

SUPREME COURT OF NIGERIA

18TH JULY, 2005. SC. 48/2001

**CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE, A. O. EJI-
WUNMI, D. MUSDAPHER, S. A. AKINTAN, JJSC**

JOHN I. OGBU APPELLANT

(Administrator of the Estate of Oji Ogbu

(Deceased) Suing by his Attorney, Nnanna Oji Ogbu)

AND

BEST WOKOMA RESPONDENT

EVIDENCE - Proof - Pleadings - Burden of proof - May shift to defendant as case progresses - Where it becomes the duty of defendant to call evidence - In proof of some particular points - Which may arise in the case (H1)

LAND LAW - Evidence - Identity of land in dispute - Where parties are ad idem as to identity of the land - The fact that defendant gave it another name - Cannot change the identity (H2)

LAND LAW - Title - Possession - Claim of - Where two competing parties claim the possession of land in dispute - Law ascribes possession to the one with better title (H3)

APPEALS - Concurrent findings - Where appeal is against concurrent findings of facts - Such findings should not be disturbed - Save for cogent reasons (H4)

FACTS

Before the High Court of Port Harcourt, the plaintiff/appellant commenced an action against the defendant/respondent. The claim was in respect of a dispute over the ownership of a house at 185, Ikwere Road, Port Harcourt. The plaintiff's case was that the land in dispute originally belonged to Charles Nyeoawa, Michale Oguogbo and Clinton Ninereni.

These original owners sold the plot to one John Emeafor and a Deed of conveyance was executed in favour of the purchase dated 18th March 1958. The purchaser, John Emeafor in turn sold to the late Oji Ogbu by a deed of conveyance dated 9th May 1958. Oji Ogbu after purchasing the land cleared it and built three houses on the land but during the Civil war, he had to abandon it. The property was treated as one of the properties abandoned, by Rivers State Government.

The property was later returned to Oji Ogbu after the Civil war. He continued to exercise all acts of possession until his death in 1971. The property was thereafter handled by his administrator who collected rents from tenants. In 1992, the defendant forcefully entered the said property and forced tenants to start paying to him. He claimed to be the rightful owner of the land. He also claimed that the land in dispute was his father's share out of the large parcel of land his family inherited from his father. He contended that the vendor who sold to the plaintiff had no authority to do so. The trial court accepted the defendant's story and dismissed the plaintiff's claim. The Court of Appeal also dismissed the plaintiff's appeal. He has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether the court below was justified in affirming the trial court's finding and conclusion that the plaintiff/appellant did not show any nexus between Exhibit 3 and No. 185 IKWERRE ROAD in dispute and did not prove the identity, ownership and possession of same to warrant the dismissal of his appeal.

2. Was the court below right to affirm the trial court's decision/finding that the appellant failed to convincingly establish by evidence that his principal had any buildings on No. 185 IKWERRE ROAD PORT HARCOURT.

3. Whether the court below was right to affirm the trial court's decision/finding that the appellant did not show where the property was advertised before it was released to him and that the said release was shrouded in uncertainty?

4. Whether the failure of the court below to adjudicate and make pronouncement on the appellant's issues Nos. 1 and 5 for determination

occasioned miscarriage of justice against the appellant?

5. *Was the court below right to affirm the trial court's decision that the defendant did not trespass into the plaintiff/appellant's property in dispute.*

6. *Whether from the totality of admissible evidence before the court below, the pleadings and peculiarities of the property in dispute as an abandoned property, the plaintiff/appellant failed in toto, to prove his case."*

HELD (Unanimously allowing the appeal per **AKINTAN JSC**)

Pleadings - Burden of proof

1. It is settled law that in civil cases, the onus of proof is not as fixed on a plaintiff as it is on the prosecution in criminal cases. Thus, in civil cases, where the general burden of proof in the sense of establishing his case lies on the plaintiff, such burden is not as static as in criminal cases. Therefore, there will be instances in which on the state of the pleadings, the burden of proof will be on the defendant also as the case progresses. Such a situation will arise when it may become the duty of the defendant to call evidence in proof or rebuttal of some particular points which may arise in the case. Thus, in the instant case, the plaintiff, having led evidence of how he came to owner of land at 185 Ikwerre Road, tendered conveyances and other document in proof of the title to the land; told the court when he built the houses on the plot; called as witnesses the people who sold the plot to him; led evidence as to how he abandoned the property as a result of the civil war told the court how the property was released to him after the civil war by the Abandoned Property Authority; and how the defendant forcefully seized it from him. It is not enough for the defendant who was alleged to have forcefully seized the property from the plaintiff to merely limit his source of title to inheritance without more, particularly when there was evidence from members of his family that his claim of inheritance was incorrect. The burden of proof definitely shifted on him to provide more credible evidence in support of his defence. (p. 2520 D)

