

SUPREME COURT OF NIGERIA
FRIDAY 2ND MAY, 2003. SC. 42/1999
CORAM:- I. L. KUTIGI, U. MOHAMMED, S. U. ONU,
A. I. IGUH, N. TOBI, JJSC

WAMADI N. EJILEMELE APPELLANT
AND
1. BELEME H. E. OPARA
2. MERCY OPARA RESPONDENTS

LAND LAW - Family land - Allocation - Manner of - Grant of the land is made by family head - With the consent of principal members - But where the transfer is made by the head alone - It is voidable not void (H1)

EVIDENCE - Evaluation - Ascription of probative value to evidence - Is the primary function of trial court - That saw heard and assessed witnesses (H2)

LAND LAW - Title deed - Fraud in execution - Effect - It renders the deed irregular and invalid - It is immaterial that such deed is registered - As mere registration does not validate fraudulent transfers (H3)

CUSTOMARY LAW - Land law - Family land - Transfer - Registration of deeds and conveyances hardly come into play - In transfer of land held under customary tenure (H4)

APPEALS - Concurrent findings - Supreme Court does not disturb such findings - Unless a substantial error is shown - Which is apparent on the face of the record (H5)

FACTS

Plaintiffs/respondents sued defendant/appellant in the High Court of Rivers State claiming declaration of title to the land in dispute, damages for trespass and injunction. It was the case of respondents that though appellant had a registered deed of conveyance i.e. Exhibit A, purportedly made between him and the senior members

of Wopara family (the original owners of the land, to which family both parties belong) conveying the land to him, the execution of the deed was obtained by fraud on the part of appellant. Respondents claim the land was allocated to 1st respondent and the late husband of 2nd respondent and that they had exercised acts of possession thereon ever since. But that while they were away appellant went into the land and built on a portion of it. Thereafter appellant secretly made a survey of the land and fraudulently induced the family head and elders to sign a paper purportedly identifying appellant to the Military Authorities for purposes of rent collection in respect of appellant's house occupied by the Authorities. As a result of this fraud Exhibit A was executed.

On the other hand, appellant claimed that the land was duly allocated to him by the leaders of Wopara family. P.W.1, who was at all material time the family head of Wopara family testified that the land was allocated as claimed by respondents and that though appellant was also allocated a piece of land that it was different from the one now in dispute. Eventually, trial court found for respondents and gave judgment accordingly. Dissatisfied, appellant appealed unsuccessfully to Court of Appeal, Port Harcourt Division. Still aggrieved, appellant filed appeal at the Supreme Court.

ISSUES FOR DETERMINATION

“(i) To whom did the Wopara family through its heads and elders in accordance with the customary law of the area grant the land now being disputed.

“(ii) Was the court below justified in upholding the findings of fact made by the trial court and inferences and conclusions from those facts when either the evidence did not support the facts pleaded or the proper inferences were not drawn from the facts given in evidence or evidence given was not fully considered before conclusions were reached and inferences drawn”

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

Family land - Allocation - Manner of

1. I think it is beyond dispute that a valid allocation of family

land requires the grant or transfer to be made by the head of the family with the principal members concurring therein. Where, however, the transfer is made by the head of the family alone acting for and on behalf of the family, such a transfer is only prima facie voidable and not void and the family may set aside such disposition of their land if the non-consenting members act timeously.

A transfer of family land other than by the head thereof or the head and principal members of the family is absolutely void ab initio. (p. 1256 F)

EVIDENCE - Evaluation

2. In this regard, it cannot be over-emphasised that the evaluation of evidence and the ascription of probative value to such evidence are the primary functions of a court of trial which saw, heard and assessed the witnesses.

This primary assignment was duly executed by the trial court whereupon it came to the conclusion that at no time whether in 1958 or thereafter did the Wopara family make any allocation of the land in dispute through its head and elders to the appellant. Accepting the evidence of PW.1, the trial court found that the appellant was allocated a different piece of land upon which he had erected his building. This grant which PW.1, took part in making was subsequently to the 1960 allocation of the land in dispute by the Wopara family to the respondents. (p. 1259 H)

LAND LAW - Title deed - Fraud in execution - Effect

3. Although the question of the validity of Exhibit A, hardly arises for determination in this appeal, it is undisputable that fraud in the execution was established against the appellant before the trial court. It is also clear from the findings of both courts below which cannot be faulted that Exhibit A was not duly executed as provided under Section 8 of the Land Instruments Registration Law, Cap. 72, Laws of Eastern State of Nigeria. Said the trial court:-

The Legal effect of Exhibit A which I have also found not to have been executed in accordance with Section 8(1) of the

Lands Instruments Registration Law is that it is irregular and thereby null and void and of no effect and the successful plea of non-est factum renders the signature of P.W.1 on Exhibit A, invalid and of no force. The Plaintiffs are therefore entitled to the declaration sought in the first arm of their claim."

