

SUPREME COURT OF NIGERIA

16TH JUNE, 2006. SC. 412/2001

**CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, D. MUSDAPHER,
I. C. PATS-ACHOLONU, G. A. OGUNTADE, JJSC**

1. ALHAJILASISIGBADAMOSI

2. YEKIN1 OLANIYI OLADITI

..... APPELLANTS

(For themselves and on behalf
of Tanimowo Family of Egbeda)

AND

1. THE GOVERNOR OF OYO STATE

2. THE A-G OF OYO STATE

3. EGBEDALOCAL GOVERNMENT

4. THE OLUBADAN OF IBADAN

5. ALHAJILASISI AMOO PIPOSOLA

6. ALHAJIOYELEKE PIPOSOLA

7. OYEKOLA PIPOSOLA

..... RESPONDENTS

(For themselves and on behalf
of Puposola Family of Egbeda)

8. CHIEF MOSES ITANOLA OKUNOLA

(For himself and on behalf of Egejobi
Family of Egbeda)

9. OLADOKUNIYANDA JEAYINFA

EVIDENCE - Oral evidence - Appraisal of - Is duty of trial court - Court of Appeal will only interfere where findings of fact by trial court - Is not supported by evidence on record - Which is not so in this case (H1)

APPEALS - Concurrent findings - Will not be disturbed by Supreme Court - Unless it violates some principle of law or procedure - Which when corrected - Will overturn the findings (H2)

CHIEFTAINCY MATTERS - Evidence - Courts - Where case of plaintiffs failed on the evidence - Supreme Court cannot award them an unjustified

2370 Gbadamosi v. Governor of Oyo State (2006) 6 KLR (pt. 221) 2369:
victory (H3)

FACTS

The Plaintiffs/Appellants had sued Defendants/Respondents before the Ibadan Division of the High Court of Oyo State claiming that the Tanimowo family of Egbeda is entitled to produce the Baale of Egbeda, under native law and custom of Egbeda, to the exclusion of all others. The title of Baale of Egbeda was a minor chieftaincy of which the Olubadan of Ibadan was the prescribed authority. When the incumbent died in 1976, the Olubadan appointed Lasisi Piposola as Baale. The appointment was resisted by the Tanimowo family of the Appellants who insisted that only from among their own family members could the Baale be appointed. Consequently, the Olubadan revoked the appointment of Lasisi Piposola and appointed the original Plaintiff/Appellant instead. It is pertinent to observe that the original plaintiff had died and the present two Appellants were substituted for him. Piposola family protested the appointment of the original plaintiff resulting in the 1st Respondent's intervention in the matter. Administrative commissions of enquiry set up by the 1st Respondent looked into the matter and made recommendations. By a letter dated 10th April, 1985, the 1st Respondent wrote the Olubadan declaring his appointment of plaintiff as Baale to be null and void. He also wrote the Plaintiff restraining him from acting as Baale. Hence this action was brought by the plaintiff.

It was the case of the Appellants that their grand ancestor, Tanimowo originally owned the land on which Egbeda market was founded and that in recognition of this, the adjoining villages had decided that the Appellants' family should produce Baale in perpetuity. They claimed that they had produced Baale ever since starting with one Lawani Olorode in 1939. The learned trial judge found as facts that Tanimowo was not the sole owner of the piece of land on which Egbeda market was founded but that it was jointly owned by Tanimowo, Ege, Piposola and Jeayinfa families. And that Appellants failed to prove the native law and custom which entitled them to produce Baale in perpetuity. Accordingly, His Lordship dismissed Appellants' claims. Appellants appealed to the

Court of Appeal which dismissed the appeal. They have brought this final appeal to the Supreme Court.

ISSUES FOR DETERMINATION

“(i) Whether or not having regard to the various strictures made against the judgment of the trial court, their Lordships were right in affirming the decision of the learned trial Judge to the effect that the appellants did not prove the custom they relied on in proving their case (Ground 2 of the grounds of appeal).

