

SUPREME COURT OF NIGERIA

12TH MAY, 2006. SC. 356/2001

**CORAM:- S. U. ONU, A. O. EJIWUNMI, D. MUSDAPHER,
W. S. N. ONNOGHEN, I. OGBUAGU, JJSC**

ADETOUN OLUKOYA	APPELLANT
AND		
ISAMOTU A. ASHIRU	RESPONDENT

LAND LAW - Title - Proof of - There are several methods of proving title to land - These include documents of title and acts of possession - As relied on by the Respondent (H1)

EVIDENCE - Proof - Onus of - Claim for declaration of title - Though plaintiff must succeed on strength of own case - Plaintiff may support own case with any evidence by defence - Once such is admitted (H2)

APPEALS - Admissions - Findings of fact - Not appealed against - Stands admitted and undisputed (H3)

DOCUMENTS - Conveyance - Recitals - Authenticity of which was not challenged - Is conclusive proof of assertion therein (H4)

LAND LAW - Doctrine of priority - Competing claims of title - He who is first in time has the strongest right - After a party effectively divests himself of his right in a land - Any further exercise of that right by him is null and void (H5)

WORDS & PHRASES - Nemo dat quod non habet - Meaning of - Having once granted his entire interest in the land to another - A landlord is left with nothing that he may subsequently grant out (H6)

EVIDENCE - Appeals - Concurrent findings of fact - Supported by evidence on printed records - Cannot ordinarily be disturbed by Supreme

Court - Even if it would have concluded otherwise upon the evidence (H7)

LAND LAW - Registration of Instruments - Purpose of - It is not concerned with validity of instruments - It is intended to protect other intending buyers - By putting them on notice (H8)

FACTS

The Plaintiff/Respondent sued the Defendant/Appellant at the Ibadan High Court, claiming title to a piece of land, damages for trespass and injunction restraining Appellant and or his privies from committing further acts of trespass on the said land. The Respondent in her evidence, relied on documents of title tracing her root of title to three generations of owners before her, as well as acts of ownership on the land for 27 years, undisturbed. The Appellant counterclaimed for title to the said land, relying also on traditional history and documentary evidence tracing his root of title to two generations of owners before him. All the documents of title relied on by both parties were duly registered.

The learned trial judge, accepted the evidence of the Respondent and entered judgment in her favour, dismissing Appellant's counterclaim. Trial judge held that though Respondent failed to explicitly connect her documents of title to the Awojobi-Kure family, the original owners of the land, the Appellant's evidence provided that necessary connection for the Respondent. Dissatisfied, Appellant appealed to the Court of Appeal contending that Respondent did not prove her case, having failed to trace her root of title to the original owners of the land. The Court of Appeal dismissed his appeal, affirming the judgment of the trial court, whereby the Appellant brought this further appeal to the Supreme Court.

ISSUE FOR DETERMINATION

“Whether there was sufficient evidence by the plaintiff to establish a better title to the land in dispute.”

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

Several methods of proving title to land

1. There is a plethora of this court's judgment stating the recognized methods by which a party can prove title to land in dispute. Perhaps the most prominent of these authorities, *Idundun v. Okumagba* (1976) 9-10 S.C. (Reprint) 140; (1976) NMLR 200 at 210-221 is where this court held that ownership of land may be proved in any of the following ways:

- (i) By traditional evidence.
- (ii) By production of documents of title which are duly authenticated.
- (iii) By acts of selling, leasing, renting out all or part of the land, or farming on it or on a portion thereof.
- (iv) By 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.

In the case herein on appeal, the plaintiff relied for proof of her case on two of the methods of proving title. Firstly, she produced documents of title to the land duly registered over 27 years ago in 1957. Secondly, she led evidence of undisturbed acts of possession of the land over the said period. (p. 1986 C)

Proof - Onus of - Claim for declaration of title

2. In this appeal, the trial court had held (for reasons which are unclear) that the original owner of the land was Awojobi Kure family. There is no appeal against the finding by either party. In the circumstance, the onus is on both parties (since there is a counter-claim by the defendant) to link their respective title to the Awojobi Kure family.

The plaintiff on her own behalf put in documentary evidence, to wit: Exhibits A, C and D to prove her root of title. The land had been devised on the plaintiff from her late father vide Exhibit D; Exhibit A was the Deed of Conveyance by which the plaintiff's father had bought the land in 1957 from one Odubanjo, whereas Exhibit C is Deed of Conveyance by which Odubanjo purchased the land from Olajumoke and Adeniran. There is no issue concerning the authenticity of the respective deeds certified true copies of which were tendered in evidence. Although Exhibit C did not ex-facie state that Olajumoke and Adeniran predeces-

sors-in-title was the Awojobi Kure family, evidence establishing the link was in fact given by D.W.9 - the current head of the Awojobi Kure family.

Under cross-examination he said:

B *"I do not know Layiwola Adigun. I know Buraimoh Adigun. He is Afe (male) descendant of our family. Buraimoh Adigun is the only son of his mother. I do not know Raimi Ajao. My father sold part of Awojobi Kure family land in his life time."*

C This evidence supported the plaintiff's case and could be relied on by her. The law is that in a claim for declaration of title, the plaintiff must succeed on the strength of his own case and not on the weakness of the defendant's case. See Coker v. Ayoade (1966) NMLR 81. In other words, the plaintiff must succeed on the totality of the evidence properly
D adduced in court, which in effect means that if the evidence does not prove his case, he will not succeed merely because the defendant's case is even weaker. What is important, it is contended, is that the evidence has been properly admitted in evidence and once it is properly admitted,
E then either party could apply it in support of his case.
(pp.1986 G / 1988 A)

APPEALS - Admissions - Findings of fact

F 3. Be it noted that as it is not in dispute that the land in dispute is family land and as such, on D.W.9's own admission, the land originally vested inter alia in his father (Gbadamosi Adeoye) and Oyadina Apeke. Since by virtue of the recital in Exhibit C, the plaintiff's title was in fact traced to these two ancestors of the Awojobi - Kure family, the trial court was
G therefore correct when it held inter alia that:

"While the 9th D.W. was in Ghana, most of the land of Awojobi Kure family had been sold to strangers many of who had already built their own. Amongst members of the Awojobi Kure who were selling family land are Gbadamosi Adeoye (9th D.W.'s father), Yinusa Akanji (9th D.W.'s brother), Buraimoh Adigun (female descendant of the family) and Lasisi Amoo whose membership is not strictly defined in the evidence. Now, Yinusa Akanji who joined to sell the land in dispute to Wahabi

Latunji Layiwola, who in turn joined with his son Rasaki to sell the same land to the defendant, is the son of Gbadamosi Adeoye. In other words, Yinusa Akanji purported to be selling in 1972, a piece of land which his own father and other members of the family had sold to Odubanjo since 1959.”

B

The above extract was a specific finding of fact from the Notice of Appeal from the High Court to the court below where there was no appeal by the defendant against his finding.

See the case of Olukoga v. Fatunde (1996) 7 NWLR 516, for the view that a finding of fact by the trial court not appealed against stands admitted and undisputed. The finding remains binding on the parties and is valid. (p. 1989 C)

C

Conveyance - Recitals - Authenticity of

D

4. There is no challenge in the court below against the recital being sufficient proof of the facts stated therein.

Consequently, it provides conclusive proof of the fact that there was a sale of the land in dispute by these vendors to the plaintiff's predecessor-in-title. The defendant has complained that the nature of the sale in the recital was not stated (i.e. whether under English law or not, neither is the capacity in which the vendors sold). The recital (the authenticity of which was not challenged) is conclusive proof that the sale vested title in Olajumoke and Adeniran. It is irrelevant how it occurred, whether by Customary Law or English Law. (p. 1990 E)

F

Doctrine of priority - Competing claims of title

5. Whatever right or title the Awojobi Kure family had in the land in dispute had been sold to Olajumoke and Adeniran by their ancestors in 1957. In the circumstances, any subsequent sale of the same land by Yinusa Akanji and Lasisi Amoo in 1972 on behalf of the Awojobi Kure family is clearly null and void. There was no right or title which Yinusa Akanji and Lasisi Amoo could sell. The case of Egbuche v. Idigo (1934) NLR 140, a case in which the plaintiff's claim was for declaration of title to land which had previously been sold by their ancestors. The court

G

H

held:

“That the plaintiff’s ancestors having by an agreement in 1898, divested themselves of all the right and title competent to them had no longer any right or title to the land, and their claim for declaration of title should have been refused.”

