

SUPREME COURT OF NIGERIA

1ST JULY, 2005 SC. 17/2001

**CORAM:- S. M. A. BELGORE, A. I. KATSINA-ALU, A. O. EJI-
WUNMI, D. O. EDOZIE, S. A. AKINTAN, JJSC**

MR. AYOADE ADEWUYI DEFENDANT/APPELLANT
AND
ANDREW AJUKO ODUKWE PLAINTIFF/RESPONDENT

LAND LAW - Proof - Onus of proof lies on plaintiff - And he must succeed on the strength of his case - Not on weakness of the defence - Except defendant's case supports plaintiff's case (H1)

EVIDENCE - Proof - Civil cases - Requirement of proof - Where there is no evidence to put on one side of the imaginary scale - Minimum evidence on the other side - Satisfies the requirement of proof (H2)

LAND LAW - Title - Proof - Burden of proof - Is on the plaintiff who is claiming title - And it never shifts to the defendant throughout the trial (H3)

FACTS

Before the High Court of Lagos State, the plaintiff/respondent brought an action against the 1st defendant. In the course of the trial, the 2nd defendant who purchased the land in dispute while the action was still pending applied to be joined. He was accordingly joined as the 2nd defendant. The plaintiff claimed inter alia, a declaration that he is entitled to statutory right of occupancy, an order setting aside the purported sale in March, 1994, by Nigerland Ltd., Kingsley Ijoma and Mrs. Elizabeth Dumuje of the land in dispute, the sum of N500.00 as special and general damages for trespass committed by the 1st defendant and a perpetual injunction restraining the 1st defendant from further trespass.

The plaintiff gave evidence in support of his claim that in January 1977, he bought the piece of land in dispute from Kingsley Ijoma. The plaintiff testified that one Godwin Nwosu (DW2), witnessed the sale

and also signed the purchase receipt. Godwin Nwosu testified for the 1st defendant to the effect that he sold the land in dispute to him. But under cross-examination DW2 admitted that he was a witness to the sale in 1977 made by Kingsley Ijoma to the plaintiff, and that the 1st defendant's/appellant's money was returned to the appellant. The trial Court then gave judgment in favour of the plaintiff. The 1st defendant not satisfied with the judgment went to the Court of Appeal where his appeal was dismissed. He has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether Exhibits B and B 1, which were relied on by the plaintiff/respondent, although not pleaded, could be resolved with the evidence led in court to prove conclusively that the plaintiff/respondent bought the land in dispute in January, 1977, and had so remained the sole owner ever since.

HELD (Unanimously dismissing the appeal per **KATSINA-ALU JSC**)
LAND LAW - Proof - Onus of proof lies on plaintiff

1. In an action for declaration of title, the onus of proof lies on the plaintiff and he must succeed on the strength of his own case and not on the weakness of the defence except where the defendant's case supports plaintiff's case.

It has been laid down in *Idundun v. Okumagba* (1976) 9-10 S.C. (Reprint) 140; (1976) 9-10 S.C. 227 that there are five different ways of proving ownership of any land in dispute, namely:

1. Traditional evidence
 2. Production of document of title.
 3. Acts of ownership and possession by a person e.g. selling, leasing, renting, farming etc. extending over a sufficient length of time and numerous and positive enough to warrant the inference that person is the true owner.
 4. Acts of long possession and enjoyment under Section 145 of the Evidence Act raising prima facie evidence of ownership.
 5. The probability raised under Section 45 of the Evidence Act.
- I must re-state here that a party claiming title to land is not expected to plead and prove more than one of the ways stated above in order

to succeed. They are five separate ways. So proof of one is enough: See *Balogun v. Akanji* (1988) 1 NWLR (Pt. 70) 301 at 323. (p. 2137 E)

Civil cases - Requirement of proof

2. So the scenario is this. Godwin Nwosu admitted during trial that he was the witness to the sale in 1977 made by Kingsley Ijoma to the respondent. It was also evident that the purchase price paid by the appellant to Godwin Nwosu was returned to the appellant. It was also in evidence that the land devolved to Kingsley Ijoma on the death of his father. There was no evidence from the defence on record which controverted the purchase of the land from Kingsley Ijoma witnessed by Nwosu who was D.W.2. Rather the evidence called by the appellant supported the case of the plaintiff. There is nothing in the evidence of the defendant/appellant to place against that of the plaintiff/respondent. It is now settled law that where there is no evidence to put on one side of the imaginary scale in a civil case, minimum evidence on the other side satisfies the requirement of proof. (p. 2139 D)

