

SUPREME COURT OF NIGERIA
2ND JULY, 2004. SC. 148/2000
CORAM:- M. L. UWAIS CJN, S. U. ONU, A. I. IGUH, U. A.
KALGO, D. O. EDOZIE, JJSC

MRS. OLAYIDE OKELOLA PLAINTIFF/APPELLANT
AND
ADEBISI ADELEKE DEFENDANT/RESPONDENT

LAND LAW - Title - Common root - Party that establishes better title - Will succeed - And plaintiff is to satisfy court - As to precise nature of title claimed (H1)

LAND LAW - Title - Proof - The onus of proof lies on the plaintiff - And he cannot rely on the weakness of the defence - Save where the defence supports plaintiff's case (H2)

APPEALS - Concurrent findings - That were not shown to be perverse - Will not be interfered with (H3)

SUCCESSION - Wills - Jointly owned landed property - Cannot be disposed of - By the Will of one of the late owners (H4)

FACTS

Before the Lagos High Court, plaintiff/appellant filed an action against the defendant/respondent. Plaintiff inter alia, claimed title to the landed property in dispute, relying on the last will of the late Christiana Ejide. The parties agreed that the property originally belonged to one Dada Adegbite by virtue of a Crown grant. But plaintiff averred that Adegbite had only one issue, Christiana Ejide, who inherited the property in dispute under customary law. Plaintiff who is a close relation of Christiana, tendered a power of attorney, exhibit P2, and last Will and Testament, Exhibit P3, that Christiana executed in her favour. Plaintiff established Christiana's death vide an affidavit for presumption of death that enabled her obtain probate in respect of the Will by which she claimed absolute ownership of the land in dispute.

Defendant who is the daughter of Bolaji Adegbite, stressed that Dada Adegbite the original owner of the disputed property, was survived by three children, Bolaji her father being one of them. She established that Christiana was not missing at any time and tendered documents as to her death. She showed how the landed property was jointly owned by her late father and late Christiana.

After an exhaustive review of the evidence, the trial court dismissed the plaintiff's claims in their entirety. Her appeal to the Court of Appeal was dismissed. Being dissatisfied, plaintiff has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the appellant was able to establish on the evidence brought by her that she is entitled to a declaration of title to the property in dispute.

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

Title - Common root

1. Where parties to a land in dispute trace their title to a common root, it is the party who establishes a better title thereto that is entitled to succeed in a claim for declaration of title. See Michael Romaine v. Christopher Romaine (1993) 2 SCNJ 25. In the second place, in a suit for declaration of title to land, the plaintiff, to succeed, must satisfy the court on two points. The first is as to the precise nature of the title claimed, that is to say, whether it is original ownership or ownership by grant and as to the nature of the grant, whether it is absolute grant or otherwise. The second is that the court must equally be satisfied with the evidence establishing title of the nature claimed. See Emegwara & Ors. v. Nwaimo & Ors. (1953) 14 WACA 347. (p. 1931 F)

Title - Proof - The onus of proof lies on the plaintiff

2. The point must be stressed that in a claim for declaration of title, the onus of proof lies on the plaintiff to satisfy the court that he is entitled on the evidence brought by him to the relief claimed. The plaintiff must rely on the strength of his own case and not on the weakness of the defence. If

this onus is not established, the weakness of the defendant's case will not help him and the proper judgment will be for the defendant unless, of course, where the defendant's case itself supports the plaintiff's case and contains evidence on which the plaintiff is entitled to rely in which case the plaintiff will be fully entitled to rely on such evidence. In the present case, however, there is no suggestion whatsoever by the plaintiff/appellant that there was any aspect of the defendant's case or evidence which supported the case for the plaintiff on the question of the plaintiff's alleged personal and exclusive ownership of the property in dispute under the Will, Exhibit P3, as claimed by her. (p. 1932 A)

APPEALS - Concurrent findings

3. On the whole, I am of the view that from all the evidence before the court that there is no reason why the findings of the learned trial Judge can be faulted. I am also of the view that there is no merit in the appeal and that it ought to be dismissed.*

The above findings of fact of the trial court as affirmed by the Court of Appeal are concurrent findings of fact which this court may not interfere with unless they are established to be perverse or not supported by the evidence or that they were reached as a result of a wrong approach to the evidence or a wrong application of a principle of substantive law or procedure. No such allegations have been established by the appellant in the present appeal. None of those findings, in my view, can be faulted. (p. 1935 D)

