

**SUPREME COURT OF NIGERIA**  
7TH MAY, 2004, SC. 31/2000  
**CORAM: M.L. UWAIS CJN, A.I. KATSINA-ALU, U.A.**  
**KALGO, S.O. UWAIFO, A.O. EJIWUNMI, JJSC**

CHIEF J. A. OJO

SUBSTITUTED BY

1. BOLA AKINBIYI OJO ..... PLAINTIFF'S/APPELLANTS

2. ASANI OGUNDIMU

(FOR HIMSELF AND ON BEHALF OF OJEKE

ARO FAMILY OF ILLATA OTTA, OGUN STATE)

AND

1. SAULA OGISANYIN ANIBIRE

2. ALHAJI SARA KATU SALAMI

3. FATAI ANIBIRE

4. ALABI SALASU

..... DEFENDANTS/

5. ALHAJI SULE AKINBOYEDE

RESPONDENTS

6. AKANNI SALAMI

7. RAIMI BANKOLE

8. OBASOLA ATOBATELE

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APPEALS - Grounds of appeal - Preliminary objection against them - As not emanating from the proceedings - Or for being a fresh point - Is dismissed for being unfounded (H1)

APPEALS - Miscarriage of justice - Meaning of - To conclude that miscarriage of justice occurred - Is not based on whether a different result - Would have been reached (H2)

EVIDENCE - Pleadings - Land matters - Miscarriage of justice - Issues related to a piece of evidence - Did not occasion miscarriage of justice (H3)

LAND LAW - Family land - Sale of - Head of family's right - Does not

arise - Where the family has delegated powers - To attorneys vide exhibit K (H4)

### **FACTS**

Before the trial High Court the plaintiffs/appellants filed an action in a representative capacity against the defendants/respondents. Appellants claimed inter alia, against the respondents declaration of title, damages for trespass and perpetual injunction in respect of the land in dispute. Appellants called 13 witnesses and 19 people testified for the respondents. The case had a chequered history. In a considered judgment delivered on 29 - 4 - 1991, the trial judge dismissed the appellants' claims in their entirety for not being proved.

Appellants appealed to the court of Appeal, Ibadan, which dismissed the appeal for being without merit. Being dissatisfied they have further appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(i) Whether a finding that the original Appellant’s name had been removed as donee of Aro family’s Power of Attorney (Exhibit K) did not occasion a miscarriage of justice?*

*(ii) Whether as a principal member and/or an attorney of the family owning the land in dispute, the original appellant is not entitled to an order of injunction perpetually restraining any sale of the family land or portion(s) thereof without his consent; or to a declaration that any sale of the family land without his consent is null and void.”*

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

### **APPEALS - Grounds of appeal**

1. Grounds of appeal (i) and (ii) complain of error in law by the Court of Appeal in refusing or failing to grant the appellants an injunction restraining the respondents from dealing with the land in dispute and for failing to grant them a declaration that any sale of the land in dispute or any portion thereof was null and void. There is no doubt that the trial court refused to grant the injunction or the declaration and the Court of Appeal affirmed such refusal in its judgment. This, in effect means that the Court

of Appeal itself refused the grant of the injunction and the declaration after considering the decision of the trial court. So the appellants have got full right to complain against the refusal of the grant by the Court of Appeal as in grounds (i) and (ii) of their notice of appeal. These grounds are in my view, therefore, competent.

This is clearly a finding or conclusion upon which a complaint can be based in a ground of appeal. I am therefore firmly of the view that ground of appeal (iii) in the appellant notice of appeal is also competent. It is a ground of law upon which no leave is required before it is filed.