Title - Proof - Burden of proof

3. The burden of proof in land matters is stated by the Supreme Court in *Kaiyaoja v. Egunla* (1974) 12 S.C. (Reprint) 49; (1974) 12 S.C. at 61 as follows:

*“We are not unmindful of the fact that it is a well established principle of law that in a claim for declaration of title, the onus is always on the plaintiff to establish his claim, and that it is not open to him to rely on the weakness of the defendant's case. This court has always held that what is required of a plaintiff in an action for declaration of title is at least to establish his claim by preponderance of evidence. It is often enough that he has produced sufficient and satisfactory evidence in support of his claim. The test is whether the plaintiff has been able to prove to the satisfaction of the court that he has a better title than the defendant. We think that it is relevant to draw attention to the fact. That subject is the well-known rule laid down in *Akpan Awo v. Cookey Gam* 2 NLR 100; and a host of other cases that followed it. The standard of proof in a claim for*

declaration of title is not different from that which is required in civil cases generally. The only difference, if we may say so, rests on the fact that the burden of proof is on the plaintiff who is claiming title, and that it never shifts to the defendant throughout the trial. The difference therefore, lies not in the standard of proof, but on the burden of proof.”

In my judgment, the plaintiff/respondent has met the required standard and burden of proof. The learned trial Judge was right when he found for the plaintiff/respondent in terms of his claim. Similarly, the court below was also right when it dismissed the defendant/appellant’s appeal and affirmed the decision of the trial court.

I find no merit in this appeal. (p. 2139 H)

NOTABLE POINT OF INTEREST

EDOZIE JSC

I. Title - Party that proves a better title will succeed

As both parties have traced their title to a common owner, in order to determine the party in whose favour title should be granted, it is apposite to refer to the dictum of Bello, JSC., (as he then was), in the case of Madam I. Arase v. Peter U. Arase (1981) 5 S.C. (Reprint) 21; (1981) 5 S.C. 33 at 35, where His Lordship observed:-

“It ought to be borne in mind always that at common law where questions of title to land are - in litigation, the court is concerned only with the relative strength of the title proved by the rival claimant. If party “A” can prove a better title than party “B”, he, party “A”, is entitled to succeed”.

In the present case, it is not disputed that the plaintiff bought the land in dispute as per Exhibits B, B1 which were endorsed by Godwin Nwosu (D.W.2) as a witness. On the other hand, there is unchallenged evidence that the defendant who purportedly bought the same land from Godwin Nwosu was refunded the purchase price. Where then lies the strength of the defendant’s claim? Having been refunded his money, he ceased to have any interest in the land in dispute and in the circumstance, the plaintiff had established a better title. (p. 2142 E)

REPRESENTATION

Counsel for the Appellant absent.

Mr. J. Akanike, for the Respondent.

CASES REFERRED TO

Balogun v. Akanji (1988) 1 NWLR (Pt. 70) 301 at 323 B

Nwabuoku v. Ottih (1961) 2 SCNLR 232; (1961) All NLR 487

Buraimoh v. Bamgbose (1989) 6 S.C. (Pt. I) 1; (1989) 3 NWLR (Pt. 109) 352

Kaiyaoja v. Egunla (1974) 12 S.C. (Reprint) 49; (1974) 12 S.C. at 61

Akpan Awo v. Cookey Gam 2 NLR 100

Ogunleye v. Oni (1990) 2 NWLR. (Pt. 135) 745 C

Kalio v. Woluchem (1985) 1 NWLR (Pt. 4) 610 at 628

Piario v. Tenalo (1976) 12 S.C. (Reprint) 19; (1976) 12 S.C. 31 at 41-42

LEAD JUDGMENT BY KATSINA-ALU JSC

At the High Court of Lagos State in the Ikeja Judicial Division, the plaintiff brought this action against the 1st defendant. In the course of the trial, the 2nd defendant who purchased the land in dispute during the pendency of the action applied to be joined. He was accordingly joined as the 2nd defendant. The plaintiff in his Amended Statement of Claim, claimed against the defendants jointly and severally the following reliefs:

“1. A declaration that the plaintiff is the person entitled to the statutory right of occupancy to all that piece or parcel of land situate, lying and being at No. 2 Obasa Street, Anifowoshe, Ikeja and more particularly described and delineated on survey Plan. No. ESL/A3273/89 dated 10th November, 1989 and drawn by S. O. A. Ifowodo, licensed surveyor.