(ii) Whether or not the court below was not in error in affirming that each of the respondents donated land for the establishment of Egbeda market when the case of the different respondents are (is) diametrically opposed and are contrary to their pleadings. (Grounds 2 and 4 of the grounds of appeal).

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

Oral evidence - Appraisal of

1. Now, against the background discussed above, I proceed to consider together the three issues for determination formulated by the plaintiffs. But before doing so, it is necessary to call to mind the well established principle of law that the appraisal of oral evidence and ascription of probative values to such evidence is the primary duty of a court of trial. In *Fashanu v. Adekoya* (1974) 6 S.C. (Reprint) 72; (1974) 6 S.C. 83, this court per Coker, JSC., restated the principle thus:

“The appraisal of oral evidence and the ascription of probative values to such evidence is the primary duty of a tribunal of trial and a Court of Appeal would only interfere with the performance of that exercise if the trial court had made an imperfect or improper use of the opportunities of hearing and seeing the witnesses or has drawn wrong conclusions from accepted or proved facts which those facts do not support or indeed has approached the determination of those facts in a manner which those facts cannot and do not in themselves support.”

It was not the case of the plaintiffs before the court below that there was no evidence before the trial court upon which it could make the findings of fact earlier paraphrased in this judgment. Nor was it shown that

the evidence before the trial court could not sustain or do not support the findings made by the trial court. (p. 2378 D)

APPEALS - Concurrent findings

B 2. I have read several times over, the judgment of the court below and I did not see anywhere therein where strictures were passed on the trial court as regard the findings of fact made.

C It is apparent that the court below affirmed the findings of fact made by the trial court. I am thus in this court confronted with concurrent findings of fact on the crucial aspects of the case made by the parties. It has been the practice of this court and there is a long line of authorities in support of it, that unless there are special circumstances shown, this court will not disturb the concurrent findings of fact made by the court of trial D and the Court of Appeal. It has not been shown that there was a violation of some principle of law or procedure such that if the violation is corrected, the findings complained of would not stand. (pp. 2379 B / 2380 C)

E ***CHIEFTAINCY MATTERS - Evidence - Courts***

3. The case of the plaintiffs before the two courts below has comprehensively failed on the evidence called by the parties. This court does not possess the power to award to the plaintiffs a victory which the evidence F called does not justify.

In the final conclusion, this appeal fails. It is dismissed.
(p. 2380 F)

REPRESENTATION

G Appellants absent and unrepresented.

O. O. Delano, (with him A. Ademoyega), for the 1st - 4th Respondents.

I. N. Ihenacho, for the 5th- 9th Respondents.

H **CASES REFERRED TO**

Chinwendu v. Mbamali Anor. (1980) 3-4 S.C. (Reprint) 21; (1980) 3-4 S.C. 31 at 75

Lamai v. Orbih (1980) 5-7 S.C. (Reprint) 20; (1980) 5-7 S.C. 28

Ipe Ibodo v. Enarofia & Ors (1980) 5-7 S.C. (Reprint) 29; (1980) 5-7 S.C. 42

Enang v. Adu (1981) 11-12 S.C. (Reprint) 17; (1981) 11-12 S.C. 25

Woluchem v. Gudi (1981) 5 S.C. (Reprint) 178; (1981) 5 S.C. 291

Oke v. Eke (1982) 12 S.C. (Reprint) 100; (1982) 12 S.C. 218

Fashanu v. Adekoya (1974) 6 S.C. (Reprint) 72; (1974) 6 S.C. 83

B

LEAD JUDGMENT BY OGUNTADE JSC

This was a dispute as to who of the contending parties was entitled under customary law to be the Baale or Head Chief of a village called Egbeda. On 17-3-87, one Chief Salimonu Bolatito Lawal, as plaintiff for and on behalf of Tanimowo family of Egbeda, brought a suit against the respondents as the defendants claiming the following:

C

“(a) Declaration that the Tanimowo family of Egbeda is the family entitled under native law and custom of Egbeda to produce (sic) the Baale of Egbeda to the exclusion of the Puposola family or any other family in Egbeda.