Having found that the grounds of appeal (i), (ii) and (iii) are competent in this appeal, I consequently also find that all the issues distilled therefrom are valid and competent. I accordingly overrule the preliminary objection and dismiss it. (pp. 1212 D/1213 B)

#### ***APPEALS - “Miscarriage of justice “***

2. “*Miscarriage of justice*” simply means failure of justice. What will constitute miscarriage of justice varies from case to case depending on the facts and circumstances. But to reach the conclusion that such a miscarriage occurred, it does not require a finding that a different result necessarily would have been reached in the proceedings to be affected by the miscarriage. It is enough if what has happened is not justice according to law” See Wilson v. Wilson (1969) ALR 191. (p. 1214 F)

#### ***EVIDENCE - Pleadings - Land matters***

3. The court of Appeal referred to the evidence of the removal of the name of Chief Ojo as a non-issue as it was a piece of evidence which needs not be pleaded in law. I entirely agree with the Court of Appeal on this particularly as that piece of evidence was not relied upon by the learned trial Judge giving his judgment as I explained earlier. I have also read the cases cited by the learned counsel for the appellant in the brief on this issue and I do not find them to be relevant. I therefore conclude that no miscarriage of justice has arisen due to the finding that Chief Ojo’s name was removed from Exhibit K. I resolve the issue in favour of the respondents. (p.1215 H)

**LAND LAW - Family land**

4. The learned trial Judge when dealing with this matter on the sale of land had this to say:-

B “In my view, this is no longer necessary because the power to deal with the land including the right of the head of the family had been delegated to those to whom the Power of Attorney was donated in Exhibit K. I hold the view that Exhibit K has over-ridden the right of any individual in this respect”.

C This meant that since the appellant was one of those to whom Power of Attorney was granted under Exhibit K to manage and control the Aro family land of Otta, it was unnecessary to give him any additional power in relation to the land. The Court of Appeal agreed with the learned trial Judge when it upheld his findings and dismissed the appeal in its entirety. I entirely agree with them too on this, and I resolve the issue in favour of the respondents. (p.1216 H)

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**NOTABLE POINT OF INTEREST**

**UWAIFO JSC**

*1. Concurrent findings - When not to be disturbed*

F The findings of the learned trial Judge were consequently affirmed by the court below and in the result, the appeal was dismissed. It is an established principle that as a matter of policy, once it is clear that the findings of the two courts below are reasonably justified by the evidence and that no error in law, substantive or procedural, that leads to a miscarriage of justice has been made, this court cannot interfere with such concurrent findings of fact but must treat them with due respect: see Abinabina v. Enyimadu (PC) 12 WACA 171 (PC) at 173.

H It is, of course, also settled that the onus lies on an appellant to show that there are special circumstances to warrant interference by this court with concurrent findings of fact of the two courts below. The burden must be clearly discharged otherwise the Supreme Court will not re-open those facts for re-valuation. As observed by Obaseki, JSC., in

Animashaun v. Olojo (1990) 6 NWLR (Pt. 154) 111 at 121 – 122.  
(p. 1220 F)

### **REPRESENTATION**

O.T. AKINBIYI, (WITH HIM, O.H. OYAJINMI), FOR THE APPELLANTS.

B

OLANIYI SALAU, ESQ., (WITH HIM, T.G. ADEOSUN AND D.A. SULEIMAN), FOR THE RESPONDENTS.

### **CASES REFERRED TO**

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Cooperative and Commerce Bank Plc. V. Attorney-General of Anambra State (1992) 10 SCNJ 137

A.C.B. Plc v. Obmimia Brick and Stone Nigeria Ltd. (1993) 6 SCNJ 908

Ogunbiyi v. Ishola (1996) 5 SCNJ 143, 150

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Oforlete v. The State (2000) 7 S.C. (Pt. 1) 80; (2000) 7 WRN 86 at 96

Obatoyinbo v. Oshatoba (1996) 5 SCNJ, 1 at 19

Salami v. Mohammed (2000) 11 WRN 76 at 84

Wilson v. Wilson (1969) ALR 191

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Devi v. Roy (1946) AC 508

State v. Ajie (2000) 7 S.C. (Pt. 1)

### **LEAD JUDGMENT BY KALGO JSC**

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This appeal concerns a land dispute with a chequered history. I do not intend to go into the history but confine myself to what has happened in the trial court and the Court of Appeal.

