

**SUPREME COURT OF NIGERIA**

3RD APRIL, 2009. SC. 54/2005

**CORAM:- D. MUSDAPHER, G. A. OGUNTADE, F. F. TABAI,  
J. O. OGEBE, M. S. MUNTAKA-COOMASSIE, JJSC**

1. CHIEF ADESINA JINADU  
(Substituted for Chief Bello Davies)
2. YINUSA ABU
3. KEHINDE SAVAGE  
(Substituted for Late Lawrence A Savage)
4. OLAJIDE SAVAGE
5. ALHAJI AMAO LAWAL
6. ISIAKA ADEWUSI  
(Substituted for Late Teslimi Adewusi)
7. MADAM IDOWU TOKOSI  
(Substituted for Late Mariam Tokosi)
8. LAMIDI TOKOSI ..... DEFENDANTS/
9. ALHAJI RAFIU KEKERE-EKUN 1ST TO 12TH APPELLANTS  
(Substituted for late Karimu Kekere-Ekun)
10. GANIYU ANMASHAUN
11. ALHAJI ALIATA RUFAL  
IGBOGBOJI  
(Substituted for late Raimi Sule Igbogboji)
12. ALHAJI NURUDEEN OKO-OSI  
(Substituted for late Nimota Bankole)  
(SUED FOR THEMSELVES AND ON  
BEHALF OF IGANMU COMMUNITY)
13. ALHAJI HAMZAT LAGUDA ..... 24TH DEFENDANT/  
(Substituted for Alhaji A. K. Laguda) 13TH APPELLANT  
FOR HIMSELF AND ON BEHALF  
OF THE YESUFU ADEOSI FAMILY  
AND
1. CHIEF ISRAEL ESUROMBI-ARO ..... PLAINTIFFS/  
2. CHIEF ABDUL FATAI AROMIRE, RESPONDENTS  
THE OJORA OF LAGOS  
(FOR THEMSELVES AND ON BEHALF  
OF OJORA CHIEFTAINCY FAMILY)

EVIDENCE - Admissibility - Documents - Unsigned by their makers - Exhibits R & S though unsigned - Do not become inadmissible thereby - But should attract little or no weight (H1)

EVIDENCE - Assessment - Documentary evidence - Effect on oral evidence - Where there is oral and documentary evidence - Documentary evidence should be used as a hanger from which to assess oral evidence (H2)

APPEALS - Concurrent findings - Supported by evidence - Fate of - Such findings - As the customary tenancy status of 1st to 12th appellants - Will not be interfered with by appellate court (H3)

LAND LAW - Title - Declaration of - Judicial precedents - Where title is in a 3rd party - Court will not grant such declaration - But instant facts are distinguishable from Dada case - As evidence show that appellants are customary tenants of respondents (H4)

LAND LAW - Tenancy - Grantor's title - Denial - By a plea of *jus terti* - Attitude of courts - License will not be granted to tenants to deny their grantors' title - Through a plea of *jus terti* (H5)

LAND LAW - Title - Traditional history - Proof - Though 13th appellant pleaded traditional history of their title to the land in dispute - There is evidence accepted by trial court contrary to that pleading (H6)

LAND LAW - Title - Proof - Evidence of acquisition - Effect - Acquisition of part of the land in Exhibit A from the respondents by government - Strengthens the respondents' claim of title to the land in dispute (H7)

ACTIONS - Counter claim - Dismissal of - Propriety - It was properly dismissed as there was no basis for granting it - In view of the evidence before the trial Court (H8)

### **FACTS**

The plaintiffs/respondents sued the defendants/appellants for declaration of title, forfeiture of customary tenancy and possession of the land in dispute. Some of the appellants counterclaimed for declaration of title on the basis that whatever land had previously belonged to the respondents had been acquired by government. Respondents had tendered certain documentary evidence in proof of their overlordship of the 1st to 12th appellants, including exhibits R and S, minutes of the respondents' meeting with those appellants and the latter's letter of apology to respondents for their misbehaviour respectively.