(b) Injunction restraining the 1st to 4th defendants, their agents and or servants from appointing or recognizing any Baale of Egbeda from the Puposola family.”

The parties filed and exchanged pleadings after which the suit was heard at the Ibadan High Court of Oyo State by Lajide, J. On 22-6-89, the trial Judge in his judgment dismissed the plaintiff's claims. It is pertinent to observe that the original plaintiff died and the present two appellants were substituted for him. The plaintiffs were dissatisfied and they brought an appeal before the Court of Appeal, Ibadan Division (i.e. the court below). The court below on 20th June, 2001, in its judgment dismissed the plaintiffs' appeal. The plaintiffs have come before this court on a final appeal. In the Appellants' Brief filed by the plaintiffs, the issues for determination in the appeal were identified as the following:

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“(i) Whether or not having regard to the various strictures made against the judgment of the trial court, their Lordships were right in affirming the decision of the learned trial Judge to the effect that the appellants did not prove the custom they relied on in proving their case

H

(Ground 2 of the grounds of appeal).

(ii) Whether or not the court below was not in error in affirming that each of the respondents donated land for the establishment of Egbeda market when the case of the different respondents are (is) diametrically opposed and are contrary to their pleadings. (Grounds 2 and 4 of the grounds of appeal).

(iii) Whether or not the case of the parties that donations of land for the establishment of Egbeda market is not a sufficient proof of the customary law that would entitle the donors to appoint the Baale of Egbeda (Ground 3).”

The 1st and 2nd defendants filed a joint brief as did the 5th, 6th, 7th and 9th defendants. The issues formulated in each of the two briefs filed by these defendants are amply covered by the plaintiffs’ issues for determination. I shall be guided in this judgment by the plaintiffs’ issues.

It is necessary for an appreciation of the issues as discussed in this judgment that the nature of the dispute leading to this appeal be fully understood. In the lead judgment of the court below per Akintan. JCA., (as he then was,) the cause of the dispute was succinctly stated thus at page 229 of the record of proceedings:

“The dispute that led to the institution of the action arose over succession to the stool of Baale of Egbeda in Egbeda Local Government Area of Oyo State. The title is a minor chieftaincy title of which the Olubadan of Ibadan is the prescribed authority. When the stool became vacant in 1976 on the death of Yesufu Laniyan, the Olubadan appointed Lasisi Layosoye Puposola from Puposola family, as the Baale. The appointment was resisted from the Tanimowo family who claimed that only members of their family were entitled to produce the Baale. Consequent upon protests from the Tanimowo family, the Olubadan revoked the appointment of Lasisi Layosoye Puposola and the plaintiff was appointed in his place in 1985.

As a result of protests from the Puposola family, the 1st respondent (Oyo State Government) had to come into the matter. Two administrative commissions of enquiry were set up to look into certain aspects of the dispute. However, by a letter dated 10th April, 1985, the 1st defendant/

respondent wrote to the Olubadan declaring his action in installing the plaintiff as Baale of Egbeda null and void. The 1st defendant/respondent also wrote to the plaintiff restraining him from acting as the Baale of Egbeda. The plaintiff instituted the action as a reaction to the action of the State Government nullifying his appointment as the Baale of Egbeda.” B

In paragraphs 9-16 and 40 of their Statement of Claim, the plaintiffs had pleaded the facts they relied upon for their claims thus:

“9. Before the early 1930s, there were a number of villages in the neighbourhood of Egbeda. C

10. These villages included Tanimowo, Aderogba, Olugbojo, Fasade, Obaloriegun, Oluwo, Elerumoke and Abidodu. Other villages are Aba Ahinde Gbalepa Omitowo A... Mosafejo Onisade, Ajule Adekila, Mapo, Aba Bale Ire.. in, Aba Edun and Adewunmi. D

11. Early in the 1930s the road linking Ibadan with Ile-Ife was constructed and it passed through the site of the present Egbeda.

