

SUPREME COURT OF NIGERIA
8TH FEBRUARY, 2008. SC. 257/2002
CORAM:- A. I. KATSINA-ALU, A. M. MUKHTAR,
M. MOHAMMED, F. F. TABAI,
C. M. CHUKWUMA-ENEH, JJSC

GODFREY ANUKAM	APPELLANT
AND		
FELIX ANUKAM	RESPONDENT

APPEALS - Grounds of appeal - Nature of - Guidelines for determining whether they be of facts, law or mixed - Are subject to the nature of complaint - Not just by appellation (H1)

APPEALS - Competence - Grounds of appeal - Where only one of the four grounds is valid - The appeal is competent vide s. 233(2)(a) of 1999 Constitution - As of right (H2)

LAND LAW - Title - Proof - Burden and standard of proof of each case - Depends on the pleadings - Defendant's admission in this case - Makes proof of plaintiff's root of title unnecessary (H3)

LAND LAW - Title - Claim for declaration of - Plaintiff is not to rely on weakness of the defence - But evidence from defendant that supports plaintiff's case - Can be relied upon (H4)

LAND LAW - Title - Root - Burden of proof - Is on the defendant/appellant by the state of pleadings - To prove his overlord's root of title (H5)

EVIDENCE - Discrepancy - Title - Where plaintiff's case is substantially as pleaded - Variation in witnesses' testimony as to year of commencing building - Is not a fatal discrepancy (H6)

EVIDENCE - Title - Contradictions - Where they are material as they relate to defendant's root of title - Lower courts rightly accorded no credibility to that evidence (H7)

LAND LAW - Title - Presumption - Acts of ownership over adjoining undisputed land - Were rightly relied on by trial court - In holding that plaintiff is also owner of the portion in dispute - Vide s. 46 of Evidence Act (H8)

LAND LAW - Title - Relief not claimed - Allegation that trial court granted parcel of land not claimed - Is only technically reasonable - But of no practical relevance (H9)

FACTS

Before the Owerri High Court the plaintiff/respondent filed an action against the defendant/appellant. He claimed entitlement to statutory right of occupancy, N2000.00 damages for trespass and perpetual injunction in respect of the land in dispute. Pleadings were filed and exchanged. Both parties testified and called witnesses. Appellant did not challenge respondent's pleading that he got the land from his father who is appellant's grand father. Appellant pleaded and traced how the land devolved till it came to one Onugha but failed to prove Onugha's root of title. Whereas there was a minor discrepancy in evidence of respondent's witnesses as to the year respondent commenced building upon the land, Appellant's case was tainted with material contradictions vide variations between pleadings and evidence.

At the close of evidence and addresses of counsel the trial Judge gave judgment in respondent's favour save that it awarded N500. 00 as damages instead of N2000.00 claimed. Appellant's appeal to the Court of Appeal was dismissed. Still dissatisfied, he has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

- 1. Whether the burden of proof of the root of title to the land in dispute did not shift to the appellant going by his amended statement of defence.*
- 2. Whether the lower court was not right in holding that Section 46 of the Evidence Act, enured in favour of the respondent.*
- 3. Whether the lower court's confirmation of the grant of the reliefs sought for in the suit was wrong.*

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

Grounds of appeal - Nature of

1. It needs to be emphasised that it is usually difficult to draw a distinction between a ground of law and a ground of fact, the distinction being always a very tiny one. The distinction becomes even more difficult when it involves a point of law and mixed law and fact. A ground of mixed law and facts or facts simpliciter does not necessarily become a ground of law simply because such an appellation has been accorded it by the appellant's counsel. The court has the task of carefully examining the ground of appeal to ascertain this fine distinction.

The following have been held to be some guidelines in the distinction between a ground of law on the one hand and a ground of mixed law and facts or facts on the other:

"(1) Where a ground of appeal complains of an error involving a misunderstanding or misconception of the law or a misapplication of the law to proved or admitted facts, it is a ground of law. See Amuda v. Adelodun (supra)

(2) A ground of appeal which complains of the lower court's exercise of its discretion necessarily involves the appellate court's consideration of the peculiar facts and circumstances upon which the discretion was exercised and so one of facts. But where the ground complains of the lower court's use of wrong principles in the exercise of its discretion, the facts and circumstances in which the discretion was exercised are no longer in issue. The only issue in such a case is that of the alleged wrong principle and therefore one of law alone. See Metal Construction (W.A.) Ltd. v. D.A. Migliore & Ors. (1990) 2 S. C. 33; (1990) 1 NWLR (Part 126) 299 at 315.

(3) A ground of appeal which complains of the lower court's evaluation of evidence and alleges sufficiency or insufficiency of evidence is one of fact or at best one of mixed law and facts. Where however the ground of appeal does not complain about the evaluation but only about the inference to be drawn from the established or admitted facts, it is one of law. Similarly, where the ground of appeal alleges that there is no evidence upon which the lower court could reach its decision it is a ground of law. (p. 755 B)

APPEALS - Competence

2. It is clear from the above that grounds (a), (b) and (d), are grounds of mixed law and facts. The totality of the aforesaid three grounds is an invitation to this court to review the evidence to see if it supports the decision of the two lower courts. Ground (c), of the grounds of appeal is however distinguishable from the other three grounds. It questions whether, given the evidence established or admitted, section 46 of the Evidence Act, was rightly invoked in favour of the Respondent which, in my consideration, is a ground of law. It involves no questions of evaluation of the evidence before the court. I hold therefore that ground (c), of the grounds of appeal being a ground of law, the appellant can appeal to this court as of right by virtue of the provisions of Section 233 (2) (a), of the 1999 Constitution.

In view of the above considerations it is my respectful view that the appeal is competent. The preliminary objection fails and is accordingly overruled. (p. 756 F)

Title - Burden and standard of proof of each case

3. It is true that in *Idundun v. Okumagba* (1976) 9-10 SC (Reprint) 140 at 154 -155 this court has laid down the five modes of proof of title to land. The first of these is that ownership of land may be proved by traditional evidence. The burden and standard of proof of each case depends on the nature of the case as pleaded. Where, as in this case, the plaintiff alleges that he got the land from his father and the defendant does not deny or challenge this allegation, then plaintiff has no duty to prove the father's own source of his title.