Evidence - Identity of land in dispute

2. The law is also settled that where the parties, by the evidence adduced, both oral and documentary, are ad idem on the identity of the land in dispute, the fact that different names are given to the land or the area where the land is located is called different names is not fatal to the party claiming such land. In the instant case, all the witnesses that testified told the court that they know the land in dispute. The plaintiff also tendered a deed of conveyance (Exhibit 3) which contains the survey plan of the land and the houses he was claiming were shown on the survey plan. The identity of the land in dispute was therefore not in issue and the fact that the defendant gave the land another name cannot derogate, alter or change the identity of the land in dispute. (p. 2521 B)

Title - Possession - Claim of

3. It is also settled law that where two competing parties claim to be in possession of land in dispute in a case, the law ascribes possession to the one with the better title: See Mogaji v. Odofin (1978) 4 S.C (Reprint) 53, 65; (1978) 4 S.C 91 at 96; and Aromire v. Awoyemi (1972) 2 S.C (Reprint) 1; (1972) 1 All NLR (Pt. 1) 101 at 112. Thus, in the instant case, the appellant, as plaintiff, clearly led credible evidence in support of his title to the plot and houses on No. 185 Ikwerre Road. The respondent, on the other hand, failed to lead credible evidence in support of his contention that the property was not that of the plaintiff but his own. It follows, therefore, that the appellant ought to have been granted his claim before the trial court. (p. 2521 E)

Concurrent findings

4. There is no doubt that this appeal is against the concurrent findings of fact by the trial court and the Court of Appeal. The position of the law is that such findings of fact should not be disturbed by this court unless there are cogent and compelling reasons shown to justify disturbing those findings of fact. In the instant case, it is quite clear from all I have stated above, that the findings of fact made and the conclusions reached in the case by the learned trial Judge are very defective and perverse. Similarly,

the court below failed to properly consider the evidence led at the trial before affirming the trial court's decision. In the result, I hold that there is merit in the appeal and I accordingly allow it. (p. 2521 G)

REPRESENTATION

Mr. E. C. Onumajuru (with him, C.P.S. Maduka 7 Mrs. T. I. Nwofor) for the Appellant.

Mr. E. A. Amadi, for the Respondent.

CASES REFERRED TO

Osawaru v. Exaruka (1978) 6-7 S.C. (Reprint) 91; (1978) 6-7S.C. 135 at 145

Adegoke v. Adibi (1992) 5 NWLR (Pt. 242) 410 at 423

Oyudev. Ogedegbe (1984) 1 S.C. 360 at 363

Makanjuola v. Balogun (1989) 5S.C. 82; (1989) 2 NSCC 294.

Mogaji v. Odofin (1978) 4 S.C (Reprint) 53, 65; (1978) 4 S.C 91 at 96

Aromire v. Awoyemi (1972) 2 S.C (Reprint) 1; (1972) 1 All NLR (Pt. 1) 101 at 112

Okeke v. Afbodike (1999) 12S.C (Pt. II) 101; (1999) 14 NWLR (Pt. 638) 215 at 222

Ibenye v. Agwu (1998) 9-10 S.C 18; (1998) 11 NWLR (Pt. 574) 372

Alakija v. Abdulai (1998) 5 S.C 1; (1998) 6 NWLR (Pt. 552) 1

Chukwu v. Nneji (1990) 6 NWLR (Pt. 156) 363

LEAD JUDGMENT BY AKINTAN JSC

The appellant as plaintiff commenced this action at Port Harcourt High Court in 1982 as Suit No. PHC/272/82 against the respondent as defendant. The claim was in respect of a dispute arising over the ownership of a house at 185, Ikwerre Road, Port Harcourt. The action was instituted by the appellant through his attorney, Nnanna Oji Ogbu, the administrator of the estate of Oji Ogbu (deceased).

The plaintiff's claim as set out in paragraph 9 of the amended Statement of Claim is as follows:

“(a) *N100.000 special and general damages for the trespass committed by the defendant to the plaintiff’s premises situate at No. 185, Ikwerre Road. Port Harcourt in September, 1982.*

B (b) *An account of all rents collected by the defendant from tenants of the said premises and payment over to the plaintiff of any amount found due.*

C (c) *Perpetual injunction restraining the defendant either by himself, his servants and/or agents from committing any further acts of trespass in respect of the premises aforesaid.”*

Pleadings were filed and exchanged and the trial took place before
 D Fiberesima, J. The plaintiff’s case at the trial was that the land in dispute originally belonged to Charles Nyeowa, Michael Oguogbo and Clinton Nmereni. These original owners sold the plot to one John Emeafor and a
 deed of conveyance executed in favour of this purchaser dated 18th
 March, 1958 was registered as No. 58 at Page 58 in Volume 103 at Enugu
 Land Registry, but now at the Land Registry, Port Harcourt. The
 purchaser, John Emeafor, in turn, sold to the late Oji Ogbu and a deed of
 E conveyance dated 9th May, 1958 and registered as No. 79 at Page 79 in
 Volume 103 at the Land Registry. Enugu, but now also at the Land
 Registry, Port Harcourt. The portion of the land sold to the late Oji Ogbu
 is shown in the survey plan attached to the conveyance and admitted at the
 F trial as Exhibit 3.