12. The inhabitants of the surrounding villages decided to establish a market town at the site of the present Egbeda and gave the town its present name. E

13. Before the coming together of these villages, the Tanimowo family had been the owners of the land through which the road passed and on which the town was located. F

14. Because of this, the community decided that the Tanimowo family who were owners of the land on which Egbeda was established should produce the Baale of Egbeda.

15. The Tanimowo family thereafter produced the first Baale of Egbeda who reigned from 1939, in person of Lawani Olorode. G

16. Thereafter other members of Tanimowo family reigned as Baale in Egbeda.

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40. The plaintiffs will further contend that under the native law and custom of Egbeda, only the Tanimowo family is entitled to produce the Baale of Egbeda to the exclusion of the Piposola family.” H

The 1st and 2nd defendants in their Statement of Defence pleaded

their case thus in paragraphs 3-7:

B “3. *The 1st and 2nd defendants deny paragraph 13 of the Statement of Claim and say that both Tanimowo and Puposola are blood relations who migrated, first to Ibadan during the incessant inter-tribal wars and settled with Elopo at Oja-Oba where from the two later moved out to co-found and settled at Tanimowo Compound during the Elepo Revolt and the compound was named Tanimowo because Tanimowo was older than Puposola.*

C “4. *The 1st and 2nd defendants deny paragraph 14 of the Statement of Claim and say that the Tanimowo family had hitherto been monopolizing the Baale of Egbeda Chieftaincy by virtue of the numerical strength of the Tanimowo family vis-à-vis those of Ege and Puposola families.*

D “5. *The 1st and 2nd defendants deny paragraph 15 of the Statement of Claim and say that Oyewole was recognized as the first Baale of Egbeda and he (Oyewole) was a son of Puposola.*

E “6. *The defendants deny paragraph 17 to the extent that Layosoye Puposola was appointed as the Baale of Egbeda by the then Olubadan of Ibadan. Oba Adebimpe.*

F “7. *The defendants deny paragraph 18 of the Statement of Claim and say that the Puposola apart from having blood relationship with the Tanimowo family was a co-founder of Egbeda and as such is entitled to the Baale of Egbeda Chieftaincy stool.”*

And in their Amended Statement of Defence, the 5th, 6th, 7th and 9th defendants pleaded in paragraphs 4-7 thus:

G “4. *With regard to paragraph 8 of the Statement of Claim, there were no villages called Ologbojo, Fasade and Obariogun but Olugbojo, Fasade and Obaloriegun.*

H “5. *The 5th, 6th, 7th and 9th defendants aver that the land on which Egbeda market is situate is jointly owned by Tanimowo, Puposola, Ege and Jeayinfa Families until the acquisition of the whole area by the Ajoda New Town Corporation.*

“6. *Oyewole, a member of Puposola family was the first Baale of Egbeda on the establishment of the market, it was after the death of Oyewole that Lawani Olorode was installed as Baale of Egbeda in 1939*

after a protracted argument amongst the four families of Puposola, Ege, Jeayinfa and Tanimowo.

7. *In 1963, the Government of Western Region of Nigeria called for a revision of all chieftaincy Declaration in the Western Region of Nigeria.”*

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The plaintiffs' case was anchored on the following facts:

1. That their grand ancestor, Tanimowo, originally owned the land on which Egbeda market was founded.

2. That the adjoining villages in recognition of the fact that the land upon which the Egbeda market was founded belonged to Tanimowo decided that the plaintiffs' family should produce the Baale in perpetuity.

