered as No.29 at page 301 in Volume 92 of the register of deeds at the Land Registry Lagos. According to the Plaintiff, Cardoso sold and conveyed his land to one William Akinola Dawodu under and by virtue of a deed of conveyance (Exhibit B in these proceedings) dated 9th April, 1921 and registered as No.52 at page 178 in Volume 148 of the register of deeds at the Land Registry Lagos. Dawodu went into possession and laid out the land into plots. In 1925, however, by a deed of mortgage dated 20th January, 1925 and duly registered, Dawodu mortgaged the land to Solomon Adekitan Sogbesan and Eusebius James Alexander Taylor, the executors of the Will of one Michael Daniel Elliott, deceased. Following the failure of Dawodu to repay the loan thereby secured, the mortgagees sought and obtained order of court dated 22nd August, 1932 in suit No. 145/30 to sell a portion of the mortgaged property to satisfy the judgment debt. The land in dispute is part of Dawodu’s land not sold as a result of the said order.

Dawodu died and by order of the High Court of Lagos made on 13th April, 1973, Rufus Akinkunmi Dawodu, Victor Abiodun Dawodu and Gbolahan Babasola Dawodu were appointed Administrators of his estate. By a deed of reconveyance dated 11th February, 1975, the trustees of the estate of Michael Daniel Elliott deceased, as mortgagees, reconveyed to the said administrators of the estate of Dawodu the unsold part of the land of Dawodu mortgaged to them by Dawodu in 1925. The land in dispute is part of the unsold land of

Dawodu reconveyed to the administrators of his estate. By a deed of conveyance dated 16th June, 1977, (Exhibit A) and registered as No.68 at page 68 in volume 1720 of the register of deeds kept in the Lands Registry Lagos, the administrators of the estate of Dawodu sold and conveyed the land in dispute to the plaintiff who immediately went into possession and exercised rights of ownership thereon. On or about May, 1978, the Defendants entered the land in dispute and commenced building thereon. The Plaintiff challenged them and the result of the dispute that followed was the action leading to this appeal.

According to the Defendants, on the other hand, the original owners of the land, the Eyisha Family, sold and conveyed the land to Cardoso in 1915. Cardoso in turn sold the land in 1926 to James Ode, now deceased. It would appear that Cardoso did not convey the land to Ode. James Ode went into possession of the land and remained thereon until 1936 when he too sold the land to one Moses Makinde, now deceased. Moses Makinde went into possession, developed and cultivated the land planting cocoa, kola, oranges, pear trees etc. On the land and reaped fruits thereon until his death in July, 1949. He was not disturbed by anyone on the land. Again, it would appear that James Ode did not convey the land to Moses Makinde. After the death of Makinde in 1949 his children remained on the land farming thereon until 1959 when by a deed of conveyance (Exhibit C) dated 5th August, 1959 and registered as No.60 at page 60 in volume 349 they sold and conveyed the land in dispute to the 1st defendant (Alhaji A. W. Akibu, deceased). 1st Defendant went into possession and had at all times relevant to this action, remained in possession. He defended an action instituted against him by Joseph Opaleye and Isaiah Faleye, over the land and won in the Supreme Court in suit No. SC.358/73. In 1959 some people disturbed the 1st Defendant on the land. He reported them to the police in consequence of which they were charged to court and convicted. In 1961, the children of Late L. A. Cardoso erected a notice on the land warning against trespass. In consequence of this notice, 1st Defendant met the firm of David and Moore, Solicitors to the said children of Cardoso and after negotiation and agreement, he obtained from them an indenture dated 15th December, 1961 which he registered as No.42 at page 42 in volume 499 of the register of

deeds formerly kept at Ibadan but now kept in Lagos Land Registry. By the time the Plaintiff claimed he bought the land in 1977, the 1st Defendant and his predecessors-in-title had been on the land for over 50 years, farming thereon and warding off trespassers and intruders. The 1st Defendant gave the 2nd Defendant, his daughter, permission to build on the land, the cause of the dispute with the Plaintiff. B

Issue 1

Whether the lower Court was not wrong in holding that for the appellants to successfully rely on the defences under the Limitation Law, laches and acquiescence, their open possession must be something of which the adverse parties were aware of? C

The Defendants pleaded in their amended statement of defence, inter alia, thus:

"5. The 1st defendant avers that in the year 1926, the aforementioned L. A. Cardoso (Dec'd) sold the land in dispute to one James Ode (Dec'd) and put him into possession. D

6. The said James Ode (deed) remained in possession of the said property until 1936 when he sold the land to one Moses Makinde (dec'd.) E

7. The said Moses Makinde (dec'd.) developed and cultivated the land and reap (sic) the fruits on it until his death on the 25th day of July, 1949.