In the trial court the plaintiffs'/appellants' claims are for:-

*"1. A declaration of title that the plaintiff for himself and on behalf of Ojeke Oke Aro Family of Ilata, Otta, Ogun State Nigeria are entitled to a Certificate of Occupancy of the Area of land measuring about 112.35 Hectares of 277.6 Acres situate, lying and being at Ilata Otun Quarters, Otta, Ogun State Nigeria particularly shown on the plan H drawn by Sewaje Esquire, Licensed Surveyor.*

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*2. The sum of N400.00 as damages for trespass committed on the land by each of the defendants except the 7<sup>th</sup> defendant.*

3. *An injunction restraining perpetually jointly the defendants, their agents, assigns and privies from committing any further acts of trespass on the land, from selling, leasing, constructing building thereon or dealing with the land in any manner without the consent and/or permission of the plaintiffs.*

4. *A declaration that any sale of any portion of OJEKE ARO FAMILY LAND, the land in dispute made by the defendants jointly or severally or by their agents are null and void.*

5. *A declaration that none of the defendants is a descendant of OJEKE ALASHE OR a member of the OJEKE ARO FAMILY of Ilata, Otta, Ogun State, Nigeria.*

6. *Any other reliefs or order as this Honourable Court may consider necessary to make in favour of the plaintiffs."*

Pleadings were filed and exchanged between the parties in the trial court and a total of 32 witnesses testified in the case; 13 for the plaintiffs/appellants and 19 for the defendants/respondents. At the end of the trial the parties' counsel addressed the court and the case was adjourned for judgment. In a considered judgment delivered on 29<sup>th</sup> April 1991, the learned trial Judge Sofolahan, J., found that the plaintiffs/appellants have failed to prove their claims and he dismissed the claims in their entirety.

The plaintiffs/appellants (hereinafter simply referred to as the appellants) were not happy with this decision and they appealed to the Court of Appeal, Ibadan, which heard the appeal and dismissed it as being without merit. They now appealed to this court.

In this court, both parties filed and exchanged their respective briefs of argument in accordance with the rules. The appellants formulated two issues for the determination of the court which read:-

*"(i) Whether a finding that the original Appellant's name had been removed as donee of Aro family's Power of Attorney (Exhibit K) did not occasion a miscarriage of justice?*

*(ii) Whether as a principal member and/or an attorney of the family owning the land in dispute, the original appellant is not entitled to an order of injunction perpetually restraining any sale of the family land or portion(s) thereof without his consent; or to a declaration that any sale*

*of the family land without his consent is null and void.”*

The defendants/respondents (hereinafter referred to as the respondents) also raised two issues as follows:-

“1. *Whether there is any competent and valid appeal in the instant case.* B

2. *Whether the Court of Appeal was right to have reached the conclusion it reached, and not to have granted the order of injunction and declaration being complained of injunction and declaration being complained of by the appellants herein.”* C

I have carefully looked at the issues set out by the parties and I find that issue 2 in each case is the same. I also observe that respondents’ issue 1, did not arise from the grounds of appeal but since they have raised a notice of preliminary objection in their brief which they are entitled to do, the substance of that issue will be considered in the appeal. D I therefore find the appellants’ issues germane to this appeal and I shall consider them accordingly.