As I have already pointed out, parties claimed to have acquired the land in dispute from a common grantor, the Jalingo Local Government.

Whereas as in the present case, the two or more competing documents of title upon which parties to a land in dispute rely for their claim of title to such land originated from a common grantor, the doctrine of priorities pursuant to the well recognized maxim, *qui prior est tempore, portior est jure*, meaning that he who is first has the strongest right, dictates that the first in time takes priority vide *Atanda v. Ajani* (1989) 6 S.C. (Pt. II) 87; (1989) 3 NWLR (Pt. 111) 511. (p. 1991 E)

Nemo dat quod non habet - Meaning of

6. It is clear from the above facts that even if Exhibits A and B were to relate to the land in dispute, the respondent’s title to the land must, in law, take priority over that of the appellant. Besides, it is settled law and in accordance with common sense that after a party has effectively divested himself of his interest in land or other res, no right naturally vests in him to deal with such land or res any further, for, *nemo dat quod non habet* meaning that no one can give that which he does not have. Accordingly, the Jalingo Local Government having lawfully granted the piece or parcel of land in dispute to the respondent in 1981 was left with nothing to grant to the appellant subsequently in 1983 or 1985 during the subsistence of the respondent’s grant. (p. 1992 E)

Concurrent findings of fact

7. Both the trial court and the court below reached this conclusion from the facts proved in the trial court and unchallenged in the court below, thus reaching concurrent findings of fact. We are accordingly urged not to interfere with these findings and in doing so we are guided by the long line of authorities of this court in which this court will not interfere with

concurrent findings of fact. The case of Igwego v. Ezeugo (1992) 6 NWLR (Pt. 248) 561 at 576, per Nnaemeka Agu, JSC, was cited as saying inter alia

“Thus, there were concurrent findings of fact by the two courts below in favour of the plaintiffs and against the defendant in all its vital areas of the case. The law is that where there are such concurrent findings, then unless those findings are found to be perverse, not supported by the evidence or reached as a result of wrong approach to the evidence, or as a result of a wrong principle of law, substantive or procedural, this court even if disposed to arrive at a different conclusion upon the printed evidence, cannot do so. I have not been persuaded that any of the above principles can apply in favour of the appellants.”

From the foregoing, the conclusions of fact reached by the two courts below were supported by evidence on the printed records. The lower courts were and are indeed entitled to draw inferences from the evidence of D.W.9 and Exhibit C and I am of the firm view that they correctly reached the findings of fact linking Exhibit C to the Awojobi Kure family. This conclusion cannot be said to be perverse and none of the principles stated therein can apply in favour of the defendant. (p. 1993 A)

LAND LAW - Registration of Instruments - Purpose of

8. Under this ground of appeal, the defendant does not and has not complained against the application of the principle of priority of interest being attached to the deed of conveyance which is registered first in time. A direct Supreme Court case in this regard is Ayinla v. Sijuwola (1984) NSCC 301 at 311 wherein this court held inter alia as follows:

“Then, there are the competing conveyances Exhibits A and C. Both were duly registered. Exhibit A which was executed on 26th September, 1959 was registered on 19th October, 1959 while Exhibit C executed on 9th April, 1969 was registered on 16th April, 1969. Clearly between these two registered conveyances, that of the respondent was first in time and took priority although the act of registration does not confer a better title. In fact, registration of instruments is not concerned with the valid-

ity or authenticity of such instruments. Once the deed is registrable, it will be accepted for registration even if its terms are inconsistent with a deed in relation to the same land registered earlier. Although I agree with Chief Sowemimo that registration is not notice to the whole world (see *B Omosanya v. Anifowoshe* (1959) 4 FSC 94 at 98), the earlier registration by the respondent would have given notice to the appellant, if only he made a diligent search, that the land had been previously dealt with. Section 16(1) of the Land Instruments Registration Law Cap. 64 of the Laws of Lagos State, to which both the learned trial Judge (indirectly) *C* and the Court of Appeal made reference provides as follows:

‘Subject to the provisions of this law, and in particular of subsection (2) of this section, every instrument registered under this law shall so far as it affects any land, take effect, as against other instruments affecting the same land, from the date of its registration as hereafter defined in the proper office as specified in Section 3, and every instrument registered before the commencement of this law shall be deemed to have taken effect from the date provided by the law in force at the time of its registration.’ *E*

See also the case of *Amankara v. Zankley* (1963) 1 All NLR 304 where this court considered the meaning of this section as well as Section 15 thereof. The court was of the view that the Act envisages that a person who receives a conveyance should register it and registration is intended to give protection to others to whom the original owner might wish to sell the land again. It came to the conclusion (as per Bairamian, JSC.), that if both competing deeds are registered, each takes effect as against the other from the date of registration. The benefit of earlier registration is preserved. Of course the case was not exactly on all fours with the present case as indeed there is no case of an earlier executed deed being registered later. In the instant appeal, the deed Exhibit A, was executed and registered about 27 years before Exhibit C was executed *G* and registered. Its priority over Exhibit C is beyond question.” *H*

For the foregoing reasons, I will answer the lone issue formulated at plaintiff’s instance in the affirmative and accordingly dismiss the appeal. (p. 1993 H)

NOTABLE POINT OF INTEREST

ONNOGHENJSC

1. Declaration of title - Plaintiff is to prove root of title of his grantor

It is the case of the appellant that since the respondent claimed a declaration of title, her root of title was put in issue and was therefore expected to do more than adducing evidence in the form of the conveyances but to prove the root of title of those who conveyed the land to her or her predecessors-in-title. For this submission, learned counsel cited and relied on *Ogunleye v. Oni* (1980) 2 NWLR (Pt. 135) 745 at 782-783; that P.W.1 stated at page 44 that she did not know that the land originally belonged to Awojobi Kure family.

I agree with the submission of learned counsel for the appellant that where the title of the grantor is in issue, production of documents of title without more is not sufficient proof of title to land since in such a situation, it is the duty of the claimant to go further to not only plead and trace the root of title of the grantor or vendor, but prove same on the balance of probability. Where the claimant fails to discharge this onus, his claim must fail. (p. 1998 B)

REPRESENTATION

E. Abiodun Esq., for the Appellant.

O. O. Delano Esq., for the Respondent.

CASES REFERRED TO

Ogunleye v. Oni (1980) 2 NWLR (Pt. 135) 745 at 782-783

Idundun v. Okumagba (1976) 9-10 S.C. (Reprint) 140; (1976) NMLR 200 at 210-221

Coker v. Ayoade (1966) NMLR 81

Olukoga v. Fatunde (1996) 7 NWLR 516

Egbuche v. Idigo (1934) NLR 140

Atanda v. Ajani (1989) 6 S.C. (Pt. II) 87; (1989) 3 NWLR (Pt. 111) 511

Adamo Akeya & Anor v. Chief Suenu of Ors. (1925) 6 NLR 87

Sanyaolu v. Coker (1983) 1 SCNLR 168; (1983) 3 S.C. 124 at 163-164

Ugo v. Obiekwe (1989) 2 S.C. (Pt. II) 41; (1989) 1 NWLR (Pt. 99) 566

Igwego v. Ezeugo (1992) 6 NWLR (Pt. 248) 561 at 576

Amankara v. Zankley (1963) 1 All NLR 304

Okafor v. Idigo (1984) 15 NSCC 360; (1984) 1 SCNLR 481

B Frempong v. Brempong (1952) 14 WACA 13

Akinola v. Oluwo (1962) 1 All NLR (Pt. 2) 224 at 235; (1962) 1 SCNLR 352

Odi v. Iyala (2004) 8 NWLR (Pt. 875) 283 at 315

C **STATUTE REFERRED TO**

Land Instrument Registration Law, Cap 64, Laws of Lagos State, ss. 15 and 16

D **LEAD JUDGMENT BY ONU JSC**

The appeal herein emanates from a land dispute. It is against the judgment of the Court of Appeal (hereinafter referred to as the court below) which affirmed the decision of the Ibadan High Court. The respondent herein was the plaintiff at the said High Court, while the appellant was the defendant. As between these two parties, a dispute arose when the defendant sought to commence building on the land and found the plaintiff's agent and lessee in possession. A fracas ensued with the result that both parties (who in the rest of this judgment I shall refer to as plaintiff and defendant simpliciter respectively) ended up at the Police Station. Following that incident, the plaintiff instituted this suit. In her Amended Statement of Claim, the plaintiff claimed for declaration of title to land as follows:

G 1. A declaration that the plaintiff is the person entitled to a grant of Statutory Right of Occupancy to the piece of land situate at Sumbare Layout, Ijebu Road, Oyo State of Nigeria and covered by instruments: (1) dated 13th day of February, 1978 registered as number 53 at Page 53 H in Volume 235 of the Lands Registry in the office at Ibadan. (2) dated the 17th day of September, 1969 and registered as number 33 in Volume 1153 of the Lands Registry in the office at Ibadan.

