

SUPREME COURT OF NIGERIA
15TH JULY, 2005. SC. 50/2001
CORAM:- I. L. KUTIGI, S. U. ONU, U. A. KALGO, I. C.
PATS-ACHOLONU, S. A. AKINTAN, JJSC

1. OBA YEKINIELEGUSHI
2. CHIEF KEHINDE H. ELEGUSHI
3. CHIEF K.O. BAKARE PLAINTIFFS/APPELLANTS
4. CHIEF N.A.B. ELEGUSHI
5. CHIEF MURPHY ADETORO
(For themselves and on behalf
of Elegushi Royal Family)

AND

1. SARATA OSENI
2. A. B. TOKOSI MAIYEGUN
3. WASIU ARIMI DEFENDANTS/ RESPONDENTS
4. ALHAJI ADIO MAIYEGUN
5. ALHAJI SAMODIUN MAIYEGUN

LAND LAW - Title - Evidence - Traditional ownership - Where traditional evidence is in conflict - Court should not go by the credibility of witnesses - But should examine the acts of ownership (H1)

LAND LAW - Title - Proof of - Where Plaintiffs' claim to land - Is predicated on ownership - The onus is on them to prove and establish their ownership (H2)

LAND LAW - Customary tenancy - Forfeiture - Challenge by defendants to plaintiffs' claim of title - Will not amount to a misconduct - Or lead to forfeiture - If plaintiffs do not succeed in proving title (H3)

LAND LAW - Title - Pleadings - Root of title and ownership - Is not established by mere plea of customary tenancy - But by showing inter alia when and how - The land was founded by their ancestor (H4)

LAND LAW - Title - Prima facie case - Pleadings - Where parties' pleadings - Raise the issue of who the original owners of land are - Plaintiffs have a heavy burden to discharge - Based on the strength of their own case (H5)

LAND LAW - Title - Proof - Possession - Defendants presented sufficient proof of ownership - And right to remain in possession - By showing acts of ownership (H6)

LAND LAW - Title - Traditional history - Party that relies on it - May not rely on documents of title - But should prove ownership and source of his title (H7)

LAND LAW - Title - Traditional History - Where evidence of parties are conflicting - Reference should be made to facts in recent years - As established by evidence - And see which of the histories is more probable (H8)

EVIDENCE - Witnesses - Veracity - Cross examination - Admissions by PW2 under cross examination - Makes it impossible to regard him as truthful (H9)

EVIDENCE - Admissibility - Previous proceedings - Can never be accepted as evidence in a present case - But could be used for cross examination - And the ones tendered in this case are inadmissible (H10)

EVIDENCE - Admissibility - Relevance - Before any evidence or document - Can be considered admissible - It must be shown to be relevant in law (H11)

LAND LAW - Acquisition by government - Notice of - Plaintiffs that fail to prove their title - Are not the rightful persons to be served - And they have no locus standi - To seek nullification of the acquisition (H12)

FACTS

Before the High Court of Lagos, the plaintiffs/appellants instituted an action against the defendants/respondents. The plaintiffs claim, inter alia, for a declaration that the plaintiffs family were the overlords of the defendants in respect of the land in Maiyegun Village occupied by the defendants; that the plaintiffs' said family had the right to appoint the Bale (Head Chief) of the said Maiyegun village, and that the ancestors as well as the descendants of Oseni Maiyegun are customary tenants of the plaintiffs' family. The controversy arose due to the opposition of the defendants to the attempt made by the plaintiffs to sell part of the land in dispute known as Maiyegun Village.

The evidence led by both parties reveal that the land was originally owned by the defendants' ancestor Oseni Maiyegun, who settled on the land since time immemorial, between 1779 and 1820. The village had no disturbance until the 1st plaintiff became the Oba of Ikate land. He made Muli Maiyegun, member of the defendants' family, the Bale (community head) which was against the defendants custom. The trial court after receiving the addresses of counsel on both sides, gave judgment in favour of the plaintiffs. Dissatisfied with the decision, the defendants appealed to the Court of Appeal. The appeal was allowed and the judgment of the trial court was dismissed. Aggrieved by the decision of the Court of Appeal, the plaintiffs have now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“(I) Whether the plaintiffs proved better title to Maiyegun Village, the land in dispute, to entitle them to forfeiture and possession of the village from the defendants and to order of injunction for trespass.

(II) Whether Exhibits C and BB were properly received in evidence.

(III) Whether the Lagos State Government should have been joined to this suit on the question whether it properly served notice of acquisition and revocation of the land situate at Eti-Osa and Ibeju Lekki areas of Lagos State.

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

Title - Where traditional evidence is in conflict

1. The plaintiffs' traditional evidence of ownership as can be seen, was in direct conflict with the defendants' evidence and this renders the traditional history or evidence of traditional history given by the plaintiffs unreliable. This is because proof of ownership of land by traditional history is usually based on hearsay evidence, that is, oral evidence often extending beyond human memory and time of the witnesses narrating the history, which narrations were handed down from generation to generation up to the present one.

Thus, the law is settled that where traditional evidence of the parties in a land matter is in conflict or inconclusive as in the case in hand,, the court should not go by the credibility of witnesses, but should examine the acts of ownership or possession done by either party in recent times in relation to the land in dispute.

To establish traditional evidence of title by conclusive evidence, the plaintiff must plead and prove such facts as:-

- (a) Who founded the land in dispute.
- (b) How they founded the land, and
- (c) The particulars of the intervening owners through whom they claim.

The plaintiffs did not establish these facts at the trial. Hence, I accept the defendants' submission that the plaintiffs failed to prove their ownership of the land in dispute by non-conflicting and conclusive traditional evidence to entitle them to possession of Maiyegun Village from the defendants. (p. 2427 B)

Title - Proof of

2. The plaintiffs' argument contained in paragraph 3.03 of their Brief to the effect that it is not necessary to establish their title in the circumstances of this case, cannot therefore stand. In answer to the said paragraph, I agree with the defendants that where the plaintiffs' claim to the land in dispute is predicated on ownership, as in the instant case, the onus is on them (plaintiffs) to prove and establish their ownership. (p. 2428 B)

Customary tenancy - Forfeiture

3. In addition, the challenge of the plaintiffs' claim of ownership of the land in dispute cannot amount to a misconduct or lead to forfeiture where the defendants are also claiming ownership and right to remain in possession; B such challenge can only amount to a misconduct or lead to forfeiture if the plaintiffs succeeded in proving their root of title, that is, a superior or better title to the land in dispute. (p. 2428 D)

Pleadings - Root of title and ownership C

4. Be it noted that the plaintiffs cannot establish their root of title and ownership by merely pleading a consequential matter such as customary tenancy. In paragraph 32 of the plaintiffs' Amended Reply to the Amended Statement of Defence (see page 241 of the record) the plaintiffs pleaded D their root of title and traced it to one Odofin, but they failed to establish the root of title at the trial by showing in evidence:

(a) When and how the land in dispute was founded by Odofin.