Oji Ogbu, after purchasing the land, cleared it and built three houses
 on the land. But he had to abandon the property during the Nigerian Civil
 War and the property was then treated as one of the properties abandoned
 in Rivers State. The property was later known as No. 185 Ikwerre Road,
 G Port Harcourt. After the civil war, Oji Ogbu returned to Port Harcourt and
 the property was released to him. The release was published in the Rivers
 State Official Gazette No. 43. Vol. 6 of 17th October, 1974, and an
 Instrument of Transfer dated 5th November, 1974. (Exhibit 5) was
 H executed in his favour. Oji Ogbu thereafter continued to exercise all acts
 of possession and ownership over the property until he died on 3rd April,
 1971. He rented the property to tenants and collected rents from the
 tenants while he was alive. The Administrators of his estate continued to

collect rents from the tenants after his death.

In September, 1982, the defendant forcefully entered the said property and forced the tenants to start paying rents to him. He claimed to be the owner of the property. He also claimed that the land on which the houses in dispute were built was his father's share out of a large parcel of his family land inherited from his said father. He contended that the vendors who sold to the plaintiff had no authority to sell the land.

The trial court accepted the defendant's story and dismissed the plaintiff's claim. The Court of Appeal also dismissed an appeal filed against the trial court's judgment. The present appeal is against the decision of the Court of Appeal. The appellant held 14 grounds of appeal against the decision and the parties filed their respective briefs of argument in this court. The appellant filed an appellant's brief and a reply brief. The respondent, on the other hand, filed a respondent's brief. The appellant formulated the following six issues as arising for determination in the appeal:

"1. Whether the court below was justified in affirming the trial court's finding and conclusion that the plaintiff/appellant did not show any nexus between Exhibit 3 and No. 185 IKWERRE ROAD in dispute and did not prove the identity, ownership and possession of same to warrant the dismissal of his appeal.

2. Was the court below right to affirm the trial court's decision/ finding that the appellant failed to convincingly establish by evidence that his principal had any buildings on No. 185 IKWERRE ROAD PORT HARCOURT.

3. Whether the court below was right to affirm the trial court's decision/finding that the appellant did not show where the property was advertised before it was released to him and that the said release was shrouded in uncertainty

4. Whether the failure of the court below to adjudicate and make pronouncement on the appellant's issues Nos. 1 and 5 for determination occasioned miscarriage of justice against the appellant?

5. Was the court below right to affirm the trial court's decision that the defendant did not trespass into the plaintiff/appellant's property in dispute.

6. *Whether from the totality of admissible evidence before the court below, the pleadings and peculiarities of the property in dispute as an abandoned property, the plaintiff/appellant failed in toto, to prove his case.*”

B The respondent, on the other hand, formulated a single issue as arising for determination in the respondent’s brief. The single issue is:

“*Whether the Court of Appeal was wrong in affirming the judgment of the trial court.*”

C It is submitted in the appellant’s issue 1 that where a survey plan is attached to a document of title showing the land conveyed, the identity of the land cannot be said to have been undefined. Reference is made in this respect to the deed of conveyance with an attached survey plan No. E.G. 126/58 by which Oji Ogbu acquired the property in dispute (Exhibit 3). It
D is argued that the contention of the learned trial Judge, which the court below affirmed, that the appellant failed to properly identify the property being claimed was therefore out of place. The survey plan attached to the said survey plan (Exhibit 3) is said to contain more than three buildings built
E thereon by Oji Ogbu in 1958. The identity of the property and the houses built on it were therefore said not to be in dispute.

Again, it is submitted that the identity of the property was not in issue at the close of pleadings because the parties in their pleadings and
F evidence agreed that they know the property in dispute. It was therefore wrong of both the trial court and the court below to hold that the property in dispute was undefined or uncertain. It is contended that where the parties, by the evidence adduced, are ad-idern on the identity of the land in dispute, the fact that different names or identification numbers are
G ascribed to it, or that the area where it is located is called different names, is not fatal to the case of the party claiming it. The decision in *Makanjuola v. Balogun* (1989) 5 S.C. 82; (1989) 2 NSCC 294 is cited in support of this submission. It is also submitted that the land in dispute in this case was
H sufficiently identified and ascertained by the appellant and as such it was wrong of the two lower courts to hold any contrary view on that point.

The evidence led in support of the pleadings that the property was released to Oji Ogbu by the Governor of Rivers State and the instrument

of transfer issued and tendered as Exhibit 5 are said to be uncontradicted by the respondent. It is submitted that since it has not been shown by the respondent that the Rivers State Abandoned Property (Custody and Management) Authority was in the habit of releasing non-existent property and/or empty parcels of land to people, the decision that the appellant failed to prove his case is untenable. B

The point canvassed in the appellant's Issue 2 is centred on the allegation that the two lower courts' failed to adequately evaluate the exhibits tendered by the appellant. References are made specifically in this respect to the survey plan to which was attached the survey plan No. EC/ 128/58 (Exhibit 3) and on which was shown that not less than three buildings were already built on the land; the Instrument of Transfer of the houses to Oji Ogbu by the Rivers State Governor (Exhibit 5); the publication of the release in the Rivers State Official Government Gazette No. 43, Vol. 6 of 17th October. 1974, and the property rate receipts paid in respect of the said property (Exhibits 6A - 6D). It is submitted that had all these exhibits and other evidence led in support of the appellant's claim been properly evaluated, the result reached by the two lower courts would have been different. C D E