2. N5,000 being special and general damages for trespass com-

mitted on the said piece of land sometimes between July and August 1984 by the defendant, his servants and agents.

3. Injunction to restrain the defendant, his servants and/ or agents or anybody claiming through or in trust for him from further entry and/ or committing further acts of trespass on the said land.

In response, the defendant filed a Statement of Defence and counter-claimed, also laying claim to the land in dispute. In proof of her title to the land, the plaintiff led documentary evidence of conveyances duly registered conveying the land to her predecessor-in-title. In addition, she relied on acts of ownership on the land over a long period of time.

On the other hand, the defendant gave traditional historical evidence of his title to support his case. It is pertinent however, to point out that there is no dispute as to the identity of the land.

Decision of the High Court.

The judgment of the trial High Court is at pages 123 to 144 of the Record. After considering the evidence adduced by both parties in which the plaintiff called eight witnesses and the defendant called nine witnesses for the defence, the learned trial Judge, Ajileye, J, accepted the evidence of the plaintiff and gave her judgment. In doing so, he made certain significant findings of fact, to wit:

1. That the land was originally owned by the Awojobi Kure family.

2. That the Awojobi Kure Family had been selling their land to third parties when D.W.9 (now head of the Awojobi Kure Family) was away in Ghana. Among those selling on behalf of the family were Gbadamosi Adeoye (D.W.9's father), Yinusa Akanji (D.W.9's brother), Buraimoh Adigun (Family member) and Lasisi Amoo.

3. That the plaintiff had exercised sufficient acts of ownership on the land to prove title, while there was no evidence that the defendant had performed any acts of ownership on the land.

4. That the documents of title produced in evidence by the plaintiff were registered prior to the defendant's documents of title, and as such, the plaintiff had a priority in interest.

Concluding his judgment, the learned trial Judge held, inter alia, as follows:-

“From the evidence, oral and documentary evidence before me, S.A. Olukoya died on 26th July, 1968. Exhibit B was purported to have been signed by him on 22/8/68, nearly a month after his death; I hold that Exhibit B in the circumstances is fraudulently procured, not by the defendant, but by the so-called purchasers namely, Omotayo Adeoye and Lajide Adesola Adewunmi. Significantly, it is this fraudulent purchaser, that is, Lajide Adesola Adewunmi, who set in motion a fraudulent chain of sales that culminated in the purchase by the defendant, of the land in dispute. Lajide Adesola Adewunmi executed Exhibit P (a Deed of Conveyance) in favour of Rasaki Adisa, who in turn joined with his own father, Wahabi Latunji Layiwola to sell to the defendant. Exhibit P, having been based on Exhibit B - fraudulently procured, is itself a fraudulent conveyance and is hereby declared a nullity.

.....
In sum, I hold that the plaintiff's case is well founded. I hereby declare that she is entitled to a grant of Statutory Right of Occupancy of the land in dispute, whose Deeds of Conveyances had been registered, as claimed in her Writ of Summons. I grant her the sum of N1,000 as general damages. No claim for special damage by her is proved to my satisfaction and none is allowed.”

The learned trial Judge in addition, dismissed the defendant's counterclaim.

Aggrieved by the said decision, the defendant as appellant, appealed to the court below.

The ground of appeal lodged by the defendant to the court below was within a relatively narrow compass. Simply put, it reads: Whether on the evidence before the court, the plaintiff traced her title to the Awojobi Kure family who had been selling land and D.W.9 was not challenged.

In its considered judgment spanning pages 176 to 189 of the Record, the court below affirmed the judgment of the trial court. One of the issues raised by the defendant/appellant against the trial court's decision is that, there was no evidence given by the plaintiff which linked

Exhibit C (plaintiff/predecessor's Deed of Conveyance) to the Awojobi Kure family. The court below rejected this submission, rightly in my view, when it held that although the plaintiff did not put in evidence of the linkage, the evidence establishing such linkage was supplied by the defendant and upon it, the plaintiff could rightly rely. See *Akinola v. Oluwo* B (1962) 2 All NLR 224 at 227. Thus, having linked Exhibit C to the Awojobi Kure family, the court below rightly affirmed the trial court's decision that the conveyance of the plaintiff, registered before that of the defendant, took priority over the defendant's conveyance. Thus, the court below held that the plaintiff had proved sufficient acts of ownership over the land to establish title. C

The lone issue for determination submitted as arising by the plaintiff is:

"Whether there was sufficient evidence by the plaintiff to establish a better title to the land in dispute." D

The two issues formulated for the determination of this court by the defendant are:

1. Whether or not the Court of Appeal is right to hold that the respondent succeeded in proving her case, and that she was entitled to the reliefs claimed. E

2. Whether or not priority of title in relation to the conveyances of both parties applies to this case. F

After a dispassionate consideration of the cases argued by the parties, the court below dismissed the defendant's appeal when it held, inter alia, as follows:-

"As I stated above, this appeal raises only one main issue which is that of proof and any resolution of the 1st issue effectually disposed of the 2nd one." G

In conclusion, I hold that from the totality of the evidence before the teamed trial Judge and particularly having regard to the fact that: H

(i) *The respondent's documents of title Exhibits "A", "C" and "D" were registered before those of the appellant's - Exhibits "P", "K" and "Q" which, in law, accords priority of title to the respondent.*

(ii) *The failure of the appellant to proffer an answer to the grave allegation of fraudulent procurement of Exhibit “P”; and*

(iii) *the evidence from the defence which linked Exhibit “C” to the Awojobi - Kure family, he was right in granting the respondent’s claim and dismissing the appellant’s counter-claim. For the foregoing reasons. I have no cause to interfere with the judgment of the learned trial Judge on the 30/3/87 which is accordingly affirmed. The appeal lacks merit and is accordingly dismissed.”*

As my consideration of the plaintiff’s lone issue will suffice to dispose of this appeal, I will proceed to consider it hereunder as follows:

There is a plethora of this court’s judgment stating the recognized methods by which a party can prove title to land in dispute. Perhaps the most prominent of these authorities, Idundun v. Okumagba (1976) 9-10 S.C. (Reprint) 140; (1976) NMLR 200 at 210-221 is where this court held that ownership of land may be proved in any of the following ways:

- (i) By traditional evidence.
- (ii) By production of documents of title which are duly authenticated.
- (iii) By acts of selling, leasing, renting out all or part of the land, or farming on it or on a portion thereof.
- (iv) By 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.

In the case herein on appeal, the plaintiff relied for proof of her case on two of the methods of proving title. Firstly, she produced documents of title to the land duly registered over 27 years ago in 1957. Secondly, she led evidence of undisturbed acts of possession of the land over the said period. In this appeal, the trial court had held (for reasons which are unclear) that the original owner of the land was Awojobi Kure family. There is no appeal against the finding by either party. In the circumstance, the onus is on both parties (since there is a counter-claim by the defendant) to

link their respective title to the Awojobi Kure family.

The plaintiff on her own behalf put in documentary evidence, to wit: Exhibits A, C and D to prove her root of title. The land had been devised on the plaintiff from her late father vide Exhibit D; Exhibit A was the Deed of Conveyance by which the plaintiff's father had bought the land in 1957 from one Odubanjo, whereas Exhibit C is Deed of Conveyance by which Odubanjo purchased the land from Olajumoke and Adeniran. There is no issue concerning the authenticity of the respective deeds certified true copies of which were tendered in evidence. Although Exhibit C did notex-facie state that Olajumoke and Adeniran predecessors-in-title was the Awojobi Kure family, evidence establishing the link was in fact given by D.W.9 - the current head of the Awojobi Kure family. The courts reached this finding by relying on the recital in Exhibit C which stated the names of the vendors who sold the land in dispute to Olajumoke and Adeniran. The vendors were:

"Gbadamosi Adeoye, Oyadina Apeke, Layiwola Adigun, Buraimoh Adigun and Raimi Ajao."