(b) The particulars of intervening persons on whom title in respect E of the land in dispute was devolved since the founding of the land.

By the same token, the plaintiffs cannot be seen to establish their root of title or ownership of the land in dispute by merely asserting that they are one or some of the landowners in Lagos as they tried to show F throughout their evidence at the trial. See the case of *Obioha v. Duru* (1994) 8 NWLR (Pt. 365) 631 SC, where this court held that where a party's root of title is pleaded, that root has to be established first and any consequential acts following therefrom can then properly qualify as acts G of ownership. (p. 2428 E)

Title - Prima facie case - Pleadings

5. The court below was therefore right in holding that proof of the plaintiffs' ownership and source of title is essential for proper and H successful adjudication of their claim for possession of Maiyegun village. However, since the plaintiffs failed to make out a prima facie case against the defendants at the trial on their claim of ownership and title to the land

in dispute, the defendants have no need to answer them on their defective defence, moreso when they (defendants) did not counterclaim against them. See the case of Mogaji v. Cadbury Nigeria Limited (1985) 2 NWLR (Pt.7) 393, wherein this court held that where pleadings of the parties raise the issue of who the original owners of the land were, the plaintiffs in this matter have a very heavy burden to discharge, and they can only succeed on the strength of their own case and not on the weakness of the defense. Since the plaintiffs failed to discharge this burden, the quo warranto of their claim (that is ownership) was not established and I so hold. (p. 2429 B)

Defendants presented sufficient proof of ownership

6. In the case of the defendants who had long been in exclusive possession of the land in dispute, however, there is sufficient proof of their ownership as well as their right to remain in possession by their:

- (i) proving their acts of long possession and enjoyment of the land from 1820 till date, which acts of long possession and enjoyment afford prima facie evidence of ownership under Section 46 of the Evidence Act;
- (ii) showing acts of ownership of the land such as possessing and occupying the land; naming it after their ancestor (Maiyegun); dwelling on the land; selling and dealing with it or parts thereof over the years;
- (iii) in addition, there is clearly the un rebutted presumption of ownership raised in favour of the defendants under Section 146 of the Evidence Act. (p. 2429 E)

Traditional history - Party that relies on it

7. In their bare claim that they were land-owners in Lagos and in particular the land in dispute, the plaintiffs sought to rely on Exhibits J1 and J2 - documents which were not documents of title but only formed part of their traditional history which is in conflict with the defendants' traditional history. In any case, the plaintiffs did not seek to prove their ownership by the production of the documents of title; they only relied on traditional history. Thus, the court below was right, in my view, in holding that proof of the plaintiffs ownership and source of title is essential for proper and

successful adjudication of their claim for the possession of Maiyegun Village. (p. 2430 A)

Traditional History - Where evidence of parties are conflicting

8. Turning to the curious evidence of P.W.2 which the trial court heavily relied upon in entering judgment for the plaintiffs, I agree with the defendants' submission that the plaintiffs' traditional evidence of ownership of the land in dispute cannot invest such evidence of traditional history with any special cloak of acceptability so as to render the test laid down in *Kojo v. Bonsie* (1957) 1 WLR 1223 at 1226 inapplicable to the conflicting evidence of traditional history given by the parties. That test of any conflicting traditional evidence of ownership of land was succinctly laid down in the case in *Kojo v. Bonsie* (supra) per Lord Denning, in the words following:-

“Witnesses of the utmost veracity may speak honestly but erroneously of what took place a hundred years ago. Where there is a conflict of traditional history, one side or the other must be mistaken, yet both may be honest in their belief. In such a case, demeanor is a little guide to the truth. The best way to test the traditional history is by reference to the facts in recent years as established by evidence and by seeing which of the two competing histories is more probable.....” (p. 2431 D)

Witnesses - Veracity - Cross examination

9. In any case, considering the background of this case, P.W.2 cannot be regarded as a witnesses of the utmost veracity so as to clothe his evidence with utmost truth. This is a witness who under cross-examination admitted that he was an illiterate but who the 1st plaintiff purportedly and in an unprecedented manner, appointed as Bale over Maiyegun Village in December, 1992, following his elevation and appointment as an Oba (king) of Ikate land. From the status of a Chief, under cross-examination, P.W.2 admitted that upon his choice as Bale by the 1st plaintiff/appellant, he and his son received gifts of some plots of land from him which they were selling. (p. 2431 H)

EVIDENCE - Admissibility - Previous proceedings

10. This law of evidence has been affirmed by the court in the case of Alade v. Aborishade (1960) 1NSCC 111 at 115 paragraphs 30-40 in the words following:-

B “.....but that does not alter the legal position which this court has stated on numerous occasions which is that “evidence” given in a previous case can never be accepted as evidence by the court trying a later case except where Section 34(1) of the Evidence Ordinance applies. C The evidence given in an earlier case by persons who also testify in a later case may be used for cross -examination as to credit but it is of no higher value than that.”

See also Folarin v. Durojaiye (1988) 1 NWLR (Pt. 70) 351. It is pertinent therefore to point out that Exhibit ‘C is of no value or relevance D at all to this case since it was not even tendered and used for the purpose of cross-examination. Hence, I agree with the plaintiffs’ submission that as Exhibit ‘C’ is not a fact in issue in this case nor is it admissible even under Sections 93 and 109 of the Evidence Act contrary to the erroneous E argument advanced by them (plaintiffs). By the combined effect of the provisions of Sections 6(b) and 34(1) of the same Act, Exhibit ‘C is not admissible either under Section 34 or Sections 93 and 209 of the Evidence Act for the same reasons highlighted in the proceedings under the issue in F consideration.

I agree with the defendants that Exhibit BB is also inadmissible in evidence. Exhibit BB, it must be emphasised, constituted the proceedings in Suit No. LD/1117/72 between City Property Dev. Ltd, v. Attorney-General & 3 Ors. who were not shown to be the same parties in the present G case.

The court below was therefore, in my view, right in regarding both Exhibits C and BB inadmissible in evidence. The court below, in my view, was equally right in considering these exhibits not useful or admissible H either as evidence of the truth of the facts they contain, or for the purpose of impeaching the credit of the witnesses through whom they were tendered. (pp. 2433 B)

EVIDENCE - Admissibility - Relevance

11. Be it also noted that it is an elementary rule of evidence that before considering the admissibility of any evidence or document in support of a party's case, it must be shown that the evidence sought to be led is relevant in law.