Before considering the appellants’ issues for determination in this appeal, I find it necessary to consider first the preliminary objection raised E by the respondents in the brief. The preliminary objection was based on two points:-

“1. *That grounds (i) and (ii) of the appellants’ grounds of appeal did not emanate from the proceedings in the Court of Appeal, but are F attack on the judgment of the High Court.*

2. *That ground (iii) of the grounds of appeal is a complaint against the conclusion reached by the Court of Appeal, and the same has not arisen from an issue that was canvassed in the Court of Appeal, but a G fresh point or new issue for which leave of court should have been obtained”.*

Learned counsel for the respondents argued that since this court has no jurisdiction to entertain any appeal direct from the decision of a High Court, the appellants’ grounds of appeal (i) and (ii) are incompetent, H must be disregarded and struck out. He cited the cases of Cooperative and Commerce Bank Plc. V. Attorney-General of Anambra State (1992) 10 SCNJ 137; A.C.B. Plc v. Obmiamia Brick and Stone Nigeria Ltd.

(1993) 6 SCNJ 908; Ogunbiyi v. Ishola (1996) 5 SCNJ 143, 150 in support.

In respect of ground (iii) of the ground of appeal, learned counsel submitted in the brief that it raised an issue of jurisprudence which was never canvassed in the Court of Appeal. It was therefore a fresh or new point for which the leave of this court or the Court of Appeal must be got before it was filed and there was no such leave. The ground is therefore incompetent, learned counsel submits, and should be struck out. He relied on the decisions of this court in Oforiete v. The State (2000) 7 S.C. (Pt. 1) 80; (2000) 7 WRN 86 at 96; Obatoyinbo v. Oshatoba (1996) 5 SCNJ, 1 at 19 and Salami v. Mohammed (2000) 11 WRN 76 at 84.

Learned counsel finally submitted that as the grounds (i), (ii) and (iii) are incompetent, all issues distilled from them are equally incompetent and must be struck out. This leaves no other ground of appeal to support the appeal which collapses and should be dismissed.

**Grounds of appeal (i) and (ii) complain of error in law by the Court of Appeal in refusing or failing to grant the appellants an injunction restraining the respondents from dealing with the land in dispute and for failing to grant them a declaration that any sale of the land in dispute or any portion thereof was null and void. There is no doubt that the trial court refused to grant the injunction or the declaration and the Court of Appeal affirmed such refusal in its judgment. This, in effect means that the Court of Appeal itself refused the grant of the injunction and the declaration after considering the decision of the trial court. So the appellants have got full right to complain against the refusal of the grant by the Court of Appeal as in grounds (i) and (ii) of their notice of appeal. These grounds are in my view, therefore, competent.**

Ground of appeal (iii) complains about the conclusion of the Court of Appeal in its judgment that the finding of the learned trial Judge about the removal of the name of the appellant did not amount or lead to a miscarriage of justice. The Court of Appeal per Mukhtar, JCA., after quoting what the learned trial Judge said about Exhibit K, the Power of Attorney and the removal of the appellant's name therefrom, had this to



say:-

*“Although the learned judge made the reference, I fail to see how it has affected the justice of the case or occasioned miscarriage of justice. It is not the main pivot upon which the learned trial Judge hinged his judgment, but on many other cogent evidence and issues joined by the parties”.* B

**This is clearly a finding or conclusion upon which a complaint can be based in a ground of appeal. I am therefore firmly of the view that ground of appeal (iii) in the appellant notice of appeal is also competent. It is a ground of law upon which no leave is required before it is filed.** C

**Having found that the grounds of appeal (i), (ii) and (iii) are competent in this appeal, I consequently also find that all the issues distilled therefrom are valid and competent. I accordingly overrule the preliminary objection and dismiss it.** D

I now consider the 2 issues raised by the appellants in the appeal. The first issue asked the question whether the finding by the Court of Appeal that the original appellant’s name i.e., Chief J.A. Ojo, as one of the donees of the Power of Attorney in Exhibit K, did not occasion a miscarriage of justice. E