C

3. That the plaintiffs' family produced the first Baale in 1939 who was by name Lawani Olorode.

4. That the plaintiffs' family has since produced the Baale of Egbeda in succession.

D

5. That under the native law and custom of the area, only the plaintiffs' family could produce the Baale.

As against the plaintiffs' case, the 1st and 2nd defendants relied on the following facts:

1. That the plaintiffs' grand ancestor, Tanimowo and Puposola, the 1st and 2nd defendants' ancestors were blood relations.

2. That Tanimowo and Puposola both co- founded Egbeda and as such were both entitled to produce the Baale from their lineages.

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3. That the 1st Baale-of Egbeda, was Oyewole from Puposola lineage and not Lawani Olorode from Tanimowo family as pleaded by the plaintiffs.

4. That the Tanimowo lineage had hitherto monopolized the succession to the Baaleship by virtue of the numerical strength of the Tanimowo family.

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The 5th, 6th 7th and 9th defendants pleaded the following facts:

1. That the land on which Egbeda market was founded was jointly owned by Tanimowo, Puposola, Ege and Jeayinfa families.

2. That Oyewole from Puposola family and not Lawani Olorode from the plaintiffs' family was the first Baale.

At the trial, the parties called evidence in support of their divergent standpoints. The trial court, in its judgment made important findings of fact, the highlights of which were -

(a) That Tanimowo was not the sole owner of the piece of land on which Egbeda market was founded and further that the said land was jointly owned by four families, namely- Tanimowo, Ege, Piposola and Jeayinfa.

(b) That the plaintiffs did not call evidence to establish that there existed a custom under native law and custom by which the owner of a parcel of land and his successors by the sheer force of such ownership were entitled perpetually to produce the Baale of the village in which the land was situate.

(c) That the first Baale of Egbeda was Lasisi Olokode as pleaded by the plaintiffs and not Oyewole as pleaded by the defendants.

Now, against the background discussed above, I proceed to consider together the three issues for determination formulated by the plaintiffs. But before doing so, it is necessary to call to mind the well established principle of law that the appraisal of oral evidence and ascription of probative values to such evidence is the primary duty of a court of trial. In *Fashanu v. Adekoya* (1974) 6 S.C. (Reprint) 72; (1974) 6 S.C. 83, this court per Coker, JSC., restated the principle thus:

“The appraisal of oral evidence and the ascription of probative values to such evidence is the primary duty of a tribunal of trial and a Court of Appeal would only interfere with the performance of that exercise if the trial court had made an imperfect or improper use of the opportunities of hearing and seeing the witnesses or has drawn wrong conclusions from accepted or proved facts which those facts do not support or indeed has approached the determination of those facts in a manner which those facts cannot and do not in themselves support.”

See also *Woluchem v. Gudi* (1981) 5 S.C. (Reprint) 178; (1981) 5 S.C. 291 and *Oke v. Eke* (1982) 12 S.C. (Reprint) 100; (1982) 12 S.C. 218.

It was not the case of the plaintiffs before the court below that there was no evidence before the trial court upon which it could make the findings of fact earlier paraphrased in this judgment. Nor

was it shown that the evidence before the trial court could not sustain or do not support the findings made by the trial court.

Under the plaintiffs' first issue for determination it was implied that the court below was in error to affirm the conclusion of the trial court that the plaintiffs did not prove the custom relied upon after it (the court below) B had passed 'various strictures' against such findings. **I have read several times over, the judgment of the court below and I did not see anywhere therein where strictures were passed on the trial court as regard the findings of fact made.** At page 233 of the record, the court C below in its judgment said:

"Again, the findings of fact made by the learned trial Judge to the effect that each of the four families contributed land on which the Egbeda market was established and that each of the four families was entitled to nominate candidates for the Baale of Egbeda are in my view, rightly made D from the evidence placed before him by the parties. The conclusion he drew to the effect that each of the four families was entitled to nominate candidates for the office is not out of place since it was in evidence before the learned Judge that each of the four families own land in Egbeda; that E they all contributed the land upon which the market was founded; and that the plaintiffs' claim that it was the Tanimowo family that had been producing all the Baales since the inception of Egbeda had been found not to be correct in that it had been shown that Puposola family had produced F a Baale of Egbeda before. The finding of fact cannot also amount to granting to the defendants what they did not claim. It could not and was not a grant made to any party. Rather, it was a finding of fact properly made from the evidence presented before the court."