D.W.9 completed the link of Exhibit C to the Awojobi Kure family by giving evidence identifying these persons. He further testified to the effect that while he was away to Ghana, some of his family members (ancestors) had been selling parts of the land and that he only returned from Ghana in 1973. This, he emphasized, was after the sale of the land in dispute to Olajumoke and Adeniran in 1957. He admitted that his father had sold part of Awojobi Kure family land in his life time. In his evidence-in-chief and under cross-examination, D.W.9, he added, identified Gbadamosi Adeoye as his father and also that he was one of the vendors that sold the land in dispute to the plaintiff's predecessor. Two other vendors identified by D.W.9 as his ancestors, were also held to be members of the Awojobi Kure family namely, Oyadina Apeke and Buraimoh Adigun, adding that:

"Awojobi Kure had male issues. Among them are Oyaseke Oyasomi, Oyaseke begat Oyadina Apeke, Gbadamosi Adeoye. Gbadamosi Adeoye begat me. I became head of family since 1973."

Under cross-examination he said:

“I do not know Layiwola Adigun. I know Buraimoh Adigun. He is Afe (male) descendant of our family. Buraimoh Adigun is the only son of his mother. I do not know Raimi Ajao. My father sold part of Awojobi Kure family land in his life time.”

This evidence supported the plaintiff’s case and could be relied on by her. The law is that in a claim for declaration of title, the plaintiff must succeed on the strength of his own case and not on the weakness of the defendant’s case. See *Coker v. Ayoade* (1966) NMLR 81. In other words, the plaintiff must succeed on the totality of the evidence properly adduced in court, which in effect means that if the evidence does not prove his case, he will not succeed merely because the defendant’s case is even weaker. What is important, it is contended, is that the evidence has been properly admitted in evidence and once it is properly admitted, then either party could apply it in support of his case. Reliance was placed on the following two cases to exemplify this point, viz:

1. *Piaro v. Tenalo* (1976) 12 S.C. (Reprint) 19; (1976) 10 NSCC 70 where Obaseki, Ag. JSC, said:

“It is settled law that a plaintiff in a claim for declaration of title must succeed on the strength of his case and not on the weakness of the defence (i.e. his opponent’s case). See Kodilinye v. Mbanefo Odu (1935) 2 WACA 226, *Nwanko Udegbe & Ors. v. Anachuna Nwokafor & 2 Ors.* (1963) 1 All NLR 418. A plaintiff is however entitled to take advantage of any evidence adduced by the defence which tends to establish his title and support his case vide *Josiah Akinola v. Fatoyinbo Oluwo* (1962) 1 All NLR 224 at 225.....”

2. *Odi v. Iyala* (2004) 8 NWLR (Pt. 875) 283 where Iguh, JSC., said at page 315:

“In the present appeal, the plaintiffs/appellants’ case before the trial court failed intoto. In a claim for declaration of title, such as in the case in the present action, the onus is on the plaintiffs to satisfy the court on the evidence produced by them that they are entitled to the declaration sought. To this end, they must rely on the strength of their case and not on

the weakness of the defendants' case and if this onus is not discharged, the weakness of the defendants' case will not help them and the proper judgment will be for the defendants. This general rule is subject to the important qualification that if the defendant's case supports that of the plaintiff and contains evidence on which the plaintiff may rely on, the plaintiff is fully entitled to make use of such evidence - see too Okafor v. Idigo 15 NSCC 360/SCNLR 481; Frempong v. Brempong (1952) 14 WACA 13; Akinola v. Oluwo (1962) 1 All NLR (Pt. 2) 224 at 225; (1962) 1 SCNLR 352."

Consequently, it was contended, the court below was right to rely on the evidence of D.W.9 to establish the link between the Awojobi Kure family and the vendors stated in Exhibit C as predecessors-in-title to the plaintiff. **Be it noted that as it is not in dispute that the land in dispute is family land and as such, on D.W.9's own admission, the land originally vested inter alia in his father (Gbadamosi Adeoye) and Oyadina Apeke. Since by virtue of the recital in Exhibit C, the plaintiff's title was in fact traced to these two ancestors of the Awojobi - Kure family, the trial court was therefore correct when it held inter alia that:**

"While the 9th D.W. was in Ghana, most of the land of Awojobi Kure family had been sold to strangers many of who had already built their own. Amongst members of the Awojobi Kure who were selling family land are Gbadamosi Adeoye (9th D.W.'s father), Yinusa Akanji (9th D.W.'s brother), Buraimoh Adigun (female descendant of the family) and Lasisi Amoo whose membership is not strictly defined in the evidence. Now, Yinusa Akanji who joined to sell the land in dispute to Wahabi Latunji Layiwola, who in turn joined with his son Rasaki to sell the same land to the defendant, is the son of Gbadamosi Adeoye. In other words, Yinusa Akanji purported to be selling in 1972, a piece of land which his own father and other members of the family had sold to Odubanjo since 1959."

The above extract was a specific finding of fact from the Notice of Appeal from the High Court to the court below where there was no appeal by the defendant against his finding.

See the case of *Olukoga v. Fatunde* (1996) 7 NWLR 516, for the view that a finding of fact by the trial court not appealed against stands admitted and undisputed. The finding remains binding on the parties and is valid. Hence, this was the established fact before the Court of Appeal when it heard the appeal following which the court also linked Exhibit C to the Awojobi Kure family. See page 184 of the Record where the court below held thus:

“With respect to the effect of the respondent’s failure to link her title document Exhibit C to the family, it is my view that although there was no evidence from the respondent in that respect, there is some evidence from the defence which tends to establish that link. The vendors in the agreement for the sale in the recital of Exhibit C are Gbadamosi Adeoye, Oyadina Apeke, Layiwola Adigun, Buraimoh Adigun and Raimi Ajao. There is no indication in Exhibit C that they were members of the Awojobi Kure family. The D.W.9 Alhaji Saibu Gbadamosi who was the head of the family testified to the effect that Gbadamosi Adeoye begat him and that Oyadina Apeke and Buraimoh Adigun were also members of the said family. This evidence shows that the vendors in the sale agreement referred to in Exhibit C were members of the Awojobi Kure family.”

From the respondent’s submission at paragraph 5.5 page 5 of his Brief, it is clear that his main complaint is against the weight which the court below attached to the evidence of D.W.9 and recital. **There is no challenge in the court below against the recital being sufficient proof of the facts stated therein.**

Consequently, it provides conclusive proof of the fact that there was a sale of the land in dispute by these vendors to the plaintiff’s predecessor -in-title. The defendant has complained that the nature of the sale in the recital was not stated (i.e. whether under English law or not, neither is the capacity in which the vendors sold). While I agree that these issues are irrelevant, what is rendered pertinent is that both D.W.9 (the current head of the family) and Yinusa Akanji (son of Gbadamosi Adeoye) could only have succeeded to the land in dispute by inheritance from their forefathers, to wit: Oyadina Apeke, Gbadamosi Adeoye and Buraimoh Adigun. It is these same fore-

fathers, as earlier demonstrated, who Joined together in conveying the land to Olajumoke and Adeniran (the plaintiff's predecessors-in-title) in 1957. **The recital (the authenticity of which was not challenged) is conclusive proof that the sale vested title in Olajumoke and Adeniran. It is irrelevant how it occurred, whether by Customary Law or English Law.** B

In addition and as can be seen, the court below rightly drew inference from the fact that the plaintiff had been exercising maximum acts of ownership over the land for over 27 years without any disturbance from the Awojobi Kure family. The court below said: C

"The learned trial Judge accepted these acts of ownership and found that he did not see any evidence of acts of ownership and possession demonstrated by the appellant. These acts of ownership by the respondent without any disturbance from the Awojobi Kure family is another indication that the vendors in the sales agreement referred to in exhibit C were members of the said family." D

I therefore agree with the plaintiff that on the evidence before the court, that she (plaintiff) successfully established that Gbadamosi Adeoye, Oyadina Apeke, Buraimoh Adigun who are ancestors of D.W.9 (the current head of the family) had sold the land in dispute to her predecessor in title in 1957. **Whatever right or title the Awojobi Kure family had in the land in dispute had been sold to Olajumoke and Adeniran by their ancestors in 1957. In the circumstances, any subsequent sale of the same land by Yinusa Akanji and Lasisi Amoo in 1972 on behalf of the Awojobi Kure family is clearly null and void. There was no right or title which Yinusa Akanji and Lasisi Amoo could sell. The case of Egbuche v. Idigo (1934) NLR 140, a case in which the plaintiff's claim was for declaration of title to land which had previously been sold by their ancestors. The court held:** F G

"That the plaintiff's ancestors having by an agreement in 1898, divested themselves of all the right and title competent to them had no longer any right or title to the land, and their claim for declaration of title should have been refused." H

As I have already pointed out, parties claimed to have ac-

quired the land in dispute from a common grantor, the Jalingo Local Government.