B The above observations of the trial court were affirmed by the Court of Appeal and I can find no reason to disturb them. I need, perhaps, add that although Exhibit A was duly registered, mere registration of title deed does not validate C spurious or fraudulent transfers. (p. 1261 C/F)

CUSTOMARY LAW - Land law - Family land - Transfer

D 4. But as I have already observed, the issues raised in the present appeal concerns to whom the Wopara family through its head and elders allocated the family land in dispute in accordance with customary law. Registration of title deeds and conveyances hardly come into play in the allocation or transfer of such family land held under customary tenure. In my view, the court below was fully justified in upholding the findings of E fact made by the trial court and the inference and conclusions drawn from those facts as there was abundant evidence on record in support of those findings and conclusions. (p. 1262 A)

F APPEALS - Concurrent findings

G 5. The law is well settled that this court will not disturb such concurrent findings of fact unless a substantial error apparent on the face of the record of proceedings is shown or when such findings are perverse or are reached as a result of a wrong approach to the evidence or as a result of a wrong application of a principle of substantive law or procedure. No such vitiating factors have been established by the appellant in this case. (p. 1262 D)

H

NOTABLE POINT OF INTEREST

TOBI JSC

1. A person can be recognised as family head in three ways

A person can be recognised as a head of a family by three major ways: (a) by operation of law; (b) by election by the members of the family; and (c) by direct appointment by the founder of the family. On the other hand, a principal member of a family is the head of each branch of the family. He is in most cases the eldest child of each wife. (p. 1263 G)

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REPRESENTATION

N. Nwanodi, Esq with G. D. Gillisharry (Ms), for the Appellant
E.G. Ukala, SAN, with D.C. Denwigwe, Esq., and M.S. Agwu, Esq.,
for the Respondents

C

CASES REFERRED TO

Lewis v. Bankole (1908) 1 NLR 82

Ekipendu v. Erika (1959) 4 FSC 79

D

Ekipendu v. Erika (1959) 4 FSC 79

Woluchem v. Gudi (1981) 5 S.C. 291

Mogaji & Ors. v. Nuga (1960) 5 FSC 107

Ike v. Ugboaja (1993) 6 NWLR (Pt.301) 539

Igwego v. Ezeugo (1992) 6 NWLR (Pt. 249) 561

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Akinloye v. Eyiola (1968) NMLR 92

Akinfolarin v. Akinola (1994) 3 NWLR (Pt. 335) 659

City Property Development Ltd. v. A-G Lagos State (1976) 1 S.C 71

NICON v. Power & Industrial Engrn. Ltd. (1986) 1 NWLR (Pt. 14) 1

F

STATUTE REFERRED TO

Lands Instruments Registration Law Cap 72 Laws of Eastern State of Nigeria, s.8

G

LEAD JUDGMENT BY IGUH JSC

The proceedings leading to this appeal were first initiated on the 29th day of May, 1980, in the High Court of Justice of the Rivers State of Nigeria, Port Harcourt Judicial Division, holden at Port Harcourt. In that court, the plaintiffs, now the respondents, claimed against the defendant, now the appellant, as follows:-

“(1) A declaration that the site plan together with the conveyance purported to have been made between the senior members of Wopara family of Rumubiakani and the Defendant, conveying a piece

of the family property known and called OKANI-ORO land situate at Rumubiakani is obtained by fraudulent misrepresentation on the part of the defendant and is thereby null and void and of no effect whatsoever, notwithstanding that it has been registered.

B (2) A declaration that the plaintiffs are the rightful owners in possession of the customary right of occupancy.

(3) N1,000.00 damages for trespass.

(4) Perpetual injunction restraining the defendants, his servants and/or agents from staying in wrongful occupation of the said piece of land.”

C Pleadings were ordered in the suit and were duly settled, filed and exchanged.

The case accordingly proceeded to trial and the parties testified on their own behalf and called witnesses.

D The plaintiffs’ case as pleaded and testified to at the trial is that they and the defendant are members of the Wopara family in Rumubiakani, Obio in the Rivers State of Nigeria. The Wopara family is also referred to as the Ejilemele or Rumuchorlu family. The present head of this family is P.W.1, Chief Christopher Ogbonda Ejims
E Wopara, Eze Izi Agwu 1, whilst Chief Joseph Ejilemele was the Owhor holder of the family until his death in January, 1987. Both P.W.1, and the late Chief Joseph Ejilemele, the Owhor holder of the family were the elders of the family. Chief Joseph Ejilemele died on the
F 23rd January, 1987, and was, while he was alive, the oldest man in their village. P.W.1, as head of the Wopara family, represented them in all transactions with Chief Joseph Ejilemele who was the Owhor holder and consequently the custodian of all the family property.

