

SUPREME COURT OF NIGERIA
30TH JANUARY, 2004. SC. 62/1997
CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, U. A.
KALGO, S. O. UWAIFO, D. O. EDOZIE, JJSC

CHRISTIAN EWO & ORS. DEFENDANTS/APPELLANTS
AND
OGBODO ANI & ORS. PLAINTIFFS/RESPONDENTS

LAND LAW - Ownership - Proof of - Five ways of proving ownership of land (H1)

LAND LAW - Ownership - Proof - Pleadings - As the plaintiff did not plead traditional evidence - Any evidence in that line ought to be disregarded - And would go to no issue (H3)

LAND LAW - Title - Communal ownership - Proof - The plaintiffs who claim communal ownership with defendants - Has the onus of proving same - Failing which their claim was rightly dismissed (H5)

LAND LAW - Title - Traditional evidence - Not every story amounts to it - Evidence of events which happened within living memory - Will not be categorized as traditional evidence (H4)

LAND LAW - Traditional Evidence - Pleadings - What does not amount to sufficient pleading of tradition - What must be pleaded where one relies on tradition - Includes who founded the land (H2)

FACTS

In the Enugu High Court, the plaintiffs/respondents in paragraph 19 of their statement of claim, claim against the defendants/appellants jointly and severally (1) Declaration of title of communal ownership by plaintiffs and 1st – 15th Defendants of a piece and parcel of disputed land situate in Ugwuaji, Awkunanaw Nkanu Division (2) One hundred

and fifty pounds general damages for trespass (3) A perpetual injunction restraining the defendants their servants, and or agents from entering the land in dispute and in any manner whatsoever interfering with the said land without the prior consent of the plaintiffs. The defendants in their Amended Statement of defence denied this claim and averred that the suit misconceived and frivolous.

At the trial each side called witnesses in support of its case. In a considered judgment the learned trial judge came to the conclusion that the plaintiffs woefully failed to prove that the land in dispute is held by the parties herein in common. Plaintiffs case was therefore dismissed with costs. Dissatisfied with the judgment of the trial court, the plaintiffs appealed to the Court of Appeal holden at Enugu. In a reserved judgment that court unanimously allowed the appeal, set aside the judgment of the learned trial judge and entered judgment in favour of the plaintiffs as claimed. Aggrieved by that decision, the defendants have now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the Court of Appeal was right in coming to the conclusion that the Plaintiffs pleaded and proved traditional history which ought to be accepted if the Defendants did not plead and prove another version of traditional history.

2. Whether the Court of Appeal was right to have shifted the onus of proof of ownership on the Defendants, and if it was not, what is the effect of such an error.”

HELD (Unanimously allowing the appeal per lead judgment of **KUTIGI JSC**)

Ownership - Proof of

1. It is settled law that there are five ways in which ownership of land may be proved as follows:-

- (a.) by traditional evidence;
- (b.) by production of documents of title;
- (c.) by acts of person or persons claiming the land such as selling, leasing, renting out or farming on it;

(d.) by acts of long possession and enjoyment of the land; and
 (e.) by proof of possession of connected or adjacent land; (see the case of IDUNDUN v. OKUMAGBA (1976) 1 N. W. L. R 200. (p. 334 H)

Traditional Evidence - Pleadings

2. Pleading in paragraph 4 that the Plaintiffs owned and possessed the land in dispute from time immemorial is certainly not sufficient pleading of tradition. Paragraphs 6, 6A, 7 & 8 pertaining to 1928 Ugwuaji settlement and stories about Court cases in 1943 and 1952 respectively cannot also by any stretch of imagination be regarded as pleading of tradition, being recent acts within living memory. In this regard the Plaintiffs were bound, if they relied on tradition, to have pleaded who founded the land, how he or they founded it, and the particulars and names of the intervening owners through whom they claim (see for example AKINOLYE & ANOR. v. BELLO EYIYIOLA (1968) N.M.L.R. 92. (p. 335 F)

As the plaintiff did not plead traditional evidence

3. Obviously if the Plaintiffs did not plead traditional evidence as indicated above, it would be futile considering any evidence in that line as such evidence would go to no issue and ought to be disregarded (see OKEBOLA v. MOLAKE (1975) 12 S.C. 61, EMEGOKWE v. OKADIGBO (1973) 4 S.C. 113). Consideration of the so called Agreements, Exhibits “B” and “E” which clearly are not documents of title therefore no longer arises. The Court of Appeal was thereby clearly in error when it came to the conclusion that the Plaintiffs had proved their ownership of the land by traditional evidence. (p. 336 A)

Traditional evidence - Not every story amounts to it

4. Generally speaking I think the learned trial judge was right when he said in his judgment on page 98 thus-

“In the instant case what is urged on the Court is certainly not traditional evidence. It is not every story which touches on the land in dispute that can be categorized as traditional evidence. The story about the dispute which is said to have been taken before the District officer is

definitely not traditional evidence but evidence of contemporary history, histories of events which apparently happened within living memory and which have to be strictly proved in accordance with the laws of evidence."

