

**SUPREME COURT OF NIGERIA**  
FRIDAY 27TH JUNE, 2003. SC. 125/1999  
**CORAM:- S. M.A. BELGORE, S. U. ONU, U. A. KALGO,**  
**S. O. UWAIFO, A. O. EJIWUNMI, JJSC**

ALHAJI ABDULRAHMAN AKANBI ..... APPELLANT  
(Substituted for Alhaji Jimoh Opeloyeru)  
(For and on behalf of Ogboye family  
of Idofian)

AND

1. MALLAM WASIU SALAWU  
(Substituted for Lambe Atunde) ..... RESPONDENTS  
(Baale Arugbo)  
2. KWARA BREWERIES NIG. LTD

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APPEALS - Grounds - Framing of - Implications - Framing a ground as a misdirection in law - Does not make the ground incompetent - Rather it raises a ground of mixed law and fact (H1)

JUDICIAL PRECEDENTS - Judgments - Overruling - Supreme Court decision in Oyeniran v. Egbetola - That High Court lacks jurisdiction over land in non-urban area - Was overruled in Adisa v. Oyinwola (H2)

LAND LAW - Title - Root of - Proof - Party who relies on traditional history for his root of title - Must plead that history - And lead evidence on it (H3)

LAND LAW - Customary tenancy - Payment of Ishakole - A party who asserts payment of Ishakole - Must specifically plead the nature of same - As Ishakole could be in kind or in cash (H4)

LAND LAW - Evidence - Contradiction - Effect - Plaintiff and his witnesses gave inconsistent testimonies - Which are fatal to plaintiff's claim (H5)

**FACTS**

Plaintiff/appellant (for himself and on behalf of Ogboye family

of Idofian) sued defendants/respondents in the High Court of Kwara State holden at Ilorin claiming sundry declarations and orders by which they claim to be entitled to customary certificate of occupancy over the land in dispute and as such entitled to receive compensation over the portion of the land now acquired by 2<sup>nd</sup> respondent. It is appellant's claim that 1<sup>st</sup> respondent were customary tenants of appellant. During trial, appellant (as P.W.1) and P.W.4 both admitted that the land in dispute did not belong to one Ogboye family alone but certain parts of it belonged to other families.

Moreover, though appellant pleaded that Opelade, their ancestor founded the land, they neither pleaded his founding activities nor pleaded the succeeding owners of the land to the time it finally devolved on them. Nevertheless, after hearing the learned trial judge gave judgment to appellant and granted all his prayers. Aggrieved, 1<sup>st</sup> respondent appealed to Court of Appeal which allowed the appeal, set aside the judgment of trial court and dismissed appellant's claims. Dissatisfied, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

*"1. Whether grounds 4 and 6 of Notice of Appeal on which issue No. 1 in the Respondents' (the Appellant's Appeal to the Court of Appeal) are formulated are competent grounds and therefore able to sustain issue No. 1 and whether upholding the grounds and issue on them has not occasioned miscarriage of justice - Ground 1.*

*2. Whether the High Court has jurisdiction to try this case which is in respect of land outside the urban area as described in Kwara State Legal Notice No. 2 of 1978 - Ground 2.*

*3. Whether the Court of Appeal did not fail to appreciate the effect of Plaintiff's claim in paragraph 27(d)(e)(f) over the other claims when it dismissed the Appellant's case on the ground that the extent of the Ogboye family land acquired by the 2nd Respondent at Arugbo was not even specified or ascertained with definitive certainty - Grounds 3 and 7.*

*4. Whether the Court of Appeal appreciated the amended Statement of Claim when the Appeal Court held that the trial Court based its decisions on unpleaded facts - Grounds 4 and 5."*

# **HELD** (Unanimously dismissing the appeal per UWAIFO JSC)

## *APPEALS - Grounds - Framing of - Implications*

**1. I need not go into further discussion of the consequences of framing a ground of appeal as a misdirection in law or an error in law and on the facts other than to say that such framing does not ipso facto make the ground of appeal incompetent. That would normally raise a ground of mixed law and fact, which is not unusual in many appeals. But it ought to be carefully examined, as any other ground of appeal, along with its particulars in order to determine its purport. So long as it is not capable of misleading the other party, and the court is satisfied that its meaning can be reasonably elicited, it cannot be considered objectionable:**