8. During his lifetime, the said Moses Makinde planted cocoa, kola, oranges, pear trees on the land in dispute and he reaped and harvested the fruits for his own benefit without let or hindrance from any person or persons. F

9. After the death of the said Moses Makinde, his children entered into possession of the land and remained thereon reaping and harvesting the fruits and other products on the land. G

10. By a Deed of Conveyance dated the 5th day of August, 1959 which is registered as No.60 at page 60 in volume 349, the children of Moses Makinde (dec'd.) sold and conveyed the land in dispute to the 1st defendant. H

11. The 1st defendant avers that his predecessors-in-title were in effective possession of the land before the sale to him and that immediately after the sale to him he was put into possession and that he has ever since that time remained in possession of the said land.

12. *The 1st defendant pleads and will at the trial of this action rely upon the judgment of the Supreme Court of Nigeria in suit No. SC.358/73. Between ALHAJIA. W. AKIBU, defendant/appellant and JOSEPH OPALEYE AND ISAIAH FALEYE plaintiffs/ respondents, which confirmed the 1st defendant's title to the land in dispute.*

B 12A. *The defendant pleads election and estoppel by conduct in that the plaintiffs predecessors-in-title had exercised their rights under the mortgage deed pleaded at paragraph 8(ii) of the statement of claim by foreclosing the mortgage and selling the mortgaged land and they cannot now be heard to say that the mortgaged land*
 C *has been redeemed by the administrators of the mortgagor.*

13. *Sometime, in 1959 upon the complaint laid by the 1st defendant to the police at Mushin Police Station, certain persons who entered the land in dispute with force and arms while the 1st defendant was in possession were charged to court and convicted in charge*
 D *No. IKD/1*

14. *The 1st defendant avers that sometime in 1961, a public notice dated the 17th day of July. 1961 was found on the land in dispute. As a result of the said notice the 1st defendant met the firm*
 E *of David and Moore, Solicitors to the surviving children to Lourenco Antonio Cardoso (Decd.), and after negotiation and agreement the 1st defendant obtained from the surviving children of L.A. Cardoso an indenture dated the 15th day of December, 1961 which was registered as No.42 at page 42 in volume 499 of the Register of the*
 F *Deed formerly kept at Ibadan now kept at Lagos Land Registry.*

15. *The 1st defendant avers that at the time the plaintiff claimed to purchase the land in June, 1977, he the 1st, defendant, and his predecessors-in-title, had been in possession of the land in dispute*
 G *for over fifty (50) years, openly using the same as absolute owners by planting economic trees thereon and enjoying the fruits all the time without any challenge by the plaintiffs alleged predecessors-in-title and also by defending the property against trespassers and other intruders and that both the plaintiff and his predecessors-in-title are*
 H *estopped from assert any claim to it (if they have any which is denied) and thus have no proprietary interest in the land in dispute.*

16. *The defendants plead and will at the trial of this action rely on all legal equitable defences open to them:-*

i. Laches

ii. Acquiescence

iii. Standing by

iv. Stale claim

v. Limitation Law

PARTICULARS

1. *The defendants on the facts herein pleaded* B

2. *The 1st defendant says that he and his predecessors-in-title have been in full and open possession of the land for upwards of 50 years and that any right, title and/or interest of any person claiming adverse to him has, by reason of the Limitation law, become barred and extinguished.* C