B That would have been the end of this appeal, the Plaintiffs having failed to prove their only root of title on which they relied. (p. 336 C)

Title - Communal ownership - Proof

C 5. I think the Court of Appeal was, with all due respect, completely wrong. It got mixed up. Family land is certainly not the same thing as communal land, but the principles are the same. If a member of a family claims ownership of family land he or she, the claimant, must prove how he or she came to own family land to the exclusion of other members of the family. So also in the instant case, though not family land, the Plaintiffs who are claiming to own communally with the Defendants the land in dispute which land they acknowledge to be in the control or possession of the Defendants, have the burden or onus to prove that the land in dispute is held by both parties in common. The law is very clear on the point. He who asserts must prove (see Sec. 134 of the Evidence Act). Again the burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side (see Sec. 135 of the Evidence Act). The Plaintiffs obviously from the nature of their cause are not saying that the Defendants do not own or control the land in dispute but are only saying that they (Plaintiffs) own the land together with the Defendants communally. So the trial Court was right in placing the burden squarely where it belonged, on the Plaintiffs. They failed to discharge the burden and their claims were rightly in my view dismissed. This issue must as well be resolved against the Plaintiffs. (p. 337 D)

REPRESENTATION

H DR. G. C. Oguagha for appellants
F. Chukwuemeka Ofodile for respondents

CASES REFERRED TO

- KOJO II v. BONISIE (1957) 1 W.L. R 1223,
 OGUNLEYE v. ONI (1990) 2 N.W.L.R (PT. 135)
 BAMGBOSE v. OSHOKO (1988) 2 N.W.L.R.(PT. 78) 509
 OLAWUYI v. ADEREMI (1990) 4 N.W.L.R. (PT. 147) 746 B
 MOGAJI & ORS.v. ODOFIN (1978) 4 S.C. 91
 IDUNDUN v. OKUMAGBA (1976) 1 N. W.L.R 200; (1976) 9 & 10 S.C.
 227
 AKINOLYE & ANOR. v. BELLO EYIYIOLA (1968) N.M.L.R. 92, C
 ADEJUMO v. AYANTEGBE (1989) 3 N. W.L.R. (PT. 110) 447
 OKE BOLA v. MOLAKE (1975) 12 S.C. 61
 EMEGOKWE v. IKADIGBO (1973) 4 S.C. 113
 Insurance Brokers of Nigeria v. Atlantic Textiles Manufacturing Company
 Ltd. (1996) 8 N.W.L.R. (Pt. F466) 316, (1996) 9 KLR (pt 44) 1675 D
 Kodilinye v. Odu (1935) 2 W.A.C.A. 336

STATUTE REFERRED TO

- Evidence Act SS. 134, 135 E

LEAD JUDGMENT BY KUTIGI JSC

In the Enugu High Court, the Plaintiffs in paragraph 19 of their Statement of Claim, claim against the Defendants jointly and severally as follows:- F

*“1. Declaration of title of communal ownership by Plaintiffs and 1st – 15th Defendants of all that piece and parcel of land known as and called “IDUNE” situate in UGWUAJI, AWKUNANAW, NKANU DIVISION, more clearly shown and delineated in the Plaintiffs” Plan No. E/ G
 FAO/1/70 OF 28/8/70 attached herewith.*

2. £150 (one hundred and fifty pounds) general damages for trespass committed by the defendants on the said land.

3. A PERPETUAL INJUNCTION H

restraining the Defendants their servants and or agents from entering the land in dispute and in any manner whatsoever interfering with the said land without the prior consent of the Plaintiffs.

The Defendants in paragraphs 15 & 16 of their Amended Statement of Defence averred thus:

“15. The Plaintiffs are not entitled as claimed in paragraph 19(1),(2) & (3) of the Statement of Claim at all. The Defendants would pray the Court to dismiss this suit.

16. The Defendants will at the trial show as follows:

1. That this suit is misconceived, frivolous and ought to be dismissed.

2. That the Plaintiffs have no communal land with the Defendants 1-15 and their people.

3. That the Plaintiffs have brought this action out of sheer greed.”

After the filing and exchange of pleadings the case proceeded to trial. At the trial each side called witnesses in support of its case. In a considered judgment the learned trial judge, Okagbue J. after carefully reviewing the evidence before him came to the conclusion that the Plaintiffs woefully failed to prove that the land in dispute is held by the parties herein common. Plaintiffs’ case was therefore dismissed with costs.

Dissatisfied with the judgment of the trial Court, the Plaintiffs appealed to the Court of Appeal holden at Enugu. In a reserved judgment the Court of Appeal unanimously allowed the appeal, set aside the judgment of the learned trial judge and entered judgment in favour of the Plaintiffs as claimed.