It is clear from the above that the appellant admitted paragraph 3 of the statement of claim in his own paragraph 3 (a) of the statement of defence without any qualification. It is surprising therefore that he proceeded to plead in the same paragraph 3(a) and other paragraphs of the amended statement of defence a different source of his root of title. The respondent maintained his source of title to be his father, Anukam Aneme, and at the trial was at pains to prove just that. And in view of the appellant's admission of his assertion in paragraph 3 of the statement of claim, he had no duty to

prove the person who founded the land, how he founded it and the person through whom the land devolved on his father. For the purpose and proof of his title, the respondent had no duty to plead and prove more facts than he did. In my view it was sufficient if he established that the land belong to his father, Anukam Aneme, who gave same to him and that is what he did. (pp. 759 G/761 D) B

Title - Claim for declaration of

4. The well settled principle of law is that in a claim for declaration of title to land, the plaintiff has to succeed on the strength of his own case and not on the weakness of the defence. Where however evidence from the defendant supports the case of the plaintiff he is entitled to rely on it. This was the principle in *Akinola v. Oluwo* (1962) 1 SCNLR 352. C

In this case, having regard to the strong evidence of the Respondent supported by the evidence of the D.W.4 highlighted above, it is futile for the Appellant to contend that the burden of proof still remained with the Respondent. I have no doubt in my mind that there was sufficient evidence to sustain the claim of the Respondent. (p. 762 B) D E

Title - Root - Burden of proof

5. On this issue of burden of proof the learned trial judge at page 95 of the record said:

"It is settled law that once a party pleads and traces the root of title to a particular person or family, he must establish how that person came to have title vested in him. He cannot ignore the proof of his overlord's title and rely on long possession Mogaji v. Cadbury (Nig) Ltd (1985) 2 NWLR (Pt. 739) 3 at 395. Did the defendant who pleaded traditional evidence fulfil this requirement of the law. In my view he had not. The defendant merely pleaded and traced the persons upon whom he alleged the land in dispute devolved upon and finally came to Onugha, without any trace of how Onugha became the owner. Again the introduction of Onugha into the lineage of Anukam seems to portray a doubtful nexus." F G H

The above represents the correct position of the legal burden of proof on the appellant going by the state of the pleadings. And I

have no conceivable reason to fault the above finding by the trial court that the appellant failed to discharge this burden. It is not surprising therefore that court below adopted the above reasoning and conclusion of the trial court in its entirety and concluded thus:

B *"From all what I have said, suffice it therefore to say that the appellant failed woefully to prove his title to the land in dispute."*

I agree with the concurrent findings of the two courts below that the appellant failed to establish his alleged title to the land in dispute through the traditional evidence on which he relied. (p. 762 G)

C ***EVIDENCE - Discrepancy - Title***

D 6. The case of the respondent is substantially as pleaded in paragraphs 3-12 which I have reproduced above. The evidence in support thereof came from two witnesses only, the P.W.1 and the respondent himself P.W.2. They are both sons of Anukam Aneme. The only discrepancy identified by the trial court was as to the year the Appellant started erecting a building on the land in dispute. While the P.W.1, said it was in 1967, the respondent said it was in 1977. The trial court reasoned that it was a mere discrepancy not fatal to the case of the respondent. I agree with that assessment. Besides this discrepancy, the evidence from the two witnesses is consistent with the case of the respondent as pleaded. (p. 763 E)

F ***EVIDENCE - Title - Contradictions***

7. Again the learned trial judge pointed out another contradiction in the evidence of the appellant himself and the D.W.4. At page 97 of the record the learned trial judge said:-

G *"Again it has to be noted, and I agree with the learned counsel for the plaintiff, that of the four witnesses called by the defendant only the D.W.3 and D.W.4 gave evidence as to the ownership of the land. While the D.W.4 testified that the land belonged to the grandfather of the defendant, i.e. Anukam Aneme, the D.W.3 i.e. the defendant said that the land in dispute was his father's inheritance from Onugha. This again is a material contradiction in the evidence of the two witnesses."*

H In view of the foregoing contradictions highlighted, the learned trial judge accorded no credibility to the traditional evidence of the ap-

pellant. At page 98 of the record the trial court also pointed out inconsistencies in the evidence of the D.W.2 and rejected his evidence as being unreliable. The court below reproduced the reasoning and findings of the trial court which it wholly endorsed. I have no reason to disturb the concurrent findings of the two courts below. They are amply supported by the evidence on record. (p. 764 D) B

Title - Presumption - Acts of ownership

8. The appellant does not deny the respondent's title to the area verged Green except the portion verged Red which is the land in dispute. The land in dispute is contiguous to the area not in dispute. And in view of the respondent's acts of ownership over the undisputed portion the learned trial judge at page 103 of the record found: C

"It seems to me that all these and all the other acts of the plaintiff in asserting his right over the land in dispute coupled with the contiguous nature of the land in dispute to the undisputed property of the plaintiff are sufficient to raise the probability that the plaintiff is in addition to his house the owner of the land in dispute. See the case of Okechukwu v. Okafor (supra) and Section 46 of the Evidence Act 1990." D E

The above clearly shows the respondent's user of the undisputed portion of the land verged Green and its contiguity to the land in dispute. These facts are uncontroverted and therefore established. The fact of contiguity is even clearly borne out in Exhibit "B". In the face of these established facts, I do not fancy any error in the trial court's invocation of Section 46 of the Evidence Act. It is not surprising therefore that the court below also fully endorsed the conclusion of the trial at page 162 of the record. The result is that I also resolve this issue in favour of the respondent. (p. 765 F) F G

Title - Relief not claimed

9. Technically, the argument sounds reasonable. In practical terms however, the argument is neither here nor there. The area verged Red which is the land in dispute forms part of the same parcel of land verged Green. The area to which the appellant made adverse claim was restricted to the area verge Red within the larger area verged Green. Although the judgment has given title of the land verged Green H

to the respondent, the appellant's loss is nevertheless confined to the area verged Red since he made no claim to any area outside the area verged Red. Therefore the declaration in respect of the Green area notwithstanding, the appellant has suffered no greater loss than the area verged Red and cannot be heard to complain. The result is that
 B this issue is also resolved in favour of the respondent. (p. 766 F)

NOTABLE POINT OF INTEREST

MUKHTAR JSC

C *1. Notice of preliminary objection - Court can suo motu consider competence of an issue*