2. An order setting aside the purported sale in March, 1994, by Nigerland Ltd., Kingsley Ijoma and Mrs. Elizabeth Dumuje of the land, the subject matter of this action, to the 2nd defendant.

And all documents purportedly executed by them to that effect while this suit filed in 1992 is pending is unconstitutional, null and void having regards to the provisions of:

(1) Constitution of the Federal Republic of Nigeria 1979.

(2) Land Use Decree 1978 and

(3) An order of specific performance directing Nigerland Ltd.,

Kingsley Ijoma and Mrs. Elizabeth Dumuje to themselves, servants or agents or any persons(s) howsoever and by whatever names called to execute all relevant documents in favour of the plaintiff, relating to the land subject matter of this action described in (one) above.

B (4) *The sum of N500.00 (Five Hundred Naira) being special and general damages for trespass committed by the 1st defendant, his agents, servants and/or privies on the said land.*

C (5) *Perpetual injunction restraining the 1st defendant by himself, servants, agents and/or privies howsoever called from further trespassing on the plaintiff's land."*

The plaintiff gave evidence and called two witnesses in proof of his claim. The 1st defendant called two witnesses in his defence. The 2nd defendant led no evidence.

D In a considered judgment, the trial Judge found for the plaintiff in terms of his claim.

E The 1st defendant's appeal was the only one argued before the Court of Appeal. His appeal was dismissed and the judgment of the trial High Court was affirmed. The 1st defendant has further appealed to this court.

Based upon the grounds of appeal, the 1st defendant submitted seven issues for determination. These are:

F (1) Whether Exhibits B and B 1, which were relied on by the plaintiff/respondent, although not pleaded, could be resolved with the evidence led in court to prove conclusively that the plaintiff/respondent bought the land in dispute in January, 1977, and had so remained the sole owner ever since.

G (2) Whether the Court of Appeal erred for not giving adequate consideration to the fact that the trial court breached the principle of fair hearing as enshrined in the 1999 Federal Constitution of Nigeria when the trial Judge closed 1st and 2nd defendants' case in court.

H (3) Whether the Court of Appeal properly evaluated the evidence led in the trial court having found in the Court of Appeal judgment as follows:-

"For, the evaluation of evidence is a duty which the law clearly

places on the trial court and if it fails to do so, the appeal court has powers to do so - See Balogun v. Akanji (1988) 1 S.C. 201.

"Whether it would be correct to ascertain that Court of Appeal had in fact done proper evaluation which the trial court failed to do?"

(4) Whether any party (the plaintiff/respondent in this appeal) B ought to give evidence contrary to what it pleaded and as such whether the Court of Appeal did consider this vital issue before confirming the decision of the trial court?

(5) Whether the Court of Appeal had jurisdiction to confirm the C decision of the trial court which had no jurisdiction to give judgment against 3rd persons who were not parties before the court?

(6) Whether Exhibits G, G1 and G2 tendered from the Bar without objection were rightly considered by the Court of Appeal?

(7) Whether the principle or doctrine of Lis (sic) Pendis was D properly applied by the Court of Appeal?

For his part, the plaintiff adopted the issues raised by the 1st defendant.

E In view of the facts and circumstances of this case, I think the first issue will dispose of this appeal.

The question, in the main, is whether the plaintiff proved his title to the land in issue. The parcel of land in dispute is No.2 Obasa Street, Anifowoshe, Ikeja.

F In his amended Statement of Claim, the plaintiff pleaded in paragraphs 4, 5, 6, 7, 8, 9, 11, 13, 14 and 17 as follows:

G 4. The land, the subject matter of this action is situate lying and being at No. 2 Obasa Street, Anifowose Area of Ikeja, Lagos within the jurisdiction of this Honourable Court.

5. The land in dispute is more particularly shown in Survey Plan No. ESL/A327/3/89 of 10th November, 1989 and drawn by licensed surveyor, S. O. A. Ifowodo which is hereby pleaded.

H 6. The plaintiff avers that on the 22nd January, 1977, the plaintiff purchased the land, the subject matter of this suit from one Kingsley Ijoma, who issued to the plaintiff a purchase agreement receipt for the sum of N8,000 (Eight Thousand Naira) same is hereby pleaded.

7. The said Kingsley Ijoma immediately put the plaintiff into possession in 1977 by showing the plaintiff round the land and performing necessary customary rites on the land in the presence of witnesses.