Relevance is therefore the main purpose for admissibility of any evidence or document under the law of evidence, whether it be in civil or criminal matters vide *ACB Ltd, v. Alhaji Umoru Gwapwada* (1994) 5 NWLR (Pt. 342) 25 SC at 44 paras. A-D. I therefore agree with the plaintiffs' submission that Exhibits C and BB have no evidential and probative value on account of their irrelevancy in law. Hence, they were in my view, not properly admissible in evidence in the circumstances of this case at the trial and I so hold. (p. 2434 D)

LAND LAW - Acquisition by government - Notice of

12. Having already demonstrated that the plaintiffs failed to prove their ownership or title to the land in dispute, it would amount to sufficient service of the notice of acquisition or revocation if service of the notice was effected on the defendants (the undisputed occupiers of the land in dispute).

In sum, I hold the view that the plaintiffs are not the rightful persons to be served with the notice of acquisition or revocation of the land in dispute and they have no locus to challenge the validity of the acquisition by the Lagos State Government. A person who is not the proven owner or occupier of land in respect of which notice of acquisition or revocation was issued has no locus standi in law to seek the nullification of the acquisition. Thus, the land in dispute was rightly, in my view, excised by the Lagos State Government to the defendants/ occupiers who have shown themselves to and do remain in possession of the land - their ancestral land, as against the plaintiffs'.

The plaintiffs' claim that they were not served with notice of acquisition and excision of the land in dispute cannot therefore detract from the fact of acquisition and excision thereof.

In the result, the plaintiffs'/appellants' claim to the land in dispute

cannot stand in view of the acquisition of the land by the Lagos State Government and the subsequent excision and grant of same to the defendants/ respondents by the Government of Lagos State.

(p. 2436 F)

B

REPRESENTATION

Mr. S.A. Bashua, (with him, Mr. K. O. Dawodu), for the Appellants. Mr. Adebola Yaya, for the Respondents.

C

CASES REFERRED TO

Idundun v. Okumagba (1976) 9-10 S.C (Reprint) 140; (1976) 1NMLR 200; (1976) 9-10 S.C 227

Kenon v. Tekan (2001) 7S.C (Pt. III) 49; (2001) FWLR (Pt. 70) 1660 SC

D Kyari v. Alkali (2001) 5 S.C (Pt. II) 192; (2001) FWLR (Pt. 60) 1481 SC

Jules v. Ajani (2001) FWLR (Pt. 45) 763 SC

Nkado v. Obiano (1997) 1NWLR (Pt. 482) 374SC; Ohiaeri v. Akabeze (1992) 12 NWLR (Pt 221) 1

E

Anyanwu v. Mbara (1992) 5 NWLR (Pt 242) 386:

Piaro v. Tenalo (1976) 12 S.C (Reprint) 19; (1976) 12 S.C. 31

Adesanya v. Otuewu (1993) 1 NWLR (Pt 270) 414 SC at 453 Para. B

Kasali v. Lawal (1986) 3 NWLR (Pt.28) 306

F

Folarin v. Duroiaive (1988) 1 NWLR (Pt. 70) 351

STATUTE REFERRED TO

Evidence Act ss. 6(b), 34(1), 46, 93, 111, 112, 146 & 209

G

LEAD JUDGMENT BY ONUJSC

The first and only plaintiff in this case initially sued as representative of Elegushi Royal Family, the five defendants representing the Maiyegun Family. He (plaintiff) later obtained an order to join other members of his H family wherein they jointly claimed for:

“(a) Forfeiture of the properties held by the defendants under customary law as customary tenants of the plaintiff on the area marked blue on Plan No.BAASS/ 073/LAG/94.

(b) Possession of the said village forfeited from defendants shown as Maiyegun village and marked blue on Plan No. BAASS/073/LAG/174 drawn by a Licensed Surveyor, A. Akinyemi.

(c) Perpetual injunction restraining the defendants by themselves, their privies, servants and agents from selling or alienating the portion of land shown on Plan No.BAASS/073/LAG/94 edged yellow on the said plan.

(d) Perpetual injunction restraining the defendants by themselves, their servants and privies from further trespassing on the portion of land edged green and yellow except the area verged blue.”

The lower court, by an order entered on 15th November. 1993, struck out the original 1st, 3rd, 6th, 9th, 10th, 11th and 12th defendants from the suit and renumbered or reconstituted the remaining defendants to defend the suit on behalf of themselves and Maiyegun family. The plaintiff thereafter filed an Amended Writ of Summons and also a Statement of Claim.

The defendants, with the leave of court, filed their Statement of Defence dated 17th November, 1994 and the plaintiff filed a Reply dated 9th January. 1995.

The suit, upon a Summons for Directions, was then set down for trial on 23rd May. 1995. Five witnesses, including the original plaintiff himself, testified for the plaintiff. All the witnesses were cross-examined by the defendants’ counsel.

Five witnesses also testified for the defendants, including the 4th defendant and they were cross-examined by the plaintiffs counsel. In the course of the trial, the then sole plaintiffs counsel applied to join the 2nd-5th plaintiffs as co-plaintiffs, and upon the grant of the application, the plaintiffs filed a further Amended Writ of Summons and Amended Statement of Claim earlier referred to.

At the close of the case, both the plaintiffs’ and defendants’ counsel filed written addresses at the trial and also addressed-the court orally in support thereof.

At the conclusion of the plaintiffs’ address, the defendants’ counsel applied to file a Reply on points of law to the written submissions filed by

the plaintiffs' counsel. The plaintiffs' counsel raised a preliminary objection to the application, and in the trial court's ruling contained in the final judgment, the defendants' counsel's application to file a Reply was refused.

B The learned trial Judge delivered his judgment on 26th November, 1996, in favour of the plaintiffs.

Dissatisfied with the said decision, the defendants appealed to the Court of Appeal, Lagos Division, which in a unanimous decision allowed their appeal by setting aside the judgment of the trial court and dismissing the plaintiffs' suit.

C Aggrieved by the said decision of the Court of Appeal, the plaintiffs/appellants filed a Notice of Appeal dated 4th December, 2000, containing eleven grounds in this court.

D From the eleven grounds of appeal the plaintiffs filed, they submitted four issues as arising for the determination of the Supreme Court, namely:

ISSUE 1

Whether the learned trial Judge must first settle the issue of title before proceeding to determine the issue of customary tenancy.

ISSUE 2

Whether the learned trial Judge should have made Lagos State Government a party to the suit.