G Both the plaintiffs and the defendants are in agreement that the land in dispute is a piece or parcel of land which belongs to the Wopara family under customary law. It is more particularly delineated in plan No. FO/18/81 and therein verged green. The entire area claimed by the plaintiffs is therein shown verged red.

H Both parties claimed that the land in dispute was allocated to them in accordance with customary law by the head and elders of the family. Chief C.O.E. Wopara, Eze Izi Agwu 1, the head and Paramount Chief of Wopara family at all material times and Chief Joseph Ejilemele, the Owhor holder of the family, were identified by both the plaintiffs and the defendant respectively as the head and/or el-

ders of the Wopara family who participated in the allocation of the land in dispute to the parties. The plaintiffs claimed that the piece of land in dispute together with the area verged red was allocated to the 1st plaintiff and Oke Ejilemele, the late husband of the 2nd plaintiff, in the year 1960. After the allocation, both plaintiffs went into immediate possession thereof. Oke Ejilemele was the first person to erect his residential house on the land in dispute into which he and his entire family moved. His wife and children continued to live on the land in dispute after the death of the said Oke Ejilemele during the last Nigerian civil war. He was buried on the land in dispute and a tomb in his memory was erected over his grave in the year 1971. The plaintiffs also cultivated the land and planted various economic trees thereon. Certain portions of the land were let to Ogoni palm wine tappers as tenants by the plaintiffs and they erected temporary structures on the land in dispute.

The plaintiffs claimed that while they were away from home, the defendants without their knowledge unlawfully trespassed on the land in dispute and forcefully built a house on a portion thereof which had been allocated to them. They further claimed that the defendant thereafter secretly made a survey of the land in dispute and fraudulently induced the head and elders of their family, to wit, Chief C.O.E. Wopara and Chief Joseph Ejilemele to sign a paper purportedly identifying the said defendant to the Military Authorities for the purpose of the collection of rent in respect of the defendants's house occupied by the said Military Authorities. As a result of this fraudulent inducement, the Deed of Conveyance, Exhibit A, was signed by the said elders granting the land in dispute to the defendant. Exhibit A, was thereafter duly registered with the Ministry of Lands and Survey, Port Harcourt, Rivers State. The plaintiffs further alleged that the defendant, equipped with this spurious document, Exhibit A, started laying false claim to the land in dispute hence this action.

The defendant, for his own part, claimed that the land in dispute is part of the land which was allocated to him under customary law by the said Wopara family in 1958 through Chief C.O.E. Wopara, Chief Joseph Ejilemele and some other elders of the family. Both himself and the plaintiffs are members of the Wopara or Ejilemele family. After the allocation, he developed the land by building houses on it and planted economic trees thereon. The defendant tendered

his document of title in respect of the land in dispute, Exhibit A. He claimed that the Deed of Conveyance, Exhibit A, was executed before a Magistrate as Chief Joseph Wopara Ejilemele was an illiterate. He denied that P.W.1, signed Exhibit A in his house at night while the said P.W.1, was eating his dinner. He also denied that the land in dispute was allocated to the plaintiffs by P.W.1, and/or the elders of the family. He admitted that the late husband of the 2nd plaintiff built a structure on the land in dispute but claimed that he, the defendant, authorized the erection of the structure. He also admitted that the tomb of the late husband of the 2nd plaintiff was erected on the land in dispute in 1972 by the 1st plaintiff. He said it was incorrect that he misrepresented the nature of Exhibit A to P.W. 1. He claimed that Exhibit A was duly executed before a Magistrate as provided by law and not in the house of P.W.1 while the latter was eating his dinner.

At the conclusion of hearing, the learned trial Judge, Olukole, J., after a careful review of the entire evidence on the 29th day of September, 1988, found for the plaintiffs. He found the evidence of P.W.1, the head of the Wopara family impressive and that it substantially supported the case of the plaintiffs. He accepted that the land in dispute was allocated by the Wopara family to the plaintiffs as joint allottees and that P.W.1, signed Exhibit A as a result of the false representation of the defendant as to the true nature of the document in the house of the said P.W.1 and not before a Magistrate as alleged by the defendant. He described the evidence of the defendant and that of his witnesses as unimpressive and he proceeded consequently to decree as follows:

“Judgment is hereby entered therefore for Plaintiffs as follows:-

(a) *A declaration that the site plan together with the conveyance purported to have been made between the Senior members of Wopara family of Rumubiakani and the Defendant conveying a piece of the family property known and called Okani-Oro land situate at Rumubiakani is obtained by fraudulent misrepresentation on the part of the Defendant and is thereby null and void and of no effect whatsoever notwithstanding that it has been registered as No. 74 at page 74 in Volume 65 of the Lands Registry in the Office at Port Harcourt.*

(b) *A declaration that the Plaintiffs are not the rightful owners of the said piece of land but are in exclusive possession thereof.*

(c) the sum of N1,000.00 (One Thousand Naira) damages against the Defendant for trespassing into the said land and

(d) A perpetual injunction restraining the defendant, his servants and/or agents from further staying in wrongful occupation of the said piece of land."