Let me start by saying that both parties have in their respective briefs confirmed that they have accepted the findings of the learned trial Judge that both of them *“are descendants of Ojeke Alashe or Ojeke Aro Family of Ilata, Otta or Aro family of Otta”*. Exhibit K according to the evidence is a document dated 20<sup>th</sup> January, 1976, in which the members of the Aro family donated a Power of Attorney to four amongst them including Chief Ojo to deal with all the land owned, possessed and controlled by the ARO DESCENDANTS FAMILY of Otta. Also according to the evidence, Exhibit D, was a conveyance made to Chief Ojo in respect of part of the family land sold to him, and which was prepared by Chief Ojo himself and signed or executed by the other donees of Power of Attorney in Exhibit K. It was, however, later discovered, according to the evidence, that Chief Ojo inserted in the preamble of Exhibit D, the words *“whereas one Ojeke Aro settled....”* The family objected seriously F G H

to the use of the words “*Ojeke Aro*” which they claimed was wrongly inserted by Chief Ojo and as a result his name was removed from Exhibit K.

B The main contention of the learned counsel in this issue is that the removal of Chief Ojo from Exhibit K was not in accordance with the provisions of Exhibit K itself and that the evidence about the removal was not in support of any pleadings by the respondents at the trial. Therefore, learned counsel argued, the evidence about the removal of Chief Ojo from Exhibit K went to no issue and should not have been considered. C Counsel further argued that the trial court and the Court of Appeal were wrong in law to consider that piece of evidence and that in his submission, was a miscarriage of justice to his clients. He cited a plethora of cases in support of his submissions.

D For the respondents, it was argued that though this issue was supposed to be raised from the ground of appeal (iii), the arguments of the appellant’s counsel in the brief in respect of it has gone beyond its limits into other matters. Learned counsel submitted that no where in the E brief did the appellant explain what miscarriage of justice his clients suffered as a result of the complaint. It was not shown, he further argued how the judgment of the courts was affected by the so-called miscarriage of justice. He finally submitted that there is no substance in the appellant’s argument on this issue and should be ignored. He cited some F decided cases in support of his contention.

***“Miscarriage of justice” simply means failure of justice. What will constitute miscarriage of justice varies from case to case depending on the facts and circumstances. But to reach the conclusion that such a miscarriage occurred, it does not require a finding that a different result necessarily would have been reached in the proceedings to be affected by the miscarriage. It is enough if what has happened is not justice according to law”*** See Wilson v. Wilson G H (1969) ALR 191; Devi v. Roy (1946) AC 508; State v. Ajie (2000) 7 S.C. (Pt. 1); (2000) 8 WRN 8 cited by respondents’ counsel.

In this case, the learned trial Judge found that one of the main reasons for removal of the name of Chief Ojo from Exhibit K was the

insertion by him, in Exhibit 'D', of the words "Ojeke Aro". He later also said:-

*"Notwithstanding, Exhibit D does not remove the fact that the defendants are members of Aro family of Otta".*

By this, learned trial Judge was saying that notwithstanding Chief Ojo's name being removed from Exhibit K, as a result of what happened in Exhibit D, the defendants are still members of Aro family. That has not been challenged in this court.

Also in respect of the pleadings, paragraphs 25, 26 and 30 of the respondents' pleadings have clearly touched on Exhibit K and paragraph 30 particularly accused Chief Ojo of abusing the trust given to him as a donee of the Power of Attorney in Exhibit K when he "fraudulently" inserted "Ojeke Aro" in the recital to Exhibit D. Paragraph 30 reads:-

*"With particular reference to paragraph 50 of the further amended Statement of Claim the defendants aver that pursuant to the Power of Attorney referred to in paragraphs 25 and 26 above, the Attorney of Aro family land granted to the plaintiff a portion of Aro family land. The plaintiff however abused the trust the other 3 Attorneys had in him then and fraudulently inserted "Ojeke Aro" in the recitals to the Deed of Conveyance which he prepared himself".*

The evidence of the removal of Chief Ojo following the contents of paragraph 30 cannot in my view be a surprise to the appellant as a direct consequence of his act. It is therefore the correct conclusion or finding made by the learned trial Judge from that evidence.