2. The 1st defendant avers that the deed pleaded at paragraphs 7 and 8(4) of the statement of claim are nullities in as much as the mortgagees had foreclosed the mortgage and/or exercised their power of sale and sold and conveyed the mortgaged land to third parties and in any case under the Real Property Limitation Acts, the rights of mortgagor and mortgagee to the mortgaged land had become barred and extinguished.” D

In reply, the plaintiff pleaded thus in his Reply to the Statement of Defence: E

“5. *The plaintiff further avers that the property litigated by the defendant in suit No.SC/358/73 is not the same as the one which is the subject matter of this action.*

6. *That the plaintiff also avers that neither the plaintiff nor his predecessors-in-title or interest was joined as a party to the said aforementioned action and that the plaintiff nor his predecessors in title or privy was ever aware of the said action and that the parties to the said action are foreign (Joseph Opaleye and Isaiah Faleye) to the Plaintiff.* F

7. *The plaintiff further avers that the mortgagees mentioned in the aforementioned deed of mortgage dated 20th day of January, 1925 and registered as No. 16 at page 32 in volume 191 of the Register of Deeds kept at the Lands Registry Office, Lagos were never in physical possession of the mortgaged properties and that there was no time that the mortgagees as ‘mortgagees’ ever exercised their Power of sale under the Mortgage Deed and that the only action brought by them was in Suit No. 145/30 which was for judgment for loan and interest and which judgment they obtained in the Supreme Court of Nigeria on the 23rd day of April, 1930 and the* G
H

plaintiff will rely on the writ of summons filed in the said matter and the judgment given therein.

8. *The plaintiff further avers that the only time the mortgagees ever sold any portion of the land was by the Order of the Supreme Court of Nigeria made in suit No. 145/30 on the 22nd day of August, 1932 wherein the Mortgagees were permitted by the Court to sell portion of the mortgaged property through one Licensed Auctioneer J. Aleshinloye Williams as there was never a time that the mortgagees were in physical possession of the mortgaged properties.*

9. *The plaintiff avers that he is in possession of the said property by deriving his title from the true owners of the land.*

10. *The plaintiff will rely on all the documents already pleaded in the statement of claim and Plan No. SEW/ L/1464/2 of 2.8.78 drawn by one M. A. Seweje, a Licensed Surveyor and attached to this reply as Exhibit 'TAA 1' showing the respective areas relating to this matter so as to show that the defendants have never acquired any right of interest in the said landed property either in law or in equity."*

The learned trial Judge made, inter alia, the following findings of fact:

1. *"I am satisfied upon the evidence in this case that the land as shown in the plan attached to EXHIBIT 'B' was sold and conveyed to WILLIAM AKINOLA DAWODU on 9th day of April, 1921."*

2. *"I am satisfied on the evidence in this case that the Plaintiff had linked his title as in EXHIBIT "A" to the title of the agreed original owner, L. A. CARDOSO as per EXHIBIT "G" dated 23rd March, 1915.*

3. *"..... that Cardoso having divested himself of his interest in the land in 1921 by virtue of EXHIBIT 'B', his children cannot sell the same land after his death to the 1st Defendant as by EXHIBIT 'S1' on the 15th December, 1961, some forty years after; as DAT QUOD NON HABET"*

4. *"I am satisfied that Exhibit 'A' conveys title to the Plaintiff."*

5. *The Defendants failed to satisfactorily establish the title or interest of both JAMES ODE and MAKINDE from CARDOSO."*

6. *There is no evidence that the Plaintiff or his predecessor-in-title was aware of any adverse interest of the Defendants or their predecessor-in-title.*

On the contrary, there had been series of litigation by or against the 1st Defendant since 1959. In 1961 the children of CARDOSO resold the land in dispute

It is my considered view that none of the legs capable of proping up the several equitable defences had been well established.”

On the possession of the 1st Defendant of the land in dispute the learned Judge observed:

“Long possession per se is not enough to give title. It must be adverse possession and the true owner must have been ousted.

The 1st Defendant alleged he came into possession in 1959, but in 1961 was challenged by the CARDOSO family and divers other people culminating in the Plaintiffs present suit.