He went on:- *"I also make the following consequential orders:-* B

(i) that the Defendant do deliver up possession of the area marked 'A' within the area edged green on his plan, Exhibit C which he occupied as his house within the area edged green on the Plaintiffs' plan Exhibit B to the plaintiffs forthwith.

(ii) that the Defendant do deliver up the original of the Deed of Conveyance, Exhibit A, registered as No. 74 at Page 74 in Volume 65 of the Lands Registry in the Office at Port Harcourt for cancellation to the Deeds Registrar, Port Harcourt, to enable him rectify his Register accordingly. These consequential orders shall be brought to the Notice of the Deeds Registry of the Ministry of Lands and Housing, Lands Division, Port Harcourt." C

Dissatisfied with this judgment of the trial court, the defendant lodged an appeal against the same to the Court of Appeal, Port Harcourt Division. E

The Court of Appeal in its majority decision upheld the evaluation of the evidence and the findings of the trial court and dismissed the defendant's appeal in its entirety.

Aggrieved by this decision of the Court of Appeal, the defendant has further appealed to this court. I shall hereinafter refer to the defendant and the plaintiffs in this judgment as the appellant and the respondents respectively. F

Five grounds of appeal were filed against this decision of the Court of Appeal. It is unnecessary to reproduce them in this judgment. It suffices to state that the parties pursuant to the Rules of this court filed and exchanged their written briefs of argument. G

The two issues identified on behalf of the appellant for the determination of this appeal are as follows:-

"(i) To whom did the Wopara family through its heads and elders in accordance with the customary law of the area grant the land now being disputed.

(ii) Was the court below justified in upholding the findings of fact made by the trial court and inferences and conclusions from

those facts when either the evidence did not support the facts pleaded or the proper inferences were not drawn from the facts given in evidence or evidence given was not fully considered before conclusions were reached and inferences drawn (Grounds 3 and 4)."

The respondents, on the other hand, have adopted the two issues formulated on behalf of the appellant for the determination of this appeal.

I have given very close attention to the two issues formulated on behalf of the appellant and accepted by the respondents and find myself in complete agreement with the parties that they are enough for my determination of this appeal.

At the oral hearing of the appeal, learned counsel for the appellant, N. Nwanodi, Esq., adopted the appellant's brief of argument and indicated that he did not intend to adduce further additional arguments in amplification thereof. He did, however, contend that the submissions in the respondents' brief of argument in no way answered the points raised in the appellant's brief of argument. Learned counsel in his brief of argument in which both issues were argued together submitted that a basic proposition of customary law is that a valid allocation of family land requires the transfer or grant to be made by the head of the family and the principal members thereof. He called in aid the decision of this court in *Mogaji and Ors. v. Nuga* (1960) 5 FSC 107 at 109 and submitted that where the transfer is made by the head of the family alone, such a grant is voidable. He referred to the decision of this court in *Akinfolarin v. Akinola* (1994) 3 NWLR (Pt. 335) 659 at 682 and stressed that a transfer of family land other than by the head thereof or the head and principal members of the family is absolutely ineffective and null and void.

Learned appellant's counsel submitted that it was common ground that the piece or parcel of land in dispute is part of the Wopara family land. It was therefore the duty of the respondents as plaintiffs in the suit to establish how title in the land in dispute devolved from the said Wopara family to themselves. He referred to the evidence of the 1st respondent and PW.1, and submitted that the elders or principal members of the family were not shown to have joined in the allocation of the land to the respondents. He argued in particular that whereas the 1st respondent stated that the land in dispute was allocated to them by Chief C.O.E. Wopara and Chief Joseph Ejilemele,

the Owhor holder, as heads of the Wopara family, P.W.1, Chief C.O.E. Wopara himself said that he alone as leader of the family allocated the land in dispute to the respondents. He observed that there was conflict in the evidence of both witnesses and he therefore submitted that the respondents failed to prove their title to the land in dispute by establishing the validity of the allocation of the land to them by the head and elders of their family. B