8. The plaintiff avers that in the exercise of his acts of ownership and possession, the plaintiff constructed a wall fence round the land and put thereon, servant/ agent planting harvestable crops thereon.

9. The plaintiff states that in 1990 the plaintiff applied for and obtained an approved building Plan No. IK92/4465/37 in respect of the land in dispute and was issued with a receipt No. 722864 dated 5th June, 1990, which is hereby pleaded.

11. The plaintiff contends that on or about the 9th of November, 1992, the 1st defendant, his servants, agents and privies came on the land and have been threatening the plaintiff's ownership and possession of the said land continuously.

13. The plaintiff states that he reported the incident to the police who warned the defendant to keep off the land.

14. The plaintiff states further that the 1st defendant inspite of police warning resumed his acts of trespass and has now commenced building on the land day and night and has threatened to continue his acts of trespass despite repeated warning unless restrained by this Honourable Court.

17. The plaintiff contends further that Kingsley Ijoma purportedly thereafter, sold the same land to one Godwin Nwosu and also the 1st defendant who is allegedly claiming ownership to the land which is the bonafide property of the plaintiff.

In his reaction, the 1st defendant in paragraphs 2, 3, 4, 6, 12 and 14 of his Amended Statement of Defence pleaded as follows:

2. The 1st defendant denies paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25(1) to (5) of the 1st Amended Statement of Claim and puts the plaintiff to the strict proof of all the facts therein contained.

3. The 1st defendant pleads that the land in dispute forms a portion of a vast area of land along Obasa Road, Anifowoshe, Ikeja which belonged to the father of one Kingsley Ijoma.

3a. ALTERNATIVELY

The 1st defendant pleads that the land now in dispute formed portion of the global acquisition made by the Government of former Western Region of Nigeria before the independence in October, 1960.

3b. That the said acquisition is for residential and, or industrial purpose in Ikeja.

3c. That the land now in dispute before the acquisition belonged to Dr. Nnamdi Azikiwe who erected a mansion thereon styled Wasimi Cottage Onitsha mansion.

3d. That the holding of Dr. Nnamdi Azikiwe was duly excised from acquisition by virtue of Instrument dated 4/2/65 and registered as No. 55 at Page 55 in Volume 812 of the Land Registry Ibadan.

3e. Dr. Nnamdi Azikiwe by virtue of Power of Attorney dated 1st November, 1975, commissioned an agent to dispose of the property mentioned in 3 (d).

3f. In 1977 under and by virtue of the Power of Attorney stated in 3(e), the land in dispute was disposed and became vested in Nigerland Limited under and by virtue of a deed of conveyance dated 16/2/77 and registered as No. 82 at page 82 in Volume 1607 of the Lands Registry at Lagos. That Kingsley Ijoma one of the Directors of Nigerland Ltd., is fixed with full knowledge of this transaction.

3g. At no time did plaintiff claim title derivable from Nigerland Ltd, as the receipts issued in favour of plaintiff by plaintiff's vendor, Ijoma, recites that the property is "*my land*" which means Ijoma's personal land.

3h. The root of title of Ijoma is put in issue moreso as Ijoma refused to give evidence at the initial trial. The due execution of receipts issued by Ijoma is put in serious issue.

3i. That Ijoma is one of the Directors of Nigerland Ltd., as such Ijoma is seized of the entitlement of Nigerland Limited and is caught by the maxim *nemo dat quid est habet* - "He gives not who possesses not". Since 1977. Nigerland Ltd. has been in lawful, effective, physical possession of the land in dispute and other adjacent lands as per the Instrument recited in paragraph 3 (f) above.

3j. That all exercise (if any) of right by the plaintiff since 1977

amounts to trespass as the root of the said exercise stems from defective grant by Ijoma, such rights can only be exercised for and on behalf of Nigerland Ltd., a corporeity by Ijoma one of its directors, which has no contract with the plaintiff.

B 4. That at the death of Kingsley Ijoma's father the said vast area of land by act of devolution became vested in Kingsley Ijoma the eldest surviving child.

6. Kingsley Ijoma on 28th March, 1974, sold the land now in dispute to one Godwin O. Nwosu of No. 1 Obasa Road, Anifowoshe, Ikeja.

C 12. In 1992, the said Godwin O. Nwosu transferred his proprietary rights over the land in dispute to the 1st defendant under Native law and custom.