In WILLIS’S CAYTON BAY HOLIDAY CAMP LIMITED v. SHELL MEX and BP LIMITED 1974 3 AER 575 it was held inter alia that in order to succeed in establishing that a person had been in adverse possession of land for a continuous period of 12 years, a claimant had to show that the true owner had discontinued possession or that he had been dispossessed for the requisite period. Mere non-user did not amount to discontinuance of possession and in order to prove dispossession, the claimant had to establish actual possession on his own part, which was of such a nature as to oust the true owner from possession.

Applying the law as hereinbefore postulated and in the light of the elucidated evidence in this case, it is my view that long possession, laches, acquiescence, standing by, stale claim and Limitation Law are of no avail to the 1st Defendant.” (Underlining are mine)

The Court of Appeal, in the lead judgment of Ademola, JCA., with which Babalakin, JCA., (as he then was) and Awogu, JCA., agreed, it was observed:

“I shall go on to consider the other defences put up by the appellants. The appellants relied on laches, acquiescence, stale claim, and then the Limitation Law.

For all these defences, he has placed much reliance upon his being in possession to the knowledge of the respondent and his predecessor-in-title. His possession of the land and that of his predecessor is said to be over 50 years.

Much has been made of the judgment of the Supreme Court, Magistrate Court, and the Customary Court-Exhibits ‘O’. ‘R’ and ‘T’

respectively by the appellants in their brief. These judgments are in no way binding upon the respondent or his predecessors-in-title. At best they show that appellants' presence on the land in dispute not as the owner of it qua the respondent and the Dawodu family. His presence and possession of the land in dispute can be that of a mere trespasser.

If as it has been argued that the area of land is a big one, the Dawodu family may not be aware of his presence on the land. To satisfy the Limitation Law, Section 16(2) and the case of Sosan & Ors. v. Odemuyiwa (1986) 3 NWLR (Part 27) page 241 much more is required on the part of the appellants than the evidence proffered by him in this case to extinguish the radical title on the disputed land which is in the Dawodu family. His possession of the land as he claimed must not only be open, it must also be something of which the respondent and the Dawodu family are aware of The evidence on this case falls short of it. See Musa Maji v Malam Shehu Shafi (1965) NMLR page 33 pages 36-37.

I do not think it is permissible to compare the situation appellant found himself in this case with that which the appellant in the Sosan & Ors. v. Odemuyiwa case found themselves. The two situations are very different.” (Underlining are mine)

It is the contention of the Appellants in this case that the Court below was in error when it held that the Plaintiff's predecessors-in-title must be aware of 1st Defendant's adverse possession of the land in dispute before the Limitation Law could apply to extinguish their title to the land. Reliance is placed on the recent decisions of this Court in Ajibona v. Kolawole (1996) 10 NWLR 22 and Alhaji A. W Odekilekun v. Mrs. Comfort O. Hassan & Anor (1997) 12 NWLR 56. It is submitted that the title of the Dawodu family had been extinguished by operation of law before the sale to the Plaintiff and, therefore, the latter acquired no title to the land. His claims, therefore, should have been dismissed.

It is submitted for the Respondents that the title of the Dawodu family was not extinguished by operation of law as at no time did the Dawodu family discontinue possession of the land in dispute up to the time of the sale to the Plaintiff.

The land in dispute consists of 4 plots - see paragraph 8(v) of the amended Statement of Claim. It, therefore, cannot be correct, as

opined by the Court below, to say that *“the area of land is a big one, (that) the Dawodu family may not be aware of his (1st Defendant’s) presence on the land.”* Be that as it may, there is overwhelming unchallenged evidence, oral and documentary, that the 1st Defendant was on the land, farming thereon and defending his ownership of it against third parties. This is abundantly demonstrated by Exhibits Q, R and T. Exhibit Q is the judgment of this Court in SC.358/73. The plaintiffs in that case had, in 1967, sued the 1st Defendant herein for declaration of title and injunction to the same land as is now in dispute in these proceedings. On appeal to this Court, it was held that 1st Defendant’s plea of long possession was established and plaintiffs’ claims in that case were dismissed. One interesting feature of that case is that the plaintiffs therein, like the Plaintiff in the present proceedings, claimed title through Dawodu family.