On the issue of the plea of non est factum, learned counsel submitted that this was not available to P.W. 1, who was content to sign Exhibit A without trying to find out the true nature of the document. He asked whether it could be said that P.W.1, was not guilty of carelessness in signing a document whose general effect he did not trouble himself to find out. He thought the answer must be in the affirmative. He submitted that the execution of Exhibit A, contrary to the findings of both courts below, was done in a manner substantially regular. He made reference to the decision in *Lawal v. G B. Ollivant* (1972) 3 S.C. 124 and submitted that Exhibit A, the execution of which was substantially regular before a Magistrate, was without fault and proper. In conclusion, learned counsel for the appellant, Mr. Nwanodi submitted that the entire judgment of the court below is so replete with serious violations of law and procedure that an intervention of this court appears imperative. He therefore urged the court to allow this appeal. C
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Learned counsel for the respondents, E.G. Ukala, Esq., SAN, in his reply similarly adopted the respondents' brief of argument and urged the court to dismiss the appeal in its entirety and to uphold the concurrent findings and judgments of both the trial court and the Court of Appeal. However, with regard to the question of whom the Wopara family granted the land in dispute to in accordance with customary law, the respondents in their brief of argument referred to the resolution of this matter by the trial court as affirmed by the court below. It was submitted that the trial court after a thorough evaluation of the evidence accepted the testimony of the 86 year old P.W. 1, Chief C.O.E. Wopara, as convincing and reliable. Learned counsel pointed out that P.W.1, on the accepted evidence before the court, was found to be the oldest member of the Wopara family as well as the head of the family. His evidence to the effect that the land in dispute was allocated to the respondents early in 1960 and that the F
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husband of the 2nd respondent was the first person to build on the land was accepted as established by the trial court before whom he testified. Also the evidence of P.W. 1, Chief C.O.E. Wopara, to the effect that the appellant after the civil war unlawfully trespassed on the land in dispute which was allocated to the respondents, that the appellant was allocated a different piece of land upon which he built his house and that the 1st respondent together with the husband of the 2nd respondent were in exclusive possession of the land in dispute were all issues of fact which were accepted as established by the trial court. Learned Senior Advocate stressed that at no time did P.W.1 testify that he alone exclusively allocated the land in dispute to the respondents and that the submission of learned counsel for the appellant to the contrary is totally misconceived and unsupported by evidence. He submitted that the findings of the trial court on the issue of fraudulent misrepresentation on the part of appellant in the matter of the execution of Exhibit A are amply supported by evidence adduced on behalf of the respondents, unequivocally ground the plea of non est factum raised by P.W. 1. He submitted that Exhibit A, on the accepted evidence before the court was not duly executed before a Magistrate as required by law. He therefore invited this court to hold that both courts below were right in holding that Exhibit A was not executed in accordance with the provisions of Section 8(1) of the Land Instruments Registration Law and that the same is therefore irregular, null and void and of no effect. He urged the court to dismiss this appeal as lacking in substance and totally unmeritorious.

Now, the 1st issue poses the question to whom the Wopara family through its heads and elders grant the land in dispute in accordance with the customary law of the parties. In this regard, ***I think it is beyond dispute that a valid allocation of family land requires the grant or transfer to be made by the head of the family with the principal members concurring therein. Where, however, the transfer is made by the head of the family alone acting for and on behalf of the family, such a transfer is only prima facie voidable and not void and the family may set aside such disposition of their land if the non-consenting members act timeously.*** See Ekpendu v. Erika (1959) 4 FSC 79 at 81; Mogaji & Ors. v. Nuga (1960) 5 FSC 107 at 109 and Manko & Ors. v. Bonso & Ors. (1936) 3 WACA 62. ***A transfer of family land other than by***

the head thereof or the head and principal members of the family is absolutely void ab initio. See Agbloee v. Sappor (1947) 12 WACA 187, Akinfolarin v. Akinola (1994) 3 NWLR (Pt. 335) 659 at 682. So, too, as the head of a family cannot transfer family land as his own exclusive personal property, such a transfer by him is void ab initio. See City Property Development Ltd. v. Attorney-General Lagos State & Ors. (1976) 1 S.C 71 at 110, (1976) All NLR 24 at 44. B

In the present case, both parties from their pleadings and evidence before the court are ad idem that they belong to the Wopara family. They are also in agreement that the land in dispute is the property of the said Wopara family otherwise also referred to as the Ejilemele or Rumuchorlu family in Rumubiakani, Obio. What seems to be the campus bellum is that whereas the respondents founded their claim to the land in dispute upon an allocation to the 1st respondent and Oke, the late husband of the 2nd respondent in the early 1960 by the said Wopara family, the appellant claimed the land by virtue of a grant in 1958 by the same Wopara family. D