D 13. Since 1992, the 1st defendant has been in maximum and effective ownership and possession of the land in dispute exercising full right thereon.

The plaintiff gave evidence in proof of his claim. In his evidence-in-chief, he testified in part thus:

E "I knew the defendant in this case in 1992. I know the land in dispute. It is along Obasa Street, Anifowoshe, Ikeja. Lagos. I have a survey plan in respect of the land in dispute in 1989. I can identify copy of the survey plan shown to me. Survey Plan ELS/A/32273/89 drawn by S. O. G. Ifowodo just shown to me is the survey plan in respect of the land. Survey Plan put in, received and marked Exhibit 'A'.

F In January, 1977, I met Mr. Kingsley Ijoma who informed me that he wanted to sell his land. Mr. Kingsley Ijoma took me to the land now in dispute. On seeing the land I became interested in it. We negotiated and we both came to an agreement to sell the place for N128,000.00. I paid the purchase price in three instalments. The first one was N8,000.00 and he gave me receipt to that effect. In proof plaintiff produced receipt dated 22/1/77. On the 3rd May, 1990, I paid my vendor, Kingsley Ijoma, on two occasions totalling N120,000.00 on the same day 2 receipts both issued on 3/5/90 in evidence and marked Exhibits B1 and B2. Kingsley Ijoma my vendor put me in possession in the presence of witnesses and told me that that is my land and that I am free to use it for whatever I want.

H From 1977 to 1992, the total area of the land was fenced round

and I employed servants and agents to be looking after the land. Oliver is one of the servants employed to look after the land. Oliver was farming and planting harvestable crops on the land. I also got an approved building plan No. IK/92/46537. Official receipt No. 72864 of 5/6/90 was issued to me. Between 1977 to 1992, November, no one disturbed my ownership and possession of the said land. However, 1992, on visiting the land I saw Mr. Adeoye, the defendant, I then asked what he was doing and he told me that he has just paid for the land in dispute. I quickly told the defendant that I have since bought the land that I am the owner. I further told him that I have no interest whatsoever to sell the land in dispute, he should go quickly to demand for the refund of his money.

I have heard of Rev. Eddie Iyinola and Mrs. Nwosu. The defendant told me that he bought the land from Rev. Eddie Iyinola and Nwosu for N380,000.00. I paid also N20,000.00 commission to Rev. Eddie Iyinola. D Rev. Eddie Iyinola and Nwosu were prepared to pay the defendant back his money. Both of them then returned the purchase price already obtained to the defendant. Rev. Eddie Iyinola deposed to an affidavit dated 11/12/92 that the money has been returned to the defendant. This is the ctc of the affidavit of Rev. Eddy Iyinola put in, received and marked Exhibit 'C' (is dated 30/10/92). It was filed on the 16/11/92.

Under cross-examination, the plaintiff testified inter alia:

"When I made payment, Mr. Godwin Nwosu was present. My brother, Mr. Mbakwe was there when (sic) made payment. Only Mr. Nwosu F witnessed the document. Mr. Nwosu is now in this court." (Underlining mine)

Still under cross-examination the plaintiff gave evidence and said:

"I have met Rev. Iyinola, Rev. Iyinola came to me and asked me if G I know anything about the land in dispute. I told him that the land belongs to me and he told me that he brought the defendant to buy the land. I told Rev. Iyinola to go and collect his money, and he later brought a letter in which the money and was paid. He told me that they had recovered their H money and showed me a teller. Nwosu told me that he had paid back this money to the defendant and he showed me a teller which is here with me. Rev. Iyinola is not in court here, he is in the office. Mr. Nwosu had paid back the money to the defendant.

When I bought the land Nwosu was not the owner. Nwosu was my witness to the purchase of the land.” (Underlining for emphasis)

The 1st defendant also called evidence in support of his case. His further witness was Lawrence U. Nwaozo, a licensed surveyor. His second witness (D.W.2) was Godwin Nwosu, his alleged vendor. This witness gave evidence and said:

“I am a trader by occupation. I know the land in dispute. The land in dispute is situated at No. 2 Obasa Road, Anifowoshe, Ikeja, Lagos State. The land was originally owned by Kingsley Ijeoma. In 1974, I bought the land from Kingsley Ijeoma. I asked Ijeoma how he became the owner of the land. Ijeoma told me that he is the only child of his father that he inherited the estate from his father. There is a written agreement between Kingsley Ijeoma and myself when Kingsley sold the land to me in 1974.”

