

SUPREME COURT OF NIGERIA

26TH MAY, 2006. SC. 344/2001

**I. L. KUTIGI, A. I. KATSINA-ALU, N. TOBI, I. C. PATS-
ACHOLONU, A. M. MUKHTAR, JJSC**

1. JUSTUS NWABUOKU
2. ROBERT C. NWABUOKU
3. NWANYASI OJUKWU
4. OKWUDILI ELUMIKE APPELLANTS
5. OBI OKOLIE OTTA
6. OKENNA IGWEILO

AND

1. FRANCIS ONWORDI
(SUBSTITUTED FOR
OBI NWADEI BY ORDER OF
COURT DATED 5/10/93)
2. JACOB OLISADEBE
3. ILOBA ABANOKWU
4. JEROME UYA RESPONDENTS
(SUBSTITUTED FOR MICHAEL
NNEMOR BY ORDER OF COURT
DATED 5/10/93)
(SUING FOR THEMSELVES AND
AS REPRESENTING THE PEOPLE
OF UMUODAFE QUARTERS, IBUSA

LAND LAW - Title - Claim for declaration of - Plaintiff may prove title -
By one or more of the five ways - Stated in Idundun v. Okumagba case
(H1)

APPEALS - Findings of fact by trial court - Not attacked on appeal -
Remain unchallenged and correct - As far as the case of the appellant
goes (H2)

EVIDENCE - Documents - Probative value of - Judge can expunge or disregard a document earlier admitted in evidence - In the course of evaluating the totality of evidence - To arrive at a proper decision (H3)

FACTS

The Plaintiffs/Respondents brought an action against the Defendants/Appellants for a declaration that they are entitled to a statutory Right of Occupancy over the land in dispute, N5,000.00 general damages for trespass and an injunction to restrain the Appellants, their servants and agents from committing further acts of trespass on the land. The land in dispute is a boundary area between the respective towns of the parties. Both parties lay claim to the land and each gave traditional evidence in support of their claim of the land, during the trial. In addition, the Appellants tendered the Survey Plan No. L.S.F 4111 (Exhibit D) which they claimed was tendered in Suit No A/14/79, an earlier suit pertaining to the land. The learned trial judge took time to examine the veracity or authenticity of the traditional evidence of both parties and gave judgment to the Respondents, rejecting the evidence of the Appellants as inconsistent and so unreliable.

The Appellants, dissatisfied, appealed to the Court of Appeal contending that the trial court had disregarded Exhibit D in its judgment and that this had occasioned a miscarriage of justice. They also contended that Respondents did not discharge the onus of proof in respect of the land as to entitle them to judgment. The Court of Appeal dismissed their appeal. Now, they brought this further appeal.

ISSUES FOR DETERMINATION

“(a) Whether the learned Justices of the Court of Appeal were right in not upholding the appellants appeal having regard to the facts and circumstances of the case.

(b) Whether the plaintiffs/respondents discharged the onus of proof which rested on them in respect of the land which they claimed.

(c) Whether the disregard of Exhibit “D” by the courts below did not occasion a miscarriage of justice to the appellants.”

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

Title - Claim for declaration of

1. In a claim for a declaration of title to land, the onus is on the plaintiff to prove title to a defined area to which the declaration can be attached. In *Idundun v. Okumagba* (1976) 9-10 S.C. (Reprint) 140; (1976) 9-10 SC 227, this court held that there are five ways in which title or ownership of land could be proved. They are (1) By traditional evidence. (2) By production of documents of title duly authenticated and executed. (3) By acts of ownership extending over a sufficient length of time, numerous and positive enough as to warrant the inference of true ownership. (4) By acts of possession and enjoyment. (5) Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute.

A plaintiff need not prove all the five ways to succeed in an action of title to land. He can succeed if he proves even one of the ways. In other words, the five ways enumerated in *Okumagba* are not cumulative but concurrent. (p. 1810 D)

APPEALS - Findings of fact by trial court

2. The crux of the matter is the boundary between the parties visa-vis the area in dispute. I should take that issue now. As I said earlier, both parties zeroed in on Achi tree but parted ways as to the real position of the tree. Dealing with the issue, the Court of Appeal eulogized the learned trial Judge at page 257 of the Record:

“Above all, learned trial Judge after his admirable appraisal of the entire evidence adduced before him made finding of facts and accepted Exhibit A, the survey plan No. KPE 2910 as the correct area of land in dispute amply supported by evidence. Having read the record, I agree that the parties knew the land and almost all the witnesses who testified for both the appellants and the respondents stated Achi tree was the ancient boundary between the parties.”