The case for the respondents is that their grant was by Chief C.O.E. Wopara, Eze Izi Agwu 1 of Rumubiakani who is P.W.1, in these proceedings and Chief Joseph Ejilemele Wopara, the Owhor holder of the Wopara family as the head and elders of the Wopara family. The appellant for his part claimed that his grant was by Chief Joseph Ejilemele Wopara, the head of and Owhor holder of Wopara family, Chief C.O.E. Wopara, Eze Izi Agwu 1 who is P.W.1 in this case and two others. F

It is not in dispute that P.W.1, Chief C.O.E Wopara, Eze Izi Agwu 1 is the oldest member and the present head of the Wopara family. Indeed, the appellant both in his pleadings and in his viva voce evidence before the court claimed that one of the elders of the family that allocated the land in dispute to him in 1958 was P.W.1. More importantly is the fact that at the trial, there was no attempt on the part of the appellant to challenge the right or capacity of P.W.1, to allocate family land. The basis of the appellant's case was simply that the land in dispute was allocated to himself and not to the respondents and P.W.1, was mentioned by both parties as having been actively connected with both allocations of family land to both parties for and on behalf of the Wopara family. It is clear that even from the admission of the appellant, P.W. 1, was without doubt one of those G H

entitled under customary law to allocate their family land. Indeed, the evidence of P.W.1, that he in fact allocated the parcel of family land west of the land in dispute to the appellant and upon which the said appellant erected his house was not challenged. Nor was the evidence of P.W. 1, that he was at all material times in charge of B Wopara family land allocations challenged at the hearing.

It is equally common ground that Chief Joseph Ejilemele Wopara, the undisputed Owhor holder of the family died in January, 1987, before the commencement of the actual hearing of this suit. C On the evidence, he was by virtue of being the Owhor holder of the family, the custodian of all the family property. Both P.W.1 and the Owhor holder of the family as head and elders of the Wopara family were said to have featured in the alleged grant of the land in dispute to the respondents and the appellant respectively. Both sides called D evidence on the point.

The learned trial Judge after a thorough evaluation of the testimony of both parties and their witnesses accepted the evidence of the respondents as totally reliable and rejected that of the appellant and his witnesses. In particular, the trial court accepted the testimony E of P.W.1, Chief C.O.E. Wopara, Eze Izi Agwu 1, who was identified by both parties as having taken part in their respective grants by the Wopara family. The trial court therefore found that the land in dispute was allocated to the 1st respondent and the 2nd respondent's husband and that both had exclusive possession of the said land which F they were entitled to maintain.

The trial court in assessing the evidence before it quoted a passage of the testimony of P.W.1, as follows:-

G *"I know the land in dispute. It is within Ejilemele's Compound opposite Old Aba Road. The piece of land in dispute belongs to late Oke and the 1st plaintiff. I gave out the place to them myself in my capacity as leader of that family as far back as 1960. It is a family land - Ejilemele family land. Oke built a house on it and I contributed corrugated iron sheets for the roofing. The house is still standing. H After the Civil War, I saw the Defendant put up a building on the land in dispute. He was not authorised by the elders of the family. He was not authorised also by me as the head. I left the owners to fight it out with him."*

The court went on to state:-

"It is significant that both in the evidence-in-chief of P.W.1, and under cross-examination, he did not say the portion he allotted to 1st Plaintiff and Oke, the late husband of the 2nd Plaintiff was partitioned between them. I have reproduced his evidence not only because he is the oldest member of the Wopara family but also because he is present head of that family also known as Rumuchorlu family. I believe his evidence which substantially supports that of the plaintiffs given by the 1st Plaintiff and I reject the suggestion made to the 1st Plaintiff under cross-examination that the 1st Plaintiff's portion of the land in dispute is a defined portion of the land allotted to him and Oke. The suggestion is a misconception of the whole evidence as reflected in the address of the learned counsel to the Defendant. Having found above that the claim of the plaintiffs is based on allotment of family land, the question that arises and which I should now consider on the authorities is whether such allotment can ripen into ownership in favour of the Plaintiffs."

It then proffered an answer thus:-

"It is settled rule of native law and custom that the Head of the family is the person entitled to look after and manage family properties. Although pieces of lands maybe allotted to members of the family, the allottees have only the right to occupy and use the lands which they cannot alienate or part with without the consent of the family. The right of occupation which the allottee has does not pass ownership of the portion of the family land to him. In other words, his occupation can never ripen into ownership....."

On the evidence before me, I find as a fact that it was to the 1st plaintiff and the late Oke, husband of the 2nd plaintiff that the area edged red on the plan, Exhibit B including the area in dispute verged green thereon were jointly allotted by the Wopara family. Their right of occupation thereby cannot ripen into ownership of the occupation held by them."