SUCCESSION - Wills - Jointly owned landed property

4. The position, as found by the learned trial Judge and affirmed by the court below, is that the original owner of the property in issue is one Dada Adegbite who had three children, namely, Seliat Adegbite, Christiana Adegbite and Bolaji Adegbite. It appears that the late Dada Adegbite died intestate. In accordance with the relevant customary law, all his real property, including the property in dispute, devolved on his said three children to the exclusion of other blood relations. See *Adesoye v. Taiwo* (1956) 1 FSC 84. On the death of Seliat Adegbite without an issue in 1936, the

property in dispute devolved on Christiana Ejide and Bolaji Adegbite. The position remained the same until Exhibits P2 and P3 were made by the late Christiana Ejide on the 22nd March, 1975. The premises in issue was at no time the sole property of the said Christiana Ejide. It therefore followed that B she lacked the legal capacity to dispose of by Will the property in dispute which belonged to her and Bolaji Adegbite. In my view, the alleged Will of Christiana Ejide, Exhibit P3, in so far as it purported to devise the property in issue which belonged to both Bolaji Adegbite and herself to the appellant is C without justification in law and is therefore null and void. This is under the principle of *nemo dat quod non habet* whereby no one can give that which he does not have. This principle of law clearly defeats the appellant's claims. (p. 1935 G)

D **NOTABLE POINT OF INTEREST**

KALGO.JSC

1. Documents - Validity of under Evidence Act

The respondent relied on a death certificate Exhibit D3 which showed that E Christiana Ejide died on 14/7/81 and was certified dead by one Dr. M.B. Labode at Kano Street, Clinic Lagos and was buried at Attan Cemetery. The death was registered on 15/7/ 81 and Mr. Bolaji Adegbite was the informant. This evidence was not challenged at the trial and as a certified true copy of F a public documents, it is presumed to be genuine by virtue of Section 114 (1) of the Evidence Act until proved to the contrary. There was no such proof here and so the learned trial Judge was entitled to hold that Exhibit D3 was genuine and that it established the facts contained therein.

G It is therefore very clear from the above that Exhibit P.1 did not confirm the death of Madam Christiana Ejide and so the Probate exhibit P4 which was obtained by or granted to the appellant as a result thereof, cannot be valid or proper. It cannot compete with exhibit D3 which is a genuine document which certified that Christiana Slide died on 14/7/81, H nor can it be regarded as conclusive proof of death of Christiana Ejide by virtue of Sections 4 (3) and 50 (1) of the Evidence Act. (p. 1937 G)

REPRESENTATION

A. I Owonikoko, Esq., (with him, F. Eke, Esq.), for the Appellant.
Respondent unrepresented.

CASES REFERRED TO

Michael Romaine v. Christopher Romaine (1993) 2 SCNJ 25

Akinola v. Oluwo (1962) 1 All NLR (Pt. 2) 224 at 225

Okafor Egbuche v. Chief Idigo II NLR 140

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

Eholor v. Osayande (1992) 6 NWLR (Pt. 249) 524 at 536

Enang v. Adu (1981) 11-12 S.C. 25 at 46

Adesoye v. Taiwo (1956) 1 FSC 84

Igwego v. Ezengo (1992) 6 NWLR (Pt. 249) 561 at 576

STATUTE & RULES REFERRED TO

Supreme Court Rules O. 2 r. 11(1)

Evidence Act ss. 114(1), 4(3), 50(1) & (2)

LEAD JUDGMENT BY IGUH JSC

In the High Court of Lagos State, the plaintiff, who is now the appellant filed an action against the respondent and her agents, servants and privies who therein were the defendants, claiming as follows:-

“(i) *A declaration that the property situate, lying, being and known as 12, Patey Street, Ebute-Metta, Lagos belonged in fee simple to Madam Christiana Subulade Oyeteju Ejide who was deemed to have died on 20th February, 1976.*

(ii) *A declaration of absolute Title to the said property, namely, 12, Patey Street, Ebute Metta, Lagos in favour of the plaintiff by virtue of the last Will and Testament of the late Christiana Subulade Oyeteju Ejide which Will was admitted to Probate on 14th August, 1985.*

(iii) *Possession of the said property to the plaintiff.*

(iv) *Damages of N 10,000.00 against the defendant for unlawful H detention of and denial of the plaintiffs absolute Title and interest in the said property*

(v) *Perpetual injunction against the 1st defendant, her agents,*

servants or privies from further staying and/or remaining on the said property.