Aggrieved by the decision of the Court of Appeal the Defendants have now appealed to this Court on a number of grounds. In obedience to the Rules of Court, the parties filed and exchanged briefs of argument which were adopted and relied upon at the hearing.

Dr. Oguagha learned counsel for the Defendants has on page 5 of his brief identified six (6) issues as arising for determination in this appeal. But having regard to the judgments of both the trial High Court and that of the Court of Appeal which I have read, only issues 1, and 3 are necessary for resolution in this appeal since they are the core issues and formed the basis of those judgments. In other words those judgments revolve around “*traditional evidence*” and the “*onus of proof*.” The

issues are –

“1. Whether the Court of Appeal was right in coming to the conclusion that the Plaintiffs pleaded and proved traditional history which ought to be accepted if the Defendants did not plead and prove another version of traditional history.”

2. Whether the Court of Appeal was right to have shifted the onus of proof of ownership on the Defendants, and if it was not, what is the effect of such an error.”

I will now proceed to treat the issues.

Issue (1)

It was submitted that the Court of Appeal was in error when it held that the Plaintiffs pleaded and proved evidence of tradition and based on that reversed the trial Court and entered judgment for the Plaintiffs. Dr. Oguagha said what the Plaintiffs pleaded and proved was not evidence of tradition, but evidence of contemporary events. That issues on which living witnesses and written agreements can be found are not traditional evidence. He said the Plaintiffs did not only fail to plead the origin of the land in dispute and its devolution from generation to generation and how their ancestors came on the land in dispute, but that they also failed to prove any of these requirements. A number of cases were cited in support including KOJO II v. BONISIE (1957) 1 W.L. R 1223, OGUNLEYE v. ONI (1990) 2 N.W.L.R. (PT. 135, BAMGBOSE v. OSHOKO (1988) 2 N.W.L.R. (PT. 78) 509, OLAWUYI v. ADEREMI (1990) 4 N.W.L.R. (PT. 147) 746.

He said the Agreements, Exhibits B & E, tendered by the Plaintiffs and which the Court of Appeal relied upon, were of no value as no effort was made to show that the parties to those Agreements are the same as those in the present suit. It could not also be proved that the land in those Agreements are the same as that in the present suit. The learned trial judge therefore rightly rejected those Exhibits and the Court of Appeal was wrong to have relied on them. We were referred to the case of MOGAJI & ORS. v. ODOFIN (1978) 4 S.C. 91.

Mr. Ofodile learned counsel for the Respondents first of all made an observation to the effect that the judgment of the Court of Appeal was

not based on his current Appellants' Further Amended Brief of argument coped on pages 137-149 of the record wherein he raised six (6) issues for determination in that Court. He said the judgment was based on his abandoned Appellants' Amended Brief of argument from where he treated the three (3) issues set out on page 176 of the record of appeal. It was therefore contended that the Plaintiffs were not given a fair hearing because only the three (3) issues in the abandoned Appellants' Amended Brief were considered, and not the six (6) issues contained in the Appellants' Further Amended brief even though the Plaintiffs still won the appeal. That he would not oppose going for a re-hearing of the appeal in the Court of Appeal. Dr. Oguagha is of course opposed to this idea. That the Plaintiff had won in the Court of Appeal and there was no need for a re-hearing in that Court. He wanted the appeal to be heard on its merit. My short answer to this is that as I have said above, after reading the judgments of both the High Court and that of the Court of Appeal, the three (3) issues set out on page 176 of the record and which were considered by the Court of Appeal formed the basis of the judgment in the High Court as well as in the Appellants' Further Amended Brief. They all in the main deal with "*traditional evidence*" and "*onus of proof*." They are also the same issues that are presently being considered in this appeal. I therefore rule that the Plaintiffs were given a fair hearing in the Court of Appeal and that they were not prejudiced in any way. In fact the judgment was in their favour.

Responding to issue (1) above, Mr. Ofodile submitted that the Court of Appeal was right when it came to the conclusion that the Plaintiffs pleaded and proved traditional history. He said the Court was equally right to have drawn inferences from Exhibits B and E which are favourable to the Plaintiffs. That having correctly assessed the Plaintiffs traditional history, the Plaintiffs were without more entitled to judgment. He cited the case of OGUNLEYE v. ONI (supra) in support.

It is settled law that there are five ways in which ownership of land may be proved as follows:-

- (a.) by traditional evidence;
- (b.) by production of documents of title;

(c.) by acts of person or persons claiming the land such as selling, leasing, renting out or farming on it;
 (d.) by acts of long possession and enjoyment of the land; and
 (e.) by proof of possession of connected or adjacent land; (see the case of **IDUNDUN v. OKUMAGBA** (1976) 1 N. W.L.R 200; (1976) 9 B & 10 S.C. 227).