Whereas as in the present case, the two or more competing documents of title upon which parties to a land in dispute rely for their claim of title to such land originated from a common grantor, the doctrine of priorities pursuant to the well recognized maxim, *qui prior est tempore, portior est jure*, meaning that he who is first has the strongest right, dictates that the first in time takes priority vide *Atanda v. Ajani* (1989) 6 S.C. (Pt. II) 87; (1989) 3 NWLR (Pt. 111) 511.

In the more recent case of *Auta v. Ibe* (2003) 7 S.C. 129; (2003) Vol. 13 (Pt. 837) NWLR 247, /gun, JSC., restated this basic principle of law thus:

“In this regard, the respondent’s Customary Right of Occupancy in respect of the land in dispute, Exhibit F, was issued by the Jalingo Local Government on the 31st October, 1981. Between the years 1981 and 1984, he commenced and completed the erection of a house thereon. On the other hand, the appellant’s Customary Right of Occupancy, Exhibits A and B, were issued by the same Jalingo Local Government on the 5th January, 1983 and 20th February, 1985 respectively.”

It is clear from the above facts that even if Exhibits A and B were to relate to the land in dispute, the respondent’s title to the land must, in law, take priority over that of the appellant. Besides, it is settled law and in accordance with common sense that after a party has effectively divested himself of his interest in land or other res, no right naturally vests in him to deal with such land or res any further, for, *nemo dat quod non habet* meaning that no one can give that which he does not have. See *Okafor Egbuche v. Idigo* (1934) NLR 140, *Adamo Akeya & Anor v. Chief Suenu of Ors.* (1925) 6 NLR 87; *Sanyaolu v. Coker* (1983) 1 SCNLR 168; (1983) 3 S.C. 124 at 163-164; *Ugo v. Obiekwe* (1989) 2 S.C. (Pt. II) 41; (1989) 1 NWLR (Pt. 99) 566 etc. Accordingly, the Jalingo Local Government having lawfully granted the piece or parcel of land in dispute to the respondent in 1981 was left with nothing to grant to the appellant subsequently in

1983 or 1985 during the subsistence of the respondent's grant.

Concurrent Findings of fact

Both the trial court and the court below reached this conclusion from the facts proved in the trial court and unchallenged in the court below, thus reaching concurrent findings of fact. We are accordingly urged not to interfere with these findings and in doing so we are guided by the long line of authorities of this court in which this court will not interfere with concurrent findings of fact. The case of Igwego v. Ezeugo (1992) 6 NWLR (Pt. 248) 561 at 576, per Nnaemeka Agu, JSC, was cited as saying inter alia

“Thus, there were concurrent findings of fact by the two courts below in favour of the plaintiffs and against the defendant in all its vital areas of the case. The law is that where there are such concurrent findings, then unless those findings are found to be perverse, not supported by the evidence or reached as a result of wrong approach to the evidence, or as a result of a wrong principle of law, substantive or procedural, this court even if disposed to arrive at a different conclusion upon the printed evidence, cannot do so. See The Stool of Abinabina v. Envimadu (1953) 12 WACA 171, Enang v. Adu (1981) 11-12 S.C. (Reprint) 17; (1981) 11-12 S.C. 25 p. 42..... I have not been persuaded that any of the above principles can apply in favour of the appellants.”

From the foregoing, the conclusions of fact reached by the two courts below were supported by evidence on the printed records. The lower courts were and are indeed entitled to draw inferences from the evidence of D.W.9 and Exhibit C and I am of the firm view that they correctly reached the findings of fact linking Exhibit C to the Awojobi Kure family. This conclusion cannot be said to be perverse and none of the principles stated therein can apply in favour of the defendant.

Defendant/Respondent's Issue 2 - Ground 6

Under this ground of appeal, the defendant does not and has not complained against the application of the principle of priority of interest being attached to the deed of conveyance which is regis-

tered first in time. A direct Supreme Court case in this regard is *Ayinla v. Sijuwola* (1984) NSCC 301 at 311 wherein this court held *inter alia* as follows:

“Then, there are the competing conveyances Exhibits A and C. Both were duly registered. Exhibit A which was executed on 26th September, 1959 was registered on 19th October, 1959 while Exhibit C executed on 9th April, 1969 was registered on 16th April, 1969. Clearly between these two registered conveyances, that of the respondent was first in time and took priority although the act of registration does not confer a better title. In fact, registration of instruments is not concerned with the validity or authenticity of such instruments. Once the deed is registrable, it will be accepted for registration even if its terms are inconsistent with a deed in relation to the same land registered earlier. Although I agree with Chief Sowemimo that registration is not notice to the whole world (see *Omosanya v. Anifowoshe* (1959) 4 FSC 94 at 98), the earlier registration by the respondent would have given notice to the appellant, if only he made a diligent search, that the land had been previously dealt with. Section 16(1) of the Land Instruments Registration Law Cap. 64 of the Laws of Lagos State, to which both the learned trial Judge (indirectly) and the Court of Appeal made reference provides as follows:

“Subject to the provisions of this law, and in particular of subsection (2) of this section, every instrument registered under this law shall so far as it affects any land, take effect, as against other instruments affecting the same land, from the date of its registration as hereafter defined in the proper office as specified in Section 3, and every instrument registered before the commencement of this law shall be deemed to have taken effect from the date provided by the law in force at the time of its registration.”

See also the case of *Amankara v. Zankley* (1963) 1 All NLR H 304 where this court considered the meaning of this section as well as Section 15 thereof. The court was of the view that the Act envisages that a person who receives a conveyance should register it and registration is intended to give protection to others to whom the

original owner might wish to sell the land again. It came to the conclusion (as per Bairamian, JSC.), that if both competing deeds are registered, each takes effect as against the other from the date of registration. The benefit of earlier registration is preserved. Of course the case was not exactly on all fours with the present case as B indeed there is no case of an earlier executed deed being registered later. In the instant appeal, the deed Exhibit A, was executed and registered about 27 years before Exhibit C was executed and registered. Its priority over Exhibit C is beyond question.” C

For the foregoing reasons, I will answer the lone issue formulated at plaintiff’s instance in the affirmative and accordingly dismiss the appeal. Costs of this appeal are assessed in the sum of N10,000.00 in favour of plaintiff. D

EJIWUNMI JSC

I have had the privilege of reading the draft of the judgment just delivered by my learned brother, Onu, JSC. In that judgment, as my learned brother has carefully reviewed the facts and the issues that fall for consideration before dismissing the appeal, I do not need to go over them for the purpose of my judgment. I would therefore adopt the said judgment as my own. The appeal is accordingly dismissed by me with F costs in the sum of N10,000.00 in favour of the plaintiff/ respondent.

MUSDAPHER JSC

I have had the honour to read in advance the judgment of my Lord, Onu, JSC., just delivered with which I entirely agree. For the same reasons so eloquently and comprehensively set out in the aforesaid judgment, I too, dismiss the appeal. I affirm the decision of the two courts below. I abide by the order for costs proposed in the aforesaid judgment. H G

ONNOGHEN JSC

The dispute in this case involves ownership of a piece or parcel of land situate and lying at Sumbare Layout, Ijebu Road, Ibadan which both parties claim as theirs. Consequently, the respondent instituted an action at the Oyo State High Court holden at Ibadan claiming the following reliefs-

“1. A declaration that the plaintiff is the person entitled to a grant of Statutory Right of Occupancy to the piece of land situate at Sumbare Layout, Ijebu Road, Oyo State of Nigeria and covered by instruments (1) Dated 13th day of February, 1978 registered as number 53 at Page 53 in Volume 235 of the Lands Registry in the office at Ibadan, (2) Dated the 17th day of September, 1969 and registered as number 33 in Volume 1153 of the Lands Registry in the office at Ibadan.

2. N5,000 being special and general damages for trespass committed on the said piece of land sometimes between July and August 1984 by the defendant, his servants, and/or agents.

3. Injunction to restrain the defendant, his servants and/ or agents or anybody claiming through or in trust for him from further entry and/or committing further acts of trespass on the said land.”

The appellant counter-claimed over the said land. The identity of the land in dispute is not disputed by the parties. What is in issue being ownership or which of the two claimants thereto has a better title.

At the conclusion of hearing, the learned trial Judge found that the land was originally owned by the Awojobi Kure family which appellant pleaded, granted the portion in question to him. The trial court also found that, the Awojobi Kure family had been selling their land to people when the current head of that family, D.W.9, was away in Ghana; that among those who sold on behalf of the said family were Gbadamosi Adeoye who happened to have been D.W.9’s father; Yinusa Akanji who is D.W.9’s brother; Buraimoh Adigun, a family member and Lasisi Amoo.