I am at one with the Court of Appeal on the eulogy. The learned

trial Judge, Akpiroroh, J., (as he then was), did a beautiful job. His evaluation of the evidence of the witnesses was fantastic.

The very curious and flabbergasting aspect of this appeal is that the appellants did not attack any of the above findings and conclusions of the two courts below. Accordingly, the findings and conclusions remain unchallenged and as far as the case of the appellants is concerned, they are correct. (pp. 1812 E / 1813 D)

C Documents - Probative value of

3. It is not the law that every document admitted by a court of law must be assigned probative value. A document could be admitted on the ground of relevancy but the court may not attach any weight on it, in the light of the circumstances of the case. In other words, admissibility which is based on relevancy is distinct from weight to be attached to the document.

A trial Judge has the competence to either completely reject admitted evidence or disregard such evidence admitted at the stage of writing judgment if he comes to the conclusion that the evidence, documentary or oral, was wrongly admitted. This is because at the stage of writing judgment, the trial Judge is fully exposed to the totality of the evidence before him and therefore in the best position to determine the probative strength of the evidence. Accordingly, where a document earlier admitted does not carry any probative value by virtue of the Evidence Act in the light of the live issues before the court, the Judge can expunge the document or disregard it in the course of evaluating the totality of the evidence before him to enable him arrive at a proper decision. That is what the learned trial Judge did and I cannot fault him. (pp. 1815 E / 1816 A)

NOTABLE POINTS OF INTEREST

H TOBI JSC

1. Plaintiff seeking title has the fixed burden of proving that title

It is elementary in our property law that he who seeks title to land must prove that title. This burden is firm and it stands unequivocally on the

face of the plaintiff, who must discharge it. This burden does not shift one second to the defendant. It is constant on the plaintiff as the sun which rises from the East and sets in the West everyday. It is only after the plaintiff has given evidence of title to the land that the defendant leads contrary evidence to expunge the plaintiff's evidence. (p. 1810 B) B

MUKHTAR JSC

2. Implication of not joining issues on identity of the land

It is instructive to note that in the above final Statement of Defence, the defendants did not deny the content of Paragraph (4) of the final Statement of Claim, in which case issues were not joined on the size, identity, etc., of the land in dispute, and so no evidence was necessary in proof thereof. The plaintiffs/respondents supported their averments with credible evidence and proved their claims as required by law. The position of the law is that in a case for declaration of title to land, a plaintiff must prove his claim with cogent, satisfactory and uncontradicted evidence, which includes the establishment of the identity of the land in dispute, where the identity is in issue. (p. 10819 C) C D E

REPRESENTATION

Chief H. O. Ogbodu, (with him, C. S. Ebitea), for the Appellants.
C.O. Ihensekhien, (with him, E. S. Osigbo), for the Respondents. F

CASES REFERRED TO

Koronye v. Mart (2000) 15 NWLR (Pt. 692) 840
Lokoyi v. Olojo (1983) 9 SCNLR 127
Salami v. Gbadeolu (1997) 4 NWLR (Pt. 499) 277 G
Enang v. Adu (1981) 11-19 S.C. (Reprint) 17; (1981) 11-12 S.C. 25
Odesanya v. Ewedemi (1962) 1 All NLR 320
Idundun v. Okumagba (1976) 9-10 S.C. (Reprint) 140; (1976) 9-10 SC 227 H
Omoregbe v. Idugiemwanya (1985) 2 NWLR (Pt. 5) 41
Mogaji v. Cadbury (Nigeria) Ltd. (1985) 2 NWLR (Pt. 7) 393
Ezeoke v. Nwagbo (1988) 1 NWLR (Pt. 72) 616

Fasaro v. Beyioku (1988) 2 NWLR (Pt. 76) 263

Okpuruwa v. Chief Okpokam (1988) 4 NWLR (Pt. 90) 554

STATUTE REFERRED TO

- B Evidence Act, Cap 112, Laws of the Federation of Nigeria 1990; ss. 97, 109 and 111

LEAD JUDGMENT BY TOBI JSC

- C This appeal involves two communities: Umuodafe of Ibusa and Okpanam. The people of Umuodafe of Ibusa are the plaintiffs/respondents. The people of Ogbeweale quarters of Okpanam are the defendants/ appellants. Ibusa and Okpanam are neighbouring towns. They are separated by a large expanse of farm land. Apart from the large expanse
D of farm land separating them, this litigation has also separated them. The large expanse of farm land is the bone of contention in this appeal. Both parties claim ownership of the land.