The reasons given by the trial court which the court below affirmed, that the plaintiff did not show where the property was advertised before it was released to the appellant and that the release of the property at No 185 Ikwerre Road in the Instrument of Transfer (Exhibit 5) and the Gazette publication were shrouded in uncertainty, are the subject of attack in the appellant's Issue 3. It is submitted that since the defendant did not contest the validity of the Instrument of Transfer (Exhibit 5) and the Gazette publication, it was therefore wrong for the court to make that case for the respondent. F G

In the appellant's issue 4, the complaint of the appellant is that the court below failed to consider two of the issues raised by the appellant in his brief before the court below. The issues are appellant's issues I and 5. H The questions posed in the two issues, respectively, in issue 1 are: whether the issue before the trial court was the ownership of Abandoned Property Authority under the Edict No. 8 of 1969 of Rivers State or issue of title to

land requiring the plaintiff to prove how he came by the land on which he built his houses, and in issue 5: was the trial Judge not wrong in suo motu raising issues and adjudicating on those issues not contested by the parties. Reference is made to paragraphs 4 and 5 of the plaintiff's amended Statement of Claim where the plaintiff pleaded that the property in dispute has been abandoned by the owner. Chief Oji Ogbu, as a result of the civil war.

It is alleged that the court below did not advert to this issue and did not adjudicate or make any pronouncement on it. It is also submitted that if the court below had adjudicated and pronounced on those issues, it would have appreciated both the quantum and nature of evidence required from the appellant to prove his case. The failure of the court below to adjudicate on the said issues is said to have influenced its judgment against the appellant as the court erroneously treated the case as one for declaration of title to land which must be proved by any of the five ways enunciated in *Idundun v. Okumagba* (1976) 9-10 S.C. (Reprint) 140; (1976) 1 NMLR 200. This failure is said to have led the court to the confused description given as to the identity of the house.

The court below is also accused of failure to make any pronouncement on the allegation of bias levied against the learned trial Judge in the issue 5 canvassed before the court below. Reference is made to a passage from the judgment of the trial court where the plaintiff is described, *inter alia*, as “*one of those improper claimants, unnecessary person in Nigerian society who refuse to allow the ugly dreams of the Nigeria Civil War to die down and He is one of those dangerous characters, peddler of bitterness among its citizens that ownership of his property in any part of the country, particularly in Rivers State, has been denied him because of his state of origin, whereas as a matter of fact he really and actually has no such property...*”

It is alleged that it was this bias of the trial court that was for determination in the said issue 5 but which the court below failed to adjudicate and pronounce upon. It is submitted that had the court below considered that issue 5 which was duly argued before it, the appeal would have been allowed.

The point taken up in appellant's issue 5 is the finding of fact by the lower court that the respondent did not commit any act of trespass on the appellant's property as claimed by the appellant. Reference is made to specific portions of the evidence led by the appellant in support of that claim. It is submitted that as the evidence was overwhelming, that claim ought not to have been dismissed. B

The final order of dismissal of the appellant's claim is the one challenged in the appellant's issue 6. It is submitted in this respect that the order of dismissal of the entire claim was erroneous and unjust having regard to the overwhelming credible evidence and the exhibits tendered by the appellant in support of his claim. This court is therefore urged to set aside the erroneous order of dismissal of the appellant's appeal made by the court below. C

It is submitted in reply in the respondent's brief on the appellant's issue 1 that it is not correct that the court below failed to properly evaluate the findings of fact made by the trial court on the evidence tendered before dismissing the appellant's appeal. Reference is made to the pleadings of the parties as regards their respective title and the evidence tendered. It is then said that the court rightly found that the appellant was not the owner of the land in dispute and that he was not in possession of it. Following those findings, the trial court placed no value on the Exhibits 6 - 6D tendered as property receipts. The court below is therefore said to be right in affirming those findings. D E F

Also on the identity of the land in dispute, it is submitted that the findings made by the trial court and affirmed by the court below are very clear and supported by (the evidence tendered at the trial. There is therefore no cause to tamper with those findings made by the two lower courts since no justification for doing so had been made by the appellant. G

On the question whether the plaintiff's claim was simply that of abandoned property, it is submitted that since the plaintiff's claim included one for trespass and injunction and he pleaded his root of title, the trial court is said to have rightly looked into the plaintiff's title and made the finding it made in that respect and that since he has put his title in issue, he was required by law to prove such title to the land in dispute in order to succeed. H

It is submitted that the conclusion of the trial court to dismiss the plaintiff's case was justifiable having regard to the material conflicts in the evidence led by the plaintiff in the description of the number of houses built on the land and the time the houses were built. It is alleged that while some of the plaintiff's witnesses told the court that five houses were built on the land, the plaintiff is said to have pleaded three houses. As to the time the houses were built, it is said that two conflicting evidence was led on this point. One is that the houses were built in 1958 while the other is that they were built in 1980.