The learned trial Judge also found that the respondent had exercised sufficient acts of ownership over the land to prove title and that there was no evidence that appellant had performed any acts of owner-

ship on the said land. Finally, the trial Judge found that the documents of title produced in evidence by the plaintiff/respondent herein were registered prior to the appellant's documents of title thereby conferring priority on the respondent.

The appellant was dissatisfied with that judgment and consequently B appealed to the Court of Appeal which confirmed the judgment of the trial court. Upon further appeal to this court, the issues for determination as formulated by learned counsel for the appellant, E. Abiodun, Esq., in the appellant's brief filed on 1/3/02 are as follows:-

"4.1 Whether or not the Court of Appeal is right to hold that the C respondent succeeded in proving her case and that she was entitled to the reliefs claimed?"

4.2. Whether or not priority of title in relation to the conveyances D of both parties applies to this case?"

It is not disputed that the case of the respondent is based on documentary evidence of conveyances duly registered which conveyed the said land to her predecessors-in-title, in addition to acts of ownership on the said land spanning over a long period of time, without let or hinder- E ance.

On the other hand, the case of the appellant is based on traditional history of ownership in which he traced his title to the original owners of the land, the Awojobi Kure family, in addition to registered conveyances. F There is no dispute that the respondent never pleaded her root of title as being traceable to the Awojobi Kure family, neither did she call evidence to that effect.

However, Exhibit C which constitutes one of the bed rocks of her claim is a conveyance which listed the vendors, most of whom were at the trial traced to the Awojobi Kure Family, the said original owners of the land G

It is now settled law that the recognized methods of proving title to land are: H

- (a) By traditional evidence.
- (b) By production of documents of title which are duly authenticated.

(c) by acts of selling/leasing, renting out all or part of the land or farming on it or on a portion thereof generally known as exercising acts of ownership and possession, and;

(d) By 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 - See *Idundun v. Okumagba* (1976) 9-10 S.C. (Reprint) 140; (1976) NMLR 200 at 210-311; Section 46 of the Evidence Act, 1990.

It is the case of the appellant that since the respondent claimed a declaration of title, her root of title was put in issue and was therefore expected to do more than adducing evidence in the form of the conveyances but to prove the root of title of those who conveyed the land to her or her predecessors-in-title. For this submission, learned counsel cited and relied on *Ogunleye v. Oni* (1980) 2 NWLR (Pt. 135) 745 at 782-783; that P.W.1 stated at page 44 that she did not know that the land originally belonged to Awojobi Kure family.

I agree with the submission of learned counsel for the appellant that where the title of the grantor is in issue, production of documents of title without more is not sufficient proof of title to land since in such a situation, it is the duty of the claimant to go further to not only plead and trace the root of title of the grantor or vendor, but prove same on the balance of probability. Where the claimant fails to discharge this onus, his claim must fail.

The question is whether in the instant case, the respondent has satisfied the requirements of the law. It must be noted that the respondent never pleaded the origin of her title as being traceable to the Awojobi Kure family neither did she call evidence to that effect. However, the respondent pleaded and tendered Exhibit C as constituting her root of title which exhibit contains the names of Gbadamosi Adeoye, Oyadina Apeke, Layiwola Adigun, Buraimoh Adigun and Raimi Ajao as the vendors of the land in dispute to her predecessors-in-title by the name of Olajumoke and Adeniran. In the course of trial, D.W.9 who is the current head of Awojobi Kure family, testified to the effect that the predecessor-in-title to Olajumoke and Adeniran was the Awojobi Kure family. D.W.9 positively identified

Gbadamosi Adeoye to be his father and from the said Exhibit C, Gbadamosi Adeoye is one of the vendors who sold the land in dispute to the respondent's predecessors-in-title. D.W.9 also identified Oyadina Apeke and Buraimoh Adigun to be his ancestors, being members of the Awojobi Kure family. It is important to note that the two joined the father of D.W.9 among others, to sell the land in dispute to the predecessors-in-title of the respondent. B

It must also be noted, that the lower court found as a fact that Exhibit C was sufficiently linked to Awojobi Kure family. C

Though it is settled law that in an action for declaration of title to land, the plaintiff must succeed on the strength of his case and not on the weakness of the defence as decided in very many cases including *Kodilinye v. Odu* (1935) 2 WACA 226, *Udegbe v. Nwokafor* (1963) 1 All NLR 418, the principle has been held to be subject to an important qualification to the effect that, where the defendant's case supports that of the plaintiff and contains evidence on which the plaintiff may rely, the plaintiff is entitled to rely on and make use of such evidence. See *Okafor v. Idigo* (1984) 15 NSCC 360; (1984) 1 SCNLR 481; *Frempong v. Brempong* E (1952) 14 WACA 13; *Akinola v. Oluwo* (1962) 1 All NLR (Pt. 2) 224 at 235; (1962) 1 SCNLR 352; *Odi v. Iyala* (2004) 8 NWLR (Pt. 875) 283 at 315. D

The law being as stated supra, I hold the view that the Court of Appeal was right in relying on the evidence adduced by D.W.9 to establish the link between the Awojobi Kure family and the vendors stated in Exhibit C as predecessors - in- title to the respondent. F

In the instant case on appeal, both the trial court and the lower court found as a fact that the land in dispute originally belonged to Awojobi Kure family and that Exhibit C which conferred title on the predecessors-in-title to the respondent was executed by members of the Awojobi Kure family, including the father of D.W.9, the current head of that family. These constitute what in law we call concurrent findings of fact. The law is settled that where there are concurrent findings, then, unless the findings are found by this court to be perverse or reached as a result of wrong approach to the evidence, or as a result of a wrong principle of G

law or procedure, the court, even if disposed to come to a different conclusion on the record, cannot do so - see *Abinabina v. Enyimadu* (1953) 12 WACA 171, *Enang v. Adu* (1981) 11-12 S.C. (Reprint) 17; (1981) 11-12 S.C. 25 at 42. In the instant case, it is not the appellant's
B case that the concurrent findings are perverse or reached as a result of wrong approach to the evidence on record or wrong application of the principles of substantive or procedural law. To cut a long matter short, I am not persuaded at all that the principles of law constituting circumstances in which this court can interfere with concurrent findings of
C facts are applicable to the facts of this case. I therefore hold accordingly.

On Issue No. 2, it is not disputed that the conveyance of the respondent was first to be registered many years before that of the appellant.

D That being the case, it is settled law that the first in time or to be registered, takes precedence over the second. I therefore hold that the lower court is right in confirming the decision of the trial court that respondent's conveyance enjoys priority over that of the appellant and
E therefore confers title. Since it is the law that *nemo dat quod non habet*, the parties having traced their title to a common grantor, who had earlier in time sold his interest on the land to the predecessors-in-title of the respondent thereby leaving him with nothing to sell to the appellant.

F The case of the respondent is further strengthened by the concurrent findings that the respondent has all along been possession of the land in dispute exercising maximum acts of ownership thereon without let or hinderance from anybody, particularly the Awojobi Kure family, the original owners thereof, until the acts of trespass by the appellant giving rise to
G the action now on appeal.

In conclusion, I agree with the reasoning and conclusion of my learned brother, Onu, JSC., that the appeal lacks merit and should be dismissed. I order accordingly and abide by the consequential orders
H contained in the said lead judgment, including the order as to costs.

Appeal dismissed.

OGBUAGU JSC

I have had the privilege of reading before now, the lead judgment of my learned brother, Onu, JSC., Just delivered by him. I respectfully agree with his reasoning and conclusion that the appeal is devoid of any merit and stands dismissed. However, by way of emphasis, I will make my own contribution.

This appeal arises from a land dispute. It is against the judgment of the Court of Appeal, Ibadan Division, affirming the decision of the Ibadan High Court. The appellant had formulated two (2) issues for determination, namely:

“4.1. Whether or not the Court of Appeal is right to hold that the respondent succeeded in proving her case and that she was entitled to the reliefs claimed. 4.2. Whether or not priority of title in relation to the v conveyances of both parties applies to this case.

On his part, the respondent has formulated one(1) issue for determination, namely:

“Whether there was sufficient evidence by the plaintiff to establish a better title to the land in dispute.