**The court below was right in holding that grounds 4 and 6 of the grounds of appeal filed before it were competent even though they complained of a misdirection in law and on the facts. (p. 1872 A)**

## *JUDICIAL PRECEDENTS - Judgments - Overruling*

**2. Issue 2 is based on the decision of this Court in Oyeniran v. Egbetola (1997) 5 NWLR (Pt. 504) 122 which held that the High Court lacks jurisdiction to entertain land dispute in a non-urban area. But that decision was overruled in Adisa v. Oyinwola (2000) 6 S.C. (Pt. II) 47; (2002) 10 NWLR (Pt. 674) 116. I must therefore resolve issue 2 in the affirmative.**

(p. 1872 E)

## *LAND LAW - Title - Root of - Proof*

**3. The court below rightly found that the learned trial Judge was in grave error as there were no facts pleaded to support or even suggest traditional history upon which a court could base findings to that end as the learned trial Judge did. It is now well established that a plaintiff who relies in his pleading and evidence on traditional history for his root of title to land must ensure that he pleads that history properly and lead evi-**

**dence on it.**

**To rely on traditional history, a party must be familiar with the substance of that history, and he must in practical terms do this by pleading the name of the ancestor who founded the land and the names of those after him to whom the land devolved up to the last successor or successors. It is also necessary to plead what the ancestor did specifically to actualize the founding; that is to say, the facts of what he did that constituted the founding. Evidence will have to be led systematically in support of the history without leaving gaps, or creating mysterious or embarrassing linkages which are difficult to explain.** (p. 1873 B)

*Customary tenancy - Payment of Ishakole - Need to plead*

**4. A party who asserts that it received or was entitled to payment of Ishakole to it in support of customary tenancy ought to plead the nature of the Ishakole before evidence could be led on it. It is known that Ishakole could be in kind, such as farm produce or in recent times in money or both.**

**Payment does not take any known particular form or kind and that is the more reason why the nature of the Ishakole relied on must, in line with the rules of pleading, be specifically pleaded. Not having so pleaded in the present case, the plaintiff found it convenient to engage in giving whatever evidence of Ishakole came to his mind in the witness box in support of his claim. The evidence was certainly inadmissible apart from being unreliable and the trial court was in error to have relied on it.** (p. 1875 G)

*Evidence - Contradiction - Effect*

**5. Apart from the deficient pleading in regard to the traditional history which I pointed out earlier, the plaintiff (as P.W.1) and his witness P.W.4 were not consistent in claiming the Arugbo village land. While P.W.1 first said that the land belonged to Ogboye family, he later contradicted himself by testifying thus:**

***“The land in respect of which I am now claiming belongs to Ogboye, Ekanola and Ododo families .....***

***Nothing could be more devastating to the plaintiff's claim than the piece of evidence recited above given by him. His witness, P.W.4, also first said the land belonged to Ogboye family but later put it as follows:***

***"The land on which the 2nd defendant is now working at Arugbo belongs to Ogboye and other families."***

***Thus the plaintiff and his witness irrefutably 'challenged' the validity of the claim they brought to court upon their showing by their evidence, and thus succeeded to destroy it.***

(p. 1876 H)

### **REPRESENTATION**

Appellant absent - not represented

Dapo Adeoye, with M.O. Olajide, Esq., for 1st Respondent

J.O. Ijaodola, Esq., for 2nd Respondent

### **CASES REFERRED TO**

Alade v. Awo (1975) 4 S.C 215

Akinloye v. Eyiola (1968) NMLR 92

Kojo II v. Bonsie (1957) 1 WLR 1223

Aikhionbare v. Omoregie (1976) 12 S.C. 11

Owoade v. Omitola (1988) 2 NWLR (Pt. 77) 413

Anyanwu v. Mbari (1992) 5 NWLR (Pt. 242) 386

Oyeniran v. Egbetola (1997) 5 NWLR (Pt. 504) 122

Aderounmu v. Olowu (2000) 4 NWLR (Pt. 652) 253

Onwugbufo v. Okoye (1996) 1 NWLR (Pt. 424) 252

Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718

Olujobu of Ijebu v. Osho, the Eleda of Eda (1972) 5 S.C. 143

Odonigi v. Oyeleke (2001) 2 S.C. 194, (2001) 6 NWLR (Pt 708) 12

Thor Ltd. v. First City Merchant Bank Ltd. (1997) 1 NWLR (Pt. 479)