ISSUE 3

F Was the finding that Exhibits "C" and "BB" admitted for certain purposes be used for another purpose when the Court of Appeal find (sic) that the using of the exhibits to tender the veracity of the witness is inept.

ISSUE 4

G Was the Court of Appeal was (sic) right by finding that the learned trial Judge should have decided the issue to make a reply on a point of law under Order 35 Rule 7(1) RSC England when there is provision in our rules which has once been judicially considered by the Supreme Court.

H The defendants/respondents, on the other hand, have preferred three issues as arising from the grounds of appeal for determination, to wit:

"(I) Whether the plaintiffs proved better title to Maiyegun Village, the land in dispute, to entitle them to forfeiture and possession of the village

from the defendants and to order of injunction for trespass.

(II) Whether Exhibits C and BB were properly received in evidence.

(III) Whether the Lagos State Government should have been joined to this suit on the question whether it properly served notice of acquisition and revocation of the land situate at Eti - Osa and Ibeju Lekki areas of Lagos State.

HISTORICAL BACKGROUND

This action was first instituted by the 1st plaintiff/appellant in March, 1993, against the background of defendants' opposition to the 1st plaintiff/ appellant's attempt at selling parts of the land in dispute compositely known as Maiyegun Village, and situate in an area measuring 14.534 hectares in the Eti - Osa Local Government Area of Lagos State.

The land was originally owned and occupied by the defendants' ancestor, Oseni Maiyegun, who had migrated from Abeokuta to settle on the land permanently since the year 1820. By the defendants' reckoning, their ancestor and his descendants had settled on the land and inhabited the village from the year 1820, whereas the plaintiffs' recollection of the defendants' ancestor's sojourn in the village goes back to the year 1779. The descendants of Oseni Maiyegun, it is further contended, had peaceably lived in and inhabited Maiyegun village without any disturbance or interference from the neighbouring village, Ikate, until the 1st plaintiff/ appellant, a white cap chief as of 1992, was made an Oba (a king) of Ikate land in February, 1993, when he was formally given a staff of office by the then Governor of Lagos State.

Upon the 1st plaintiff/appellant becoming the Oba of Ikate land in 1993, it was further averred, Ikate land was christened as Ikate Kingdom. Sequel to this case, it was added, the 1st plaintiff/appellant had in December, 1992, purportedly chosen and appointed one illiterate, Muili Maiyegun, a member of the defendants' family, as the Bale (the community head) of Maiyegun Village - an act which the defendants considered was against their family custom, which only permits defendants' community to appoint their own Bale. The said Muili Maiyegun and his son, it was added, received some gift of a parcel of land from the 1st plaintiff which

they were selling before he was called to give evidence for the plaintiffs as P.W.2.

It was further stated that no sooner was the 1st plaintiff/appellant formally installed as an Oba of Ikate land in February, 1993, than he B instituted this action on behalf of his family, claiming inter alia:

(I) That his family are the overlords of the plaintiffs' family

(II) That his family is the owner of Maiyegun land.

(III) That the ancestor as well as the descendants of Oseni C Maiyegun are the customary tenants of his family.

(IV) That his family has the right to appoint Muili Maiyegun as the Bale of Maiyegun Village.

(V) That Maiyegun Village is under his domain.

It is incontestable, it is further argued, that the defendants' family D have always been in exclusive possession of the land in dispute and have exercised long, continuous and maximum acts of possession and ownership over the land.

It was also pointed out that before the institution of this case, the E land in dispute and indeed the whole land situate in Eti-Osa and Ibeju Lekki Local Government Area of Lagos State following revocation of existing rights of occupancy over same existed; and that following the request or representation made to the Lagos State Government by the defendants' F family for the excision and release of their ancestral homeland, the area of land measuring 14.535 hectares, namely, the land in dispute, was excised and granted to the defendants' family by the Lagos State Government. The plaintiffs had also through Elegushi Property and Investment Company G Limited, applied to the Lagos State Government for grant of land, and they were granted a right of occupancy over a larger area of land measuring 500 hectares covered by a Certificate of Occupancy dated 19/9/90 registered as No. 6 at page 60 in Volume 1990, that is Exhibit T.

Apart from the fact of excision and grant of the land in dispute to H the defendants' family by the Lagos State Government, the defendants' root of title was shown to have originated from Oluge, the then Ojomu of Ajiran, who in 1820 made absolute grant of the land to defendants' ancestor, Oseni Maiyegun. The plaintiffs failed to prove by evidence how

they acquired or came to settle on the land in dispute.

Thus, the judgment of the Court of Appeal was that the plaintiffs did not show or prove superior title to entitle them to possession of Maiyegun Village from the defendants' family.

In the argument of this appeal, the parties are herein re-characterized as plaintiffs and defendants respectively. B

ARGUMENT

Since a close and careful study of the issues formulated by both parties to this appeal are similar and overlap, albeit that the plaintiffs' are three and the defendants' are four respectively, (*sic the plaintiffs' are four and the defendants are three*) I take the view that those proffered by the plaintiffs (*sic defendants*) should, for their succinctness, be adopted in the consideration of this appeal as follows:- C

ISSUE 1

Whether the plaintiffs proved better or superior title to Maiyegun Village to the land in dispute to entitle them to forfeiture and possession of the village from the defendants and to the order of injunction for trespass. This singular issue is formulated in relation to Grounds 1, 2, 3, 5, 6 and 8 of the Grounds of Appeal filed by the defendants/appellants. D E

It was common ground that the defendants' family is in exclusive possession of the land in dispute, and they have exercised long and continuous acts of possession and ownership over same from the year 1820. As a matter of fact, according to the 1st appellant's evidence-in-chief the defendants' family's possession of the land in dispute dates further back to the year 1779. F

As eventually became manifest, the defendants sufficiently joined issues with the plaintiffs in their pleadings by claiming right to possession and ownership of the land in dispute and supported the claim by the evidence they led at the trial. The effect of the state of the pleadings, particularly the plaintiffs' claim for possession and injunction for trespass, is that the plaintiffs' title to the land is in issue. And since the defendants' exclusive possession of the land in dispute confers on them the right in law to remain in possession and to undisputed argument of the land against every other person except the one who can establish a better title, the G H

burden is on plaintiffs to establish a superior or better title to Maiyegun Village before they can rightly dispossess the defendants/inhabitants of the village.