It concluded:-

"My decision on the 2nd arm of his claim is that I cannot declare that the plaintiffs are the rightful owners in possession although it is clear from the evidence common to both sides that they are in possession which I shall consider later."

In this regard, it cannot be over-emphasised that the evaluation of evidence and the ascription of probative value

to such evidence are the primary functions of a court of trial which saw, heard and assessed the witnesses. See Akinloye & Anor. v. Eyiola & Ors. (1968) NMLR 92 at 95, Woluchem v. Gudi (1981) 5 S.C. 291 at 320. **This primary assignment was duly executed by the trial court whereupon it came to the conclusion that at no time whether in 1958 or thereafter did the Wopara family make any allocation of the land in dispute through its head and elders to the appellant. Accepting the evidence of P.W.1, the trial court found that the appellant was allocated a different piece of land upon which he had erected his building. This grant which P.W.1, took part in making was subsequently to the 1960 allocation of the land in dispute by the Wopara family to the respondents.**

Now, dealing with the above findings of the trial court, the Court of Appeal per the leading judgment of Nsofor, JCA., commented thus:-

“The learned trial Judge, after carefully reviewing the evidence placed before him assessed it. In his assessment, he found that the testimonies of the D.W.2 and D.W.3, whom, he saw testify and, watched as each of them testified, and, who were called to support the alleged grant of the land in dispute to the appellant, “cannot be relied on.” Concentrating on the versions of evidence by the appellant and the respondents, the learned trial Judge wrote in page 98 lines 29 to 31 of the Record:- “It is significant that both in the evidence-in-chief of P.W. 1, and under cross-examination he did not say the portions he allotted to 1st plaintiff and Oke, the late husband of the 2nd plaintiff, was partitioned between them”. Continuing in page 99 of the Record, the learned Judge wrote inter alia:-

“I believe his evidence which substantially supports that of the plaintiffs given by the 1st plaintiff.”

Having accepted the version of the evidence by the Respondents as to their root of title in the land, the learned trial Judge, rightly in my view, rejected the version of the evidence by the appellant. I confess that I am fully in agreement with the finding, amply supported by the evidence of the pleaded facts. The finding is unsailable. And it is not, in my view, perverse. It is unimpeachable.”

I have given very close consideration to the above findings of the Court of Appeal and find myself in total agreement with the same.

Learned counsel for the appellant in attacking the judgment of the court below which affirmed the decision of the trial court, submitted that it failed to give due weight to the evidence of P.W.1, to the effect that he allocated the land in dispute alone to the respondents. All P.W.1, stated was that the family land was allocated to the respondents in his capacity as leader of the family and not that he alone exclusively allocated the land to them. B

Turning now to issue 2, it seems to me clear that the evaluation of the evidence by the trial court and the conclusions of the court below thereupon are unimpeachable. The Court of Appeal was very much justified in upholding the decision of the trial court. There is abundant evidence on record in support of the case of fraudulent misrepresentation levelled against the appellant by P.W. 1. ***Although the question of the validity of Exhibit A, hardly arises for determination in this appeal, it is undisputable that fraud in the execution was established against the appellant before the trial court. It is also clear from the findings of both courts below which cannot be faulted that Exhibit A was not duly executed as provided under Section 8 of the Land Instruments Registration Law, Cap. 72, Laws of Eastern State of Nigeria.*** Said the trial court:- E

“P.W.1’s signature on the document is therefore invalid and of no effect. His signature is invalid not only on the ground of fraud which I have found on the false representation knowingly made to P.W. 1 by the Defendant as to the nature of the document but on the ground that the mind of P.W.1, did not accompany the signature he appended to Exhibit A ... F

The Legal effect of Exhibit A which I have also found not to have been executed in accordance with Section 8(1) of the Lands Instruments Registration Law is that it is irregular and thereby null and void and of no effect and the successful plea of non-est factum renders the signature of P.W.1 on Exhibit A, invalid and of no force. The Plaintiffs are therefore entitled to the declaration sought in the first arm of their claim. H

The above observations of the trial court were affirmed by the Court of Appeal and I can find no reason to disturb them. I need, perhaps, add that although Exhibit A was duly registered, mere registration of title deed does not validate

spurious or fraudulent transfers. See *Lababedi & Anor. v. Lagos Metal Industries (Nig) Ltd. & Anor.* (1973) 8 NSCC 1. ***But as I have already observed, the issues raised in the present appeal concerns to whom the Wopara family through its head and elders allocated the family land in dispute in accordance with customary law. Registration of title deeds and conveyances hardly come into play in the allocation or transfer of such family land held under customary tenure. In my view, the court below was fully justified in upholding the findings of fact made by the trial court and the inference and conclusions drawn from those facts as there was abundant evidence on record in support of those findings and conclusions.***