It is submitted in respect of the Instrument of Transfer (Exhibit 5) that that document is no title document and did not convey title in the land on Oji Ogbu. Similarly, the claim that the Military Governor of Rivers State let Oji Ogbu who died in 1971 into possession in 1974 is said to be at variance with the pleadings and evidence led in support by the plaintiff.

On the allegation of bias levelled against the trial Judge in the appellant's issue 4, it is submitted that such a serious allegation was not made a ground of appeal both at the court below and in this court. It arose as a mere comment in the appellant's brief. It is therefore argued that serious allegation, as one of bias against a Judge ought to be made a ground of appeal and not merely subsumed under an unsubstantiated complaint that the judge formulated issue suo motu. As bias was not one of the issues formulated for determination in the appeal in the court below or in this court, and does not arise or relate to any ground of appeal filed in the court below or in this court, the comment made by the trial Judge on which the appellant based his complaint is therefore not an issue in this appeal and should be discountenanced.

The plaintiff's claim, as already set out above, is for special and general damages for trespass; an account of rents collected by the defendant from tenants in the plaintiff's house; and perpetual injunction restraining the defendant, his servants and/or agents from committing further acts of trespass. The action was instituted by the attorney to John I. Ogbu, the administrator to Oji Ogbu, the owner of the house in dispute. The power of attorney made on 9th September, 1982, was tendered at the trial and admitted as Exhibit 2. The plaintiff's case was that Oji Ogbu

owned the house in dispute. He acquired the land and a conveyance executed in his favour by the people from whom he bought the land was executed in his favour. The conveyance with the survey plan of the plot he bought was admitted at the trial as Exhibit 3. Oji Ogbu built on the land and put tenants in the houses he built on the plot. But the man had to B abandon the property when he left Port Harcourt as a result of the Nigerian Civil War. He however, returned to Port Harcourt after the civil war and he applied for the release of his abandoned house to the Abandoned Property Authority. The property was released to him. He died on 3rd C April. 1971. Upon the death of Oji Ogbu, two people - John I. Ogbu, the deceased's son, and Vincent N. Ogbu, a nephew of the deceased, were granted letters of administration to manage the estate of the said Oji Ogbu. The letters of administration were issued at Enugu on 20th June. 1972, (Exhibit 4). Vincent N. Ogbu later died, leaving only John I. Ogbu, the D present plaintiff, as the administrator of his late father's estate. Four landed properties, all in Port Harcourt, are listed in the letters of administration (Exhibit 4) as landed properties of the deceased. Oji Ogbu, which the administrators was to manage. The property in dispute at 185 Ikwerre E Road. Port Harcourt is listed as the fourth property in the letters of administration.

At the trial, four witnesses in all testified in support of the plaintiff's claim. Two of these witnesses, Clinton Nmereni (P.W.I) and Michael F Ogbogbo (P.W.2), were the vendors who sold the land in dispute to the late Oji Ogbu's vendors. The third witness, Chijioke Wokoma (P.W.3), is a close relation of the defendant. Clinton Nmereni (P.W.I) told the trial court, inter alia, as follows on page 18 of the record:

"I know Gilbert Ekwedike. I know John Erne for. They are both G deceased. I know Charles Onyeowo, Michael Ogbogbo. The property in dispute belongs to Oji Ogbu. I myself, Michael Ogbogbo, Charles Onyeowo sold the property to Gilbert Ekwedike and John Emefor in 1958. We jointly sold the land because some portion of each of our parcel form H a total of the land sold and which is in dispute. We executed a deed of conveyance in favour of the purchasers. I signed as one of the vendors. Charles and Michael signed as vendors and late Chief Nwosu signed as a

witness. This is the deed of conveyance admitted without objection as Exhibit 1.”

Michael Ogbogbo (P.W.2) was also one of the vendors. The witness told the court, inter alia, in the course of his evidence as recorded on page 20 of the record as follows:

“I know the plaintiff. I know the defendant. I know Clinton Nmereni, my co-vendor. I know the property in dispute; it is along Ikwerre Road by Oji Ogbu Street, No. 4 or 6 Oji Ogbu Street or Ikwerre Road by 185, Ikwerre Road. The property is owned by Chief Oji Ogbu, deceased. In 1958, I had a transaction with Ekwedike and Emefor to whom we sold land, that is, the land in dispute. Three of us sold the land to them; we, Charles, Clinton and Michael. There was an agreement for the sale. This is the sale agreement, Exhibit 1. I signed as one of the vendors. Three of us joined to sell the land because the land was together. Nobody challenged our right of sale. Later, the purchasers resold the land to Chief Oji Ogbu, deceased. Charles was the senior brother to the defendant. Charles joined us to sell to John and Gilbert. The senior sister to Charles is the mother of the defendant.”