The Court of Appeal dealt with this matter in its judgment and said:-

*"Although the learned Judge made reference, I fail to see how it has affected the justice of the case or occasioned miscarriage of justice.*

*It is not the main pivot upon which the learned trial Judge hinged his judgment but on many other cogent evidence and issues joined by the parties."*

**The court of Appeal referred to the evidence of the removal of the name of Chief Ojo as a non-issue as it was a piece of evidence which needs not be pleaded in law. I entirely agree with the**

**Court of Appeal on this particularly as that piece of evidence was not relied upon by the learned trial Judge giving his judgment as I explained earlier. I have also read the cases cited by the learned counsel for the appellant in the brief on this issue and I do not find them to be relevant. I therefore conclude that no miscarriage of justice has arisen due to the finding that Chief Ojo's name was removed from Exhibit K. I resolve the issue in favour of the respondents.**

Issue 2 asked the question whether Chief Ojo as principal member of Aro family is not entitled to:-

- (a) an order of injunction perpetually restraining any sale of the family land or portions thereof without his consent;
- (b) a declaration that any sale of the family land without his consent is null and void.

It is pertinent to recall here that both the appellants and the respondents are descendants of Aro family of Otta who owned, possessed and controlled the vast land in Otta. The learned counsel for the appellants argued that although the appellants cannot be given any title to Aro family land to the exclusion of the respondents or other members of the Aro family, they must, as principal members of the family have other rights to that land like stopping trespass to and unauthorized sale of the land. That was why, counsel argued, the appellants sought for a declaration and an injunction.

The learned respondents' counsel pointed out that the original appellant personally asked for the injunction and declaration and now that he was dead, no such orders could be made in his favour. Counsel also submitted that since the two lower courts dismissed the appellants' case in its entirety including their claims for injunction and declaration, that is the end of it all. He further repeated his argument in the preliminary objection that the grounds of appeal (i) and (ii) from which this issue was distilled were incompetent as well as the issue itself. I have already overruled this last point and I say nothing about it any more.

**The learned trial Judge when dealing with this matter on the sale of land had this to say:-**

*“In my view, this is no longer necessary because the power to deal with the land including the right of the head of the family had been delegated to those to whom the Power of Attorney was donated in Exhibit K. I hold the view that Exhibit K has over-ridden the right of any individual in this respect”.*

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This meant that since the appellant was one of those to whom Power of Attorney was granted under Exhibit K to manage and control the Aro family land of Otta, it was unnecessary to give him any additional power in relation to the land. The Court of Appeal agreed with the learned trial Judge when it upheld his findings and dismissed the appeal in its entirety. I entirely agree with them too on this, and I resolve the issue in favour of the respondents.

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In sum, in view of what I have said above, I find that no special circumstances were shown by the appellants for me to interfere with the concurrent findings of the trial court and the Court of Appeal in this matter. I accordingly affirm their decisions and dismiss this appeal with costs which I assess at N10,000.00 in favour of the respondents.

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#### UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother Kalgo, JSC. I entirely agree that the appeal has no merit and that it should be dismissed.

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Accordingly, I too hereby dismiss the appeal with N10,000.00 costs to the respondents.

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#### KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother, Kalgo, JSC. I agree with it, and for the reasons he gives. I too, overrule the preliminary objection and dismiss the appeal. Accordingly, I affirm the decision of the Court of Appeal. I abide by the order for costs.

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## UWAIFO JSC

I had the opportunity of reading in advance the judgment of my learned brother, Kalgo, JSC. I agree with it for the reasons he had given.