Exhibit R is the judgment in the criminal case No. M1K/365C/71 against Saka Saliu and 3 Others who were charged for wilfully and unlawfully on 15th day of April, 1971, damaged some pawpaw trees, cocoyams, cassava and pepper, property of Alhaji Akibu. All the accused persons were convicted.

Exhibit T is the judgment in a criminal charge No. IKD. 1 140/CR/59 against the 1st Defendant in these proceedings (Alhaji Akibu) and 2 others. The Customary Court President found there was a dispute between the complainant in the case and Alhaji Akibu to title to the land on which the complainant erected a foundation which Alhaji Akibu and his co-accused destroyed. The court acquitted and discharged all the three accused persons but bound over the complainant and Alhaji Akibu to keep the peace.

What all these court proceedings establish is that the 1st Defendant, Alhaji Akibu had been defending his ownership and possession of the land in dispute since 1959 right through 1971. While Exhibits Q, R and T are not binding on the Plaintiff in this case, they are nevertheless evidence of acts of ownership and possession by the 1st Defendant. The Court below found that “his presence and possession of the land in dispute can be that of a mere trespasser.” That may be so in the light of the concurrent findings of the two courts below that he had no title to the land in dispute. What is important is that he had been in possession of the land since 1959 and

remained on it until 1978 when the Plaintiff came to disturb him. If the 1st Defendant was in physical possession of the land farming thereon during that period, the Dawodu family could not have been in possession; they only had a right to possession which they could have asserted against him but did not.

What is the evidence of possession on Plaintiffs side? Plaintiff in his evidence, deposed:

"After purchase I was shown the land in dispute by my vendor. I went on the land and took possession. I wanted to erect something on the land, the 1st and 2nd Defendants stopped me."

Cross-examined he testified-

"I did not know what went on the land prior to my purchase."

PW.3, Gbolahan Babasola Dawodu, one of the administrators of the estate of late Dawodu testified and said:

"We put Plaintiff in possession after we sold the land to him. We were in possession of the land before the sale to the plaintiff. The land was vacant."

That is all the evidence of possession of the land led in support of Plaintiff's case. As against this is the evidence of possession led for the defence. There was the evidence of the 1st Defendant that he fenced the land in 1959, that he cultivated the land and was reaping cash crops on it and that he defended his possession and ownership in Exhibits Q and T and he prosecuted some trespassers on the land, who were convicted in Exhibit R. The overwhelming evidence on record shows abundantly that 1st Defendant was in exclusive possession of the land in dispute from 1959 to 1978 when the dispute with the Plaintiff arose. There is no evidence that the Dawodu family did anything on the land since at least 1959 to 1978.

Now Sections 16, 17, 19 and 21 of the Limitation Law of Lagos State Cap 70 Laws of Lagos State, 1973 (now Cap. 118, Laws of Lagos State, 1994) provide:

"16.(1) Subject to the provisions of subsections (2) and (3) of this section, no action shall be brought by a State authority to recover any land after the expiration of twenty years from the date on which the right of action accrued to the State authority, or if it first accrued to some person through whom the State authority claims, to that person."

(2) The following provisions shall apply to an action by a person to recover land -

(a) subject to paragraph (b) of this subsection, no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person; B

(b) if the right of action first accrued to a state authority, the action may be brought at any time before the expiration of the period during which the action could have been brought by the State authority, or of twelve years from the date on which the right of action accrued to some person other than the State authority, whichever period first expires. C

(3) For the purposes of this Law, a right of action to recover any land which accrued to the Republic or to the Lagos State before the commencement of this Law shall be deemed to have become D exercisable by an appropriate State authority on the date on which it first accrued to the Republic or to the Lagos State, as the case may be.

17. Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof E 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.

19.(1) No right of action to recover land shall be deemed to F accrue unless the land is in the possession (in this section referred to as adverse possession) of some person in whose favour the period of limitation can run.

(2) Where-

(a) under the provisions of this Law a right of action to recover G land is deemed to accrue on a certain date, and

(b) no person in adverse possession of the land on that date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.