The Court of Appeal in its lead judgment on page 179 of the record Said:

“After considering the submissions and argument in the briefs of the parties in this appeal, and upon a review of the state of pleadings on the issue of traditional history, I will agree with the Plaintiffs/Appellants that they have adequately the issue in their paragraphs 4, 6, 6A, 7 & 8 of the statement of claim.....”

In any case, even if we regard the denial by the defence in this case as sufficient and that the issue of communal usage of the land in dispute had been joined, it is my humble view that the Plaintiffs/Appellants had proved that at the lower Court by means of Exhibit “B” and “E” and by the evidence of P.W.’s 2, 4 and 8. It is on this basis that I regard the rejection of the traditional evidence adduced by the Plaintiffs/Appellants at the lower Court as unjustified.”

I have had a close look at paragraphs 4, 6, 6A, 7 & of the Plaintiffs’ Statement of Claim which the Court of Appeal held to have sufficiently pleaded traditional evidence of the Plaintiffs. **Pleading in paragraph 4 that the Plaintiffs owned and possessed the land in dispute from time immemorial is certainly not sufficient pleading of tradition.** Paragraphs 6, 6A, 7 & 8 pertaining to 1928 Ugwuaji settlement and stories about Court cases in 1943 and 1952 respectively cannot also by any stretch of imagination be regarded as pleading of tradition, being recent acts within living memory. In this regard the Plaintiffs were bound, if they relied on tradition, to have pleaded who founded the land, how he or they founded it, and the particulars and names of the intervening owners through whom they claim (see for example **AKINOLYE & ANOR. v. BELLO EYIYIOLA** (1968) N.M.L.R. 92, **ADEJUMO v. AYANTEGBE** (1989) 3 N. W.L.R. (PT. 110)

Obviously if the Plaintiffs did not plead traditional evidence as indicated above, it would be futile considering any evidence in that line as such evidence would go to no issue and ought to be disregarded (see OKE BOLA v. MOLAKE (1975) 12 S.C. 61, EMEGOKWE v. OKADIGBO (1973) 4 S.C. 113). Consideration of the so called Agreements, Exhibits “B” and “E” which clearly are not documents of title therefore no longer arises. The Court of Appeal was thereby clearly in error when it came to the conclusion that the Plaintiffs had proved their ownership of the land by traditional evidence.

Generally speaking I think the learned trial judge was right when he said in his judgment on page 98 thus-
“In the instant case what is urged on the Court is certainly not traditional evidence. It is not every story which touches on the land in dispute that can be categorized as traditional evidence. The story about the dispute which is said to have been taken before the District officer is definitely not traditional evidence but evidence of contemporary history, histories of events which apparently happened within living memory and which have to be strictly proved in accordance with the laws of evidence.”

**That would have been the end of this appeal, the Plaintiffs having failed to prove their only root of title on which they relied. But before I conclude I would like to comment briefly on issue (2).
Issue (2)**

This simply has to do with who between the Plaintiffs and the Defendants has the onus or burden of proving that the land in dispute is communally owned together by the two sides to the dispute. The Plaintiffs clearly in paragraph 19(1) of their Statement of Claim above, claim-
Declaration of title of communal ownership by Plaintiffs ... of all that piece and parcel of land known and called “IDUME” ...

The Defendants in paragraph 15 of their Statement of Defence above denied the claim.

The learned trial judge on page 99 of the record rightly in my view

resolved the issue thus-

“In my view the onus clearly lies on the Plaintiffs to prove that the land is held by both parties in common since the parties have not been shown to belong to the same family and to all intents and purposes are strangers to each other. This they have not succeeded in doing and I have no alternative but to dismiss their claim and it is hereby dismissed with cost assessed at N250.00.”

But the Court of Appeal in the lead judgment on page 187 had this to say-

“In any case the said lower Court did not specifically hold that the traditional evidence was inconclusive. Therefore there is no need to cast any burden on the Plaintiffs/Appellants as was done by the lower Court. In other words, the lower Court should have placed the onus of proof on the Defendants/Respondents who from the state of their pleadings are claiming exclusive ownership of the land which was said to be owned communally.”

I think the Court of Appeal was, with all due respect, completely wrong. It got mixed up. Family land is certainly not the same thing as communal land, but the principles are the same. If a member of a family claims ownership of family land he or she, the claimant, must prove how he or she came to own family land to the exclusion of other members of the family. So also in the instant case, though not family land, the Plaintiffs who are claiming to own communally with the Defendants the land in dispute which land they acknowledge to be in the control or possession of the Defendants, have the burden or onus to prove that the land in dispute is held by both parties in common. The law is very clear on the point. He who asserts must prove (see Sec. 135 of the Evidence Act). Again the burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side (see Sec. 135 of the Evidence. Act). The Plaintiffs obviously from the nature of their cause are not saying that the Defendants do not own or control the land in dispute but are only saying that they (Plaintiffs) own the land together with the Defendants communally. So the trial Court was

right in placing the burden squarely where it belonged, on the Plaintiffs. They failed to discharge the burden and their claims were rightly in my view dismissed. This issue must as well be resolved against the Plaintiffs.