35

Eze v. Atasie (2000) 6 S.C. (Pt. I) 214; (2000) 10 NWLR (Pt. 676)

470

Makinde v. Akinwale (2002) 1 S.C. 89

### **LEAD JUDGMENT BY UWAIFO JSC**

This is an appeal from a judgment of the Court of Appeal, Kaduna Division. The subject-matter is land in Arugbo village in

Ifelodun Local Government area of Kwara State. The plaintiff, now appellant, for himself and on behalf of Ogboye family of Idofian, claiming the ownership of Arugbo land, sought six reliefs against the defendants, now respondents as follows:

- B *“(a) That Ogboye family of Idofian are entitled to Customary Certificate of Occupancy over the unoccupied land at Arugbo.*
- (b) That Ogboye family of Idofian are the family entitled to receive compensation over the acquired land by Kwara Breweries (Nig.) Ltd.*
- C *(c) An order that Kwara Breweries Nig. Ltd. should pay to the Plaintiff compensation payable on Ogboye family land at Arugbo village, Idofian.*
- (d) That Ogboye family of Idofian is entitled to harvest the economic trees on the land at Arugbo village in accordance with the*  
D *age long tradition of Idofian.*
- (e) That Ogboye family land at Arugbo traditionally extends to Odo Yinde, where they have boundary with Omupo, Ododo land near Igberi and river Odomu in Okanle village and lower river Odomu in Elerinjare.*
- E *(f) That the Arugbo people having refused to pay annual tribute to Ogboye family and having denied the overlordship of the Ogboye family of Idofian have forfeited their tenancy and should vacate the land forthwith.”*

F On 12th November, 1993, Orilonise, J., sitting in the High Court, Ilorin, in a considered judgment found for the plaintiff inter alia:

*“I am satisfied that by denying his landlord’s title to the land in dispute which was granted to his ancestors for farming purposes, the*  
G *1st defendant has committed serious breaches of customary tenancy entitling him under customary law to forfeiture of his holding.....*

*The 1st defendant has no choice than (sic) to either acknowledge the title of the plaintiff’s family to Arugbo land and obtain that family’s consent to remain on the land or vacate it if himself and his*  
H *people are not prepared to continue to pay Ishakole to the Ogboye family.....*

*The plaintiff’s claims succeed and on the preponderance of evidence and upon balancing the probabilities of this case he is granted all the reliefs sought against the defendants.”*

The 1st defendant appealed to the Court of Appeal and raised five issues for determination of the appeal, two of which were, in my view, central to the case presented to the trial court. They were:

“(a) *whether in view of the pleading and evidence led, the trial court was right in its conclusion that the plaintiff/respondent proved his claim to customary ownership of Arugbo.* B

(b) *Was the trial court right when it held that 1st defendant was plaintiff’s customary tenant.”*

In the leading judgment delivered by Mahmud Mohammed, JCA., which was concurred in by Ogebe and Muhammad, JJCA., the two issues stated above were resolved in the negative. Having done so, in addition to also answering the other issues, the court below, obviously, allowed the appeal. It dismissed the action. C

The plaintiff has now appealed to this court and has raised four issues for determination as follows: D

“1. *Whether grounds 4 and 6 of Notice of Appeal on which issue No. 1 in the Respondents’ (the Appellant’s Appeal to the Court of Appeal) are formulated are competent grounds and therefore able to sustain issue No. 1 and whether upholding the grounds and issue on them has not occasioned miscarriage of justice - Ground 1.* E

2. *Whether the High Court has jurisdiction to try this case which is in respect of land outside the urban area as described in Kwara State Legal Notice No. 2 of 1978 - Ground 2.*

3. *Whether the Court of Appeal did not fail to appreciate the effect of Plaintiff’s claim in paragraph 27(d)(e)(f) over the other claims when it dismissed the Appellant’s case on the ground that the extent of the Ogboye family land acquired by the 2nd Respondent at Arugbo was not even specified or ascertained with definitive certainty - Grounds 3 and 7.* F G

4. *Whether the Court of Appeal appreciated the amended Statement of Claim when the Appeal Court held that the trial Court based its decisions on unpleaded facts -Grounds 4 and 5.”*