I need to say that this appeal is essentially against concurrent findings of fact in a land case in which each party pleaded traditional history. The plaintiffs brought this action in a representative capacity on behalf of “Ojeke Aro Family of Ilata Otta, in Ogun State” and tended to plead that ownership of the land in dispute was in Ojeke Aro family. The purpose was to exclude the defendants from membership of such family. But the defendants pleaded and led evidence to show that the family is known simply as Aro family, and that they are members of that family. This was, incidentally, supported even by the evidence tendered on behalf of the plaintiffs. Evidence also established, including that given by the plaintiffs, that the 3<sup>rd</sup> defendant is the present Aro of Otta. Aro in fact is a chieftaincy name. The learned trial Judge considered the relevant pieces of evidence on the point and said:

*“I have quoted this lengthy extracts of the evidence and to convince myself and I am fully convinced that defendants are not only members of Aro family but that one of them, the 3<sup>rd</sup> defendant, Fatai Anibire, is the present Aro of Otta despite the fact that the plaintiffs disputed Anibire’s title as Aro. Nothing has changed, rather, the truth of it had emerged from the mouths of Anibire’s opponents and those of their allies for this purposes.”*

The learned trial Judge being of the view that the traditional histories relied on by the two parties conflicted, fell back on the principle in Kojo v. Bonsie (1957) 1 WLR 1223 at 1226 to decide which one was more probable. He examined facts of recent acts of ownership along with the three survey plans produced in court, namely Exhibit A by the plaintiffs (which he considered not reliable); Exhibit R by the main defendants (which he declared reliable); and Exhibit S by the 7<sup>th</sup> defendant who was indeed a proponent of the plaintiffs. He had been merely sued by them so that in his defence he would, as indeed he did, align himself with their case. From the features depicting acts of ownership shown in Exhibit R, the learned trial Judge was satisfied that the claims made by

the main defendants in their traditional history were reasonably substantiated.

The learned trial Judge considered the effect of the Power of Attorney (Exhibit K) dated 20<sup>th</sup> January, 1976, issued by persons nominated by both parties to constitute members of a single body of a family known as “Aro descendants Family of Otta”. From that body, four persons were appointed to manage and have control over the land in dispute on behalf of the said family. This showed that the land was regarded as the property of the same family. The learned trial Judge said of Exhibit K:

“Now to Exhibit K, the Power of Attorney on which much heat had been generated. In the Power of Attorney, 26 people which included some of the defendants, to wit; Alhaji Imam S.A. Akinboyede (dead but substituted with Kamoru Akinboyede) Saula Anibire, 1<sup>st</sup> defendant, Akanni Salami 6<sup>th</sup> defendant Fatai Anibire, 3<sup>rd</sup> defendant, Chief Jacob Akinbiyi Ojo and others gathered themselves together and donated a Power of Attorney to four amongst themselves that included the defendants and the plaintiff to deal with all land owned, possessed and controlled by the ‘Aro descendant’s family.’ They described themselves as members of Aro descendants family of Otta. This document was dated 20<sup>th</sup> day of January, 1976 when the going was good between the two parties. How can someone now say that the defendants are no longer members of Aro family? I reject that assertion.”

It was by virtue of Exhibit K some sales of parcels of land were made from the land in dispute. The plaintiff, Chief J.A. Ojo (later substituted by these two appellants when he died) had disputed the validity of sales made thereunder. But the learned trial Judge rightly observed thus:

“I do not buy the contention of Chief Coker that sales made through Exhibit K are not valid because no head of the family agreed to the sale. In my view, this is no longer necessary because the power to deal with the land including the right of the Head of family had been delegated to those to whom the Power of Attorney was donated in Exhibit K. I hold the view that Exhibit K has over-ridden the right of any individual in this respect.”

On the whole, the learned trial Judge did a good analysis of the

case because he meticulously examined the evidence, identified all aspects in which the plaintiffs' case supported the defence, resolved that there was only one family known as Aro (not Ojeke Aro) and concluded that the plaintiffs failed to discharge the onus on them to justify the reliefs B sought by them. He accordingly dismissed the claim.