B All the issues having been resolved against the Plaintiffs, the appeal must be allowed. The judgment of the Court of Appeal is set aside while that delivered by the Enugu High Court on the 24th January 1977 is restored. For the avoidance of doubt Plaintiffs' claims are dismissed.

C The Defendants are awarded costs assessed at N10,000.00 only.

KATSINA-ALU JSC

D I have had the advantage of reading in draft the judgment delivered by my learned brother KUTIGI JSC. I am in complete agreement with his reasoning and conclusion.

It is settled law that the onus of proof in civil cases lies on plaintiff to satisfy the court that his is entitled on the evidence called by him to his claim. And E in doing so, he must rely on the strength of his own case and not on the weakness of the defence: Insurance Brokers of Nigeria v. Atlantic Textiles Manufacturing Company Ltd. (1996)8 N.W.L.R. (Pt. 466) 316; Kodilinye v. Odu (19352 W.A.C.A. 336.

F In the instant case, the Plaintiffs claimed that they and the Defendants Communally own the land in question. The Plaintiffs have impliedly admitted that the Defendants own the land in dispute. On the other hand, the Defendants in their pleadings denied communal ownership of the said land with the Defendants. The learned trial Judge rightly held G that the burden of proof was on the Defendants. The Court of Appeal was clearly in grave error to have otherwise.

What is more the evidence called by the Plaintiffs to establish their claim was not traditional evidence. Traditional evidence is evidence H beyond living memory. In this connection, a party who seeks title to land and relied on traditional history must, to succeed, plead and prove facts as to: (a) who founded the land; (b) how the land was founded and (c) particulars of the ancestors through whom he claims: Cadbury (Nig.) Ltd.

(1985)2 N.W.L.R. (Pt.7)393; Akanbi v. Salawu (2003)13 NWLR 9Pt. 838 637. In the instant case what the Plaintiffs plead without doubt, did not amount to traditional history. The trial Judge was right when he held that “*what is urged on the court is certainly not traditional evidence.*” The evidence they relied on was clearly within living memory. Again the Court of Appeal was in grave error when they disagreed with the court of trial and proceeded to hold that the evidence led by the Plaintiffs was traditional evidence.

In the circumstances, I too allow the appeal, set aside the judgment of the Court of Appeal and restore the judgment of the trial court dismissing the claim of the Plaintiffs. I abide by the order as to costs.

KALGO JSC

I have had the opportunity of reading in draft the judgment of my learned brother Kutigi, JSC just delivered in this appeal. I entirely agree with his reasoning and conclusions and am of the firm view that the appeal ought to be allowed. Issues 1 and 3 raised by the appellants’ counsel in his brief are the most important issues material to the points in controversy in this appeal and this appeal court is competent to consider them only in determining this appeal. See Anyaduba V N.R.T.C. Ltd (1992) 5 NWLR (Pt. 243) 535 at 561; Okonji v Njokanma (1991) 7 NWLR (Pt. 202) 131; Sanusi v Ameyogun (1992) 4 NWLR (pt.237) 527. It is also my view, as stated in the leading judgment, that the failure of the Court of Appeal, to consider the issues in the amended appellants’ brief before it, did not occasion any miscarriage of justice and in fact that court dealt with the main issues in controversy between the parties. The question of unfair hearing did not therefore arise. But the Court of Appeal was wrongly carried away in its judgment when it heavily relied on Exhibits ‘B’ and ‘E’ and also held that the plaintiffs/respondents have proved sufficient traditional evidence to entitle them to succeed.

For the above and the more detailed reasons given in the leading judgment, I find that there is merit in this appeal, which is hereby allowed. I set aside the decision of the Court of Appeal and restore the

judgment of the trial court. I abide by the order for costs made in the leading judgment.

UWAIFO JSC

B

I read in advance the judgment of my learned brother Kutigi JSC.

I fully agree with his reasoning and conclusions.

The plaintiffs are representatives of Ugwuaji, Awkunanaw in Enugu State. There are three sets of defendants. The first set is some people of Ugwuaji; the second set is the representatives of Nkpofia, Obeagu Ndiuno, Awkunanaw; while the third set is the representatives of Owa on the land in dispute. The plaintiffs put up the following claim:

D *“1. Declaration of Title of communal ownership by plaintiffs and 1st – 15th defendants of all that piece and parcel of land known as and called ‘IDUME’ situate in UGWUAJI, AWKUNANAW, NKANU DIVISION, more clearly shown and delineated in the plaintiffs Plan No. E/GAO/1/70 of 28/8/70 attached herewith.*

E *2. 150 (one hundred and fifty pounds) General Damages for Trespass committed by the Defendants on the said land.*