Ideally, a notice of preliminary objection and its ground should have been filed by learned counsel for the respondent, and then the argument in respect of the objection could be incorporated in the brief of
 D argument. As it is, he merely made his contention and argued that the said issue (c) did not stem from any of the grounds of appeal. Be that as it may, even if the learned counsel has not raised the issue of competence of the issue the court can suo moto consider the competence of an issue or ground of appeal and make whatever consequential orders it deems fit in the circumstance. However, at the hearing
 E of the appeal learned counsel for the appellant saw some wisdom in withdrawing the said issue (c) above, and it is accordingly been struck out. (p. 768 E)

REPRESENTATION

Mr. D.O. Madu, (with him C.E. Anyanwu), For the Appellant
 Mr. E.T.O. Njoku For the Respondent

CASES REFERRED TO

Amuda v Adelodun (1994) 8 NWLR (Pt. 360) 23 at 30
 Ogbechie v Onochie (1986) 2 NWLR (Part 23) 484
 Nwadike v Ibekwe (1987) 4 NWLR (Pt. 67) 718
 Anambra State Housing Development Corporation v J.C.O.
 H Emekwue (1996) 1 NWLR (Part 426) 505 at 527-528
 Ifediorah v Ume (1988) 2 NWLR (Part 74) 5
 U.B.A. v Stahlbau (1989) 3 NWLR (Part 110) 374
 Kodilinye v Odu (1935) 2 WACA 336

Omoni v Tom (1991) 6 NWLR (Part 195) 93
 Obiaso v Okoye (1989) 2 NWLR (Part 119) 80
 Abioye v Afolabi (1998) 4 NWLR part 545 page 296
 Akinbinu v Oseni (1992) 1 NWLR part 215 page 97
 Ugo v Obiekwe (1989) 1 NWLR part 89 page 89
 Module v State (1988) 4 NWLR part 87 page 130
 Nwadike v Ibekwe (1987) 4 NWLR part 67 page 718

B

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999 s. 233 (2) (a), C
 (3)
 Evidence Act, LFN 1990 ss. 46, 75, 137

LEAD JUDGMENT BY TABAI JSC

This suit was filed at the Owerri Judicial Division of the High D
 Court of Imo State by the plaintiff who is the respondent herein. The
 Defendant therein is the Appellant before us. The suit was filed on
 the 21/10/92. The following reliefs were claimed:

"(a) Declaration that the plaintiff is entitled to a Statutory Cer- E
tificate of Occupancy of the land verged Green in the plaintiff's plan
No. GIK/IMD 89/92, filed together with the statement of claim.

(b) N2,000.00 damages for trespass.

(c) Perpetual injunction restraining the defendant, his agents F
or servants from further interfering howsoever with the plaintiff's rights
and interests in the land for which the declaration in (a) above is
sought."

Pleadings were filed and exchanged. The statement of claim was filed
 along with the writ of summons on the 21/10/92. The appellant's
 amended statement of defence was filed on the 9/1/97. G

At the trial, both parties testified and called witnesses. At the
 close of evidence, learned counsel for the parties addressed the court.
 By its judgment on the 7/7/99, the claim was allowed in its entirety
 except that N500.00 damages was awarded instead of the N2,000.00
 claimed. The appellant was not satisfied with the judgment and went H
 on appeal to the court below. The appeal was dismissed. This was in
 the judgment of the Court of Appeal on the 8/7/2002. The Appellant
 was still aggrieved by the judgments and has come to this court on

appeal.

Briefs have been filed and exchanged. The Appellant's Brief was prepared by Declan Obioma Madu, and same was filed on the 30/12/02. The respondent's brief was settled by Chief E.T.O. Njoku. It was filed on the 6/3/03. The appellant proposed four issues for determination in his brief of argument. On the 12/11/07, when the appeal was argued, on the application of learned counsel for the appellant, the third issue was withdrawn and struck out, leaving the following three issues for determination.

C 1. Whether the learned Justices of the Court of Appeal were right in affirming the judgment of the court below in favour of the plaintiff/respondent when he did not plead and prove the root of his title to the land in dispute.

D 2. Whether the provisions of Section 46 of the Evidence Act, Laws of the Federation of Nigeria, 1990 Edition avails the respondent in the circumstances of this case?

E 3. Whether the learned justices of the Court of Appeal were right in affirming the award by the learned trial Judge of reliefs not claimed by the plaintiff/respondent in his evidence before the trial court.

For the respondent the following three issues for determination were presented:

F 1. Whether the burden of proof of the root of title to the land in dispute did not shift to the appellant going by his amended statement of defence.

2. Whether the lower court was not right in holding that Section 46 of the Evidence Act, enured in favour of the respondent.

G 3. Whether the lower court's confirmation of the grant of the reliefs sought for in the suit was wrong.

In my consideration, but for differences in phraseology, the issues formulated by the parties are in substance the same. But the appellant's issues one and three are couched with some assumptions of facts to suit his arguments. This should not be so. I would therefore H adopt the issues as formulated by the respondent. They are clearer to me.

Before I embark upon the resolution of the issues for determination, let me first dispose of the preliminary objection raised by the

respondent. Chief Njoku, for the respondent argued that all the four grounds of appeal are grounds of mixed law and facts and submitted, therefore, that by reason thereof the appeal can only be competent if it was filed with the leave either of the court below or this court in compliance with Section 233(3) of the 1999, Constitution of the Federal Republic of Nigeria. It was his submission that since there was no leave to appeal, the appeal was incompetent. Mr. Madu for the appellant did not react to the preliminary point. B

It needs to be emphasised that it is usually difficult to draw a distinction between a ground of law and a ground of fact, the distinction being always a very tiny one. The distinction becomes even more difficult when it involves a point of law and mixed law and fact. A ground of mixed law and facts or facts simpliciter does not necessarily become a ground of law simply because such an appellation has been accorded it by the appellant's counsel. The court has the task of carefully examining the ground of appeal to ascertain this fine distinction. See Amuda v. Adelodun (1994) 8 NWLR (Pt. 360) 23 at 30, Ogbegie v. Onochie (1986) 2 NWLR (Pt. 23) 484, Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718. C D E

The following have been held to be some guidelines in the distinction between a ground of law on the one hand and a ground of mixed law and facts or facts on the other:

"(1) Where a ground of appeal complains of an error involving a misunderstanding or misconception of the law or a misapplication of the law to proved or admitted facts, it is a ground of law. See Amuda v. Adelodun (supra) F

(2) A ground of appeal which complains of the lower court's exercise of its discretion necessarily involves the appellate court's consideration of the peculiar facts and circumstances upon which the discretion was exercised and so one of facts. But where the ground complains of the lower court's use of wrong principles in the exercise of its discretion, the facts and circumstances in which the discretion was exercised are no longer in issue. The only issue in such a case is that of the alleged wrong principle and therefore one of law alone. See Metal Construction (W.A.) Ltd. v. D.A. Migliore & Ors. G H

(1990) 2 S. C. 33; (1990) 1 NWLR (Pt. 126) 299 at 315.