The Court of Appeal, Ibadan Division, in an equally meticulous manner, in the leading judgment of Mukhtar, JCA., given on 27<sup>th</sup> May, 1999, examined the case in all the issues on which complaints were made. At a stage, the learned Justice of Appeal after considering the contentions C of the appellants' counsel, observed:

*"A careful perusal of the judgment of the lower court reveals that the learned trial Judge considered the issues joined and made the necessary findings on them. He made specific findings on the existence of an D Aro family of Otta and that the defendants are members of that family"* Later she said:

*"On the contention of learned counsel for the respondents (sic: appellants) that the learned trial Judge did not make a finding on the E location and name of the compound of the plaintiff and defendants, again I disagree with this..... All the discussions above considered, to say that the learned trial Judge wrongly dismissed the plaintiff's claim in view of the issues involved and without making specific findings on them F is misleading."*

The findings of the learned trial Judge were consequently affirmed by the court below and in the result, the appeal was dismissed. It is an established principle that as a matter of policy, once it is clear that the findings of the two courts below are reasonably justified by the evidence G and that no error in law, substantive or procedural, that leads to a miscarriage of justice has been made, this court cannot interfere with such concurrent findings of fact but must treat them with due respect: see Abinabina v. Enyimadu 12 WACA 171 (PC) at 173 per Lord Thankerton; H Dibiamaka v. Osakwe (1989) 5 S.C. 53; (1989) 3 NWLR (Pt. 107) 101 at 110; Are v. Ipaye (1990) 2 NWLR (Pt. 132) 198 at 308; Iroegbu v. Okwordu (1990) 6 NWLR (Pt. 159) 643 at 659. In Dibiamaka v. Osakwe (supra) at 110, Oputa, JSC., observed inter alia:



*“Having lost in the court of first instance, the plaintiffs then appealed to the Court of Appeal... the Court of Appeal dismissed the plaintiffs/appellants’ appeal describing the same as ‘being without merit’. The Court of appeal instead affirmed the judgment of the trial court. This then means that the various and far-reaching findings of fact made by the learned trial Judge were all affirmed by the Court of Appeal. We now have the concurrent findings of two courts on the facts. And it is the policy of this court not to disturb such findings unless it is shown that either they were perverse or that there was a substantial error either in substantive or procedural law which if uncorrected will lead to miscarriage of justice.”*

It is, of course, also settled that the onus lies on an appellant to show that there are special circumstances to warrant interference by this court with concurrent findings of fact of the two courts below. The burden must be clearly discharged otherwise the Supreme Court will not re-open those facts for re-valuation. As observed by Obaseki, JSC., in Animashaun v. Olojo (1990) 6 NWLR (Pt. 154) 111 at 121 – 122:

*“Where an appellant has failed to show that the concurring facts found by the courts below were based on an erroneous view of or misapprehension of the facts before them, the Supreme Court is bound by those facts and will not reopen those facts’ reappraisal and reassessment. The judgment will be affirmed. Balogun v. Labiran (1988) 1 NSCC (Volume 19); (1988) 3 NWLR (Pt. 80) 66. It is only where the appellant has succeeded in showing that the concurrent findings of fact were wrong in that they were based on a misapprehension of the evidence before it or an erroneous appraisal and assessment of such evidence or that the findings were perverse, or that the evidence was inadmissible and the findings occasioned a miscarriage of justice that the Supreme Court will interfere with such findings.”*

In the present appeal, the appellants completely failed to discharge the onus on them to show impropriety in the concurrent findings of fact of the two courts below. This court will not therefore interfere with those findings. I am satisfied that for the reasons I have given and those contained in the judgment of my learned brother Kalgo, JSC., this appeal

fails I accordingly dismiss it with N10,000.00 costs in favour of the respondents.

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**EJIWUNMI JSC**

I have before now been privileged to read the draft of the judgment just delivered by my learned brother, Kalgo, JSC. For the reasons given in the said judgment to dismiss the appeal, I also dismiss the appeal and award costs in the sum of N10,000.00 in favour of the respondents.

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