In any event, it is submitted that the plaintiffs' case against the defendants herein postulates that they (plaintiffs) are the owners of the land in dispute and for that they had, prior to the act of trespass complained of, the right to exclusive possession of the land. The onus therefore, is on them (the plaintiffs), to prove better title and ownership to the land to succeed. Pertinently, there are five ways of establishing the ownership of land, viz

- (a) By traditional evidence.
- (b) By acts of ownership extending over a sufficient length of time which acts are numerous and positive enough to warrant the inference that they are true owners.
- (c) By act of long possession and enjoyment of the land in dispute.
- (d) By the production of documents of title which must be authenticated.
- (e) By proof of possession of connected or adjacent land in circumstances rendering it probable that the owners of such connected or adjacent land would in addition be the owners of the land in dispute.

See

- 1. *Idundun v. Okumagba* (1976) 9-10 S.C. (Reprint) 140; (1976) 9-10 S.C. 227; (1976) 1 NMLR 200.
- 2. *Omoriegie v. Idugienwanye* (1985) 2 NWLR 41 at 54-59.
- 3. *Piaro v. Tenalo* (1976) 12 S.C. (Reprint) 19; (1976) 12 S.C. 31 at 37 and
- 4. *Achiakpa v. Nduka* (2001) 7 S.C. (Pt. III) 125; (2001) FWLR (Pt. 71) 1804 SC.

On this legal principle alone, many authorities such as *Ogunbiyi v. Adewunmi* (1988) 12 S.C. (Pt. III) 144; (1988) 5 NWLR (Pt. 93) 215 SC at 221 paragraph B-C; *Amobi v. Amobi* (1996) 8 NWLR (Pt. 49) 638 SC and *Tewogbade v. Obadina* (1994) 4 NWLR (Pt. 338) 326 SC were cited in support thereof.

In paragraph 32 of the plaintiffs' Amended Reply to the Amended

Statement of Defence dated 27th November, 1995, the plaintiffs pleaded their ownership of the land as follows:-

“In answer to paragraph 19 Elegushi Royal Family did not flee from Iddo, the family occupied Ikate and their villages by virtue of being a child of Olofin, the landowners and also as Idejo chief. The family has been on the land before 19th century.....”

The plaintiffs' traditional evidence of ownership as can be seen, was in direct conflict with the defendants' evidence and this renders the traditional history or evidence of traditional history given by the plaintiffs unreliable. This is because proof of ownership of land by traditional history is usually based on hearsay evidence, that is, oral evidence often extending beyond human memory and time of the witnesses narrating the history, which narrations were handed down from generation to generation up to the present one.

Thus, the law is settled that where traditional evidence of the parties in a land matter is in conflict or inconclusive as in the case in hand,, the court should not go by the credibility of witnesses, but should examine the acts of ownership or possession done by either party in recent times in relation to the land in dispute. See this court's decisions in *Idundun v. Okumagba* (1976) 9-10 S.C (Reprint) 140; (1976) 1 NMLR 200; (1976) 9-10 S.C 227; *Kenon v. Tekan* (2001) 7 S.C. (Pt. III) 49; (2001) FWLR (Pt. 70) 1660 SC; *Kyari v. Alkali* (2001) 5 S.C (Pt. II) 192; (2001) FWLR (Pt. 60) 1481 SC and *Jules v. Ajani* (2001) FWLR (Pt. 45) 763 SC.

To establish traditional evidence of title by conclusive evidence, the plaintiff must plead and prove such facts as:-

- (a) Who founded the land in dispute.
- (b) How they founded the land, and
- (c) The particulars of the intervening owners through whom they claim.

See the cases of *Nkado v. Obiano* (1997) 1 NWLR (Pt. 482) 374SC; *Ohiaeri v. Akabeze* (1992) 12 NWLR (Pt 221) 1 : *Anyanwu v. Mbara* (1992) 5 NWLR (Pt 242) 386; *Piara v. Tenalo* (1976) 12 S.C (Reprint) 19; (1976) 12 S.C. 31 and *Mogaji v. Cadbury* (supra).

The plaintiffs did not establish these facts at the trial. Hence, I accept the defendants' submission that the plaintiffs failed to prove their ownership of the land in dispute by non-conflicting and conclusive traditional evidence to entitle them to possession of B Maiyegun Village from the defendants.

The plaintiffs' argument contained in paragraph 3.03 of their Brief to the effect that it is not necessary to establish their title in the circumstances of this case, cannot therefore stand. In answer to the said paragraph, I agree with the defendants that where the C plaintiffs' claim to the land in dispute is predicated on ownership, as in the instant case, the onus is on them (plaintiffs) to prove and establish their ownership. See the case of Adesanya v. Otuewu (1993) 1 NWLR (Pt 270) 414 SC at 453 Para. B.

D In addition, the challenge of the plaintiffs' claim of ownership of the land in dispute cannot amount to a misconduct or lead to forfeiture where the defendants are also claiming ownership and right to remain in possession; such challenge can only amount to a E misconduct or lead to forfeiture if the plaintiffs succeeded in proving their root of title, that is, a superior or better title to the land in dispute.

Be it noted that the plaintiffs cannot establish their root of F title and ownership by merely pleading a consequential matter such as customary tenancy. In paragraph 32 of the plaintiffs' Amended Reply to the Amended Statement of Defence (seepage 241 of the record) the plaintiffs pleaded their root of title and traced it to one Odofin, but they failed to establish the root of title at the trial by G showing in evidence:

- (a) When and how the land in dispute was founded by Odofin.
- (b) The particulars of intervening persons on whom title in respect of the land in dispute was devolved since the founding of the H land.

By the same token, the plaintiffs cannot be seen to establish their root of title or ownership of the land in dispute by merely asserting that they are one or some of the landowners in Lagos as

they tried to show throughout their evidence at the trial. See the case of Obioha v. Duru (1994) 8 NWLR (Pt. 365) 631 SC, where this court held that where a party's root of title is pleaded, that root has to be established first and any consequential acts following therefrom can then properly qualify as acts of ownership. B

The court below was therefore right in holding that proof of the plaintiffs' ownership and source of title is essential for proper and successful adjudication of their claim for possession of Maiyegun village. However, since the plaintiffs failed to make out a prima facie case against the defendants at the trial on their claim of ownership and title to the land in dispute, the defendants have no need to answer them on their defective defence, moreso when they (defendants) did not counterclaim against them. See the case of Mogaji v. Cadbury Nigeria Limited (1985) 2 NWLR (Pt.7) 393, wherein this court held that where pleadings of the parties raise the issue of who the original owners of the land were, the plaintiffs in this matter have a very heavy burden to discharge, and they can only succeed on the strength of their own case and not on the weakness of the defense. Since the plaintiffs failed to discharge this burden, the quo warranto of their claim (that is ownership) was not established and I so hold. C D E

In the case of the defendants who had long been in exclusive possession of the land in dispute, however, there is sufficient proof of their ownership as well as their right to remain in possession by their: F

(i) proving their acts of long possession and enjoyment of the land from 1820 till date, which acts of long possession and enjoyment afford prima facie evidence of ownership under Section 46 of the Evidence Act; G

(ii) showing acts of ownership of the land such as possessing and occupying the land; naming it after their ancestor (Maiyegun); H dwelling on the land; selling and dealing with it or parts thereof over the years;

(iii) in addition, there is clearly the un rebutted presumption

of ownership raised in favour of the defendants under Section 146 of the Evidence Act.