(3) A ground of appeal which complains of the lower court's evaluation of evidence and alleges sufficiency or insufficiency of evidence is one of fact or at best one of mixed law and facts. Where however the ground of appeal does not complain about the evaluation but only about the inference to be drawn from the established or admitted facts, it is one of law. Similarly, where the ground of appeal alleges that there is no evidence upon which the lower court could reach its decision it is a ground of law. See *Anambra State Housing Development Corporation v. J.C.O. Emekwue* (1996) 1 NWLR (Pt. 426) 505 at 527-528, *Ifediorah v. Ume* (1988) 2 NWLR (Pt. 74) 5, *U.B.A. v. Stahlbau* (1989) 3 NWLR (Pt. 110) 374.

In this case the four grounds of appeal without their particulars are as follows:

(a) The Court of Appeal erred in law when it held that the appellant did not prove his root of title to the land and this occasioned a miscarriage of justice.

(b) The lower court erred in law when it upheld the decision of the trial court declaring title by traditional history to the land in dispute in favour of the respondent who did not establish the root of title of his grantor Aneme Anukam.

(c) The lower court erred in law in holding that the provision of Section 46 of the Evidence Act, availed the respondent.

(d) The lower court erred in law when it held that the respondent led evidence in support of the reliefs claimed in the statement of claim and therefore affirmed the trial court's judgment.

It is clear from the above that grounds (a), (b), and (d), are grounds of mixed law and facts. The totality of the aforesaid three grounds is an invitation to this court to review the evidence to see if it supports the decision of the two lower courts. Ground (c), of the grounds of appeal is however distinguishable from the other three grounds. It questions whether, given the evidence established or admitted, section 46 of the Evidence Act, was rightly invoked in favour of the Respondent which, in my consideration, is a ground of law. It involves no questions of evaluation of the evidence before the

court. I hold therefore that ground (c), of the grounds of appeal being a ground of law, the appellant can appeal to this court as of right by virtue of the provisions of Section 233 (2) (a), of the 1999 Constitution.

In view of the above considerations it is my respectful view that the appeal is competent. The preliminary objection fails and is accordingly overruled. B

I shall now proceed to consider the issues raised. With respect to the 1st issue, learned counsel for the appellant referred to paragraphs 3, 4, 5, 6, 7 and 8 of the statement of claim and submitted that the respondent whose claim is founded on evidence of tradition was bound to plead and establish such facts as; the person who founded the land and exercised original acts of possession, how he founded the land and the particulars of the intervening owners through whom he claims. For this submission he relied on D Onwugbufo v. Okoye (1996) 1 NWLR (Pt. 424) 252 at 280-281; Piaro v. Tenalo (1976) 12 S.C. 41; Mogaji v. Cadbury (Nig.) Ltd. (1985) 2 NWLR (Pt. 7) 393. Having failed to plead and prove these crucial facts, counsel submitted, the respondent failed to prove that his father, Anukam Aneme, had title to the land in dispute, contending that he (Anukam Aneme) could not therefore have given to him what he did not have *Nemo dat quod non habet*. He relied further on Macaulay v. Omilaye (1997) 4 NWLR (Pt. 497) 94 at 102, Odubeko v. Fowler (1993) 7 NWLR (Pt. 208) 637. E

On the second issue of whether, in the light of the evidence before the court, Section 46 of the Evidence Act, was rightly invoked in favour of the Respondent, learned counsel for the Appellant, submitted that there was overwhelming evidence of the Appellant's numerous acts of possession of the land in dispute, and that the evidence was essentially unchallenged under cross-examination and should be taken as established. It was his submission therefore that Section 46 of the Evidence of Act ought to be invoked in favour of the appellant and not the respondent. For this submission he relied on Omoregbe v. Lawani (1980) 3-4 S.C. 108 at 117; 70, Osakwe v. Governor of Imo State (1991) 5 NWLR (Pt.191) 318 at 339. He referred, in particular, to the evidence that the Appellant's father, John Anukam, built a photographic studio on the land in dispute as far F G H

back as 1932 which he gave to one Anuruo Ibekanwa, who lived there from 1946 -1952.

B For more acts of possession, counsel referred further to the evidence of the PW.1 under cross-examination that the appellant started building a house on the land in dispute in 1967, erected temporary stores thereon after the civil war and that during the life time of the respondent's father the appellant's father had the D.W.1 as a tenant on the land in dispute. Counsel argued that there was no such evidence of the respondent's possession of the land to avail him of C the provisions of Section 46 of the Evidence Act. On the prerequisites for the invocation of Section 46 of the Evidence Act, learned counsel relied on *Abibu v. Binutu* (1988) 1 NWLR (Pt. 68) 57; *Idiribe v. Ogbodu* (1990) 5 NWLR (Pt. 123) 599.

D As regards the third issue the substance of the arguments of learned counsel for the appellant is that whereas the relief for declaration of the respondent's entitlement to a certificate of occupancy and injunction as pleaded in paragraph 26 of the statement of claim is in respect of the area verged Green, the area verged Red is the area in dispute and that it is this area in respect of which the declaration and injunction ought to be granted. It was his submission therefore that there is no evidence in support of the Green area for which E the declaration and injunction were sought and granted. In this regard, counsel submitted that the concurrent findings of the two courts below are not supported by the evidence and therefore perverse. F

Learned counsel for the appellant finally urged that all the issues be resolved in favour of the appellant and the appeal is allowed with a dismissal of the respondent's claim.

G On the 1st issue for determination learned counsel for the respondent made the following submissions. He referred to the pleadings in paragraph 3 of the statement of claim which were admitted by the appellant in paragraph 3 (a) of the amended statement of defence and submitted that by virtue of the provisions of Section 75 of the Evidence Act, they need no further proof. It was his further submission that the different and additional aspect of the Appellant's case H pleaded in paragraphs 3-6 of the amended statement of defence is that which burden of proof was squarely on the appellant in accordance with the provisions of Section 137 of the Evidence Act. On the

specific issue, learned counsel referred to the concurrent findings of the two courts below about the appellant's failure to prove as alleged and submitted that the findings are not perverse and ought not to be disturbed. Reliance was placed in *Ude v. Nwangwu* (1995) 8 NWLR (Pt. 466) 644 at 652, *Chiwendu v. Mbamali* (1980) 3-4 S.C. 42.