He continued thus:

“In 1992, I contacted our estate agents by name A. D. Rex Nig. Ltd. to help and find purchaser for the land. In consequence, he brought to me the defendant in this case as the prospective buyer. In the process of the transaction between A. D. Rex Nig. Ltd., who I had already given authority to sell, the defendant paid the sum of N280,000.00k cash and N100,000.00k by cheque to A. D. Rex Nig. Ltd. When A. D. Rex Nig. Ltd. told me that the N100,000.00k was by cheque, I told A. D. Rex Nig. Ltd. that I do not want payment by cheque. Then A. D. Rex Nig. Ltd. returned the money to the defendant.

It was then the defendant came and paid me cash and took possession of the land while he was working on the land.”

When cross-examined this witness said:

“The signature and the name on Exhibit 'B' are my own. I have seen Exhibit 'B.' It is the purchase receipt of the plaintiff in this case (Underlining for emphasis)

Kingsley Ijoma is my friend. He used to bring documents to me to witness his signature. Kingsley Ijoma signed Exhibit 'B'. It is in relation to No. 2 Obasa Street, Ikeja.”

The witness continued his testimony as follows:

“Rev. Eniola was a witness to my sale to the defendant in 1992. The

cheque for N280,000.00 was drawn on my agent Eniola by the defendant.

The sum of N100,000.00 cheque was drawn in my favour by the defendant. A. D. Eniola, my agent returned the whole of the N380,000.00k to the defendant in respect of the land in dispute.”

As I have already indicated, the 2nd defendant did not call evidence in support of his counter-claim which the learned trial Judge dismissed. The learned trial Judge in his judgment found for the plaintiff in terms of his claim.

The 1st and 2nd defendants appealed to the Court of Appeal. The 2nd defendant did not pursue his appeal and it was accordingly dismissed with costs to the plaintiff.

In this appeal, it was said on behalf of the 1st defendant that the plaintiff did not discharge the onus of proof of the title he claimed. It was contended that his claim should have been dismissed.

I must say that I find no merit whatsoever in the arguments advanced by the 1st defendant’s counsel in this appeal. **In an action for declaration of title, the onus of proof lies on the plaintiff and he must succeed on the strength of his own case and not on the weakness of the defence except where the defendant’s case supports plaintiff’s case.** See Kodilinye v. Odu 2 WACA 336; Nkwo v. Iboe (1998) 6 S.C. 27; (1998) 7 NWLR (Pt. 558) 354; Iyayi v. Eyigebe (1987) 3 NWLR (Pt. 61) 523; Bankole v. Pelu (1991) 8 NWLR (Pt. 211) 253.

It has been laid down in Idundun v. Okumagba (1976) 9-10 S.C. (Reprint) 140; (1976) 9-10 S.C. 227 that there are five different ways of proving ownership of any land in dispute, namely:

1. Traditional evidence
2. Production of document of title.
3. Acts of ownership and possession by a person e.g. selling, leasing, renting, farming etc. extending over a sufficient length of time and numerous and positive enough to warrant the inference that person is the true owner.
4. Acts of long possession and enjoyment under Section 145 of the Evidence Act raising prima facie evidence of ownership.
5. The probability raised under Section 45 of the Evidence Act.

I must re-state here that a party claiming title to land is not expected to plead and prove more than one of the ways stated above in order to succeed. They are five separate ways. So proof of one is enough: See Balogun v. Akanji (1988) 1 NWLR (Pt. 70) 301 at 323.

B The question in the present case is which of the five ways has the plaintiff pleaded and proved? In paragraph 6 of the Amended Statement of Claim, the root of title relied on by the plaintiff is pleaded thus:

C *“6. The plaintiff avers that on 22nd January, 1977, the plaintiff purchased the land, the subject matter of this suit from one Kingsley Ijeoma, who issued to the plaintiff, a purchase agreement receipt for the sum of N8,000 (Eight Thousand Naira) same is hereby pleaded.”*

The plaintiff has pleaded and relied on the second way of proving ownership.

D The 1st defendant (appellant herein) pleaded his title to the land thus:

“3. The 1st defendant pleads that the land now in dispute forms a portion of a vast area of land along Obasa Road, Anifowoshe, Ikeja, which belonged to the father of Kingsley Ijeoma.