In their bare claim that they were land-owners in Lagos and in particular the land in dispute, the plaintiffs sought to rely on Exhibits J1 and J2 - documents which were not documents of title but only formed part of their traditional history which is in conflict with the defendants' traditional history. In any case, the plaintiffs did not seek to prove their ownership by the production of the documents of title; they only relied on traditional history. Thus, the court below was right, in my view, in holding that proof of the plaintiffs ownership and source of title is essential for proper and successful adjudication of their claim for the possession of Maiyegun Village.

Furthermore, since the plaintiffs failed to make out a prima facie case against the defendants at the trial on their claim of ownership and title to the land in dispute, the defendants have no need to answer them on their defective defence. Moreso, when the defendants did not counterclaim against them vide paragraph 3.10 of the appellants' brief. See also Mogaji v. Cadbury (supra) wherein this court held that where pleadings of the parties raise the issue of who the original owners of the land were, the plaintiffs in the matter have a very heavy burden to discharge and they can only succeed on the strength of their own case and not on the weakness of the defence. Since the plaintiffs in this case failed to discharge this burden, their claim (of ownership) is not established. Compare the case of the defendants who had long been in exclusive possession of the land in dispute with sufficient proof of their ownership as well as their right to remain in possession by their:

(i) proving their acts of long possession and enjoyment of the land from 1820 till date, which acts of long possession and enjoyment afford them prima facie evidence of ownership under Section 46 of the Evidence Act. See Okechukwu v. Okafor (1961) 1 All NLR 685 at 686 and Kasali v. Lawal (1986) 3 NWLR (Pt.28) 306;

(ii) showing acts of ownership of the land, naming the land after their ancestor (Maiyegun), dwelling on the land, selling, and dealing with same over a long period of time;

(iii) in addition, there is un rebutted presumption of ownership raised in favour of the defendants under Section 146 of the Evidence Act.

In their bare claim that they were land owners in Lagos, they sought to rely on Exhibits J1 and J2, documents which are not documents of title but only form part of their evidence of traditional history which is in conflict with the defendants' traditional history. In any case, much as the plaintiffs did not seek to prove their ownership by the production of documents of title, they relied on traditional history.

The plaintiffs' contention in paragraph 3.06 of their brief that they are the owners of the land in dispute by reason of their being one of the landowners in Lagos, is to say the least, perverse. Thus, all the pieces of evidence given in support of the plaintiffs' claim of ownership that they "own Eko" (Lagos) or that they "own Maiyegun village" by reason of being landowners in Lagos, are deficient or at most non sequitur.

Turning to the curious evidence of P.W.2 which the trial court heavily relied upon in entering judgment for the plaintiffs, I agree with the defendants' submission that the plaintiffs' traditional evidence of ownership of the land in dispute cannot invest such evidence of traditional history with any special cloak of acceptability so as to render the test laid down in *Kojo v. Bonsie* (1957) 1 WLR 1223 at 1226 inapplicable to the conflicting evidence of traditional history given by the parties. That test of any conflicting traditional evidence of ownership of land was succinctly laid down in the case in *Kojo v. Bonsie* (supra) per Lord Denning, in the words following:-

"Witnesses of the utmost veracity may speak honestly but erroneously of what took place a hundred years ago. Where there is a conflict of traditional history, one side or the other must be mistaken, yet both may be honest in their belief. In such a case, demeanor is a little guide to the truth. The best way to test the traditional history is by reference to the facts in recent years as established by evidence and by seeing which of the two competing histories is more probable....."

See also the case of *Mogaji v. Cadbury* (supra) at p. 430. **In any case, considering the background of this case, P.W.2 cannot be regarded as a witnesses of the utmost veracity so as to clothe his**

evidence with utmost truth. This is a witness who under cross-examination admitted that he was an illiterate but who the 1st plaintiff purportedly and in an unprecedented manner, appointed as Bale over Maiyegun Village in December, 1992, following his elevation and appointment as an Oba (king) of Ikate land. From the status of a Chief, under cross-examination, P.W.2 admitted that upon his choice as Bale by the 1st plaintiff/appellant, he and his son received gifts of some plots of land from him which they were selling.

Issues No. 3

This issue asks whether Exhibits C and BB were properly received in evidence. Exhibit C, in the first place, was the certified true copy of the proceedings in a previous suit in which the parties thereto (namely, Suit No. 1/302/55) were Oba Onibeju for himself and members of the Ibeju Family v. Salimonu Oyeboja who are not per chance, the same parties in this suit.

In that case, one Lawani Maiyegun, a relation of the defendants, had testified that the land at Maiyegun Village belonged to the family of the plaintiffs in this case. And this particular record of proceedings in the said Suit No. 1/302/55 was tendered by the 1st plaintiff at the trial.

Exhibit C was tendered for the purpose of admission as evidence at the trial and the defendants counsel objected to the admissibility of the said document as evidence. Under Section 34 (1) of the Evidence Act, 1990, Cap. 112, Laws of the Federation, the provisos which are:

“Provided-

(a) that the proceeding was between the same parties or their representatives in interest;

(b) that the adverse party in the first proceeding had the right and opportunity to cross-examine; and

(c) that the questions in issue were substantially the same in the first as in the second proceedings.....”

The three provisos stipulated in Section 34(1) of the Evidence Act (ibid) it was stressed, must co-exist before Exhibit ‘C’ can be properly admitted for the purpose of proving the truth of any facts stated therein.

And since it was not shown at the trial that the parties in Suit No.

IV 302/55 were the same as the parties in the present case, or that the real questions in issue in the previous suit were substantially the same as in the present one: and that the adverse party in the previous suit as well as in the present case had the opportunity to cross-examine Lawani Maiyegun whose evidence is contained in Exhibit 'C' then Exhibit 'C' is not relevant B and cannot be properly received in evidence of the truth of what Lawani Maiyegun said in the previous suit, as contained in Exhibit 'C'.