Issues 1 and 2 have raised questions which have been finally settled by this court in some recent decisions. Issue 1 arises from the unfortunate misconception by some Judges of a mere obiter dictum of Nnaemeka-Agu, JSC., (which they applied as if a pronouncement by this court) in Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718 at 744 where he said that “a ground of appeal cannot be an error in H

law and a misdirection at the same time.....” Not only was this misapplied to regard grounds of appeal so framed as incompetent, it was extended to attack grounds of appeal complaining of misdirection in law and on the facts, as the present appellant has done in this case. **I need not go into further discussion of the consequences of framing a ground of appeal as a misdirection in law or an error in law and on the facts other than to say that such framing does not ipso facto make the ground of appeal incompetent. That would normally raise a ground of mixed law and fact, which is not unusual in many appeals. But it ought to be carefully examined, as any other ground of appeal, along with its particulars in order to determine its purport. So long as it is not capable of misleading the other party, and the court is satisfied that its meaning can be reasonably elicited, it cannot be considered objectionable:** see *Thor Ltd. v. First City Merchant Bank Ltd.* (1997) 1 NWLR (Pt. 479) 35; *Aderounmu v. Olowu* (2000) 4 NWLR (Pt. 652) 253; *Odonigi v. Oyeleke* (2001) 2 S.C. 194, (2001) 6 NWLR (Pt 708) 12. **The court below was right in holding that grounds 4 and 6 of the grounds of appeal filed before it were competent even though they complained of a misdirection in law and on the facts.**

**Issue 2 is based on the decision of this Court in *Oyeniran v. Egbetola* (1997) 5 NWLR (Pt. 504) 122 which held that the High Court lacks jurisdiction to entertain land dispute in a non-urban area. But that decision was overruled in *Adisa v. Oyinwola* (2000) 6 S.C. (Pt. II) 47; (2002) 10 NWLR (Pt. 674) 116. I must therefore resolve issue 2 in the affirmative.**

Issues 3 and 4 will be considered together. The learned trial Judge appeared to have considered the case on the basis that the plaintiff pleaded traditional history and proved it by evidence. That was why, apparently, he observed and found as follows:

*“On the issue of who among the plaintiff’s Ogboye family and the 1st defendant has proved title to the land, I find from the evidence before me that while the plaintiff’s family claimed title to the disputed land through Opelade, their progenitor, who was said to have founded the land and settled both Bandawaki and Aina thereat to farm the land, the 1st defendant on the other hand claimed that it (was) Esubiyi who founded and first settled on Arugbo land.*



*The traditional historical evidence given by both parties though conflicting is in my view, not inconclusive. I shall now consider the totality of the evidence and see which of the two histories is more probable.....*

*From the pleadings of both the plaintiff and the 1st defendant as well as from their evidence, I find it more probable that Opelade who founded Arugbo lived in Idofian while the land was occupied by Bandawaki and Aina. I prefer the evidence of the plaintiff to that of the defendant....”*

**The court below rightly found that the learned trial Judge was in grave error as there were no facts pleaded to support or even suggest traditional history upon which a court could base findings to that end as the learned trial Judge did. It is now well established that a plaintiff who relies in his pleading and evidence on traditional history for his root of title to land must ensure that he pleads that history properly and lead evidence on it.** The history may succeed on its merits either standing alone when there is no competing story or where such story breaks down for being unreliable in nature or owing to its own internal conflict. The traditional history of the plaintiff would accordingly be accepted on the basis of its strength and cogency: see *Olujebu of Ijebu v. Osho*, the *Eleda of Eda* (1972) 5 S.C. 143; *Alade v. Awo* (1975) 4 S.C 215; *Aikhionbare v. Omoregie* (1976) 12 S.C. 11. Where however the traditional histories of both parties are plausible but conflict one with the other so that it will not be open to the court simply to prefer one to the other, then the situation calls for the application of the rule in *Kojo II v. Bonsie* (1957) 1 WLR 1223, which is that preference of one history to the other as being more probable would depend on recent acts of possession shown by the parties that the court will need to consider to make up its mind.