(vi) For such further or other reliefs as this Honourable Court may deem fit in the circumstances.”.

B 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.

C The plaintiff’s case as pleaded and testified to is that the landed property in dispute known as and called No. 12, Patey Street, Ebute Metta, Lagos originally belonged to one Dada Adegbite by virtue of a Crown grant. Dada Adegbite, according to the plaintiff, had only one issue, to wit, Christiana Subulade Oyeteju Ejide, nee Adegbite. On the death of Dada Adegbite, his D said property devolved under customary law on his only child, Christiana Ejide, who inherited the same.

The plaintiff was a niece of the said Christiana Ejide and her close relation. Because of her advancing age, Christiana Ejide, by Exhibit P2, E appointed the plaintiff her lawful Attorney on the 22nd March, 1975. By her last Will and Testament, Exhibit P3, she also devised the property in dispute absolutely and in fee simple to the plaintiff. According to the plaintiff, on or about the 20th February, 1976 Christiana Ejide left her home for an unknown destination and had not been seen since then. As a result, court F order, Exhibit PI, for leave to swear to an affidavit for the presumption of her death was obtained on the 20th December, 1983. Probate, Exhibit P4, in respect of the Will, Exhibit P3, was subsequently obtained as a result of which the plaintiff claimed absolute ownership of the land in dispute.

G The 1st defendant who is the daughter of Bolaji Adegbite, for her own part, admitted that the property in dispute originally belonged to the late Dada Adegbite but stressed that the said Dada Adegbite died intestate on the 10th December, 1932 and was survived by three children, to wit. H Madam Seliatu Adegbite, Christiana Ejide Adegbite and Bolaji Adegbite. The said three children of the late Dada Adegbite inherited the property in dispute on his death in accordance with customary law. Madam Seliatu Adegbite died in 1936 without any issue. The 1st defendant testified that

sometime in 1976, Christiana Ejide Adegbite and Bolaji Adegbite applied to the Land Registry by Exhibit D1 and D2 for the registration of their names as owners of the property in dispute. Christiana Ejide Adegbite died after Exhibit D1 and D2 were made. Exhibit D3 is her death certificate. It shows that the late Christiana Ejide Adegbite died on the 14th B July, 1981 of high blood pressure, that, it was Dr. M. B. Labode of Kano Street Clinic who certified her death and that she was buried at Attan Cemetery. The 1st defendant, testified that it was on the death of Christiana Ejide Adegbite that her father, Bolaji Adegbite, obtained the Letters of C Administration of the Estate of the late Dada Adegbite. She stated that it is not true that Christiana was at any time missing and asserted that she died at No. 12, Patey Street, Ebute-Metta. She added that her father, Bolaji Adegbite, had been collecting rents in respect of the property with- D out interference from any one whatever and she tendered the counter-foil of the receipts, Exhibit D5. At the conclusion of trial, the learned trial Judge, Adeyinka, J., (as he then was) after an exhaustive review of the evidence dismissed the plaintiffs claims in their entirety on the 3rd day of September, 1990. Being dissatisfied with the said judgment, the plaintiff E lodged an appeal against the same to the Court of Appeal, Lagos Division. The Court of Appeal in a unanimous decision affirmed the decision of the trial court and dismissed the plaintiff's appeal on the 1st day of December, 1998. Aggrieved by this decision of the Court of Appeal, the plaintiff F has further appealed to this court. I shall hereinafter refer to the plaintiff and the 1st defendant in this judgment as the appellant and the respondent respectively.

Four grounds of appeal were filed by the appellant against this G decision of the court below. It is unnecessary to reproduce them in this judgment. It suffices to state that the appellant pursuant to the Rules of this court filed her brief of argument in which two issues were identified for the determination of this appeal. These are as follows:-

"1. Whether the evaluation of facts by the learned trial Judge H rejecting the evidence of the appellant in proof of her title was wrongly affirmed by the justices of the Court of Appeal having regard to the relative probative value of Exhibit D3 and P4 against the background of

Sections 4(3), and 50(1) & (2), of the Evidence Act.