This law of evidence has been affirmed by the court in the case of Alade v. Aborishade (1960) 1NSCC 111 at 115 paragraphs 30-40 in C the words following:-

“.....but that does not alter the legal position which this court has stated on numerous occasions which is that “evidence” given in a previous case can never be accepted as evidence by the court trying a later case except where Section 34(1) of the Evidence Ordinance D applies. The evidence given in an earlier case by persons who also testify in a later case may be used for cross -examination as to credit but it is of no higher value than that.”

See also Folarin v. Durojaiye (1988) 1 NWLR (Pt. 70) 351. It E is pertinent therefore to point out that Exhibit 'C' is of no value or relevance at all to this case since it was not even tendered and used for the purpose of cross-examination. Hence, I agree with the plaintiffs' submission that as Exhibit 'C' is not a fact in issue in this F case nor is it admissible even under Sections 93 and 109 of the Evidence Act contrary to the erroneous argument advanced by them (plaintiffs). By the combined effect of the provisions of Sections 6(b) and 34(1) of the same Act, Exhibit 'C' is not admissible either under G Section 34 or Sections 93 and 209 of the Evidence Act for the same reasons highlighted in the proceedings under the issue in consideration.

I agree with the defendants that Exhibit BB is also inadmissible H in evidence. Exhibit BB, it must be emphasized, constituted the proceedings in Suit No. LD/1117/72 between City Property Dev. Ltd, v. Attorney-General & 3 Ors. who were not shown to be the same parties in the present case.

To the further submission that for the same reasons highlighted in the preceeding paragraphs under the issue in consideration, Exhibit BB is inadmissible in evidence, it was the plaintiffs' submission that Exhibit BB is not admissible in evidence irrespective of whether it was tendered under Sections 34(1), 93, 109, 111 or 112 of the Evidence Act. Korean the exhibit be tendered in evidence to impeach the credit of D.W.4 through whom it was tendered, since D.W.4 in that suit was not the same witness who gave the evidence contained in Exhibit BB in Suit No. LD/1117/72. **The court below was therefore, in my view, right in regarding both Exhibits C and BB inadmissible in evidence. The court below, in my view, was equally right in considering these exhibits not useful or admissible either as evidence of the truth of the facts they contain, or for the purpose of impeaching the credit of the witnesses through whom they were tendered.**

Be it also noted that it is an elementary rule of evidence that before considering the admissibility of any evidence or document in support of a party's case, it must be shown that the evidence sought to be led is relevant in law.

Relevance is therefore the main purpose for admissibility of any evidence or document under the law of evidence, whether it be in civil or criminal matters vide ACB Ltd. v. Alhaji Umoru Gwagwada (1994) 5 NWLR (Pt. 342) 25 SC at 44 paras. A-D. I therefore agree with the plaintiffs' submission that Exhibits C and BB have no evidential and probative value on account of their irrelevancy in law. Hence, they were in my view, not properly admissible in evidence in the circumstances of this case at the trial and I so hold."

Issue No. 2

The question this issue poses is whether the Lagos State Government should have been joined to this suit on the question of whether it properly served notice of acquisition and revocation of the land situate at Eti-Osa and Ibeju Lekki areas of Lagos State. The defendants pleaded and the plaintiffs joined issues therewith, on acquisition and revocation of all rights of occupancy over the land situate at Eti-Osa Ibeju Lekki areas of Lagos State.

Evidence was also led by the defendants at the trial in proof of acquisition and revocation of the right of occupancy over the land area in dispute covering 823 square kilometres situate at Eti-Osa and Ibeju-Lekki including the land in dispute.

Exhibit Q, Lagos State Gazette, was tendered by the 4th defendant and admitted in evidence without any objection while Revocation Notice (Exhibit P) was also tendered and received without any objection of the area excised from the acquisition.

The plaintiffs, however, failed to prove their averments against the Lagos State Government and also failed to properly challenge the evidence of the defendants on acquisition, revocation and excision at the trial. In his evidence at the trial the 1st plaintiff merely said:

“If the land was Government acquired land, the reference should be to me and not them (the defendants). Although the defendants admitted the Maiyegun land was acquired by Government. I say that my ancestors had owned the land.”

It is further submitted that the unchallenged evidence of the defendants on the fact of acquisition and revocation of land in Eti-Osa and Ibeju-Lekki, which includes the land in dispute, must be accepted as proved, particularly when the plaintiffs have acknowledged by conduct, the general acquisition by making representation to the Lagos State Government for grant of land after the acquisition and on the strength of which the Government granted over 500 hectares to Elegushi Property Investment Company Limited. It is also further submitted that the scanty evidence of the 1st plaintiff quoted in paragraph 6. 4 earlier on is not a sufficient rebuttal of the defendants’ evidence in support of acquisition and revocation of right of occupancy over the land in Eti-Osa and Ibeju Lekki.

Thus, it was in addition contended that the acquisition and subsequent excision of the land in dispute to the defendants were established by the defendants, as there was no evidence challenging the proven facts at the trial vide *American Cyanamid v. Vitality Pharm. Ltd.* (1991) 2 NWLR H (Pt. 71) 15 at pages 28-30, wherein it was held that where the evidence of a witness has not been challenged, contradicted or shaken under cross-examination and his evidence is not inadmissible in law, and the evidence

led is in line with the facts pleaded, the evidence must be accepted as the correct version of what that witness says.

Furthermore, the fact that the plaintiffs in their pleading challenged the acquisition and revocation of the right of occupancy over the land in dispute, would not change the position of law as enunciated in the American Cyamamid case (supra) because averments in a pleading do not constitute evidence or proof of the facts averred in the pleading. See Awojugbagbe Light Industries Ltd, v. Chinukwe (1995) 4 NWLR (Pt. 390) 379 SC and Ajuwon v. Akanni (1993) 9 NWLR (Pt. 316) 182 SC.

Be that as it may, the issue raised in the plaintiffs' pleadings as to whether the land in Eti-Osa and Ibeju Lekki including the land in dispute has been properly acquired by the Lagos State Government and whether notice of acquisition and revocation was properly served on them by the government under the Public Lands Acquisition Law, cannot, in my view be completely and properly adjudicated upon and determined by the trial court without joining the Lagos State Government to this suit.

On the state of the pleadings filed by the parties therefore, I am of the view that it is necessary to join the Lagos State Government on the issue raised by the plaintiffs on the validity or propriety of acquisition and service of notice of acquisition and revocation of grant, This is the very point being made by the court below, which point of law is affirmed by this Honourable Court in the case of Mobil Oil Nigeria Limited v. Nabsons Ltd. (1995) 7 NWLR (Pt. 407) 254 at pages 262-263 SC.