It remains for me finally to mention that this appeal involves concurrent findings of fact of both the trial court and the Court of Appeal. In this regard, ***the law is well settled that this court will not disturb such concurrent findings of fact unless a substantial error apparent on the face of the record of proceedings is shown or when such findings are perverse or are reached as a result of a wrong approach to the evidence or as a result of a wrong application of a principle of substantive law or procedure.*** See *Enang v. Adu* (1981) 11-12 S.C. 25, *Woluchem v. Gudi* (1981) 5 S.C. 291 at 326, *Ike v. Ugboaja* (1993) 6 NWLR (Pt.301) 539 at 569, *Igwego v. Ezeugo* (1992) 6 NWLR (Pt. 249) 561 at 576. ***No such vitiating factors have been established by the appellant in this case.***

In the same vein, the Supreme Court will not interfere with the concurrent judgments of the High 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 & Industrial Engineering Co. Ltd.* (1986) 1 NWLR (Pt. 14) 1 at 36, *Enang v. Adu* (supra). Again no miscarriage of justice or violation of some principles of law or procedure was established by the appellant in this case. In my view, both issues 1 and 2 must be and are hereby resolved against the appellant.

In the final result, this appeal fails and the same is hereby dismissed with N10,000.00 costs to respondents against the appellant.

KUTIGI JSC

I have had a preview of the judgment just rendered by my learned brother, Iguh, JSC. He has meticulously dealt with all the issues canvassed before us. I agree with his reasoning and conclusions. The appeal is accordingly dismissed with N10,000.00 costs in favour of Plaintiffs/ Respondents. B

MOHAMMED JSC

I have had the opportunity to go through the judgment of my learned brother, Iguh, JSC., in draft, and I agree entirely with him that this appeal has failed. For the reasons given in the said judgment which I adopt as mine. I will also dismiss this appeal. It is dismissed with N10,000.00 costs in favour of the respondents. C

ONU JSC

I had the opportunity to read before now the judgment of my learned brother, Iguh, JSC., just delivered. For the reasons set out therein, I am in full agreement with him that the appeal lacks merit and must therefore fail. E

I accordingly dismiss it and made similar consequential orders inclusive of those as to costs.

TOBI JSC

I have read the judgment of my learned brother, Iguh, JSC., and I agree with him that this appeal should be dismissed.

It has been established by a long line of cases that the best way to alienate family property is by the head of the family with the concurrence or consent of the principal members of the family. A person can be recognised as a head of a family by three major ways: (a) by operation of law; (b) by election by the members of the family; and (c) by direct appointment by the founder of the family. On the other hand, a principal member of a family is the head of each branch of the family. He is in most cases the eldest child of each wife. See Lewis v. Bankole (1908) 1 NLR 82. H

There are situations where the head of the family alienates

family property without the consent of the principal members of the family. Such an alienation is not void ab initio but is voidable at the instance of the principal members of the family. But where the principal members of a family alienate family property without the consent of the head of the family, such an alienation is void ab initio.

B That was the decision in *Ekpendu v. Erika* (1959) 4 FSC 79 and the group of cases. See *Esan v. Faro* 12 WACA 135; *Agbloee v. Sappor* 12 WACA 187.

C There is evidence that P.W.1, the head of the Wopara family, otherwise known as Ejilemele or Rumuchorlu family, allocated the parcel of family land, west of the land in dispute, to the appellant who erected his house. That was way back in 1960. In the circumstances, it is wrong for the appellant to erect a contrary title to the land in dispute based on the allocation.

D The appellant is not happy with the evaluation of the evidence by both the High Court and the Court of Appeal. Counsel submitted that the Court of Appeal was not justified in upholding the findings of fact by the trial Judge. With respect, I do not agree with him. The learned trial Judge took time and pains in evaluating the evidence before him and arrived at the correct conclusion. Accordingly, the Court of Appeal which relied on the correct conclusion reached by the trial Judge cannot be faulted. Where the evaluation of facts is borne out from the evidence adduced in court, an appellate court had no jurisdiction to interfere. But where the evaluation is outside the evidence adduced, an appellate court will interfere on the ground that such an evaluation and subsequent findings are perverse. I do not see any perversion in the evaluation of the evidence by both High Court and the Court of Appeal.

G The law is trite that this court cannot interfere with concurrent findings of the High Court and the Court of Appeal. In this appeal, both courts made valid concurrent findings which are against the appellant. I do not see my way clear in interfering with the valid concurrent findings of the two courts.

H It is for the above reasons and the more detailed reasons given by my learned brother, Iguh, JSC., that I too dismiss the appeal with N10,000.00 costs in favour of the respondents.