With respect to the 2nd issue for determination, learned counsel for the respondent referred to the pleadings in paragraph 7(e) of the amended statement of defence that the appellant's father, John Anukam, allotted land to the respondent and argued that Section 46 of the Evidence Act, was rightly invoked particularly having regard to the established fact that the Respondent's house is adjacent to the land in dispute.

For the 3rd issue the substance of the submissions of learned counsel for the respondent is that since the entire land of the respondent is verged Green including the area verged Red which is the area in dispute, the trial court was in order in granting the relief as claimed.

The above represents the substance of the submissions of counsel in their respective briefs of argument. I shall now endeavour to resolve the issues starting with the first issue. It poses the question of where lies the burden of proof having regard to the pleadings and evidence. It is the contention of the appellant that the respondent, having failed to plead and prove his root of title by evidence of tradition, failed to discharge the onus of proof on him. The argument of the respondent on the other hand is that it is the appellant who failed to prove the root of his title to the land in dispute.

In the first place, had the plaintiff/respondent any duty, going by his case as set out in the statement of claim, to plead and prove the original founder of the land in dispute, how he founded it and the intervening persons through whom it devolved down to his father Anukan Aneme, from whom he inherited it? I shall answer this question in the negative. ***It is true that in Idundun v. Okumagba (1976) 9-10 S.C. (Reprint) 140 at 154-155, this court has laid down the five modes of proof of title to land. The first of these is that ownership of land may be proved by traditional evidence. The burden and standard of proof of each case depends on the nature of the case as pleaded. Where, as in this case, the plaintiff alleges that he got the land from his father***

and the defendant does not deny or challenge this allegation, then plaintiff has no duty to prove the father's own source of his title. To drive this point home, it is necessary to reproduce paragraphs 3-12 of the statement of claim.

B *3. The land the subject matter of this suit (hereinafter called the land in dispute) is situate at No. 2 Ekeonunwa Street, Owerri, and forms part of a family land traditionally known as and called "Ishi onueku One" where the father of the plaintiff, Anukam Aneme, lived with his wife and children.*

C *4. The land in dispute verged Red in the plaintiff's plan is part of the plaintiff's land verged Green. The entire plaintiff's land is bounded by the houses of Dick Anukam, Sunday John Anukam, Patrick and Hezekiah Ibejiako and by Ekeonunwa Street.*

D *5. Many years ago when the plaintiff was a minor the plaintiff's father made a gift inter vivos of the land verged Green in the survey plan No. GIKS/IMD 89/92 drawn by G.I. Ikeh, a registered surveyor and filed together with this statement of claim to the plaintiff.*

E *6. The gift was made in the presence of John Anukam (the father of the defendant), William Anukam (also called Wilfred Anukam), Dick Anukam and Godwin Anukam all being brothers of the plaintiff and sons of the plaintiff's father.*

F *7. Also in the presence of the sons, the plaintiff's father entrusted the said land to the plaintiff's aunt, Beatrice Okenwa, to look after for the plaintiff.*

8. The plaintiff's father had hitherto made gifts of various portions of land in the compound to his sons who built and lived in the houses as shown in the survey plan.

G *9. The plaintiff's aunt built a mud house on a portion of the plaintiff's land and lived therein while erecting another mud house on the portion verged Red in the plan and let same out on rent. The plaintiff's aunt used the proceeds from the rent in paying plaintiff's school fees.*

H *10. When the plaintiff became a major the aunt handed over the two buildings to the plaintiff. Plaintiff lived in the house formerly occupied by his aunt while allowing the one on rent to continue to be on rent.*

11. During the Nigerian civil war the two buildings were de-

stroyed. At the end of hostilities the plaintiff rebuilt the house he lived in using concrete blocks for the walls and corrugated iron sheets for the roof. He did not rebuild the house that was let out on rent but let it out to tenants who used it as open stalls. That portion of the plaintiff's land overlooks the Owerri main market and is separated from the market by Ekeonunwa Street. This portion is verged Red and is the land in dispute. B

12. In 1977 the defendant, without the consent of the plaintiff broke and entered the land in dispute and started the construction of a building." C

In paragraph 3(a) of the amended statement of defence, the appellant pleaded:

"Paragraph 3 of the statement of claim is also admitted. Furthermore, the defendant avers that the great grand father of the defendant and grand father of the plaintiff lived on the land with their relations Uwaleke Eshika, Eke Onugha on the land in dispute. Both begat children on this land." D

It is clear from the above that the appellant admitted paragraph 3 of the statement of claim in his own paragraph 3 (a) of the statement of defence without any qualification. It is surprising therefore that he proceeded to plead in the same paragraph 3(a) and other paragraphs of the amended statement of defence a different source of his root of title. The respondent maintained his source of title to be his father, Anukam Aneme, and at the trial was at pains to prove just that. And in view of the appellant's admission of his assertion in paragraph 3 of the statement of claim, he had no duty to prove the person who founded the land, how he founded it and the person through whom the land devolved on his father. For the purpose and proof of his title, the respondent had no duty to plead and prove more facts than he did. In my view it was sufficient if he established that the land belong to his father, Anukam Aneme, who gave same to him and that is what he did. E F G

On this question of whether the land in dispute belonged to the respondent's father, Anukam Aneme, as claimed by the respondent or Onugha Uwaleke, as claimed by the appellant, the testimony of the D.W.4 supported the case of the respondent. At page 61 of the H

record of proceedings the D.W.4, Obodi Akuebionwu, said:-

"I know the land in dispute. I know that the land belongs to Anukam since I was a boy. The Anukam I am talking about is the father of John. I know late John Anukam. The late John Anukam, was a steward. Apart from being a steward, he was also a photographer."