**But to rely on traditional history, a party must be familiar with the substance of that history, and he must in practical terms do this by pleading the name of the ancestor who founded the land and the names of those after him to whom the land devolved up to the last successor or successors. It is also necessary to plead what the ancestor did specifically to actualize the founding; that is to say, the facts of what he did that constituted the founding. Evidence will have to be led system-**

***atically in support of the history without leaving gaps, or creating mysterious or embarrassing linkages which are difficult to explain:*** see *Akinloye v. Eyiola* (1968) NMLR 92; *Owoade v. Omitola* (1988) 2 NWLR (Pt. 77) 413; *Anyanwu v. Mbara* (1992) 5 NWLR (Pt. 242) 386; *Onwugbufo v. Okoye* (1996) 1 NWLR (Pt. 424) 252; *Uchendu v. Ogboni* (1999) 4 S.C. (Pt. II) 1; (1999) 5 NWLR (Pt. 603) 337; *Eze v. Atasie* (2000) 6 S.C. (Pt. I) 214; (2000) 10 NWLR (Pt. 676) 470.

In the present case, surprisingly, all that the plaintiff pleaded to assert ownership of the land in question i.e. the Arugbo village land, is contained in just one paragraph of the amended Statement of Claim. It is paragraph 2 which reads:

*“2. Ogboye family of Idofian were the traditional owners of the land on which Arugbo people settled.”*

The statement of claim then devoted the next ten paragraphs to narrate how one Aina who was regarded as “the first settler on the land in question came from Ilorin,” and was “settled at Ogboye family land.” This was then followed by a narrative of how Aina had made fruitless attempts to settle elsewhere until he met one Bandawaki where he was settled, who said he could not give Aina permission to settle near him without the consent of Ogboye family. Bandawaki introduced Aina to one Opelade, the head of Ogboye family. Aina, a Fulani from Ilorin, had asked for land to stay temporarily to farm but it turned out that Aina remained there permanently. It happened that Opelade accepted the situation and always paid a visit to Aina, the old man he referred to as Arugbo. That was how Arugbo settlement otherwise called Arugbo village came to be known. This was the bizarre story relied on by the plaintiff. It must be said that the history of how Ogboye family founded the land through Opelade (the head of Ogboye family) which is now known as Arugbo village, and of those who successively became the family head, before talking about how Aina was permitted to settle on it, is completely absent.

The question of customary tenancy and the payment of tribute (Ishakole) by the 1st defendant cannot arise without the plaintiff first establishing the ownership of Arugbo village which he claims to belong to his family of Ogboye (or Opelade’s family). Notwithstanding the failure to prove that he is the overlord of Arugbo village land,

the plaintiff pleaded the following averments in support of his entitlement to payment of tribute by Aina as an alleged customary tenant:

*“1.3 Each year during the festival of Orisa Oko, Aina used to bring to Opelade’s family gifts as a token of gratitude for allowing him to stay on the land.*

*1.5 Oduntan was collecting annual tribute for Opelade from Aina.*

*1.6 Aina and his descendants did not defy traditional duties in respect of the land and they have always paid their tribute to Ogboye family and obtained Ogboye family consent before allowing tenants to stay on the land.”*

It will be observed that the nature of the tribute was not specified. But some attempt was made by the late plaintiff, Alhaji Jimoh Opeloyeru as P.W. 1, to give evidence of the tribute as follows:

*“It was customary among the Yorubas for a stranger who was given a piece of land to farm to pay annual tributes called Ishakole to the land owner. Aina agreed to pay Ishakole on the land granted to him. Aina paid Ishakole to Opelade’s family called Ogboye.*

*The Ishakole that was paid to Opelade included pounding traditional dye (Elu). The traditional dye would be moulded and shared equally between Opelade and the women from Aina’s family who pounded the Elu.*

*Aina was also bringing palm-wine to Opelade during Orisa - Oko festival. Whenever harvests are made from economic trees on the land, Aina would bring the produce to Opelade and it would be shared.”*

And later that:

*“These days, anybody who farms on Arugbo land pays N5,000 as tribute to my family. The descendants of Aina also pay N5,000 annually to my family as Ishakole.”*

**A party who asserts that it received or was entitled to payment of Ishakole to it in support of customary tenancy ought to plead the nature of the Ishakole before evidence could be led on it. It is known that Ishakole could be in kind, such as farm produce or in recent times in money or both: see Makinde v. Akinwale (2002) 1 S.C. 89; (2002) 2 NWLR (Pt. 644) 435 at 447. Payment does not take any known particular form or kind and that is the more reason why the nature of the Ishakole relied**