Having already demonstrated that the plaintiffs failed to prove their ownership or title to the land in dispute, it would amount to sufficient service of the notice of acquisition or revocation if service of the notice was effected on the defendants (the undisputed occupiers of the land in dispute). See Obikoya & Sons Ltd. v. Governor of Lagos State (1987) 1 NWLR (Pt. 50) 385 at 397 paragraphs C-H.

In the suit herein on appeal, the defendants did not challenge the propriety of service of notice of acquisition and revocation on themselves, being the people in occupation and who ought to be served. Be it noted also that the plaintiffs who in their pleadings are challenging the validity of acquisition or revocation on the ground of non-service on them of notice

of acquisition and revocation, have to show that they were the persons who ought to be properly served, which they failed to do, having failed to prove their ownership of the land in dispute. Thus, the plaintiffs cannot contend in this case the validity of public acquisition of the land in dispute on the ground of non-service of notice of acquisition or revocation, moreso, when the land in dispute is not Ikate land, their homeland, of which they are in occupation. B

In sum, I hold the view that the plaintiffs are not the rightful persons to be served with the notice of acquisition or revocation of the land in dispute and they have no locus to challenge the validity of the acquisition by the Lagos State Government. A person who is not the proven owner or occupier of land in respect of which notice of acquisition or revocation was issued has no locus standi in law to seek the nullification of the acquisition. See Titiloye v. Olupo (1991) 7 NWLR (Pt. 205) 519 SC and Kokoro-Owo v. Lagos State Government (2001) 5 S.C (Pt. II) 50; (2001) FWLR (Pt. 61) 1709 SC Thus, the land in dispute was rightly, in my view, excised by the Lagos State Government to the defendants/ occupiers who have shown themselves to and do remain in possession of the land - their ancestral land, as against the plaintiffs’. C D E

The plaintiffs’ claim that they were not served with notice of acquisition and excision of the land in dispute cannot therefore detract from the fact of acquisition and excision thereof. F

In the result, the plaintiffs’/appellants’ claim to the land in dispute cannot stand in view of the acquisition of the land by the Lagos State Government and the subsequent excision and grant of same to the defendants/ respondents by the Government of Lagos State. The appeal fails and is accordingly dismissed with costs assessed at N10,000.00 in favour of the defendants/respondents. G

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KUTIGIJSC

I have had the privilege of reading in advance the judgment just rendered by my learned brother, Onu, JSC. He has meticulously dealt with

all the issues canvassed before us. I agree with his reasoning and conclusions. The appeal is dismissed with costs as assessed in the lead judgment.

B

KALGO JSC

I have read in advance the judgment of my learned brother, Onu, JSC., just delivered in this appeal and I entirely agree with him that there is no merit in the appeal. The issues which arose for determination in the appeal have been thoroughly and painstakingly considered in the leading judgment and I have nothing useful to add. I agree with the reasoning and conclusions reached in the said judgment which I adopt as mine. I therefore also dismiss the appeal with N10,000.00 cost in favour of the respondents.

PATS-ACHOLONU, JSC

I have read in advance the judgment of my learned brother, Onu, JSC., and I agree with him. I too dismiss the appeal and abide by the order in the leading judgment.

F

AKINTAN JSC

The 1st plaintiff/appellant instituted this action in a representative capacity for himself and on behalf of the Elegushi Royal family against the defendants/respondents at Lagos High Court. The other plaintiffs/appellants were later joined as co-plaintiffs. Their claim was, inter alia, for: a declaration that the plaintiffs' family were the overlords of the defendants in respect of the land at Maiyegun village occupied by the defendants; that the plaintiffs' said family had the right to appoint the Bale (Head Chief) of the said Maiyegun village, and that the ancestors as well as the descendants of Oseni Maiyegun are customary tenants of the plaintiffs' family.

The defendants denied the claim. They pleaded and led evidence to show that the defendants had settled on the land since 1820 and had lived there without any disturbance since their ancestor, Oseni Maiyegun, first

settled there in 1820. However, the trial High Court entered judgment for the plaintiffs as per their claim. The defendants were dissatisfied with the judgment and their appeal to the Court of Appeal was allowed. The present appeal is against the decision of the Court of Appeal.

The parties filed their respective brief of argument in this court. The appellants formulated four issues as arising for determination in the appeal. The issues are fully set out in the leading judgment written by my learned brother, Onu, JSC. I therefore need not repeat them here. The only one issue I will like to discuss is issue 1 which is: “*whether the learned trial Judge must first settle the issue of title before proceeding to determine the issue of customary tenancy.*”

The crucial point raised in the appellants’ issue 1 is whether the appellants led sufficient evidence in support of their claim that the Maiyegun village belonged to their family and that Oseni Maiyegun and his descendants living in the village were tenants of the appellants’ family. The court below, on going through the evidence led by the parties in the case, held that the plaintiffs/appellants failed to establish a better title to the land than the respondents. The defendants led evidence at the trial that they had been in exclusive possession of the entire land since 1820 when their ancestor, Oseni Maiyegun, first settled on the land. The village was named after their said ancestor and they had never been disturbed by anybody since they had been on the land.

It is the contention of the defendants that since they had exclusive possession of the land in dispute, such exclusive possession over such a long period confers on them the right in law to remain in possession and to undisputed occupation of the land against every other person except the one who can establish a better title. The burden is therefore said to be on the plaintiffs/appellants to establish a superior or better title to the Maiyegun village before they can rightly dispossess the defendants as the inhabitants of the village. Both the plaintiffs and the defendants rely on traditional evidence in support of their respective case. But it was discovered that the evidence of traditional history led by the plaintiffs was in conflict with that of the defendants.

As the law is settled that where evidence of traditional history led

by the parties in land matters are conflicting or inconclusive, the court is required not to adopt the credibility test of witnesses but to examine the acts of ownership or possession by the parties in recent times in relation to the land in dispute. See Kyari v. Alkali (2001) 5 S.C. (Pt.II) 192; (2001) B 1 NWLR (Pt.724) 412; Idundun v. Okumapba (1976) 9-10 S.C. (Reprint) 140; (1976) 1 NMLR 200 and Kenon v. Tekam (2001) 7 S.C. (Pt. III) 49; (2001) 14 NWLR (Pt. 732) 12. There is no doubt that the defendants/respondents' acts of long and undisturbed possession of the land in dispute since 1820 when their ancestor first settled on the land is far superior to that of the plaintiffs/appellants.

It is for the above reasons and the fuller reasons given in the leading judgment written by my learned brother, Onu, JSC., which I have read before now and which I fully agree with and adopt, I hold that the court below was right in holding that the plaintiffs/appellants failed to prove their claim. I therefore dismiss the appeal with N10,000 costs in favour of the respondents.

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