The exhibits happened not to have been signed by their makers. After hearing, the trial Court granted the claims of the respondents and dismissed the counterclaims of the appellants. Dissatisfied, appellants appealed to the Court of Appeal which dismissed the appeal. Still dissatisfied, appellants have brought this further appeal to the Supreme Court contending, *inter alia*, that the unsigned exhibits were inadmissible.

### **ISSUE FOR DETERMINATION**

*"Whether or not on the totality of the evidence called by the plaintiffs/respondents they were entitled to the judgments given in their favour by the two courts below."*

**HELD** (Unanimously dismissing the appeal per **OGUNTADE JSC**)  
**Admissibility - Documents - Unsigned by their makers**

1. I think that the 1st - 12th appellants have merely tried to make a mountain out of a mole hill concerning exhibits R and S. These were documentary evidence tendered by the plaintiffs/respondents to show that the 1st to 12th appellants had held a meeting with the plaintiffs/respondents' family whereat they acknowledged the overlordship of the family over the land in disputes. The minutes exhibit 'R' were not signed by the maker as they should be. Exhibit 'S' is a letter said to have been written by the 1st - 12th appellants to apologize over their attempt to appoint a Baale for Iganmu village without the concurrence of the plaintiffs/respondents' family.

I do not consider exhibits R and S inadmissible in evidence but being documents not bearing the signatures of the makers, they

should attract little or no weight. (p. 901 D)

**EVIDENCE - Assessment - Documentary evidence**

2. In reacting to the argument of the 1st to 12th appellants before it, the court below at page 52 of the record observed:

B      *"It is settled that where there is oral and documentary evidence, documentary evidence should be used as a hanger from which to assess oral testimony. "*

I agree with the reasoning above of the court below.

C (pp. 901 G/ 902 A)

**Concurrent findings - Supported by evidence - Fate of**

3. It ought to be borne in mind that the plaintiffs/respondents' case was that the 1st to 12th appellants were their customary tenants. The finding of the trial court which was affirmed by the court below was that the 1st- 12th appellants were the customary tenants of the Plaintiffs/respondents. There was adequate evidence on record to support these finding and these being concurrent findings on an issue of fact, this Court will not interfere. (p. 904 G)

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**Title - Declaration of - Judicial precedents**

4. In Dada v. Ogunremi [1967] NMLR 181, this Court per Coker JSC held that in a claim for declaration of title, where there is evidence before the trial court that the ownership of the land in dispute is in another person who is not a party to the proceedings, the court would refuse to grant a declaration of title. But in this case we have a situation where the evidence accepted by the court indicates that the land in dispute was granted to the 1st to 12th appellants as customary tenants. (p. 905 E)

G

**Tenancy - Grantor's title - Denial - By a plea of jus tertii**

5. It is therefore not open to the appellants to argue that the ownership of the land granted to them by the plaintiffs/respondents was in another party not before the court, since the trial court had found that they were customary tenants to the plaintiffs/respondents. That would amount to granting them the license to deny their grantors' title. They did not derive their possessory rights from the colonial government or any other government. In Anukanti v. Ekwonyease

H

[1978] 1 S.C. 37, this Court held that where a party obtains possession of land from one person, he could not rely on title vested in another to defeat through a plea of *jus tertii* his grantor's title. (p. 905 G)

### ***Title - Traditional history - Proof***

B

6. It was pleaded that Yesufu Adeosi's ancestors settled in Iganmu at a time when the place was a jungle with no sign of habitation. But there was the evidence which the trial court accepted that the 13th appellant was a member of the group created by all the customary tenants of the plaintiffs/respondents solely for the purpose of revolting against the plaintiffs/respondents by denying the title through which they and their ancestors came on the land. (p. 906 D)

### ***Title - Proof - Evidence of acquisition - Effect***

D

7. All the appellants made a great play out of the fact that part of the Land of the plaintiffs/respondents as depicted in exhibit A (made in 1918) had been acquired by the colonial government vide exhibit AA5. Even on that supposition, the plaintiffs/respondents case is further strengthened because this shows that the land contiguous to the land in dispute has been shown to belong to the plaintiffs/respondents. (p. 909 A)

### ***Counter-claim - Dismissal of - Propriety***

F

8. Lastly is the contention of the 13th appellant that his counter-claim for declaration of title was wrongly dismissed. This contention in my view is patently unsupportable having regard to the fact that the 13th appellant admitted before the trial court that his family had transferred its interest in the land to a limited liability company which was not a party to this proceedings.