This was the testimony of the D.W.4 in-chief. It supports the case of the respondent that the land belonged to Anukam Aneme, and not Onugha Uwaleke, who is the Appellant's source of title. ***The well settled principle of law is that in a claim for declaration of title to land, the plaintiff has to succeed on the strength of his own case and not on the weakness of the defence. Where however evidence from the defendant supports the case of the plaintiff he is entitled to rely on it. This was the principle in Akinola v. Oluwo (1962) 1 SCNLR 352, Kodilinye v. Odu (1935) 2 WACA 336, Omoni v. Tom (1991) 6 NWLR (Pt. 195) 93, Obiaso v. Okoye (1989) 2 NWLR (Pt. 119) 80.***

In this case, having regard to the strong evidence of the Respondent supported by the evidence of the DW4 highlighted above, it is futile for the Appellant to contend that the burden of proof still remained with the Respondent. I have no doubt in my mind that there was sufficient evidence to sustain the claim of the Respondent.

On the other hand, it was not unreasonable to expect that the appellant who is a grandson of Anukam Aneme, would also trace his title to him. He did not do that. Rather he traced it to Onugha Uwaleke. I am persuaded by the argument of the respondent that it was the appellant who had the duty to plead and prove the person through whom Uwaleke derived his title. ***On this issue of burden of proof the learned trial judge at page 95 of the record said:***

"It is settled law that once a party pleads and traces the root of title to a particular person or family, he must establish how that person came to have title vested in him. He cannot ignore the proof of his overlord's title and rely on long possession. Mogaji v. Cadbury (Nig.) Ltd (1985) 2 NWLR (Pt. 739) 3 at 395. Did the defendant who pleaded traditional evidence fulfil this requirement of the law. In my view he had not. The

defendant merely pleaded and traced the persons upon whom he alleged the land in dispute devolved upon and finally came to Onugha, without any trace of how Onugha became the owner. Again the introduction of Onugha into the lineage of Anukam seems to portray a doubtful nexus."

The above represents the correct position of the legal burden of proof on the appellant going by the state of the pleadings. And I have no conceivable reason to fault the above finding by the trial court that the appellant failed to discharge this burden. It is not surprising therefore that court below adopted the above reasoning and conclusion of the trial court in its entirety and concluded thus:

"From all what I have said, suffice it therefore to say that the appellant failed woefully to prove his title to the land in dispute."

(See pages 157-158 of the e record).

I agree with the concurrent findings of the two courts below that the appellant failed to establish his alleged title to the land in dispute through the traditional evidence on which he relied.

Still on this question of proof of the respective cases of the parties, it is necessary to examine other aspects of the case contained in the pleadings and evidence. *The case of the respondent is substantially as pleaded in paragraphs 3-12 which I have reproduced above. The evidence in support thereof came from two witnesses only, the P.W.1 and the respondent himself P.W. 2. They are both sons of Anukam Aneme. The only discrepancy identified by the trial court was as to the year the Appellant started erecting a building on the land in dispute. While the P.W.1, said it was in 1967, the respondent said it was in 1977. The trial court reasoned that it was a mere discrepancy not fatal to the case of the respondent. I agree with that assessment. Besides this discrepancy, the evidence from the two witnesses is consistent with the case of the respondent as pleaded.* The P.W.1, besides being a son of Anukan Aneme, was one of those in whose presence Anukam Aneme, made the gift of the land verged Green in plaintiff's plan including the land in dispute.

The learned trial judge accorded credence to his evidence and I have no doubt that he had good cause so to do.

With respect to the case of the appellant, apart from the finding that he failed to establish the traditional history pleaded, the trial court identified some material contradictions. In paragraph 8 of the amended statement of defence the appellant pleaded as follows:

"8. Anukam Aneme, died in 1955. He never shared land to anybody in the family and never encroached on John Onuegbu Anukam, property which he inherited from Onugha. The plaintiff had all along been in Owerri and all through the life time of John Anukam, he never disputed this land in dispute. The purported gift is a mere ruse. No gift was ever made to the plaintiff."

Yet in his evidence under cross-examination at page 58 of the record the appellant said:

"Anukam Aneme, gave the plaintiff and the mother where they were living in the compound. Anukam Aneme, was my grandfather."

No explanation was offered for this contradiction between the pleading in paragraph 8 of the amended statement of defence and the evidence of the appellant himself. ***Again the learned trial judge pointed out another contradiction in the evidence of the appellant himself and the D.W.4. At page 97 of the record the learned trial judge said:-***

"Again it has to be noted, and I agree with the learned counsel for the plaintiff, that of the four witnesses called by the defendant only the D.W.3 and D.W.4 gave evidence as to the ownership of the land. While the D.W.4 testified that the land belonged to the grandfather of the defendant, i.e. Anukam Aneme, the D.W.3 i.e. the defendant said that the land in dispute was his father's inheritance from Onugha. This again is a material contradiction in the evidence of the two witnesses."

In view of the foregoing contradictions highlighted, the learned trial judge accorded no credibility to the traditional evidence of the appellant. At page 98 of the record the trial court also pointed out inconsistencies in the evidence of the D.W.2 and rejected his evidence as being unreliable. The court below reproduced the reasoning and findings of the trial court which it wholly endorsed. I have no reason to disturb the concurrent

findings of the two courts below. They are amply supported by the evidence on record. The result is that I resolve the 1st issue for determination against the appellant.

The 2nd issue pertains to the propriety or otherwise in the invocation of Section 46 of the Evidence Act, in favour of the respondent. It was the contention of the appellant that there was evidence of his numerous acts of possession and ownership on and around the land in dispute to warrant the inference that he has title to it. It was his submission there from that Section 46 of the Evidence Act, was wrongly invoked in favour of the respondent.

The case of the respondent and accepted by the court below is that the land verged Green in Exhibit "B" and which includes the land verged Red was given to him by his father and grandfather of the appellant, Anukam Aneme, in the presence of his other children namely John Anukam (appellant's father), William Anukam, Godwin Anukam and Dick Anukam and his maternal aunt Beatrice Okenwa, that he gave it on trust to Beatrice Okenwa for him. Beatrice Okenwa, split the land into two and built thatched houses on them. She lived in one and rented out the other to tenants which proceeds she used in paying his school fees. When the land was surrendered to him he continued to live on the part where she lived and collected rents on the other part. During the civil war they fled. On their return after the civil war the buildings had been damaged. He rebuilt the part where he now lives and rented out the empty portion to traders who paid him rent. It is this empty portion on which the appellant encroached and which is the land in dispute. ***The appellant does not deny the respondent's title to the area verged Green except the portion verged Red which is the land in dispute. The land in dispute is contiguous to the area not in dispute. And in view of the respondent's acts of ownership over the undisputed portion the learned trial judge at page 103 of the record found:***

"It seems to me that all these and all the other acts of the plaintiff in asserting his right over the land in dispute coupled with the contiguous nature of the land in dispute to the undisputed property of the plaintiff are sufficient to raise the probability that the plaintiff is in addition to his house the owner of the land in dispute. See the case of Okechukwu v.