E *4. That at the death of Kingsley Ijeoma’s father the said vast area of land by act of devolution became vested in Kingsley Ijeoma, the eldest surviving child.*

F *6. Kingsley Ijeoma on 28th March, 1974, sold the land now in dispute to one Godwin O. Nwosu of No. 1 Obasa Road, Anifowoshe, Ikeja.*

12. In 1992, the said Godwin O. Nwosu transferred his proprietary rights over the land in dispute to the 1st defendant under native law and custom.”

G The plaintiff/respondent gave evidence in support of his claim that in January, 1977, he bought the piece of land in question from Kingsley Ijeoma as pleaded in paragraph 6 of his Amended Statement of Claim. I have earlier on in this judgment reproduced in extenso his evidence at the trial. The respondent testified that Godwin Nwosu witnessed the sale to him. He signed the purchase receipt which was received in evidence as Exhibit “B”.

H The appellant as 1st defendant called Godwin Nwosu as his second witness. The witness (D.W.2) gave evidence to the effect that he

sold the land in dispute to the 1st defendant. Godwin Nwosu claimed in his testimony that he purchased the land in question from Kingsley Ijeoma, who acquired it on devolution from his father. I have also reproduced his evidence earlier on. However, when D.W.2 was cross-examined, he testified thus:

B *“The signature and the name on Exhibit “B” are my own. I have seen Exhibit “B”, it is the purchase receipt of the plaintiff in this case. Kingsley Ijeoma is my friend, he used to bring documents to me to witness his signature. Kingsley Ijeoma signed Exhibit “B”. It is in relation to No. 2 Obasa Street, Ikeja.”* C

D.W.2 further testified that his agent returned the appellant’s money amounting to N380,000.00 to him.

So the scenario is this. Godwin Nwosu admitted during trial that he was the witness to the sale in 1977 made by Kingsley Ijeoma to the respondent. It was also evident that the purchase price paid by the appellant to Godwin Nwosu was returned to the appellant. It was also in evidence that the land devolved to Kingsley Ijeoma on the death of his father. There was no evidence from the defence on record which controverted the purchase of the land from Kingsley Ijeoma witnessed by Nwosu who was D.W.2. Rather the evidence called by the appellant supported the case of the plaintiff. There is nothing in the evidence of the defendant/appellant to place against that of the plaintiff/respondent. It is now settled law that where there is no evidence to put on one side of the imaginary scale in a civil case, minimum evidence on the other side satisfies the requirement of proof: See Nwabuoku v. Ottih (1961) 2 SCNLR 232; (1961) All NLR 487; Buraimoh v. Bamgbose (1989) 6 S.C. (Pt. I) 1; (1989) 3 NWLR (Pt. 109) 352. The burden of proof in land matters is stated by the Supreme Court in Kaiyaoja v. Egunla (1974) 12 S.C. (Reprint) 49; (1974) 12 S.C. at 61 as follows: F G

H *“We are not unmindful of the fact that it is a well established principle of law that in a claim for declaration of title, the onus is always on the plaintiff to establish his claim, and that it is not open to him to rely on the weakness of the defendant’s case. This court has always held that what is required of a plaintiff in an action for declaration of title is at least to establish his claim by preponderance of evidence. It is*

often enough that he has produced sufficient and satisfactory evidence in support of his claim. The test is whether the plaintiff has been able to prove to the satisfaction of the court that he has a better title than the defendant. We think that it is relevant to draw attention to the fact. That subject is the well-known rule laid down in Akpan Awo v. Cookey Gam 2 NLR 100; and a host of other cases that followed it. The standard of proof in a claim for declaration of title is not different from that which is required in civil cases generally. The only difference, if we may say so, rests on the fact that the burden of proof is on the plaintiff who is claiming title, and that it never shifts to the defendant throughout the trial. The difference therefore, lies not in the standard of proof, but on the burden of proof.”

In my judgment, the plaintiff/respondent has met the required standard and burden of proof. The learned trial Judge was right when he found for the plaintiff/respondent in terms of his claim. Similarly, the court below was also right when it dismissed the defendant/appellant’s appeal and affirmed the decision of the trial court.

I find no merit in this appeal. It is accordingly dismissed with N10,000.00 costs in favour of the plaintiff/respondent against the defendant/appellant.

BELGORE JSC

On the facts of this case, the two courts below were unanimous that the plaintiff’s case was proved satisfactorily. The land in dispute was clearly identified, the purchase of the land was proved with all necessary documents, and the plaintiff had been in possession since 1977 and fenced it round. All the evidence before trial court was carefully reviewed and evaluated and its findings were lawfully based on the evidence. Court of Appeal had no reason to disturb those findings. On the concurrent findings

of facts, this appeal has no merit and for the full reasons in the judgment of my learned brother, Katsina-Alu, JSC., I also dismiss it with the same order as to costs.