2. *Whether on the strength of admissible evidence the case of the appellant as to title was more probable than that of the defence to have entitled her to judgment.”*

B The respondent, although served with the appellant’s brief of argument, filed no reply thereto and thus failed to identify any issues for the resolution of this court in this appeal. She will therefore be taken to have adopted the same issues formulated on behalf of the appellant for the determination of this appeal. See *Ajibade v. Pedro* (1992) 5 NWLR (Pt. C 241) 257 at 267.

At the oral hearing of the appeal, learned leading counsel for the appellant, A. J. Owonikoko Esq., adopted his brief of argument and proffered brief oral submissions in elucidation thereof. The respondent, although D served with both the appellant’s brief of argument and the hearing notice in respect of the appeal, was absent in court and unrepresented. She also filed no brief of argument in reply to the appellant’s brief. In the circumstances, the court proceeded with the hearing of the appeal ex parte pursuant to the provisions of Order 2 Rule 11(1) of the Rules of this court. E

The main point argued by learned counsel for the appellant is that the two courts below wrongly ascribed probative value to Exhibit D3, the death certificate in respect of the late Madam Christiana Subulade Oyeteju Ejide to disprove Exhibit PI, a court order, whereby leave was granted to the F appellant to swear to an affidavit in respect of the death of the said Christiana Ejide. Exhibit PI, in effect, was to establish the averment by the appellant that the said Madam Christiana Ejide was presumed dead, having disappeared for several years. He submitted that the late Madam Christiana G Ejide being the sole issue of the late Dada Adegbite, the agreed original owner of the property in dispute, inherited the same exclusively under native law and custom on the death of Dada Adegbite. He further argued that the late Madam Christiana Ejide was entitled to devise her property H under her Will, Exhibit P3, to the appellant or to whoever she so desired. He urged the court to allow the appeal, set aside the judgment of both courts below and enter judgment for the appellant as claimed.

Two issues have been formulated by the appellant for the determina-

tion of this appeal. A close study of these two issues reveals that they revolve almost entirely on whether the appellant was able to establish on the evidence brought by her that she is entitled to a declaration of title to the property in dispute. It seems to me clear that this sole question is totally sufficient for the resolution of this appeal and I will now proceed to B consider the same.

It is not in dispute that both parties traced their respective claims of title to the property in issue from a common root. They claimed, both from their pleadings and evidence before the court, that one Dada Adegbite C was the original owner of the property in dispute and each side then testified as to how the property devolved from the said original owner upon her.

The appellant traced her root of title from the said original owner, Dada Adegbite, to his alleged only child and daughter, the late Christiana D Ejide from whom she gained title to the property from her last Will and Testament, Exhibit 3.

The respondent, for her part, asserted that the late Dada Adegbite had three children and not only Christiana Ejide. The three children, including the respondent's father, Bolaji Adegbite, are now all dead. These children of Dada Adegbite inherited the property in issue on his death. The respondent claimed that Christiana Ejide was never the sole owner of the property in dispute and could not therefore lawfully devise it to the appellant F or to anyone.

Perhaps, I need firstly to state at this stage that **where parties to a land in dispute trace their title to a common root, it is the party who establishes a better title thereto that is entitled to succeed in a claim for declaration of title. See Michael Romaine v. Christopher Romaine (1993) 2 SCNJ 25. In the second place, in a suit for declaration of title to land, the plaintiff, to succeed, must satisfy the court on two points. The first is as to the precise nature of the title claimed, that is to say, whether it is original ownership or ownership by grant and as to the nature of the grant, whether it is absolute grant or otherwise. The second is that the court must equally be satisfied with the evidence establishing title of the nature claimed. See** G H

Emegwara & Ors. v. Nwaimo & Ors. (1953) 14 WACA 347.