- The case of the plaintiffs/respondents is as follows: The foremost
E ancestor of the plaintiffs, Umuejei, founded Ibusa. He had three children: Oshe, Ezebuogu and Ezemeze. Before Umuejei died, he shared the land amongst his three sons. Ezebuogu inherited Akwu Ogonogo, Akwu Ogonogo Etiti, Akwu Okpokolo, Akwu Ogede, Akwu Mmanu, Akwu
F Imilikiti and Akwu Mkpili from his father. Like his father, Ezebuogu lived on the land, farmed on it, hunted on it and reaped the economic trees on it.

- Odafe, the son of Ezebuogu, inherited the parcels of land from his father and made use of them like the father. The plaintiffs, who are the
G descendants of Odafe, inherited the land and they have been farming, hunting, worshipping their juju on it, reaping the economic trees and letting portions of it to tenants. They traced the genealogy of Odafe. Plaintiffs said that the Achi tree is the boundary between the two com-
H munities. In October, 1979, the defendants crossed the boundary of the land and cleared part of the land of the plaintiff, the immediate cause of the action against the defendants.

The defendants/appellants understandably presented a different

case. They inherited the land in dispute from their ancestor, Dioha, the founder of Obodogwugwu. Dioha was the father of Okpalani who founded Okpanam many years ago. Okpalani had four sons: Ozoma, Achala, Anatogba and Dioha. Dioha who founded Obodogwugwu had seven children, namely: Chime, Ogboduma, Osedi, Obiajie, Male, Idigbe and Omake. B Before his death, Dioha told his children to farm on the land together.

On the southern part of the land are the people of Odauku and Odanta of Ibusa and after Odanta are the Ogboli Atakpo people of Ibusa, and that they have boundary with the people of Obodogwugwu of Okpanam C on Etukuche land and the people of Obodogba of Okpanam. There is a cement pillar on the boundary between Obodogba people of Okpanam and Ogbogwugwu people of Ibusa. The boundary between Ibusa and Okpanam is marked by Achi tree and Ububa Ngwulor tree but the Achi tree was burnt down. There are two hills on the boundary, Ani Obida D (juju shrine), Alunsi Ngere, Okwuta Oji and at Okwuta Oji, they have a common boundary with Odanta people of Ibusa. They have been farming on the land and they have yams, cassava and other crops.

The plaintiffs/respondents brought an action for declaration that E they are entitled to a Statutory Right of Occupancy over the land in dispute, N5,000.00 general damages for trespass and an injunction to restrain the defendants/appellants, their servants and agents from committing further acts of trespass on the land in dispute. F

The learned trial Judge gave judgment to the plaintiffs/respondents. Appeal to the Court of Appeal was dismissed. Dissatisfied, the appellants have come to the Supreme Court. Briefs were filed and duly exchanged. The appellants formulated the following issues for determination: G

“(a) Whether the learned Justices of the Court of Appeal were right in not upholding the appellants appeal having regard to the facts and circumstances of the case.

(b) Whether the plaintiffs/respondents discharged the onus of proof which rested on them in respect of the land which they claimed. H

(c) Whether the disregard of Exhibit “D” by the courts below did not occasion a miscarriage of justice to the appellants.”

The respondents agree with the issues raised by the appellants.

Learned counsel for the appellants, Chief H.O. Ogbodu, said that in challenging the facts as presented by the respondents, the appellants were consistent throughout their testimony. He referred to Paragraphs 5 and 6 of the Amended Statement of Defence and Plan No. LSF7892. He submitted that the appellants denied every averment in the last Statement of Claim, including Exhibit A, Plan No. KPE2910. He cited *Ezeudu v. Obiagwu* (1986) 2 NWLR (Pt. 21) 218.

Learned counsel submitted that the learned trial Judge was wrong in disregarding Exhibit D, which the Court of Appeal also disregarded. Narrating the purpose of tendering Exhibit D, counsel cited *Agbahomovo v. Eduyegbe* (1999) 2 S.C. 79; (1999) 3 NWLR (Pt. 594) 170 at 182.

Counsel submitted that a plaintiff who claims declaration of title to land must show the court with certainty the area of land in respect of which the claim is made. He contended that if Exhibit D was given due regard, it would have depicted the true picture painted by P.W.4 showing the South-East land of Odanta Umuodafe family as pleaded by the appellants. He cited *Epi v. Aigbedion* (1972) 10 S.C. (Reprint) 45; (1972) 10 S.C. 53.

Still on Exhibit D, learned counsel submitted that had the trial Judge given due consideration to the effect of the exhibit, he certainly would have dismissed the case of the respondents. Counsel lamented that the Court of Appeal fell into the same error.