And finally at page 235, the court below said: G

"Finally, the question whether the learned trial Judge failed to carry out a proper and dispassionate evaluation of the evidence adduced before him also did not arise. This is because it was quite clear from the evidence placed before the learned trial Judge that the plaintiffs failed to H prove the essential ingredients of their claim. Such vital evidence they failed to establish are those relating to the customary law governing the Baale of Egbeda chieftaincy title, which is the pivot on which the entire

plaintiffs' claim rested. The omission to lead the required evidence is so glaring that it never needed any evaluation of particular witnesses' testimonies before making the required findings. Similarly, the evidence in support of the contention that a member of Puposola family had previously been installed as Baale of Egbeda was also very glaring from the evidence tendered before the court. There is therefore totally no merit in the allegation that the evidence presented at the trial was not properly evaluated."

It is apparent that the court below affirmed the findings of fact made by the trial court. I am thus in this court confronted with concurrent findings of fact on the crucial aspects of the case made by the parties. It has been the practice of this court and there is a long line of authorities in support of it, that unless there are special circumstances shown, this court will not disturb the concurrent findings of fact made by the court of trial and the Court of Appeal. See Chinwendu v. Mbamali Anor. (1980) 3-4 S.C. (Reprint) 21; (1980) 3-4 S.C. 31 at 75; Lamai v. Orbih (1980) 5-7 S.C. (Reprint) 20; (1980) 5-7 S.C. 28; Ipe Ibodo v. Enarofia & Ors (1980) 5-7 S.C. (Reprint) 29; (1980) 5-7 S.C. 42 and Enang v. Adu (1981) 11-12 S.C. (Reprint) 17; (1981) 11-12 S.C. 25. It has not been shown that there was a violation of some principle of law or procedure such that if the violation is corrected, the findings complained of would not stand. The case of the plaintiffs before the two courts below has comprehensively failed on the evidence called by the parties. This court does not possess the power to award to the plaintiffs a victory which the evidence called does not justify.

In the final conclusion, this appeal fails. It is dismissed. I award to each set of defendants against the plaintiffs/appellants N10,000.00 costs.

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KUTIGIJSC

I have had the privilege of reading before now the judgment just

delivered by my learned brother, Oguntade, JSC. I agree with it. The facts as found by both the trial High Court and the Court of Appeal are quite clear and the law was properly applied. It has not been shown in this court that those findings of facts are perverse, nor that the law was not properly applied. I therefore agree with the conclusion that the appeal is without any merit. It is dismissed with N10,000.00 costs to each set of defendants/respondents against the plaintiffs/appellants.

KATSINA-ALUJSC

I have had the advantage of reading in draft the judgment delivered by my learned brother, Oguntade, JSC. I agree with him that the appeal has no merit. I also dismiss it with costs as assessed.

MUSDAPHERJSC

I have had the honour to read in advance the judgment of my lord, Oguntade, JSC., just delivered in this matter. For the same reasons so meticulously set out in the judgment which I respectfully adopt as mine, I too, dismiss this appeal. I abide by the order for costs contained in the judgment

PATS-ACHOLONUJSC

Editorial Note: The Hon Justice Ignatius Chukwudi Pats-Acholonu, JSC., was in the panel that heard this appeal. He indicated his concurrence with the lead Judgment.

However, he passed away on the 14th of May 2006, before the date of this Judgment. His pronouncement was read by the Hon. Justice I. L. Kutigi, JSC.