The point must be stressed that in a claim for declaration of title, the onus of proof lies on the plaintiff to satisfy the court that he is entitled on the evidence brought by him to the relief claimed. The plaintiff must rely on the strength of his own case and not on the weakness of the defence. If this onus is not established, the weakness of the defendant's case will not help him and the proper judgment will be for the defendant unless, of course, where the defendant's case itself supports the plaintiff's case and contains evidence on which the plaintiff is entitled to rely in which case the plaintiff will be fully entitled to rely on such evidence. See Kodilinye v. Mbanefo Odu (1935) 2 WACA 336 at 337} Akinola v. Oluwo (1962) 1 All NLR (Pt. 2) 224 at 225; Oduaran v. Asarah (1972) 1 All NLR (Pt. 2) 137; Woluchem v. Gudi (1981) 5 S.C. 291. See too, Eholor v. Osayande (1992) 6 NWLR (Pt. 249) 524 at 536. **In the present case, however, there is no suggestion whatsoever by the plaintiff/appellant that there was any aspect of the defendant's case or evidence which supported the case for the plaintiff on the question of the plaintiff's alleged personal and exclusive ownership of the property in dispute under the Will, Exhibit P3, as claimed by her.** It is now convenient to examine the evaluation of the evidence of the parties by both courts below and their findings thereupon.

I think it ought to be stressed that the question whether or not the late Christiana Ejide possessed the legal capacity to dispose of the property in dispute by Will and to devise the same to the appellant or, indeed, to anyone else is of primary importance in this case. The learned trial Judge in his judgment rightly described the issue as "*the crux of this action*". He then proceeded to resolve the same and stated thus-

"..... since I have that Exhibit D3, (i.e. the Death Certificate) established the facts contained therein, Exhibit P4 is not true that Christiana Ejide was missing until presumed dead. I hold that Christiana Ejide died on 14th July, 1981 and was buried at Attan Christian Cemetery and that the person who registered her death was Mr. Bolaji Adegbite. The plaintiff's Probate, Exhibit P4, and the Will and power of attorney showed Christiana Ejide as the sole owner of the property in dispute while the

Letters of Administration, Exhibit D4, showed Bolaji Adegbite as one of the children of the late Dada Adegbite. The evidence of the 1st defendant that Dada Adegbite had three children was not challenged or controverted under cross-examination. The evidence of the 1st defendant and Exhibit D4 established that Dada Adegbite had more than one child..... B

I believed the evidence of the 1st defendant coupled with Exhibit D3 and D4 that her father's name was Bolaji Adegbite. I also find as a fact upon the preponderance of the evidence before the court and on the balance of probability that the late Dada Adegbite had three children namely Seliat Adegbite (ii) Christiana Ejide Adegbite and (iii) Bolaji Adegbite". C
The learned trial Judge, a little later in his judgment, went on as follows-

".....the original owners of the property by virtue of the Crown grant was the late Dada Adegbite who had three children, namely Seliat Adegbite, Christiana Adegbite and Bolaji Adegbite. There was no evidence as to when Seliat and Bolaji died but the evidence showed that when Christiana Ejide was making her Will in 1975, Bolaji Adegbite was alive. It also appeared that the late Dada Adegbite died intestate. The real property of a deceased person who dies living (sic) children surviving him goes to the children under native law and custom to the exclusion of other blood relations' - See Adesoye v. Taiwo (1956) 1 FSC 84. The property at 12, Patey Street, Ebute Metta, Lagos therefore devolved on the three children of the late Dada Adegbite. Christiana Ejide Adegbite and Bolaji Adegbite became the owners of the property on the demise of Seliat Adegbite. It follows that Christiana Ejide Adegbite could not solely dispose by Will the property of herself and Bolaji Adegbite." D E F

He continued-

"The plaintiff's claim is premised on the fact that Christiana Ejide was the only daughter of the late Dada Adegbite and in view of my finding that the late Dada Adegbite had three children, the declaration sought by the plaintiff cannot be granted. I refer to the 2nd declaration that the plaintiff is the sole owner of the property by virtue of the Will of the late Christiana Ejide. The said Will by Christiana Ejide was ineffective to transfer the property to the plaintiff since the property did not belong to her G H

alone.....

The 2nd declaration sought also fails”

He then concluded-

B *“The other four reliefs sought by the plaintiff face the same fate as the first two reliefs since they are dependent on the first relief. This action fails and is hereby dismissed.”*

C There is abundant evidence on record in support of the above findings of the learned trial Judge which were affirmed by the court below. On the trial court’s finding that Dada Adegbite had three children and not just Christiana Ejide, the Court of Appeal declared-

“There is enough evidence to support this finding and it therefore cannot be faulted in any way”.