F *3. A PERPETUAL INJUNCTION restraining the defendants their servants and/or agents from entering the land in dispute and in any manner whatsoever interfering with the said land without the prior consent of the plaintiffs.”*

In an averment in paragraph 4 of their statement of claim, the plaintiffs alleged that the land in dispute *“is owned, possessed and had from time immemorial been owned and possessed communally by the plaintiffs and 1st-15th defendants.”* From the averment in paragraph 1, the plaintiffs alleged that the land in dispute is situate at Ugwuaji, i.e. their own village. Yet they pleaded in paragraph 4 as already indicated that the said land in their village is communally owned by their village and the people of other completely different villages, namely Nkofia, Obeagu, Ndiuno and Owa. The defendants denied this and alleged that the land is wholly situate in Nkpofia in Obeagu, the village of the 1st-15th defendants; and that the plaintiffs are from Amechi.

It is plain therefore that by their own averments that they are co-owners with the defendants, the plaintiffs have completely conceded to the defendants that they are overlords; and the consequence is that they have the burden to prove their co-ownership of the land with the defendants. It is settled law that a party who acknowledges the title of his opponent to a parcel of land must prove how that opponent has been divested of title wholly or partially of the ownership of the land to the satisfaction of the court: see *Thomas v. Holder* (1946) 12 WACA 78; *Ochonma v. Unosi* (1965) NMLR 121; *Isiba v. Hanson* (1967) 1 All NLR 8; *Nwosu v. Udeaja* (1990) 1 NWLR (Pt.125) 188; *Oyovbiare v. Omamurhomu* (1999) 10 NWLR (Pt.621) 23.

The plaintiffs in paragraph 4 their statement of claim based their alleged co-ownership first on the fact of ownership and possession from time immemorial. As to this, there is no evidence of substance led by them. In paragraphs 5,6,7 and 8, they pleaded as follows:

“5. *The land in dispute, IDUME, is an extension of other communal lands owned by UGWUAJI, AMECHI and OBEAGU. The other communal lands surrounding IDUME and shown in the plaintiffs plan No.E/GAO/1/70 are OTONOZI, ISI INE, ISIAWANA, ISIAKA, NKWAFU, NGWA and NGBALA LANDS.*

6. *Before UGWUAJI settlement in 1928, the people of UGWUAJI formed integral parts of AMECHI and OBEAGU and the whole stretch of land between the towns of Awkunanaw and Nike, which stretch includes IDUME and the other lands mentioned in paragraph 5 above, was known as “No man’s land” The people who now make up Ugwuaji, Obeagu and Amechi enjoyed this stretch of land communally.*

7. *After the UGWUAJI settlement in 1928, the people of UGWUAJI started claiming exclusive ownership of this land. This resulted in a dispute between the people of UGWUAJI, AMECHI and OBEAGU.*

8. *In 1943, the Divisional Office Nkanu intervened and secured a settlement. Representatives of UGWUAJI, OBEAGU AND AMECHI, which include plaintiff and 1st-15th defendants, reached a decision recognizing this stretch of land as the communal farming land*

of the 3 groups and in which no houses were to be erected nor tenant farmers taken in by any group. This unanimous decision of the 3 groups was recorded by the Divisional officer and signed by the parties. The plaintiffs will found on this settlement.”

B It had been argued before the learned trial judge by the plaintiffs that what they pleaded above was traditional history upon which they were entitled to rely. But the learned trial judge disagreeing, observed thus:

C “ *In the instant case what is urged on the Court is certainly not traditional evidence. It is not every story which touches on the land in dispute that can be characterized as traditional evidence.*

The story about the dispute which is said to have been taken before the District Officer is definitely not traditional evidence but evidence of contemporary history, stories of events which apparently happened within living memory and which have to strictly proved in accordance with the laws of evidence. There is not enough precision in the evidence led as to the extent of land involved and much of what was said in Court was hearsay evidence and in the context of our law not relevant.”

In the end the learned trial judge held that the plaintiffs failed to discharge the onus of proof on them and accordingly dismissed the claim.

F The court of Appeal, Enugu Division allowed the appeal against the judgment of the trial court. It held that the plaintiffs succeeded on the evidence led which it regarded as traditional evidence as raised in issue 1 for determination. But, as I have earlier said, there was no evidence of traditional history. Indeed there could not have been such evidence because facts of traditional history were not pleaded as requires by the rules of pleading: see *Akinloye v. Eyiola* (1968) NMLR 92; *Adejumo v. Ayantegbe* (1989) 3 NWLR (Pt. 110) 117; *Alli v. Alesinloye* (2000) 6 NWLR (Pt.660) 177. It must be pleaded (a) who founded the land; (b) in what manner the land was founded and the circumstances leading to it; (c) the successive persons to whom the land thereafter devolved through an unbroken chain or in such a way that there is no gap which cannot be explained. Furthermore, as the learned trial judge rightly held, the facts

relied on were facts of recent events which cannot be the basis of traditional history. Traditional history, by concept, deals with an event beyond human memory; or is ancient through recollection beyond record; or is what happened at a time out of mind and therefore qualifies to be immemorial: see *Lebile v. Registered Trustees of Cherubim and Seraphim Church* (2003) 2 NWLR (Pt. 804) 399 at 419. B