Asking the court to do justice, counsel cited *Ajide v. Kelani* (1985) 3 NWLR (Pt. 12) 248. He urged the court to allow the appeal.

Learned counsel for the respondents, Chief C. O. Ihensekhien, argued Issues Nos. 1 and 2 together. He submitted that where a fact pleaded by a plaintiff is not denied, no issue emerges for proof as no issue is in dispute. He cited *Okonkwo v. Kpajie* (1992) 2 NWLR (Pt. 226) 633; *Lewis and Peat Ltd. v. Akhimien* (1976) 6 S.C. (Reprint) 159; (1976) 7 S.C. 157.

Counsel submitted specifically that as the respondents did not join any issue with the appellants on the partition of the property, there was no need for the respondents to prove partition. He cited *Eze v. State* (1985) 3 NWLR (Pt. 13) 429; *Niger Construction Limited v. Okugbeni*

(1987) 4 NWLR (Pt. 67) 787; Dikwa v. Modu (1993) 3 NWLR (Pt. 280) 170 and Olanguno v. Ogunsanya (1970) 1 All NLR 223 at 227.

On the issue of boundary, learned counsel submitted that in an action for declaration of title when the boundary is in dispute, the boundary that need be proved is that which is on the side in dispute. He cited B Omoregie v. Idugiemwanye (1985) 2 NWLR (Pt. 5) 41; and referred to the evidence of D.W.3 and D.W.4.

Learned counsel made reference to the findings of fact of the trial Judge which were accepted by the Court of Appeal, and urged this court not to tamper with the concurrent findings of the two courts. He cited C Akintoye v. Eyilola (1968) NMLR 92 at 95; Woluchem v. Gudi (1981) 5 S.C. (Reprint) 178; (1981) 5 S.C. 291 at 320 and Ume v. Okoronkwo (1996) 10 NWLR (Pt. 477) 133 at 134.

Taking Issue No. 3, learned counsel submitted that Exhibit D which D was relied upon by the appellants is a public document which ought to have been certified. As the document was not certified in accordance with the provisions of Section 111 of the Evidence Act, it is inadmissible. He cited Dobadina Family v. Ambrose Family (1969) NMLR 24; Okafor E v. Okpala (1995) 1 NWLR (Pt. 374) 758; Ipinlaye II v. Olukotun (1996) 6 NWLR (Pt. 455) 417 at 428 and Udeze v. Chidebe (1990) 1 S.C. 148; (1990) 1 NWLR (Pt. 135) 141. He urged the court to dismiss the appeal.

In this matter, both parties agree that the Achi tree is the boundary F between them. In the light of this common position in an important aspect of the case, there ought to be normally no dispute but there is a dispute. This is because each party has knowledge or idea where the Achi tree, the boundary indicator, is. Curiously, the Achi tree, created and situate in its habitat does not move; what moves are the human G ec-centric concepts and claims of where the Achi tree ought to be. In view of the fact that the courts were not there to watch and see the origin of the Achi tree, they have to rely on the evidence of the parties. And that is what the two courts below did. And this is what this court will do also. H

Although the appellants' brief formulated three issues for determination, the arguments in the brief essentially covered the third issue on the disregard of Exhibit D by the two courts below. Where are the argu-

ments on the first and second issues? Are they abandoned? The respondents' brief is quite different. They raised the same three issues and argued them. I shall therefore take all the three issues in this judgment.

B I will take Issues Nos. 1 and 2 together. That will cure the vagueness of Issue No. 1, standing alone. The burden of proof in land matters, though depends on the state of the pleadings, is mainly on the plaintiff, in the first place. It could thereafter move to the defendant, like a circus circle. It is elementary in our property law that he who seeks title to land must prove that title. This burden is firm and it stands unequivocally on C the face of the plaintiff, who must discharge it. This burden does not shift one second to the defendant. It is constant on the plaintiff as the sun which rises from the East and sets in the West everyday. It is only after the plaintiff has given evidence of title to the land that the defendant leads D contrary evidence to expunge the plaintiff's evidence.