D On the rest of the findings of the learned trial Judge above set out, the Court of Appeal was of the view that it would be difficult to fault them. The court observed -

E *“It has been established that there was a person called Bolaji Adegbite and that he was alive when Christiana Ejide died and in fact, it is shown in Exhibit D3, Christiana’s death certificate that it was he that obtained the Death Certificate. Further, the Death Certificate shows that Christiana died on 14/7/81 and that she was buried at Attan Cemetery and it was after this that Bolaji Adegbite obtained Exhibit D4 the Letters of Administration in respect of the estate of Dada Adegbite.”*

F The court went on-

G *“Exhibit D4 the Letters of Administration was made on 14/7/81 while Exhibit P4, the Probate was obtained on 14/ 8/85, obviously if the Probate Registrar was aware that the Letters of Administration had been granted in respect of that property in 1981 and that the property belonged to Christiana Ejide and Bolaji Adegbite and also that the property was not vested on Christiana Ejide, obviously he would not have issued Exhibit P4 in respect of the same property. In effect Exhibit P4 conveys nothing to the H appellant..... The learned trial Judge had considered the relative strengths (sic) of the cases of the parties and rightly found that the declarations cannot be granted”.*

It concluded -

“The appellant claimed that the property in dispute was bequeathed to her by Christiana Ejide, nee Adegbite by virtue of her Will, Exhibit P3. It had been shown that Dada Adegbite, the original owner of the property in dispute had three children and that when Christiana Ejide died in 1981, that she was survived by Bolaji Adegbite and that she was not the sole owner of the property in dispute and could not therefore bequest it to the appellant or anyone.

In respect of the claim for possession, it had also been shown that the respondent and her born had been living in the house, that the respondent was born in that house and has been living there ever since then, that she and her father had been collecting rents from the tenants in the premises. The appellant never lived there and she had also stated that nobody ever paid any rent to her.....She had failed to prove her possessory right to the property in dispute or that she is in physical or constructive possession of the said property in dispute.

On the whole, I am of the view that from all the evidence before the court that there is no reason why the findings of the learned trial Judge can be faulted. I am also of the view that there is no merit in the appeal and that it ought to be dismissed”.

The above findings of fact of the trial court as affirmed by the Court of Appeal are concurrent findings of fact which this court may not interfere with unless they are established to be perverse or not supported by the evidence or that they were reached as a result of a wrong approach to the evidence or a wrong application of a principle of substantive law or procedure. See Enang v. Adu (1981) 11-12 S.C. 25 at 46; Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718; Igwego v. Ezengo (1992) 6 NWLR (Pt. 249) 561 at 576 etc. No such allegations have been established by the appellant in the present appeal. None of those findings, in my view, can be faulted.

The position, as found by the learned trial Judge and affirmed by the court below, is that the original owner of the property in issue is one Dada Adegbite who had three children, namely, Seliat Adegbite, Christiana Adegbite and Bolaji Adegbite. It appears that the late Dada Adegbite died intestate. In accordance with the relevant cus-

tomary law, all his real property, including the property in dispute, devolved on his said three children to the exclusion of other blood relations. See *Adesoye v. Taiwo* (1956) 1 FSC 84. On the death of Seliat Adegbite without an issue in 1936, the property in dispute devolved on Christiana Ejide and Bolaji Adegbite. The position remained the same until Exhibits P2 and P3 were made by the late Christiana Ejide on the 22nd March, 1975. The premises in issue was at no time the sole property of the said Christiana Ejide. It therefore followed that she lacked the legal capacity to dispose of by Will the property in dispute which belonged to her and Bolaji Adegbite. In my view, the alleged Will of Christiana Ejide, Exhibit P3, in so far as it purported to devise the property in issue which belonged to both Bolaji Adegbite and herself to the appellant is without justification in law and is therefore null and void. This is under the principle of *nemo dat quod non habet* whereby no one can give that which he does not have. See *Okafor Egbuche v. Chief Idigo II* NLR 140; *Adamo Akeju & Anor. v. Chief Suenu & Ors.* 6 NLR 87. This principle of law clearly defeats the appellant's claims.

The main issue for determination in this appeal is accordingly resolved against the appellant.