(3) Where a right of action to recover land has accrued, and H thereafter, before the right of action is barred, the land ceases to be in adverse possession, the, right of action shall no longer be deemed to have accrued and no fresh right of action shall be deemed to accrue unless and until the land is again taken into adverse posses-

sion.

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.*

Interpreting these provisions, this Court in *Ajibona v. Kolawole* B (supra), per Ogwuegbu, JSC, said at pages 35-36 of the report:

“On the reading of the provisions of the Limitation Law of Lagos State as a whole, they do not merely deny the right of action. They completely extinguish an existing right at the expiration of twelve C years from the accrual of the right of action.”

On whether the knowledge of the true owner of the land of the adverse possession of the trespasser is essential before the former’s title can be extinguished by operation of law Ogwuegbu, JSC., said:

“On a cumulative reading of the entire provisions of the Limitation D Law and in particular. Sections 16, 17, 19 and 21 thereof, knowledge on the part of the plaintiff is not a condition precedent. The knowledge of the plaintiff is immaterial. The words of the Limitation Law of Lagos State are clear and unambiguous and must therefore be accorded their ordinary meaning.

*E Apart from fraudulent concealment of right of action which itself furnishes a cause of action, knowledge cannot be said to be relevant. In order to constitute such fraudulent concealment as would, in equity, take a case out of the law of limitation, it is not enough that there should be merely tortious act unknown to the injured party or F the enjoyment of property without title while, the rightful owner is ignorant of his right; there has to be some abuse of a confidential position some intention at imposition, or some deliberate concealment of facts. To enter a land without the knowledge of the owner G does not constitute concealed fraud. Under the Limitation Law, the right to land is extinguished, in the absence of fraud, after discontinuance of possession for the period enacted in the law, although the owner so discontinuing possession was unaware that adverse possession had been taken. See *Rains v. Buxton* (1880)14 Ch.D. 537. The H question of fraudulent concealment did not arise in this case.*

The Limitation Law and all laws of this description ought to receive beneficial construction. They should be construed liberally but not in such a way as to read into them words not intended by the law makers as the majority decision of the court below portrayed. All

limitation laws have for their object the prevention of the rearing up of claims that are stale. To contend that the defendant must prove plaintiffs knowledge of such adverse possession for time to start to run, or the defendant's presence on the land is to import a strange condition into the Limitation Law. See Sosan & Ors. v. Ademuyiwa & Ors (1986) 3 NWLR (Pt. 27) 241 at 256." See Odekilekun v. Hassan B (1997) 12 NWLR (Pt. 531) 56.

With profound respect to their Lordships of the Court below, they were in error in holding that the Dawodu family must be aware of the presence of the 1st Defendant on the land before their title could be extinguished by the Limitation Law; they erroneously read into Sosan & Ors. v. Odemuyiwa (supra) what was not there. While knowledge of the true owner of land of the adverse possession of another is essential to the success of the equitable defences of laches and acquiescence, this is not material under the Limitation Law. C D

Ajibona v. Kolawole applies with equal force to the case on hand. The 1st Defendant was in continuous possession (adverse to the possession of the Dawodu family) of the land in dispute from 1959 to 1978 when the dispute leading to these proceedings arose. There is no suggestion that he concealed his presence. He was for most part of the period engaged in defending his presence on the land by various litigations in court in which he was successful. The Dawodu family, particularly the administrators of the estate, did nothing to assert their right to the land as against the 1st Defendant. Rather, it was the persons who alleged they bought from the Dawodu family that in 1959 sued the 1st Defendant and lost in the Supreme Court. F

On the welter of evidence on record I must hold that the Dawodu family lost their title to the land in 1971 and when in 1977 the administrators of the estate of late Dawodu sold the land to the Plaintiff, they had nothing, to sell and the Plaintiff bought nothing. The two Courts below were, therefore, in error to hold that Plaintiff had title to the land in dispute. In the circumstance, Plaintiff's claim (1) fails and it is accordingly dismissed by me. G H

At the time the dispute in this case arose, 1st Defendant was in possession even though, on the concurrent findings of the two Courts below (which findings I have no reason to dis-

turb), he had no valid title to it when he first went on the land in 1959. 1st Defendant's possession in itself is, nevertheless, a good title against the whole world except the true owner of the land - see Akano v. Okunade (1978) 3 S.C. 129, 140; Odekilekun v. Hassan (supra). **As the plaintiff was not in possession and had no right to it since he had no title to that land, he could not sue in trespass** - see: Aderibigbe v. Obi (1971) 1 All NLR 116, 121-222; Odekilekun v. Hassan (supra), **his claim, therefore, must fail and it is accordingly dismissed by me. A fortiori, his claim (3) for injunction must equally fail and it is dismissed.** In conclusion I resolve Issue (1) in favour of the Appellants.