In a claim for a declaration of title to land, the onus is on the plaintiff to prove title to a defined area to which the declaration can be attached. See *Odesanya v. Ewedemi* (1962) 1 All NLR 320. In E *Idundun v. Okumagba* (1976) 9-10 S.C. (Reprint) 140; (1976) 9-10 SC 227, this court held that there are five ways in which title or ownership of land could be proved. They are (1) By traditional evidence. (2) By production of documents of title duly authenticated and executed. (3) By acts of ownership extending over a sufficient F length of time, numerous and positive enough as to warrant the inference of true ownership. (4) By acts of possession and enjoyment. (5) Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected G or adjacent land would, in addition, be the owner of the land in dispute. See also *Omogbe v. Idugiemwanya* (1985) 2 NWLR (Pt. 5) 41; *Mogaji v. Cadbury (Nigeria) Ltd.* (1985) 2 NWLR (Pt. 7) 393; *Ezeoke v. Nwagbo* (1988) 1 NWLR (Pt. 72) 616; *Fasaro v. Beyioku* (1988) 2 H NWLR (Pt. 76) 263; *Okpuruwa v. Chief Okpokam* (1988) 4 NWLR (Pt. 90) 554.

A plaintiff need not prove all the five ways to succeed in an action of title to land. He can succeed if he proves even one of the

ways. In other words, the five ways enumerated in Okumagba are not cumulative but concurrent.

Both parties gave traditional evidence as to how their ancestors came to the land. While P.W.4 gave traditional evidence for the respondents, D.W.4 and the 4th defendant gave traditional evidence for the appellants. The learned trial Judge took time to examine the veracity or authenticity of the traditional evidence of both parties. On the evidence of the plaintiffs/respondents, the learned trial Judge said at page 175 of the Record:

“The traditional evidence of the plaintiffs as given by P.W.4 is consistent with Paragraphs 5-11 of the Amended Statement of Claim. I accept and believe the traditional evidence of the plaintiffs that their foremost ancestor, Umuejei who came from Izu in Anambra State founded Ibusa which was a virgin forest and that before his death, he shared his lands among his three children and Ezebuogu, one of them inherited the parcels of land now in dispute and Odafe, one of the children of Ezebuogu inherited them and they who are the descendants of Odafe inherited them from Odafe.”

On the evidence of the defendants/appellants, the learned trial Judge said at pages 174 and 175 of the Record, and I will quote what he said in extenso:

“D.W.5 testified that Dioha founded Obodogwugwu while the 4th defendant testified that all the villages founded by the 7 children of Dioha are called Obodogwugwu. In effect, the evidence of the 4th defendant showed that Obodogwugwu was founded by the children of Dioha. This evidence is in conflict with Paragraph 8 of the Amended Statement of Defence where it was pleaded that when Okpalani got old, (he) made a gift of his lands to his sons including Dioha and the area given to Dioha is now called Obodogwugwu lands with specific names to specific areas. It is trite law that parties are bound by their pleadings and any evidence which is at variance with the averment in the pleadings goes to no issue and should be disregarded by the court..... The evidence of D.W.5 and the 4th defendant that the descendants of Obiaji are called Umuobiaji is in violent conflict with Paragraph 9 of the Amended State-

ment of Defence in which it was pleaded that the children of Obiaji are called Umuomake. In their evidence, they also stated that the descendants of Omake are called Umuomake but it was not pleaded in Paragraph 9 of the Amended Statement of Defence that the children of Omake are called Umuomake..... These conflicts and missing linkages or gaps in the traditional evidence of the defendants which was predicated on Dioha and Obodogwugwu heritage and relied on heavily by them renders their traditional evidence contradictory, inconsistent and inconclusive; and can result in nothing less than the total collapse or breakdown of their traditional evidence as set out in their pleadings.”

What did the Court of Appeal say on the traditional evidence? Ba’aba, JCA, said at page 254 on the findings of the learned trial Judge:

“It is clear from close study of the pleadings and the evidence adduced that the respondents as plaintiffs founded their case on traditional evidence which is one of the five recognised methods of establishing or proving ownership of a piece or parcel of land in dispute, but still proceeded to prove acts of ownership of the land in dispute amongst other things.....”

The above are concurrent findings of the trial court and the Court of Appeal, findings I cannot dislodge because they are clearly borne out from the evidence before the court. **The crux of the matter is the boundary between the parties visa-vis the area in dispute. I should take that issue now. As I said earlier, both parties zeroed in on Achi tree but parted ways as to the real position of the tree. Dealing with the issue, the Court of Appeal eulogized the learned trial Judge at page 257 of the Record:**

“Above all, learned trial Judge after his admirable appraisal of the entire evidence adduced before him made finding of facts and accepted Exhibit A, the survey plan No. KPE 2910 as the correct area of land in dispute amply supported by evidence. Having read the record, I agree that the parties knew the land and almost all the witnesses who testified for both the appellants and the respondents stated Achi tree was the ancient boundary between the parties.”