Okafor (supra) and Section 46 of the Evidence Act, 1990.
The above clearly shows the respondent's user of the undisputed portion of the land verged Green and its contiguity to the land in dispute. These facts are uncontroverted and therefore established. The fact of contiguity is even clearly borne
 B ***out in Exhibit "B". In the face of these established facts, I do not fancy any error in the trial court's invocation of Section 46 of the Evidence Act. It is not surprising therefore that the court below also fully endorsed the conclusion of the trial at***
 C ***page 162 of the record. The result is that I also resolve this issue in favour of the respondent.***

The third and last issue is whether the lower court was right in affirming the reliefs granted by the trial court. I have earlier in this judgment reproduced the reliefs claimed by the respondent. Relief
 D one thereof seeks a declaration that the respondent is entitled to a Statutory Certificate of Occupancy to the land verged Green in the Respondent's plan Exhibit "B". With respect to the relief claimed, the respondent testifying as P.W.2 said:

E ***"I want the court to declare that I am entitled to the Statutory Certificate of Occupancy of the land in dispute."***

The substance of the argument of learned counsel for the appellant is that the land in dispute is the area verged Red in plaintiff's plan Exhibit "B" which is not the same thing as the land verged Green. It was
 F his submission therefore that the court granted a relief not claimed by the respondent.

Technically, the argument sounds reasonable. In practical terms however, the argument is neither here nor there. The area verged Red which is the land in dispute forms part of
 G ***the same parcel of land verged Green. The area to which the appellant made adverse claim was restricted to the area verge Red within the larger area verged Green. Although the judgment has given title of the land verged Green to the respondent, the appellant's loss is nevertheless confined to the area***
 H ***verged Red since he made no claim to any area outside the area verged Red. Therefore the declaration in respect of the Green area notwithstanding, the appellant has suffered no greater loss than the area verged Red and cannot be heard to***

complain. The result is that this issue is also resolved in favour of the respondent.

On the whole, I am satisfied that the appeal is without substance and is liable to be dismissed and is accordingly dismissed. I assess the costs of this appeal at N10, 000.00 in favour of the respondent. B

KATSINA-ALU JSC

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

MUKHTAR JSC

In the High Court of Justice, Imo State, holden at Owerri, the respondent who was then the plaintiff, as per his statement of claim sought the following reliefs:-

"(a) declaration that the plaintiff is entitled to a statutory Certificate of Occupancy of the land verged green in the plaintiffs plan No GIKS/IMO 89/92 filed together with this statement of claim. E

(b) N2,000.00 damages for trespass.

(c) Perpetual injunction restraining the defendant his agents or servants from further interfering however with the plaintiffs rights and interests in the land for which the declaration in (a) above is sought." F

The learned trial judge found in favour of the plaintiff and granted the above reliefs, but less damages in respect of (b) above. The defendant was dissatisfied and appealed to the Court of Appeal which dismissed the appeal. Again, he has appealed to this court on G four grounds of appeal. Briefs of argument were exchanged and adopted by learned counsel at the hearing of the appeal. The three issues raised in the appellant's brief of argument are:-

"(a) Whether the learned Justices of the Court of Appeal were right in affirming the judgment of the court below in favour of the plaintiff/respondent when he did not plead and prove the root of his title to the land in dispute? H

(b) Whether the provisions of Section 46 of the Evidence Act,

Laws of the Federation of Nigeria, 1990 Edition avails the respondent in the circumstances of this case?

(c) *Whether the respondent was not estopped from claiming the entire land contrary to the alleged decision of the Native Arbitrators to share the land into two which decision he accepted and also*
 B *relied upon in proof of this case?*

(d) *Whether the learned Justices of the Court of Appeal were right in affirming the award by the learned Trial Judge of reliefs not claimed by the plaintiff/respondent in his evidence before the trial court?"*
 C

On the other hand the issues raised by the respondent in his brief of argument are as follows:-

(a) Whether the burden of proof of the root of his title to the land in dispute did not shift to the appellant going by his amended
 D statement of defence.

(b) Whether the lower court was not right in holding that section 46 enured in favour of the respondent.

(c) Whether the lower court's confirmation of the grant of the reliefs sought for in the suit was wrong.

E At this juncture I will advert my mind to the respondent's attack of issue (c) supra in the appellant's brief of argument, which learned counsel contended did not relate to any of the grounds of appeal. Ideally, a notice of preliminary objection and its ground should
 F have been filed by learned counsel for the respondent, and then the argument in respect of the objection could be incorporated in the brief of argument. See *Abioye v Afolabi* (1998) 4 NWLR part 545 page 296. As it is, he merely made his contention and argued that
 G the said issue (c) did not stem from any of the grounds of appeal and placed reliance on the cases of *Akinbinu v Oseni* (1992) 1 NWLR part 215 page 97, *Ugo v Obiekwe* (1989) 1 NWLR part 89 page 89, and *Module v State* (1988) 4 NWLR part 87 page 130. Be that as it may, even if the learned counsel has not raised the issue of competence of the issue the court can suo moto consider the competence
 H of an issue or ground of appeal and make whatever consequential orders it deems fit in the circumstance. However, at the hearing of the appeal learned counsel for the appellant saw some wisdom in withdrawing the said issue (c) above, and it is accordingly been struck

out.

Then later in the respondent's brief of argument the learned counsel raised a preliminary objection in which he argued that the appeal was not competent in that leave to appeal should have been sought in compliance with Section 233 (3) of the Constitution of the Federal Republic of Nigeria 1999, the grounds of appeal not being grounds of law simpliciter but at best of mixed law and facts. B

I will now reproduce and examine the grounds of appeal. The grounds are :-

Ground one - Error in Law:

"(a) The Court of Appeal erred in law when it held that the appellant did not prove his root of title to the land in dispute and this occasioned a miscarriage of justice. C

Particulars of Error

(i) The appellant pleaded at paragraph 3 (a) and (b) of the amended statement of defence that the great grandfather of the defendant and the grandfather to the plaintiff/respondent lived on the land in dispute with their relations Uwaleke Eshika and Eke Onugha. D

(i) There was pleading and evidence that the Appellant inherited the land in dispute from his father, John Owuegbu Anukam. The land was the property of Onugha who was buried by John Anukam and therefore inherited it from its original owner, Onugha, in accordance with Owerri custom. E

(ii)(iv)

(b) Ground two: Error in Law F

The lower court erred in law when it upheld the decisions of the trial court declaring title by traditional history to the land in dispute in favour of the respondent who did not establish the root of title of his purported grantor, Aneme Anukam. G

Particulars of Error

(i) The respondent's case was essentially founded on traditional history.