**on must, in line with the rules of pleading, be specifically pleaded. Not having so pleaded in the present case, the plaintiff found it convenient to engage in giving whatever evidence of Ishakole came to his mind in the witness box in support of his claim. The evidence was certainly inadmissible apart from being unreliable and the trial court was in error to have relied on it.**

Still on the overall performance of the learned trial Judge in the evaluation of the evidence adduced by the plaintiff, the court below, per Mahmud Mohammed. JCA., after pointing out conflicts in the evidence, observed inter alia:

*“These glaring conflicts in the evidence of the 1<sup>st</sup> respondent and his witness have not been considered let alone resolved by the learned trial Judge before concluding that the 1st respondent had proved all his claims and was entitled to judgment. Surely if Alhaji Abdulrahman is the true owner of the land acquired by the 2nd defendant now 2nd respondent in this appeal and not the Ogboye family, then the Ogboye family of the 1st respondent has no business claiming the same compensation from the 2nd defendant in reliefs (b) and (c) of paragraph 27 of his amended Statement of Claim. Similarly, if indeed other families notably Ekanola and Ododo families also own land in the same Arugbo village being claimed by the 1<sup>st</sup> respondent for his Ogboye family, on behalf of whom alone he instituted the present action, then his other claims for title to the same land, right to harvest economic trees and forfeiture of customary tenancy as framed in reliefs (a), (d) & (f) of paragraph 27 of the amended Statement of Claim have no basis to stand whatsoever. This is because the pieces of unresolved conflicting evidence earlier quoted in this judgment, particularly having come from the plaintiff/1st respondent himself is quite inconsistent with his claim of exclusive ownership of the land in Arugbo village by his own Ogboye family alone.”*

The learned Justice of Appeal thus quite rightly unraveled the weakness in the plaintiff’s case and the inadequacies in the judgment of the trial court.

**Apart from the deficient pleading in regard to the traditional history which I pointed out earlier, the plaintiff (as P.W.1) and his witness P.W.4 were not consistent in claiming the Arugbo village land. While P.W.1 first said that the land be-**

**longed to Ogboye family, he later contradicted himself by testifying thus:**

***“The land in respect of which I am now claiming belongs to Ogboye, Ekanola and Ododo families ... I agree that Ekanola family owns part of the land acquired by the 2nd defendant ... It is true that part of the land acquired by 2nd defendant belongs to Ododo family..... I agree that Alhaji Abdulrahman is entitled to claim the compensation for my family because he and not my Ogboye family owns the land acquired by the 2nd defendant.”*** B

**Nothing could be more devastating to the plaintiff’s claim than the piece of evidence recited above given by him. His witness, P.W.4, also first said the land belonged to Ogboye family but later put it as follows:** C

***“The land on which the 2nd defendant is now working at Arugbo belongs to Ogboye and other families.”*** D  
**Thus the plaintiff and his witness irrefutably ‘challenged’ the validity of the claim they brought to court upon their showing by their evidence, and thus succeeded to destroy it.**

It can be seen from the circumstances that the learned trial Judge completely failed to consider and evaluate the evidence properly. This consequently resulted in his erroneously granting all the six reliefs sought by the plaintiff. The first relief seeks a declaration of entitlement to a customary right of occupancy over ‘the unoccupied land at Arugbo’ in which the plaintiff expects a Certificate of Occupancy to be issued. This must be in respect of part of Arugbo village, i.e., that part which is unoccupied. Even assuming that Arugbo village area was adequately identifiable from the evidence, there is no evidence as to the quantum of the area that is occupied so as to know which is unoccupied. How then can a declaration be made in regard to the first relief without a survey plan? The second and third reliefs for compensation for the land acquired by the 2nd defendant had been obviously defeated by the plaintiff’s evidence reproduced earlier. The fourth and sixth reliefs suffer from the inability of the plaintiff to prove either ownership or exclusive possession of Arugbo village land. E F G H

The fifth relief is a claim by the plaintiff “that Ogboye family land at Arugbo have boundary with Omupo, Ododo land near Igberi and River Odomu in Okanle village and lower river Odomu in