I am at one with the Court of Appeal on the eulogy. The

learned trial Judge, Akpiroroh, J., (as he then was), did a beautiful job. His evaluation of the evidence of the witnesses was fantastic.

The learned trial Judge found in the evidence of D.W.5 and the 4th defendant, supporting the case of the respondent. He said at pages 175 and 176 of the Record:

“Under cross-examination, D.W.5 admitted that the plaintiffs have settlements on the land in dispute. This piece of evidence supports the evidence of the plaintiffs that they are in possession of the land..... The plaintiffs in this case, are therefore, entitled to rely on the evidence of D.W.5 which supports their case. Exhibit A also shows the various camps of P.W.1 and P.W.2 on the land. Still under cross-examination, the 4th defendant admitted that one Alphonsus Nwosu with whom he had a dispute over the land is a tenant of the plaintiffs. This piece of evidence also supports the plaintiffs’ claim that they are in possession of the land in dispute.”

The very curious and flabbergasting aspect of this appeal is that the appellants did not attack any of the above findings and conclusions of the two courts below. Accordingly, the findings and conclusions remain unchallenged and as far as the case of the appellants is concerned, they are correct. I say this because the short brief of the appellants concentrated on the disregard of Exhibit D by the learned trial Judge. Although counsel formulated issues covering the entire case, the brief dealt only with Exhibit D which was the basis of Issue No. 3.

And that takes me to the almighty Exhibit D. Paragraph 17 of the Amended Statement of Defence is relevant. It is in the following terms:

“The defendants would rely on the Survey Plan No. LSF 4111 tendered in Suit No. A/14/79 - Michael Egobudika Nnando & 2 Ors. v. Obi Okwulese & 6 Ors. to show that the plaintiffs are laying claim to almost identical area and using common features.”

Exhibit D is the Survey Plan No. LSF 4111, which the appellants claimed was tendered in Suit. No. A/14/79. The learned trial Judge did not agree with the averment in Paragraph 17 of the Amended Statement of Defence when he said at page 178 of the Record:

“Ex facie, there is nothing to show that Plan No. LSF 4111 was tendered in Suit No. A/14/79 because it was not marked.”

I entirely agree with the learned trial Judge. I have also looked at the exhibit, and I do not see any mark on it in respect of Suit No. A/14/79. It is part of our adjectival law to mark exhibits tendered and admitted in court by clearly stating the suit number and the identity of the exhibit, either by letters of the English alphabet starting from A or by numerical figures starting from 1. In the absence of such clear identification usually made in “red”, the learned trial Judge’s conclusion on the exhibit cannot be faulted.

The above apart, the learned trial Judge raised another fundamental aspect on the exhibit. He said at page 178 of the Record:

“More importantly, Exhibit D is a public document by virtue of Section 109 of the Evidence Act, Cap. 112 Laws of the Federation, 1990 and by virtue of Section 97(1)(e) and (f) and 97(2)(c) of the Evidence Act, only a certified true copy of it can be tendered in court. Section 111 of the Evidence Act describes what a certified copy of a public document should contain. Exhibit ‘D’ violently violates Section 111 of the Evidence Act in that it was (not) signed and certified. I therefore agree with the submission of learned counsel for the plaintiffs that Exhibit ‘D’ is inadmissible in evidence.”

The Court of Appeal dealt in some useful detail, the history behind Exhibit D at pages 258 and 259. After that useful detail, the Court of Appeal said at page 259:

“The question, one would like to ask here, is Plan No. LSF 4111 referring to Plan No. KPE 2910, the amended plan, filed by the respondents? It does not appear to be referring to Plan No. KPE 2910, because the appellants did not join issue with the respondents on that issue as submitted by the learned counsel for the respondents. Be that as it may, it is clear from both Paragraph 17 and the evidence of the 4th defendant, that emphasis is on the case in Suit No. A/14/79. Exhibit “D” appears to me to be a process of the court having been tendered in evidence during trial before a court. It is only relevant in my view because of the said suit, otherwise, it would be like any other plan. I agree with the learned trial

Judge, that going by the provision of Section 132 of the Evidence Act. Exhibit "D" is not admissible and I hold the view that the learned trial Judge was right in attaching no weight to Exhibit D and in discountenancing the said exhibit in his judgment."

The Court of Appeal raised a pertinent question on Exhibit D and arrived at a pertinent answer. The brief of the appellants did not deal with the issues raised by the Court of Appeal but only dealt with the issue of admissibility which I will now examine.

There is no argument that Exhibit D is a public document. Both parties agree. The only argument is that the learned trial Judge was wrong in disregarding the exhibit.