As can be seen, Issue 4.1 of the appellant, is in substance, the same with the lone issue of the respondent. It is not in dispute that the original owners of the land in dispute, is the Awojobi Kure family. Incidentally, the appellant, traced his root of title to the same Awojobi Kure’s family. The respondent proved her case firstly by producing the documents of her title –i.e. Exhibits, “A”, “C” and “D” and secondly, her giving satisfactory evidence of her being in exclusive possession of the land in dispute for over twenty-seven (27) years. She called her tenants as witnesses and gave uncontroverted evidence of her being in peaceable possession of the land in dispute without any molestation or interference from anybody including the appellant.

Now to the specifics. The material and relevant documentary evidence in this case leading to this appeal, is Exhibit C. In its recital, the names of the vendors who sold the land in dispute to Olajumoke and

Adeniran in 1957, included Gbadamosi Adeoye who happened to be the father of the D.W.9 - the undisputed head of the family since 1973. The D.W.'s 9 late father- Gbadamosi Adeoye, was one of the sons of Awojobi Kure. The other vendors of Olajumoke and Adeniran, were Oyadina Apeke B and Buraimoh Adigun who are also the sons of Awojobi Kure. The evidence of the D.W.9, appears at pages 110 to 113 of the records. In other words, the appellant, helped the respondent in establishing her root of title by calling the D.W.9- who at the time of his testimony, was the head C of the family of Awojobi Kure - who are the original owners of the land in dispute.

As I stated hereinabove, the appellant traced his root of title also through Awojobi Kure's family. This was when he swore that Yinusa Akanji and Lasisi Amoo, are his vendors. The respondent traced her title D through Odubanjo, who had sold the land in dispute to her father, who devised the land in dispute to the respondent in his Will. The evidence of the D.W.9, supported the respondent's case having regard to the said Recital in Exhibit C. His evidence so to say, is the exception to the general E principle or settled law that a plaintiff to succeed in a claim for a declaration of title, should rely on the strength of his own case and not on the weakness of the defendant's case. See *Kodilinye v. Mbanefo Odu* (1935) 2 WACA 336 at 337; *Ekun & 3 Ors. v. Baruwa & 11 Ors.* (1966) 2 ANLR F 211; *Cobblah v. Gbeke* 12 WACA 294; *Adeyeri v. Okobi* (1997) 6 NWLR (Pt. 510) 534; (1997) 6 SCNJ 67 and recently *Adeniran v. Alao & Anor.* (2001) 12 S.C (Pt. If) 59; (2001) 12 SCNJ 337 at 355 and many other.

This broad general principle of law, does not naturally apply, where the defendant's case itself, lends support to that of the plaintiff and contains evidence on which the plaintiff, is entitled to rely. See *Josiah Akinola & Anor. v. Fatoyinbo & Ors.* (1962) 1 ANLR (Pt. 2) 224 at 225 (also cited and relied on by Delano, Esq, of counsel to the respondent in their brief), *Odunaran & Ors. v. Chief Asarah & Ors.* (1972) 5 S.C (Reprint) G H 173; (1972) 1 All NLR (Pt. 2) 137 and recently, *Adesanya v. Alhaji Aderonmu & 2 Ors.* (2000) 6 S.C. (Pt. II) 18; (2000) 6 SCNJ 242. See also the cases of *Piaro v. Tenalo & Ors.* (1976) 12 S.C. (Reprint) 19; (1976) 10 NSCC 700 - per Obaseki, JSC, and *Odi v. Iyala* (2004) 8

NWLR (Pt. 875) 283 at 715 - per Iguh, JSC., also cited and relied on by Mr. Delano in the respondent's Brief. (Piaro v. Tenalo is also reported in (1976) 12 S.C. (Reprint) 19; (1976) 12 S.C. 31 at 40, 41).

This brings me to the settled law as regards the radical title to land being traced to the same source or the same land owner. Although the onus of proof lies on a plaintiff to prove his/her title and he succeeds on the strength of his own case, but where the land in dispute, has been accepted by both parties as originally belonging to a particular person, land owner or that it is a family land and either party claims title to the said land through that original land owner or family, then, the plaintiff, has to discharge the onus of proof of title in him and the onus shifts to the defendant who has claimed title. See *Awomuti v. Alhaji Salami & Ors.* (1978) 3 S.C. (Reprint) 73; (1978) 3 S.C. 105.

Also settled, is that where two persons claim to be in possession of land, the law ascribes possession, to the one with a better title. See *Amakor v. Obiefuna* (1974) 3 S.C. (Reprint) 49; (1974) 1 ANLR 119. *Yeye v. Olubade* (1974) 10 S.C. (Reprint) 145; (1974) 1 ANLR (Pt. 2) 118 at 123; *William Ajani & Anor v. Ladepo & 2 Ors.* (1986) 3 NWLR (Pt. 28) 276 at 283; *Ekpan & Anor v. Chief Eve & Anor.* (1986) 3 NWLR 63 at 79-80 - per Obaseki, JSC., *Jones v. Chapman* (1848) 2 Exch 803; *Canvey Island Commissioner v. Preedy* (1922) 1 Ch. 179 cited in *Mogaji & Ors. v. Odofin* (1978) 4 S.C. (Reprint) 53 at 65; (1978) 4 S.C. 91 at 96 and recently, *Provost Lagos State College of Education & Ors. v. Dr. Kolawole Edun & Ors.* (2004) 2 S.C. (Pt. II) 17; (2004) 2 SCNJ, 156 at 166-167 citing the cases of *Renner v. Daboh & Anor* 2 WACA 258 and *Umoabi v. Otukoya* (1978) 4 S.C. (Reprint) 23; (1978) 4 S.C. 33. As a matter of fact and law, even where the possession is doubtful or equivocal, the law attaches possession to title. See *Odunsi v. Kuforiji & Anor.* 19 NLR 7 and *Ibanga & Ors. v. Usanga* (1982) 5 S.C. (Reprint) 49; (1982) 5 S.C. 103 at 120.

Now, the learned trial Judge after meticulously reviewing and assessing the evidence before him, found as a fact and held that Yinusa Akanji - one of the vendors, who purported to sell the land in dispute in 1972 to the appellant, "sold a piece of land where his own father and

other members of his family, had sold to Odubanjo since 1957.”

Thereafter, said he at page 141 of the Records, inter alia, as follows;

B “.....The defendant (meaning the appellant) had thus been swindled. Had the defendant made proper inquiries of in the Registry of Lands, he would have discovered the earlier registration by previous purchasers of the land in dispute.”

C The court below - per Onalaja, JCA., at page 183 of the Records stated inter alia as follows:

D “The position is that in view of the counter-claim, both parties have equal burden of proof to succeed. The plaintiff, (meaning the respondent) in my view adduced sufficient evidence in proof of the facts pleaded in the Statement of Claim.....”

At page 184, His Lordship, stated inter alia, as follows:

E “In addition, there was abundant evidence of the respondent’s use of the land in dispute. There was the evidence of Baba Akangbe who was put on the land as a caretaker until he vacated same in 1977. Mufu, Joseph and Adelaja were mechanics put on the land by the respondent. Respondent’s mother also had a shop on the land since 1977. According to the plaintiff (meaning the respondent) and her witnesses, their use of the land was not disturbed until the 3/8/84 when the acts which gave rise to this suit commenced. The learned trial Judge accepted these acts of ownership and found that he did not see any evidence of acts of ownership and possession demonstrated by the appellant. These acts of ownership by the respondent without any disturbance from the Awojobi Kure family is another indication that the vendors in the sales agreement referred to in Exhibit C were members of the said family”.