(ii) The respondent pleaded and gave evidence that the land in dispute was given to him by his father Anukam Aneme. H

(iii)(vii)

The respondent did not prove his root of title and none was admitted by the appellant.

(c) Ground three

Error in Law

The lower court erred in holding that the provision of Section 46 of the Evidence Act availed the respondent.

Particulars of error:

- (i)(ii)
 B (iii) There was no record of evidence showing that the land in dispute was surrounded by the respondent's land.

(iv) Having failed to plead and prove the root of title of his alleged grantor, Anukam Aneme, the respondent cannot call in aid the provision of Section 46 of the Evidence Act nor any claim for possession of a parcel of land from the grant or adjoining the disputed land.
 C

(d) Ground four

The lower court erred in law when it held that the respondent led evidence in support of the reliefs claimed in the statement of claim and therefore affirmed the trial court's judgment.
 D

Particulars of error

- (i) At paragraph 4 of the statement of claim the respondent pleaded inter alia; "4. The land in dispute verged red in the plaintiffs plan is part of the plaintiffs land verged green...." The same fact is pleaded at paragraph 12 of the statement of claim.
 E

(Underlining is mine)

- (ii) In his evidence before the trial court the respondent stated inter alia, (a) I want the court to declare that I am entitled to the statutory certificate of occupancy of the land in dispute'
 F

(iii)

- (iv) The court ought not to have granted the land verged ' green' to the respondent as he gave no evidence in support of that relief."
 G

The grounds are all christened grounds of law, but the grounds and supporting particulars with the exception of ground (3) are not in any way grounds of law simpliciter, i.e. they are not purely grounds of law. Facts are certainly involved for nowhere in any part of grounds (1), (2) and (3) were there no evidence or finding mentioned. In this respect, the grounds are grounds of mixed law, and facts for which leave of court is required. Authorities abound that the fact that a ground of appeal is christened error in law does not make it a ground
 H

of law. See *Nwadike v Ibekwe* (1987) 4 NWLR part 67 page 718.

By virtue of Section 233 (2) of the constitution supra, 'An appeal shall lie from decisions of the Court of Appeal as of right in the following case -

(a) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Court of Appeal.

The subsection (3) stipulates:-

"(3) Subject to the provisions of subsection (2) of this section, an appeal shall lie from the decisions of the Court of Appeal to the Supreme Court with the leave of the Court of Appeal or the Supreme Court."

As can be seen from the contents grounds (1), (2) and (4) are not grounds of law, but facts and or mixed law and facts; which do not fall within the ambit of sub-subsection (a) supra. They are grounds that require the leave of court, which have not been obtained. The grounds are therefore incompetent and deserve to be struck out.

However, ground (3) of appeal, as I have already stated above is a ground of law, and being so it can sustain the appeal. The lead judgment of my learned brother Tabai, J.S.C has already been read by me, and I am in full agreement with the reasoning and conclusion reached therein, that the appeal lacks merit and deserves to be dismissed. I also dismiss it and abide by the order on costs.

MOHAMMED JSC

The respondent in this appeal was the plaintiff at the trial Owerri High Court of Imo State where he sued the appellant as defendant for a declaration of title over a piece of land located at Ekeonunwa Street Owerri. After hearing the parties on pleadings, the trial court in its judgment of 7th July, 1999, found in favour of the Respondent and granted the reliefs sought by him. The appellant who was not satisfied with the judgment, appealed against it to the Court of Appeal Port-Harcourt division where the appeal was heard and dismissed. Still not satisfied with the determination of his right by that court, the appellant is now on a final appeal to this court, raising for determination of the appeal, the following three issues:-

"(a) Whether the learned Justices of the Court of Appeal were right in affirming the judgment of the trial court in favour of the plaintiff/respondent when he did not plead and prove the root of his title to the land in dispute.

B (b) Whether the provisions of Section 46 of the Evidence Act, Laws of the Federation of Nigeria, 1990 Edition avails the respondent in the circumstances of this case.

(c) Whether the learned Justices of the Court of Appeal were right in affirming the award by the learned trial judge of reliefs not C claimed by the plaintiff/respondent in his evidence before the trial court."

Three issues on the root of title to the land, effect of Section 46 of the Evidence Act and whether the reliefs claimed by the respondent at the trial court were rightly granted, were duly framed in the D respondent's brief of argument.

From the pleadings and the evidence led in support thereof, the respondent's case as put before the trial court was that the land in dispute formed part of the parcel of land which his father Anukam E Aneme gave to him during his life time when the Respondent was ten years old in the presence of his other brothers, including the father of the appellant.

The appellant on the other hand pleaded and led evidence that he inherited the land in dispute from his own father John F Anukam who in turn inherited the same from one Onugha Uwaleke, whom the appellant's father buried and inherited the land in dispute including other parcels of land as the said Onugha had no male issue.

The learned trial judge had no difficulty in accepting the evidence led by the respondent in support of his claim that the land in G dispute was given to him by his father in the presence of other children of the respondent's father one of whom in fact happened to be the father of the appellant himself being one of the children of the respondent's father. The trial court rejected the evidence adduced by the appellant that he inherited the land in dispute from his own father H who inherited the same, not from his own father Anukam Aneme or grand father but from one Onugha whose root of title to the land in dispute was not revealed by the appellant, particularly when the parties are members of the same Anukam family.

The court below on preponderance of evidence, agreed with the trial court that the respondent had proved his case to have been entitled to judgment. I have no reason, whatsoever to disagree with these concurrent decisions of the two courts below. I therefore entirely agree with my learned brother Tabai, J.S.C in his lead judgment that there is no merit in this appeal. Consequently, I also dismiss the appeal and abide by the order on costs in the lead judgment.

CHUKWUMA-ENEH JSC

I have had the privilege to read in advance the judgment of my Lord Tabai J.S.C with which I entirely agree. I also agree with the conclusions reached in the said judgment and that it lacks merit. I too dismiss the appeal.

However, I must observe that the trial court made a brilliant job of the case. The respondent is entitled to costs which I assess and fix at N10,000.00.