Admissibility, one of the cornerstones of our Law of Evidence, is based on relevancy. A fact in issue is admissible if it is relevant to the matter before the court. In that respect, it is correct to say that relevancy is a precursor to admissibility in our Law of Evidence. Flowing from the above, the negative statement that what is not relevant is not admissible is correct.

It is not the law that every document admitted by a court of law must be assigned probative value. A document could be admitted on the ground of relevancy but the court may not attach any weight on it, in the light of the circumstances of the case. In other words, admissibility which is based on relevancy is distinct from weight to be attached to the document.

Section 111 of the Evidence Act provides for the certification of public documents. This is done by a certificate written at the foot of a copy of the document that it is a true copy of such document or part thereof as the case may be. Such certificate must be dated and subscribed by a public officer in custody of the document with his name and his official title with a seal, if the officer is entitled in law to make use of a seal. By Section 112 of the Act, only such certified copy or copies would be produced in proof of the contents of the public document.

I have carefully examined Exhibit D and I do not see any certificate as provided in Section 111 of the Evidence Act. In this case, the admissibility of Exhibit D was objected to at the trial court but it was

wrongly admitted.

A trial Judge has the competence to either completely reject admitted evidence or disregard such evidence admitted at the stage of writing judgment if he comes to the conclusion that the evidence, documentary or oral, was wrongly admitted. This is because at the stage of writing judgment, the trial Judge is fully exposed to the totality of the evidence before him and therefore in the best position to determine the probative strength of the evidence. Accordingly, where a document earlier admitted does not carry any probative value by virtue of the Evidence Act in the light of the live issues before the court, the Judge can expunge the document or disregard it in the course of evaluating the totality of the evidence before him to enable him arrive at a proper decision. That is what the learned trial Judge did and I cannot fault him.

As I said earlier, the appellants' grouse is on the learned trial judge's disregard of Exhibit D. Where an appellant heavily and totally relies on a document as basis for faulting the judgment of the lower court and this court comes to the conclusion that the document has no probative value and therefore rightly disregarded by the lower court, the appeal crumbles and must be dismissed. Exhibit D which is the cynosure of this appeal, not being certified within the meaning of Section 111 of the Evidence Act, was rightly disregarded by both courts.

In sum, the appeal fails and it is dismissed. I award N10,000.00 costs in favour of the respondents.

G **KUTIGI JSC**

I have had the privilege of reading in advance the judgment just rendered by my learned brother, Niki Tobi, JSC.

I agree with his reasoning and conclusion. The appellant woefully failed to dislodge the concurrent findings of the lower court.

The appeal therefore, fails. It is dismissed with N10,000.00 cost against the appellant.

KATSINA-ALU JSC

I have read in advance in draft the judgment delivered by my learned brother Niki Tobi, JSC. I agree with it and, for the reasons given therein, I also dismiss the appeal with N10,000.00 costs in favour of the respondents.

PATS-ACHOLONU JSC

Also agreed with lead judgment. He however, passed away on the 14th of May 2006, before the Judgment was delivered on Friday, 26th of May, 2006.

His pronouncement was read by the Hon. Justice I. L. Kutigi, JSC.

MUKHTAR JSC

In the Amended Statement of Claim, the respondents who were plaintiffs in the then High Court of Bendel State claimed against the defendants jointly and severally the following reliefs:-

(a) Declaration that the plaintiffs are entitled to a Statutory Right of Occupancy over the plaintiffs' Akwu Ogede, Akwu Imilikiti and Akwu Mkpili portions of land shown in the plan No. LSF 782.

(b) N5,000.00 general damages for trespass.

(c) An order of Injunction restraining the defendants, their servants and agents from committing further acts of trespass on the plaintiffs' Akwu Ogede, Akwu Imilikiti and Akwu Mkpili portions of land.

The plaintiffs/respondents having pleaded their title vide traditional history (See *Idundun v. Okumagba* (1976) 9-10 S.C. (Reprint) 140; (1976) 9-10 S.C. 227), adduced traditional evidence in proof thereof. The learned trial Judge found the plaintiff's claim proved on preponderance of evidence, and granted the reliefs sought by the plaintiff. Aggrieved by the decision, the defendant appealed to the Court of Appeal. The Court of Appeal, as per Ba'aba JCA., affirmed the decision, and dismissed the

appeal holding inter alia thus:-

B “In this case, I can find nothing to justify my interference with the decision of the trial court which is amply supported by the evidence before that court. In the result, the appeal fails in its entirety and is hereby dismissed.