The third plaintiff’s witness was Chijioke Nyeowa Wokoma (P.W.1). He is a relation of the defendant. He told the court, inter alia, in his evidence as recorded on pages 22 to 23 of the record as follows:

“I know the plaintiff. I know the property in dispute, it is at 185 Ikwerre Road. Mile 3. Diobu. The property belongs to the plaintiff. I know the defendant, he is the son of my father’s sister my father was Charles Nyeowa, he had died. My mother informed me that my father had died, he sold his own portion of the land to Oji Ogbu, defendant also told me so ... My father was the family head and I believe as the family head he had the right to sell the family land. The defendant is a woman’s son, and he cannot inherit through a woman in our custo-----I am the bona fide person to challenge any sale of land. Defendant is not now defending this action with my consent.”

The 4th plaintiff’s witness is Nnanna Oji Ogbu, the plaintiff. He instituted the action as the Attorney to the plaintiff. He told the court how Oji Ogbu acquired the land and built the houses on the land in dispute, how

the property was abandoned during the civil war. He also told the court how he came into the matter after the death of Oji Ogbu and how the defendant forcefully took over the property from him. He tendered his power of attorney, the receipts for rates paid in respect of the property.

On the other hand, two witnesses testified for the defence. They are the defendant himself who testified as D.W.1, and Anderson Kalabo, who testified as D.W.2. The defendant told the trial court that he knew the land in dispute. He gave the name of the land as Ekwuijiri and that it belonged to him. He said further that the land in dispute was part of the land which his father, Wopara, inherited from his own father. Wokoma. He said he inherited it from his own father, Wopara, as the only surviving issue. He said he built on the land in 1970 and after building thereon, he let it to tenants. He described the land as follows:

“There is no building on No. 185 Ikwerre Road. Port Harcourt. I have land near this 185 Ikwerre Road. No. 3 is still an empty land. I built my house on No. 4 and No. 6B formerly known as Oji Ogbu, now Ataba Street, Port Harcourt.”

The second defence witness, Anderson Kalabo, also told the court that he knew the land in dispute. He described the land as follows in the course of his evidence on page 41 of the record:

“I know the land in dispute. It is at 185 Ikwerre Road, Port Harcourt. I saw the land last week. The land is empty. Before you get to 183, there is 185; 185 is the property of the defendant.”

As already mentioned above, the plaintiff pleaded and tendered a number of documents. Among the documents tendered are the two conveyances (Exhibits 1 and 3). Exhibit 1 is the one executed in favour of those who sold the land to Oji Ogbu while Exhibit 3 is the one executed in favour of Oji Ogbu by the vendors who sold the plot to him. Exhibit 2 is the power of attorney issued by John Oji Ogbu in favour of Nnanna Oji Ogbu while Exhibit 4 was issued at the Probate Registry, Port Harcourt, when the power of attorney (Exhibit 2) issued in Aba, was presented for re-sealing in Rivers State. Also admitted in evidence as Exhibit 5 is the Instrument of Transfer of the house at 185 Ikwerre Road. Port Harcourt to Oji Ogbu. It was dated 5th November, 1974. and issued by the Rivers

State Abandoned Property Authority. Exhibits 6-6D are Port Harcourt City Local Government receipts issued to Oji Ogbu for various payments made as property rates in respect of the house at 185 Ikwerre Road, Port Harcourt.

B It may also be mentioned at this juncture that the defence did not
tender any document to support his case. But the learned trial judge held
that the plaintiff failed to prove his claim and he accordingly dismissed the
case. The reasons given by the learned trial Judge are that the plaintiff failed
C to prove the identity of the land he was claiming; that the description of the
land in the two conveyances - Exhibits 1 and 3. failed to show the position
of No. 185 Ikwerre Road. Port Harcourt; that the plaintiff ought to have
produced the approved building plan for the house he built on the plot; that
the plaintiff ought to have called an engineer from the City Council to
D confirm that the property rate receipts. Exhibits 6-6D. were issued in
respect of existing building; and that *“the whole release made in Exhibit
5 and the circumstances leading in the Gazette publication are surrounded
in uncertainly.”*

E The learned trial Judge then said as follows in the concluding
portion of his said judgment on pages 75 to 76 of the record:

*“On the whole the claim fails in its entirety. Plaintiff is just one of
those improper claimants, unnecessary persons in Nigerian Society who
F refuse to allow the ugly dream of the Nigerian Civil War to eat down and
away ?? He is one of those dangerous characters, peddlers of bitterness
among its citizens that ownership of his property in part of the country,
particular in Rivers State, has been denied him because of his state of
origin, whereas as matter of fact he really and actually has no such
G property.”*

The Court of Appeal (Coram: Pats-Acholonu, Akpiroroh, and
Ikongbeh. JJCA.). dismissed the appeal filed against the decision of the
trial court. The reasons given by the court below are as set out in the leading
H judgment of the court written by Ikongbeh. JCA., to which Pats-Acholonu
and Akpiroroh. JJCA., agreed, are similar to those given by the learned trial
Judge, which I have summarized above. The learned Justice said as
follows in the leading judgment on page 158 of the record:

“The learned trial judge, J. A. Fiberesima, J., came to the conclusion, after listening to the evidence of the witnesses called by the parties and the addresses by counsel, that the plaintiff had failed in his task of making the requisite showing. Consequently, he dismissed the claim before him in its entirety. Hence, this appeal by the plaintiff. B

All the arguments raised in the briefs of argument before us on behalf of the parties boil down to the same question that was before the trial court. Did the appellant satisfactorily show that his principal, Orji Ogbu, owned the premises in dispute, i.e., No. 185 Ikwerre Road, or that he was in lawful possession, either personally or by his agents, or that he or his agents were entitled to immediate possession thereof? C

After reading through the record of proceedings and the arguments in the briefs of arguments, I have no difficulty whatsoever in agreeing with the respondent’s counsel that the learned trial Judge was perfectly justified in dismissing the appellant’s claim in its entirety.” D

The reasons given by the learned Justice in arriving at his above conclusion are the same as those given by the learned trial Judge which I have summarized above. E

The main questions raised in this appeal, in my view, are what is the standard of proof required of the plaintiff in this case and whether he met this required standard of proof. The plaintiff’s case, as already set out above, was to reclaim his property released to him by the Abandoned F Property Authority from the defendant whom, he said, forcefully took over the property from him. In his bid to satisfy the court, he testified and called three other witnesses. He also tendered a number of documentary exhibits, namely: two deeds of conveyance, Instrument of Transfer of the G house to him from the Abandoned Properties Authority and a number of Local Authority receipts issued to him in respect of rates he paid in respect of the property. All the four witnesses who testified for the plaintiff claimed to know the land in dispute. Also, one of the plaintiff’s witnesses, Chijoke Nyeowa (P. W.3) is a relation of the defendant. Apart from also H claiming to know the disputed land, he also specifically told the trial court that the defendant was not entitled to inherit the property as he claimed because he was a grand son from the female line. The credibility of any

of the documents tendered was not challenged or attacked by the defence.

On the other hand, the case for the defence was presented by the defendant and one other witness Anderson Kolabo (D.W.2). Although the defendant told the court that he knew the land in dispute, he however, gave
 B it the name: “*Ekwuijiri*” and he claimed to be the owner. He failed to tender any document to support his title to the land and he also failed to call any member of his family to confirm that the property was in fact inherited by him from his late father who also inherited it from the defendant’s maternal grand father as claimed by the defendant.

C The defendant’s only witness, D.W.2. also confirmed that he knew the land that it is at 185 Ikwerre Road. But he contradicted the defendant’s evidence when he told the court that the defendant’s house is at No. 185 Ikwerre Road.

D **It is settled law that in civil cases, the onus of proof is not as fixed on a plaintiff as it is on the prosecution in criminal cases. Thus, in civil cases, where the general burden of proof in the sense of establishing his case lies on the plaintiff, such burden is not as static**
 E **as in criminal cases. Therefore, there will be instances in which on the state of the pleadings, the burden of proof will be on the defendant also as the case progresses. Such a situation will arise when it may become the duty of the defendant to call evidence in**
 F **proof or rebuttal of some particular points which may arise in the case.** See *Osawaru v. Exaruka* (1978) 6-7 S.C. (Reprint) 91; (1978) 6-7S.C. 135 at 145; *Adegoke v. Adibi* (1992) 5 NWLR (Pt. 242)410 at 423; and *Oyudev. Ogedegbe* (1984) 1 S.C. 360 at 363. **Thus, in the instant case, the plaintiff, having led evidence of how he came to owner of**
 G **land at 185 Ikwerre Road, tendered conveyances and other document in proof of the title to the land; told the court when he built the houses on the plot called as witnesses the people who sold the plot to him: led evidence as to how he abandoned the property as a result**
 H **of the civil war, told the court how the property was released to him after the civil war by the Abandoned Property Authority: and how the defendant forcefully seized it from him. It is not enough for the defendant who was alleged to have forcefully seized the property**

from the plaintiff to merely limit his source of title to inheritance without more, particularly when there was evidence from members of his family that his claim of inheritance was incorrect. The burden of proof definitely shifted on him to provide more credible evidence in support of his defence.

The law is also settled that where the parties, by the evidence adduced, both oral and documentary, are ad idem on the identity of the land in dispute, the fact that different names are given to the land or the area where the land is located is called different names is not fatal to the party claiming such land. See *Makanjuola v. Balogun* (1989) 5S.C. 82; (1989) 2 NSCC 294. In the instant case, all the witnesses that testified told the court that they know the land in dispute. The plaintiff also tendered a deed of conveyance (Exhibit 3) which contains the survey plan of the land and the houses he was claiming were shown on the survey plan. The identity of the land in dispute was therefore not in issue and the fact that the defendant gave the land another name cannot derogate, alter or change the identity of the land in dispute.