In view of the conclusion I have just reached on Issue (1), I do not consider it necessary to go into the other two issues raised in this appeal. Suffice it to say that I am of the view that this appeal has merit and it is accordingly allowed by me. I set aside the judgment of the Court of Appeal which affirmed the judgment of the trial High Court. In its stead I order that Plaintiff's claims be dismissed.

I award to the Appellants N10,000.00 costs of this appeal, N450.00 costs in the Court of Appeal and N300.00 costs in the trial High Court.

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother, Ogundare, JSC. I entirely agree with the judgment.

Accordingly, I too hereby allow the appeal, set aside the decisions of the Court of Appeal and the trial court. The plaintiffs claim is dismissed instead with costs assessed as in the judgment of my learned brother, Ogundare, JSC., in favour of the Appellants against the Respondents.

H ONU JSC

I am in complete agreement with the judgment of my learned brother, Ogundare, JSC., just delivered that this appeal is meritorious. Accordingly, I allow it and make similar consequential orders as contained therein.

KATSINA-ALU JSC

I have had the privilege of reading in advance the judgment of my learned brother, Ogundare, JSC., which has just been delivered. I entirely agree with his reasoning and conclusion. There is nothing I can usefully add. B

TOBI JSC

I have read the judgment of my learned brother, Ogundare, JSC., and I entirely agree with him that this appeal should be allowed. C

I want to add this bit on the pronouncement of the court, below in respect of the ambit of the Limitation Law and the case of Sosan v. Odemuyiwa (1986) 3 NWLR (Pt. 27) 241. D

Ademola, JCA., said at page 307 of the Record.

“To satisfy the Limitation Law, Section 16(2) and the case of Sosan and Ors. v. Odemuyiwa (1986) 3 NWLR (Pt. 27) page 241 much more is required on the part of the appellant than the evidence proffered by him in this case to extinguish the radical title on the disputed land as he claimed must not only be open, it must also be some of which the respondent and the Dawodu family are aware of The evidence on this case falls short of it. See Musa Mail v. Malam Shehu Shafi (1965) NMLR page 33 Pages 36-37.” E

In Mrs. Sosan v. Odemuyiwa (supra) cited by Ademola, JCA., F this court held that the cause of action having arisen in 1939 and the action having been brought in 1976, the plaintiff’s title has clearly become extinguished by virtue of Sections 16(2)(a) and 21 of the Limitation Law of Lagos State, Cap. 70 which provides that such G actions must be commenced within 12 years. In his lead judgment, Oputa, JSC., said at page 256:

“By the provision of Section 16(2)(a) the Plaintiff’s right of action accrued when T.K.E. Phillips got his conveyance Ex. N and was put in possession as result on 23rd day of August, 1939. The Plaintiff’s family had up to and including 23rd August, 1951 to take an action for the recovery of the land in dispute now in the adverse possession of T. K. Phillips. They waited for an extra 24 years before filing this action in 1976. By 1976 the Plaintiff’s title had long been H

extinguished by operation of law Section 21 of the, Limitation Law Cap. 70.”

As it is, the above case cited by the Court of Appeal did not decide that knowledge on the part of plaintiff of the trespass or adverse possession is relevant before time can run under the Limitation Law. I therefore entirely agree with my learned brother, Ogundare, JSC., that the court below “*erroneously read into Sosan & Ors. v. Odemuyiwa (supra) what is not there*”.