C Dissatisfied with the judgment of the court below, the defendants again appealed to this court on four grounds of appeal. Learned counsel exchanged briefs of argument which were adopted at the hearing of the appeal. In the appellants’ brief of argument, learned counsel formulated the following issues for determination:-

“(a) *Whether the learned Justices of the Court of Appeal were right in not upholding the appellants’ appeal having regard to the facts and circumstances of the case.*

D “(b) *Whether the plaintiffs/respondents discharged the onus of proof which rested on them in respect of the -land which they claimed.*

E “(c) *Whether the disregard of Exhibit “D” by the courts below did not occasion a miscarriage of justice to the appellants.”*

The issues raised in the respondents’ brief of argument are in pari materia with the above issues.

F In its final Amended Statement of Claim, the plaintiffs/appellants pleaded the identity of the land they are claiming thus:-

G “4. *The traditional boundary between the plaintiffs and Ogbewelee Quarter, Okpanam, is marked by a 4 portion of the Iyiabi Stream, earth mound, Achi-nabo tree, Achi tree, Okeabu tree, Ububa tree and Icheku tree and it falls along the boundary line verged yellow in the accompanying plan No. KPE 2910. The plaintiffs hereby specifically plead the boundaries, features and details in the said Plan No. KPE 2910.*

H 5. *The plaintiffs are, and were from time beyond human memory, the owners in possession of the land south of the yellow verge or the Plan No. KPE 2910 and portions of the said land include Akwu Ogonogo, Akwu Ogonogo Etiti, Akwu Okpolo, Akwu Ogede, Akwu Mkpili, Akwu Imilikiti and Akwu Mmanu.”*

The defendants/respondents denied Paragraph (4), supra, in Para-

graph (5) of their further Amended Statement of Defence as follows:-

“5. The defendants deny Paragraph 4 of the Amended Statement of Defence (sic) and puts the plaintiffs to the strictest proof thereof. The defendants state that the boundary between Okpanam and Ibusa is at Achi which is not where the plaintiffs have placed it. The defendants state that plan No. LSF 7892 is not correct and does not reflect the land in dispute and the defendants at the trial will rely on survey Plan No. MCW/79/87 prepared by licensed surveyor M. N. Chukwura at the trial. The defendants pleaded the features, boundaries and details in the said plan No. MWC/79/87.”

It is instructive to note that in the above final Statement of Defence, the defendants did not deny the content of Paragraph (4) of the final Statement of Claim, in which case issues were not joined on the size, identity, etc., of the land in dispute, and so no evidence was necessary in proof thereof. The plaintiffs/respondents supported their averments with credible evidence and proved their claims as required by law. The position of the law is that in a case for declaration of title to land, a plaintiff must prove his claim with cogent, satisfactory and uncontradicted evidence, which includes the establishment of the identity of the land in dispute, where the identity is in issue. See *Onibudo v. Akibu* (1982) 7 S.C. (Reprint) 29; (1989) 7 S.C. 60, *Aikhionbare v. Omoregie* (1976) 12 S.C. (Reprint) 6; (1976) 12 S.C. 11, and *Odesanya v. Ewedemi* (1962) All NLR 320. In the instant case, the plaintiffs/ respondents proved their case, and in this vein, the learned Justice of the court below did not err when he said inter alia in his lead judgment, the following:-

“It is clear from close study of the pleadings and the evidence adduced that the respondents as plaintiffs founded their case on traditional evidence which is one of the five recognized methods of establishing or proving ownership of a parcel of land in dispute, but still proceeded to prove acts of ownership of the land in dispute amongst other things and long possession. Evidence of traditional history, if cogent, satisfactorily established and accepted by the court is enough and capable of forming the basis for the grant of declaration of title to a statutory or customary right of occupancy to a piece or parcel of land in

dispute.”

This is an appeal against the concurrent findings of fact of the two lower courts, which the law enjoins us not to disturb or reverse, in view of the findings of fact which are supported by uncontroverted credible evidence and are neither perverse nor substantial error apparent. See *Koronye v. Mart* (2000) 15 NWLR (Pt. 692) 840; *Lokoyi v. Olojo* (1983) 9 SCNLR 127; *Salami v. Gbadeolu* (1997) 4 NWLR (Pt. 499) 277; and *Enang v. Adu* (1981) 11-19 S.C. (Reprint) 17; (1981) 11-12 S.C. 25.

In view of the above additional discussions, I am in full agreement with the lead judgment of my learned brother, Tobi, JSC, which I have had the advantage of reading in advance. I also dismiss the appeal, and abide by the consequential orders made in the lead judgment.

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