It is also settled law that where two competing parties claim to be in possession of land in dispute in a case, the law ascribes possession to the one with the better title: See *Mogaji v. Odofin* (1978) 4 S.C (Reprint) 53, 65; (1978) 4 S.C 91 at 96; and *Aromire v. Awoyemi* (1972) 2 S.C (Reprint) 1; (1972) 1 All NLR (Pt. 1) 101 at 112. Thus, in the instant case, the appellant, as plaintiff, clearly led credible evidence in support of his title to the plot and houses on No. 185 Ikwerre Road. The respondent, on the other hand, failed to lead credible evidence in support of his contention that the property was not that of the plaintiff but his own. It follows, therefore, that the appellant ought to have been granted his claim before the trial court.

There is no doubt that this appeal is against the concurrent findings of fact by the trial court and the Court of Appeal. The position of the law is that such findings of fact should not be disturbed by this court unless there are cogent and compelling reasons shown to justify disturbing those findings of fact. See *Okeke v. Afodike*

(1999) 12S.C (Pt. II) 101; (1999) 14 NWLR (Pt. 638) 215 at 222; Ibenye v. Agwu (1998) 9-10 S.C 18; (1998) 11 NWLR (Pt. 574) 372; Alakija v. Abdulai (1998) 5 S.C 1; (1998) 6 NWLR (Pt. 552) 1; and Chukwu v. Nneji (1990) 6 NWLR (Pt. 156) 363. **In the instant case, it is quite clear from all I have stated above, that the findings of fact made and the conclusions reached in the case by the learned trial Judge are very defective and perverse. Similarly, the court below failed to properly consider the evidence led at the trial before affirming the trial court's decision. In the result, I hold that there is merit in the appeal and I accordingly allow it.** The judgment of both the trial High Court and that of the Court of Appeal delivered in the case together with all the orders made therein, including those on costs, are set aside. In their place, I hereby order that the plaintiff's claim succeeds. I accordingly enter judgment for the plaintiff in the sum of N100,000 as general damages for the trespass committed by the defendant on his said house and I also make an order of perpetual injunction restraining the defendant either by himself, his servants and/or agents from committing any further acts of trespass in respect of the said plaintiff's premises at 185 Ikwerre Road, Diobu, Port Harcourt. I will, however, not make any order for an account of rents collected by the defendant from tenants in the premises as doing so may create unnecessary tension between the parties. The appellant is, however, entitled to his costs at the High Court, Court of Appeal and this court which I assess respectively as N3,000, N5,000 and N10,000. All the costs are against the respondent.

G **UWAIS CJN**

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

H Accordingly, I too hereby allow it and set aside the decisions of the courts below. The plaintiff's action succeeds. I adopt all the orders contained in the leading judgment.

BELGORE JSC

When there are concurrent findings of fact by the lower courts, this court will not disturb such findings. The exceptions to this rule are many, but suffice to say if such findings of fact are made on inadmissible evidence, or they cannot be related to any evidence before the court, or are on matters unpleaded or on the whole facts before the trial court and Court of Appeal are manifestly perverse, in such cases this court will intervene and do what the lower courts ought to have done. (Section 66, Supreme Court Act.) It is on this basis that the decision of trial court upheld by Court of Appeal is defective and perverse that this appeal succeeds. (See *Ibenye v. Agwu* (1998) 9-10 S.C. 18; (1998) 11 NWLR (Pt. 574) 372; *Alakiiia v. Abdullai* (1998) 5 S.C. 1; (1998) 6 NWLR (Pt. 552) 1; *Okeke v. Agbodike* (1999) 12 S.C. (Pt. II) 101; (1999) 1 ALLNLR (Pt. 638) 215, 222).

I therefore agree with the lead judgment by my learned brother, Akintan, JSC., that the appeal has merit and I also allow it with the same orders made as to costs.

EJIWUNMI JSC

The judgment just delivered by my learned brother, Akintan, JSC., was read in advance by me in its draft form. As the issues raised in the appeal have been cogently considered in the light of the facts found in the printed record. I adopt as my own reasons for allowing the appeal. I also abide with the order as to costs made in the said judgment.

MUSDAPHER JSC

The evidence led by the appellant as the plaintiff at the trial court is, in my view, overwhelming. Though it is generally not the function of an appellate court to review the concurrent findings of fact by two lower courts, yet, there may be special circumstances in which an appellate court may do so. In the instant case, as comprehensively and lucidly set out in

the judgment of my Lord, Akintan, JSC., there are cogent and compelling reasons justifying the disturbance of the findings of fact by the trial court. The findings and the conclusions are clearly defective and perverse. Similarly, the lower court on appeal failed in its duty to properly consider
B the evidence by erroneously not interfering with the findings made by the learned trial Judge. I adopt the reasonings in the lead judgment aforesaid as mine, and accordingly find the appeal meritorious. I allow the appeal and set aside the decisions of the courts below. I enter judgment in favour of
C the plaintiff (i) N100,000.00 damages for trespass committed by the respondent to the appellant's premises situate at No.185 Ikwerre Road, PortHarcourt. (ii) I order perpetual injunction against the respondent either by himself, his servants and/or agents from committing further acts of trespass in respect of the premises aforesaid.
D I abide by the order for costs proposed in the aforesaid leading judgment.

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