G It seems apposite for me, to reproduce the pronouncement of Bairamian, JSC., in the case of Onyechaonwu & Ors. v. Ekwubiri (1966) H 1 ANLR 32, 34-35 in order to buttress the above findings of the court below. Said his Lordship:

“There is a saying that possession is nine-tenths of the law and a great grandmother means three generations. There is also Section 145

(which is now Section 146) Evidence Act which provides that, when the question as to whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. The rule is that the person in possession can maintain trespass (sic) against any one who cannot show a better title." B

I note that on 6th March, 2006, when this appeal came up for hearing, the learned counsel for the appellant - Abiodun, E. Esq., in his oral submission, added that the appeal is mainly on the question of proof which relates to the pleadings and question of facts. That the case revolves on proof of root of title. He cited and relied on their case No. 12 on their list of Authorities - i.e. Olohunde v. Adeyoju (2000) 6 S.C. (Pt. Ill) 118; (2000) 10 NWLR (Pt. 676) 562 at 596. C

I have hereinabove, reproduced the findings and holding of the court below as regards the possessory title established in evidence by the respondent. I agree with Mr. Delano's submission at page 6 of their Brief, that from the submissions at page 5, paragraph 5.5 is against the weight which the court below, attached to the evidence of the D.W.9 and the Recital in Exhibit C. That there is no challenge by the appellant in the court below, against the recital being sufficient proof of the facts contained therein and that consequently, Exhibit C provides conclusive proof of the fact, that there was a sale of the land in dispute by those vendors to the plaintiff/respondent's predecessor-in-title. D E F

The court below at page 186 of the Records, described the evidence in favour of the respondent, as overwhelming. I agree. The consequence is that I have no hesitation in rendering my answer to Issue 4.1 of the appellant and the lone issue of the respondent, in the affirmative. G In respect of Issue 4.2 of the appellant, the learned trial Judge rightly in my view at page 137 of the Records, stated inter alia, as follows:

"Contrary to the two foregoing purchases of the land, Samuel Lajumoke and Sule Adeniran, acting on a sale agreement between them and others, on the one hand, and D. Ado Odubanjo on the other hand, sold the land to Odubanjo on 22nd June, 1957, Exhibit C. Odubanjo in turn sold it to S.A. Olukoye (plaintiff's father) on the 13th day of Febru- H

ary, 1958. See Exhibit A. The two sales, which evidenced (sic) by Deeds of Conveyance were registered. It is mystifying why the enquiries made by the defendant did not disclose these earlier registrations. Under the circumstances, I do not believe that a careful search of the property was made at the Land's Registry. That is the maxim, "caveat emptor". The evidence before me is that the defendant (meaning the respondent) bought the land in dispute on the 24th of May, 1979.....".

On the effect of previous registration of a Deed of Conveyance on a subsequent purchase of such land, the learned trial Judge, reproduced at page 142 of the Records, the pronouncement of Ademola, CJF., in the case of Ogunbambi v. Abowaba 13 WACA 222/225 thus:

"The respondent testified that he went to the the Land Registry to make a search and was told there was no previous conveyance covering the area. This is a strange story; for to say nothing of the earlier conveyances, the appellant's conveyance had been handed in for registration only 2 months before the conveyance to Atunrase. It is not possible for the court to believe that respondent bought without notice of the appellant's prior equity, he is neither untruthful (sic) or he deliberately shut his eyes or was guilty of gross negligence in finding out the facts and this is enough to fix him with notice".

The learned trial Judge stated after the above pronouncement that had the defendant conducted discreet inquiries, he would have had notice of the earlier registration of the land in dispute. He held that the respondent's case is/was well founded. The court below in its conclusion at pages 186 and 187 of the Records, stated inter alia, as follows:

"In conclusion, I hold that from the totality of the evidence before the learned trial Judge and particularly having regard to the fact that:

(1) The respondent's documents of title, Exhibits "A", "C" and "D" were registered before those of the appellant's Exhibits "P". "K" and "Q" which in law, accords priority of title to the respondent.....

He was justified in granting the respondent's claim and dismissing the appellant's counter-claim....."

The law in respect of the registration of titles, is now firmly settled that if both competing deeds are registered, each takes effect as against

the other, from the date of registration. This is because the benefit of an earlier registration is preserved. See the case of Rebecca Amankara v. Zankley (1963) 1 ANLR 304. In other words, where there exists two competing conveyances which have been duly registered, each takes effect as against the other, from the date of registration, so that the one executed earlier, loses its priority, if it was not registered later in point of time. See the case of Tewogbade v. Mrs. Obadina (1994) 4 SCNJ (Pt. 1) 61 at 176 - per Iguh, JSC.

Let me explain or expatiate further. Firstly, where for instance, two contesting parties, trace their title in respect of the same grantor (it is not so in the instant case leading to this appeal), the applicable principle of law, has always been that the latter In time of the parties to obtain the grant, cannot maintain an action against the party who first obtained a valid grant of the land from such common grantor. This is because, the grantor having successfully divested himself of his title in respect of the piece of land by the first grant, would have nothing left to convey to a subsequent purchaser under the elementary principle of *nemo dat quod non habet* as no one may convey what no longer belongs to him. See Boulous v. Odunsi (1958) WRNLR 169; Coker v. Animashaun (1960) LLR 71; Adams Akeyo & Anor. v. Chief Suenu & Ors. (1925) 6 NLR 87; Okafor Egbuche v. Chief Idigo (1934) 11 NLR 140.

So, assuming that the vendors of the appellant, had the right to sell or alienate the land in dispute to him, from the documentary and oral evidence before the trial court, the appellant got nothing. This is because, the said vendors had nothing to sell or alienate to the appellant. See recently, the case of Auta v. Chief Ibe (9003) 7 S.C. 129; (2003) 13 NWLR (Pt. 837) 247 cited and relied on in the respondent's Brief, (it is also reported in (2003) 7 SCNJ 159) citing the cases of Okafor Egbuche v. Chief Idigo and Adams Akeya & Anor v. Chief Suenu & Ors. (supra); Sanyaolu v. Coker (1983) 1 SCNLR 168; (1983) 3 S.C. 124 at 163-164 and Ugo v. Obiekwe & Anor (1989) 2 S.C. (Pt. II) 41; (1989) 1 NWLR H (Pt. 99) 566 - (It is also reported in (1989) 2 SCNJ 95).

Thus, Exhibits "A" dated 13th February, 1958, and "C" dated 22nd June 1957 which were executed and registered many many years before

Exhibit “P” came into being, is in law, superior to and must enjoy definite priority in terms of validity of purchase, over Exhibit “P” tendered by the D.W.9. That was why, the learned trial Judge, stated at page 141 of the Records, that the appellant was swindled.

B As rightly submitted in the respondent’s Brief at page 8, the Jalingo Local Government, having lawfully granted the land in dispute to the respondent, in 1981, it was left with nothing, to grant to the subsequently in 1983 during the subsistence of the grant to the respondent

C I wish to add here and this is also settled, that the fact that a person who is in possession of land is disturbed on it by another person, does not render the former’s possession, not being exclusive. Such possession, will cease to be exclusive, if others or the other person, are or is on the land lawfully. See *Ogbu & 4 Ors. v. Ani & 4 Ors.* (1994) 7-8 D SCNJ (Pt. IT) 363 at 389.

For completeness and this is an assumption or by way of an illustration, if a party received title to land say, under Native Law and Custom and entered into possession and the same Vendor, conveyed the same E land to another purchaser executing a Deed of Conveyance, any claim that the first party’s equitable interest, was cut off by the latter “bona fide purchaser”, would in law and certainly, not be upheld. See *Amao v. Adebona* (1962) LLR 125.

F So that, if there is proof that money was paid for the land coupled with an entry into possession, it is sufficient, to defeat the title of a subsequent purchaser of the legal estate, if and provided that the possession, is continuously maintained. See *Soremekun v. Shodipo* (1959) LLR 30 and *Oresanmi v. Idowu* (1959) 4 FSC 40. Thus, if even it was an equitable interest, but it is coupled with possession, it cannot be overridden by a legal estate. See *Oshodi v. Balogun & Ors.* 4 WACA 1 at 6; *Suleman & Anor v. Johnson* 13 WACA 213; *Fakoya v. St. Paul’s Church. Shagamu* (1966) 1 ANLR 74 cited in the case of *Kale v. Coker* (1982) 12 S.C. H (Reprint) 18; (1982) 12 S.C. 252 at 269 and *Dr. Joseph Okoye v. Dumez Nig. Ltd. & Anor.* (1985) 6 S.C. 3 at 12. Forgive me. I have gone this far, in order to underscore the point or fact that which ever way the appellant’s case is looked at or viewed, this appeal decisively, lacks merit.

There is finally, the concurrent judgments of the two lower courts and the attitude of this court in respect thereof, is no longer in doubt. This court, will not interfere. See recently, *Arinze v. First Bank of Nigeria Ltd.* (2004) 5 S.C. (Pt. I) 160; (2004) 12 NWLR (Pt. 888) 663 at 673, 675, 679; (2004) 5 SCNJ 183 at 188; *Alhaji Mainagge v. Alhaji Gwamma B* (2004) 7 SCNJ 361 at 372; (2004) 14 NWLR (Pt. 893) 323; (2004) 7 S.C. (Pt. II) 86 at 97, just to mention but a few.

It is from the foregoing, and the much fuller judgment of my learned brother, Onu, JSC., that I too, dismiss this appeal. I hereby af-
firm the -judgment of the court below affirming the decision of the trial
court. I abide by the consequential order in respect of costs.

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