I must refer briefly to the manner in which the Court of Appeal dealt with the proof of ownership raised in issue 2 before it. The issue reads thus:

“Whether the learned trial judge was right in holding that the onus clearly lies on the plaintiffs/appellants to prove ownership of the land in dispute in spite of the nature of the pleadings.” C

In dealing with this issue, it would seem the court below was still under the misconception that the case was fought on traditional history. Upon that premise, it held that since the trial court did not specifically find that the traditional history relied on by the plaintiffs was conclusive, the burden was on the defendants to prove exclusive ownership of the land. As put by Adamu JCA in his leading judgment: D

“In the instant case however, we have seen that the rejection of the traditional evidence adduced by the plaintiffs/appellants at the lower court was made in error. In any case, the said lower court did not specifically hold that the traditional evidence was inconclusive. Therefore, there is no need to cast any burden on the plaintiffs/appellants as was done by the lower court. In other words, the lower court should have placed the onus of proof on the defendants/respondents who from the state of their pleadings are claiming exclusive ownership of the land which was said to be owned communally” E F G

I think the learned Justice of Appeal, with due respect to him, completely misunderstood the implication of the claim to co-ownership of the land in question. As I said earlier in this judgment, the onus rested on the plaintiffs squarely to prove how they are co-owners with the defendants. By their claim they conceded ownership to the defendants prima facie. It is as if a person alleges that he owns a particular building in common with another. That other has no burden to prove such com- H

mon ownership. It is for the person who has positively asserted that claim to that property to prove satisfactorily how the common ownership came about. In other words, it is a party who claims any right in property that bears the burden of proof. The defendants in this case said
 B no more, in effect, than that the plaintiffs are not common owners with them. That is simply a negative assertion which carries no burden of proof. It is quite clear, therefore, that the court below misplaced the burden of proof. Having done so, it came to a wrong decision: see Sandy
 C v. Hotogua (1952) 14 WACA 18 at 20; Onobruchere v. Esegine (1986) 17 NSCC (Pt.1) 343 at 345; Olohunde v. Adeyoju (2000) 10 NWLR (Pt. 676) 562 at 599; Psychiatric Hospital Management Board v. Ejitagha (2000) 1.1 NWLR (Pt. 677) 154 at 160.

For the above reasons and those more fully stated by my learned
 D brother Kutigi JSC, I too find this appeal meritorious. I accordingly allow it and dismiss the claim as done by the trial court. I award the defendants/appellants N10,000.00 costs.

E

EDOZIE JSC

I had a preview of the judgment just read by my learned brother Kutigi J.S.C and I am in complete agreement with his reasoning and
 F conclusion in allowing this appeal.

From the main issues canvassed by the parties in their briefs of argument, the merit or otherwise of this appeal turns on the burden of proof and on its discharge by traditional evidence on the party on whom that burden lies.

G Generally, the onus of proof in civil cases lies on the plaintiff to satisfy the court that he is entitled on the evidence adduced by him to the claim he asserts and in doing so, he must rely on the strength of his own case and not on the weakness of the defence: Insurance Brokers of Ni-
 H geria v Atlantic Textiles Manufacturing Company Ltd (1996) 8 N.W.L.R. (Pt. 466) 316, 318, Kodilinye v Odu (1935) 2 W.A.C.A. 336 at 337. It is also the law that where a plaintiff leads evidence that the land in dispute is communal property, the onus is on the defendant to establish that the

land belongs to him exclusively: see Udeakpu Eze v Igiliegbé (1952) 14 W.A.C.A. 61, Atuanya v Onyejekwe (1975) 3 SC 161 at 167, Onowhosa v Odiuzou (1999) 1 N.W.L.R. (Pt. 586) 173, 190. In the instant case, the plaintiffs by their claim asserted that the land in dispute is owned communally by them and the Defendants and by that assertion they the plaintiffs have impliedly conceded or admitted that the Defendants have interest in the land in dispute. There is no burden on the Defendant to prove what is admitted rather it is the plaintiffs whose alleged interest on the land is denied by the Defendants who have the burden of proving their interest. The position would have been different if the defendants had admitted the communal ownership of the land but alleged that they later acquired the land exclusively: see Chief Alhaji K.O.S. Are & Anor v Raji Ipaye & Ors (1990) 2 N.W.L.R. (Pt.132) 298 at 309, Ochonma v Unosi (1965) N.M.L.R.321 at 323, Buraimoh v Bamgbose (1989) 6 S.C.N.J 36 at p.45. Since , in the case in hand, the Defendants in their pleadings denied the communal ownership of the land, the burden of proof is cast on the plaintiffs to prove their communal ownership of the land in dispute with the Defendants. The learned trial Judge, Okagbue J (as he then was) was right in holding that the burden of proof was on the plaintiffs. The Court of Appeal was in grave error to have decided otherwise. To place the burden of wrongly on a party will usually lead to a miscarriage of justice; see Onobruhere v Esegine (1986) 1 N.W.L.R. (Pt. 19) 729; Psychiatric Hospital Management Board v E.O.O Ejitagha (2001) 11 N.W.L.R. (Pt. 677) 154.