Knowledge of trespass or adverse possession is not a precondition to a successful plea of the Limitation Law of Lagos State. In other words, a party who pleads the defence that an action is statute barred need not satisfy the court that the plaintiff had knowledge of the trespass or adverse possession. Ogwuegbu, JSC, came out very clearly in *Ajibona v. Kolawole* (1996) 10 NWLR (Pt. 476) 22. He said at page 36:

“*On a cumulative reading of the entire provisions of the Limitation Law and in particular Sections 16, 17, 19 and 21 thereof, knowledge on the part of the plaintiff is not a condition precedent. The knowledge of the plaintiff is immaterial. The words of the limitation Law of Lagos State are clear and unambiguous and must therefore be accorded their ordinary meaning.*”

The court below also invoked Section 16(2) of the Limitation Law of Lagos State in this appeal to justify the issue of knowledge.

Section 16(2) provides in the following terms:

“*The following provisions shall apply to an action by a person to recover land :*

(a) *subject to paragraph (b) of this subsection, no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person;*

(b) *if the right of action first accrued to a State authority, the action may be brought at any time before the expiration of the period during which the action could have been brought by the State authority, or of twelve years from the date on which the right of action accrued to some person other than the State authority, whichever period first expires.”*

Again, there is no provision in Section 16(2) of the Limitation Law of Lagos State which says time will start running only when the

plaintiff becomes aware of the trespass or adverse possession. By the subsection, the limitation period is twelve years and knowledge is not a precondition for the determination of the period.

Let me take a few more decisions of this court. In *Odubeko v. Fowler* (1993) 7 NWLR (Pt. 308) 637, the court interpreted the provisions of Sections 16, 19 and 21 of the Limitation Law of Lagos State. The court held as follows: (1) The effect of Section 16(2) of the Limitation Law of Lagos State is to deny the exercise of any right of action hitherto accruing to any person and destroy the remedy which has not been exercised by such person after the expiration of twelve years from the date on which the right of action accrued. (2) By Section 19 of the Limitation Law of Lagos State, the exercise of the right of action is based on the establishment of adverse possession of the land in favour of the person in whom the period of limitation can run. (3) Although Sections 16 and 19 of the Limitation Law speak of barring right of action, which merely destroys the remedy, which would have been available to the plaintiff, Section 21 of the Law goes on to extinguish the right itself. Thus, as a cumulative reading of the provisions of the Limitation Law of Lagos State they do not merely deny the right of action, they completely extinguish an existing right at the expiration of twelve years from the accrual of the right of action.

In *Eboigbe v. The Nigerian National Petroleum Corporation* (1994) 5 NWLR (Pt. 347) 649, the appellant as plaintiff instituted an action in a representative capacity at the High Court of Abudu Judicial Division. The appellant stated in his statement of claim that on or about 18th July, 1979, the respondent by its agents and servants in the course of laying pipes destroyed the greater part of his farms which contained many economic trees, cash and food crops. The appellants further stated that of all the persons affected by the destruction, only himself and one other are literate. He averred that he left home sometime in 1979 for Northern Nigeria and returned in July, 1983 and that on his return home he learnt from his illiterate relations how the respondent during its operation destroyed greater part of their farms. The respondent filed an application to strike out the action on the ground that it was statute barred, as it was not commenced within a period of twelve months. This court held that a statute of limitation begins to run from the moment the cause of action arose. It is immaterial that a party was absent from the jurisdic-

tion or that there was no court within the jurisdiction to entertain the claim. Similarly, illiteracy will also not avail the plaintiff because ignorance of the law is no excuse.

The implication of the above decision from the point of view of this appeal is remotely this: even if a plaintiff has no knowledge of the trespass because he is not within the place where the trespass occurred, that cannot be a valid defence to commencing the action outside the statutory period. In other words a plaintiff who by reason of his absence from the place where the trespass occurred, is unaware of the trespass, cannot use such lack of knowledge as a defence to commence an action outside the limitation period.

It is for the above reasons and the fuller reasons given by my learned brother, Ogundare, JSC., that I too allow the appeal. I set aside the judgment of the Court of Appeal. I also order that the plaintiffs claim be dismissed. I award the appellants N10,000.00 costs in this appeal, N450.00 costs in the Court of Appeal and N300.00 costs in the trial court.

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