In the final result, this appeal lacks substance and it is hereby dismissed. I make no order as to costs.

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother, Iguh, JSC. I entirely agree with him that the appeal is devoid of merit.

Accordingly, I too hereby dismiss the appeal and affirm the decision of the Court of Appeal confirming that of the trial court. I make no order as to costs.

ONU JSC

I have been privileged to read before now, the judgment of my learned brother, Iguh, JSC., just delivered.

I am in entire agreement with his reasoning and conclusion that this appeal is devoid of any merit. Accordingly, I too dismiss the appeal and affirm the decision of the court below with similar consequential orders inclusive of costs.

KALGO JSC

I have had the privilege of reading in draft the judgment just delivered by my learned Iguh, JSC., in this appeal and I entirely agree with him that there is no merit in the appeal and it ought to be dismissed.

The appeal is heard on the appellant's brief only as the respondent, though served with the appellant's brief has failed to file any brief. The appeal was therefore heard *ex parte* in accordance with Order 2 rule 11(1) of the Rules of this court. The main issue to be determined by this court is whether the owner of the property in dispute, one Madam Christiana Subulade Oyeteju Ejide disappeared and was never seen again since 20th February, 1976, or she actually died on 14th July, 1981. On this issue the appellant relied on Exhibit P. 1 at the trial, which was an order made by Jinadu, J., that the appellant is entitled to swear an affidavit to the death of Christiana Ejide who was last seen or heard of before 20th February, 1976 "*for the purpose of applying for a grant of probate of the last will of the said Christiana Subulade Ejide*". Exhibit P. I did not declare that Christiana Subulade Ejide died; it only entitled the appellant to swear that the said Christiana Subulade Ejide was missing for more than 7 years and that the appellant may or may not apply for Probate of her estate. The appellant however applied and was granted the Probate which was Exhibit P4 at the trial.

The respondent relied on a death certificate Exhibit D3 which showed that Christiana Ejide died on 14/7/81 and was certified dead by one Dr. M.B. Labode at Kano Street, Clinic Lagos and was buried at Attan Cemetery. The death was registered on 15/7/81 and Mr. Bolaji Adegbite was the informant. This evidence was not challenged at the trial and as a certified true copy of a public document, it is presumed to be genuine by virtue of Section 114 (1) of the Evidence Act until proved to the contrary. There was no such proof here and so the learned trial Judge was entitled to hold that

Exhibit D3 was genuine and that it established the facts contained therein.

It is therefore very clear from the above that Exhibit P.1 did not confirm the death of Madam Christiana Ejide and so the Probate exhibit P4 which was obtained by or granted to the appellant as a result thereof, cannot be valid or proper. It cannot compete with exhibit D3 which is a genuine document which certified that Christiana Slide died on 14/7/81, nor can it be regarded as conclusive proof of death of Christiana Ejide by virtue of Sections 4 (3) and 50 (1) of the Evidence Act.

From the evidence on record both parties to this appeal are claiming from a common root of title through one Dada Adegbite. The learned trial Judge found that the said Dada Adegbite had 3 children and he died intestate and his properties devolved to all his children including Christiana Ejide. Since Christiana Ejide died in 1981 per Exhibit D3, and her brother Bolaji Adegbite obtained letters of administration of the estate of their father Dada Adegbite, Exhibit D4, after her death, Exhibit P2, P3 and P4 are ineffective in giving the properties in dispute to the plaintiff/appellant. The trial court and the Court of Appeal were therefore correct in refusing to grant the property in dispute to the appellant.

For the above and more detailed reasons given in the leading judgment by my learned brother, Iguh, JSC, I also find no merit in this appeal. I dismiss it and affirm the decision of the Court of Appeal. I abide by the order of cost made in the leading judgment.

EDOZIE JSC

I had a preview of the leading judgment just delivered by my learned brother, Iguh, JSC. I agree with him that as Christiana Ejide through whom the appellant derived title, owned the property in dispute jointly with Bolaji Adegbite, she, the said Christiana Ejide lacked the legal capacity to devise that property to the appellant. Consequently, her last Will and Testament, Exhibit P3, by which she purportedly devised the property in dispute to the appellant was ineffectual to confer valid title on her, the appellant.

The appeal lacks merit and accordingly, I dismiss it with no order as to costs.