The appeal succeeds on this score alone but the court below was also in error on the nature of evidence relied upon by the plaintiffs to establish their case, which they categorized as traditional evidence. This is “evidence as to rights alleged to have existed beyond time of living memory and proved by linguist or other members of the various tribes concerned”: Abinabina v Enyinmadu (1953) 12 W A C A 171 at p. 172. Blacks Law Dictionary, Sixth Edition p.1495 defined traditional evidence as “evidence derived from tradition or reputation or the statement formerly made by persons since deceased in regard to questions of pedigree, ancient boundaries, and the like, where no living witnesses can be

produced having knowledge of the facts. By its nature traditional evidence is hearsay evidence which according to the strict rules of evidence is inadmissible but is made admissible by section 44 of the evidence Act which provides that where the title or interest in family or communal land is in issue, oral evidence of family or communal tradition concerning such title or interest is relevant. Traditional evidence is one of the methods of proving title to land: see Idundun & ors v Okumagba & ors (1976) N.S.C.C. 445, Piario v Tenalo (1976) 12 S.C. 31 at 33. It is settled law that a plaintiff who seeks title to land and relies on traditional history must, to succeed, plead and prove facts as to:- (a) who founded the land; (b) how the land was founded and (c) particulars of the ancestors through whom he claims: see Mogaji v Cadbury (Nig) Ltd (1985) 2 N.W.L.R. (Pt.7) 393; Akanbi v Salawu (2003) 13 N.W.L.R. (Pt.838) 637 at 649 - 650, Elias v Omo - Bare (1982) 5 S.C. 25, Anyanwu v Mbara (1992) 5 N.W.L.R. (Pt. 242) 386, Adejumo v Ayantegbe (1989) 2 N.W.L.R (Pt. 110) 417. Traditional evidence which is not contradicted and found by the court to be cogent can support a claim for declaration of title: see E.F.M. Alade v Lawrence Awo (1975) 4 S.C. 215 at p. 228; Obiaso v. Okoye (1989) 5 N.W.L.R. (Pt. 119) 80; Akhionbare v Omoregie (1976) 12 S.C. 11 at p. 27. In the instant case, the plaintiffs pleaded in their statement of claim that the land in dispute and from time immemorial been owned and possessed communally by the plaintiffs and 1st – 15th defendants; that before the 1928 settlement the land in dispute referred to as “No Man’s Land” was enjoyed communally by the three communities of Ugwuaji, Obeagu and Amaechi; that after the 1928 settlement the Ugwuaji community started claiming exclusive ownership of the land in dispute resulting in dispute between the three communities; that in 1943, the Divisional Officer intervened and a settlement was reached in which it was agreed that the land in dispute was the communal farming land of the three communities. It was further alleged that before 1960, the 1st – 15th dependants in breach of the 1943 agreement brought tenants on the land in dispute and started to claim exclusive ownership thereof. Commenting on the evidence led in support of the plaintiffs’ pleadings, the learned trial judge at pp 97 and 98 of the record observed, inter alia,

thus:-

“It was submitted on behalf of the plaintiffs that they alone led traditional evidence and that title could be granted solely on the basis of traditional evidence. There is no doubt that title can be awarded solely on the basis of traditional evidence” B

In the instant case what is urged on the court is certainly not traditional evidence. It is not every story which touches on the land in dispute that can be characterized as traditional evidence.

The story about the dispute, which is said to have been taken before the District Officer is definitely not traditional evidence but evidence of contemporary history, stories of event which apparently happened within living memory and which have to be strictly proved in accordance with the law of evidence. There is not enough precision in the evidence led as to the extent of land involved and much of what was said in court was hearsay evidence and in the context of our law of evidence not relevant.” C D

The above finding cannot be faulted. The plaintiffs did not plead nor give evidence about who founded the land in dispute and the successive ancestors through whom the land devolved on them. They relied on the events that occurred within living memory, which they supported with hearsay evidence, which is inadmissible. With respect, their Lordships of the Court of Appeal were in error to have disagreed with the trial court on the nature of the evidence adduced by the plaintiffs. E F

It is for these and the more detailed reasons articulated in the leading judgment of my learned brother Kutigi J.S.C. that I, also allow the appeal, set aside the judgment of the Court of Appeal and restore that of the trial court dismissing the plaintiffs’ claim. I abide by the orders as to costs. G

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