EJIWUNMI JSC

I have had the privilege of reading in its draft form the judgment just delivered by my learned brother, Katsina-Alu, JSC. In that judgment as the issues raised in the appeal had been properly considered in the light of the admitted facts, I agree with the conclusion reached thereon that this appeal lacks merit.

I accordingly dismiss it with N10,000.00 costs in favour of the plaintiff/respondent against the defendant/appellant.

EDOZIE JSC

I had the benefit of reading in draft the leading judgment of my learned brother, Katsina-Alu, JSC. I agree with his reasoning and conclusion in dismissing the appeal.

The subject-matter in controversy between the parties is the statutory right of occupancy over the land in dispute described as No. 2, Obasa Street. Anifowoshe, Ikeja. The plaintiff’s claim to the land in dispute is anchored on his production of documents of title, that is Exhibits B, B1, the purchase receipt of his vendor coupled with possession of the land. Learned counsel for the defendant had submitted, relying on the authority of *Lawson v. Ajibulu* (1997) 6 NWLR (Pt. 507) 13 at 31 that mere production of documents of title alone is not sufficient to discharge the onus of proving the title claimed and that it is incumbent on the claimant to go further to trace his root of title to one whose ownership of the land is established. As was decided in the case of *Bamgboye v. Olusoga* (1996) 4 NWLR (Pt. 444) 520 per Belgore, JSC., where in a claim for declaration of title to land, a party bases its title on a grant according to custom by a particular person, family or community, that party must go further to plead and prove the origin of the title of that particular person,

family or community unless that title has been admitted. Consequently, mere production of a deed of grant as being equivalent to proof of title when the root of title of the grantor was neither admitted nor established is not sufficient: *Ogunleye v. Oni* (1990) 2 NWLR (Pt. 135) 745; *Kalio v. Woluchem* (1985) 1 NWLR (Pt. 4) 610 at 628; *Piaro v. Tenalo* (1976) 12 S.C. (Reprint) 19; (1976) 12 S.C. 31 at 41-42.

In the instant case, the plaintiff's vendor is Kingsley Ijoma. The defendant claimed to have purchased the said land in dispute in 1992 from Godwin Nwosu who in turn derived title thereof from Kingsley Ijoma, the plaintiff's vendor. Since both parties traced their title to the same person, I do not think the plaintiff is required to prove the title of Kingsley Ijoma as that had inferentially been admitted by the defendant.

As both parties have traced their title to a common owner, in order to determine the party in whose favour title should be granted, it is apposite to refer to the dictum of Bello, JSC., (as he then was), in the case of *Madam I. Arase v. Peter U. Arase* (1981) 5 S.C. (Reprint) 21; (1981) 5 S.C. 33 at 35, where His Lordship observed:-

"It ought to be borne in mind always that at common law where questions of title to land are - in litigation, the court is concerned only with the relative strength of the title proved by the rival claimant. If party "A" can prove a better title than party "B", he, party "A", is entitled to succeed".

In the present case, it is not disputed that the plaintiff bought the land in dispute as per Exhibits B, B1 which were endorsed by Godwin Nwosu (D.W.2) as a witness. On the other hand, there is unchallenged evidence that the defendant who purportedly bought the same land from Godwin Nwosu was refunded the purchase price. Where then lies the strength of the defendant's claim.? Having been refunded his money, he ceased to have any interest in the land in dispute and in the circumstance, the plaintiff had established a better title.

This is by way of emphasis in support of the leading judgment of my learned brother, Katsina-Alu, JSC. I agree with him that the appeal lacks merit. I will also dismiss it with costs as assessed in the leading judgment.

AKINTAN JSC

The main question raised in this appeal boils down or on a review of the concurrent findings of fact made by the two lower courts in the case. No new point of law was raised or canvassed by the appellant in this court. The appellant has therefore failed to show why the concurrent findings of fact made by the two lower courts should be tampered with.

I had the privilege of reading in advance the leading judgment prepared by my learned brother, Katsina-Alu, JSC., which has just been delivered. He has fully discussed all the issues raised in the appeal. I entirely agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. For the reasons I have given above and those given in the leading judgment, which I hereby adopt, I also dismiss the appeal and award N10,000 costs in favour of the respondent.