Elerinjare.” This is a rather curious relief since this is not a suit brought by Arugbo village against neighbouring villages to determine the boundaries between them. Indeed, it is not better than an averment pleaded to delimit the land area of Arugbo village with a view to obtaining a relevant relief when the said land area is established by evidence. It is clearly inappropriate in the present suit in which the plaintiff alleges the 1st defendant is a customary tenant of Ogboye of Arugbo village to ask for a declaration that Arugbo village is bounded by certain features. In paragraph 20 of the amended Statement of Claim, it was averred thus:

- “20. *The land of Opelade Ogboye has boundaries as follows:*  
 (a) *with Omupo at River Yinde*  
 (b) *with Ododo compound Idofian at Igberi*  
 (c) *with Okanle at River Odomu*  
 (d) *with Elerinjare at lower river Odomu*  
 (e) *and with Ile Ekanola of Idofian.*”

This was, it seems, to establish the land area to which eventually the reliefs stated in (a), (b), (c), (d) and (f) could be tied in case the claim to title, customary tenancy, right to compensation and ownership of economic trees is proved by credible evidence. But that evidence of P.W.2 and D.W. 5 accepted and relied on by the learned trial Judge would not appear to sufficiently support the finding he made as to the boundaries of Arugbo village when he said thus:

- “*I accept the evidence of both P.W.2 and D.W.5 That Ogboye family land at Arugbo has river Mani, a tributary of Odomu or Odorun stream, as boundary with Elerinjare. The boundaries of Ogboye family land at Arugbo have therefore been proved and the fifth head of claim succeeds.*” (Emphasis mine)

As a matter of fact I do not know what the learned trial Judge considered relevant in the evidence of P.W.2 and D.W.5 as capable of establishing the boundaries of Arugbo village land, and what he accepted in that evidence. The evidence of D.W.5 who gave his name as Alhaji Abass, the Chief Ajiroba of Elerinjare went thus:

- “*I am sent here as a representative of the village head of Elerinjare so that the people of Idofian would not claim ownership of Elerinjare’s land. I have come to give evidence on behalf of the village head of Elerinjare because the people of Idofian want to claim ownership of Elerinjare land.*”

He was not cross-examined. This is part of what the learned trial Judge specifically believed. This piece of evidence has no probative value and is therefore of no use. As for the evidence of P.W.2, Memudu Alao, the relevant aspect reads thus:

*“I know that the boundary between Elerinjare and Idofian is river Odorun. The land on Idofian side of the boundary between Elerinjare and Idofian belongs to Ogboye family. I know the place called Arugbo. It is a village. I do not know of any river between Arugbo village and the Ogboye family land.”*

This was evidence-in-chief. One wonders how this evidence relied on by the learned trial Judge proves the boundaries of Arugbo village.

I am satisfied that in all the circumstances of this case, the judgment of the learned trial Judge was manifestly perverse. The court below was justified to set it aside and to dismiss the action as it is patently clear that the plaintiff failed to prove his case. I find no merit in this appeal. I accordingly dismiss it with N10,000.00 costs to the 1st respondent against the appellant.

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### **BELGORE JSC**

I agree with my learned brother, Uwaifo, JSC., that this appeal must fail. The judgment of trial court based on untenable reasons and the Court of Appeal was on firm ground to set it aside. I also dismiss this appeal and make the same orders as to costs as made by Uwaifo, JSC.

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### **ONU JSC**

I read before now the judgment of my learned brother, Uwaifo, JSC., just delivered. I agree with his reasoning and conclusion that the appeal must perforce fail. I accordingly dismiss it and make the same consequential orders inclusive of the costs awarded therein.

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### **KALGO JSC**

I have had the opportunity of reading in draft the judgment just delivered by my learned brother, Uwaifo, JSC., in this appeal. I

entirely agree with the reasoning and conclusions reached therein. The Court of Appeal was right in my view to hold that there was insufficient credible evidence before the trial court to prove the title to and identity of the land in dispute to entitle the appellant to the judgment of the trial court. This appeal therefore lacks merit and is  
B hereby dismissed with costs as assessed in the leading judgment.

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***EJIWUNMI JSC***

C Having had the privilege of reading the draft of the judgment just delivered by my learned brother, Uwaifo, JSC., before now, I agree with him for the reasons given in the said judgment that the appeal lacks merit. The appellant has not in this appeal advanced any argument to persuade me that the lower court was wrong to  
D have arrived at its decisions against which he has now appealed. The appeal is therefore dismissed by me with costs in the sum of N10,000.00 to the 1st respondent.

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