It seems to me that there existed no basis upon which the two courts below could have granted the counter-claim of the 13th appellant when on the plethora of evidence before the trial court, the ownership of the land was vested in the plaintiffs/respondents, and when in any case, the 13th appellant having admitted that the land had been conveyed by his family to a limited liability company had no further interest in the land to protect. (p. 909 D)

**REPRESENTATION**

P. O. Jimoh-Lasis Esq. S.A.N, (Messrs. J. K. Adeyi-Odumbaku , S. Agbarere Mustapha, Uche-Okoro, M, B. Jimoh-Akogun and Adedoyin Elegbede with him) for 1st-12th appellants.

J. A. Badejo Esq. (P. E. K. Ekwueme Esq. with him) for the 13th  
B appellant.

Chief G. O. K. Ajayi SAN (A. O. Okeaya Ineh SAN, Mrs. R. F. Okunola and Miss A. Lawal with him) for the respondents.

**CASES REFERRED TO**

- C Ogundairo v. Okanlawon [1963] 1 All NLR 358  
 Faleye v. Otapo [1995] 3 NWLR (Pt 381) 1 at 32 - 22  
 Uchendu v. Ogboni [1999] 4 S.C. 1 (Part II)  
 Ekpo v. Ita 11 NLR 68  
 D Mogo Chinwendu v. Nwanegbo Mbamali & Anor (1980) 3-4 SC. 31  
 at 75  
 Lamai v. Orbih (1980) 5-7 S.C. 27  
 Ikpe Ibodo v. Enarofia & Ors. (1980) 5 S.C. 42 at 4.  
 Victor Woluchem v. Simon Gudi (1981) 5 SC. 319 at 326-330  
 E Seisemograph Service Nigeria Ltd. V. Chief Keke Ogbenekwe Eyaufe  
 (1976) 9-10 SC 135, 146; (1976) F.N.R. 162  
 Madumure v. Okafor (1996) 3-4 MAC 165

**LEAD JUDGMENT BY OGUNTADE JSC**

F The respondents were the plaintiffs before the Lagos High Court where they claimed against the appellants (as the defendants) the following reliefs:

- G “1. A declaration of title under native law and custom to all that parcel of land being part of Ojora Chieftaincy Family land situate at Iganmu, Lagos comprising inter alia Orile Iganmu, Aloko Sarage, Sari, Offa-Offin, Oso-Olodi, Tokosi, Coker, Ajabe, Laniyonu, Tapa Bankole, Imoro and adjoining villages shown on Plan No. AL 641/1974;  
 H 2. Forfeiture of the customary tenancy and occupational right of all the defendants and each of them in the land in dispute.  
 3. Possession of the said lands.”

The parties filed and exchanged pleadings. The suit was heard by Segun C.J. On 13th December, 2000, the trial Chief Judge in his

judgment granted the claims of the plaintiffs now respondents. The counter-claims filed by some of the defendants were dismissed. The defendants/appellants were dissatisfied with the judgment of the trial court. They brought an appeal before the Court of Appeal, Lagos (hereinafter referred to as 'the court below'). The court below, on 8/11/2004 dismissed the appeal. Still dissatisfied, the defendants/ap-  
 appellants have come on a final appeal before this Court. It is necessary that I point out here that the appellants before this Court are in two groups, namely the 1st - 12th appellants and the 13th appellant who was the 24th defendant before the trial court. In the appellants' brief filed on behalf of the 1st- 12th appellants, the issues for determination in the appeal were identified as the following:

*"1. Whether the Court of Appeal was right when it held that the plaintiffs/respondents were entitled to a declaration of title to the land in dispute. Grounds 1, 5 and 7.*

*2. Whether the plaintiffs/respondents can maintain an action for declaration of title to the same land acquired by government even on the admission of the 9th Plaintiffs' witness Chief Taoreed Lawal-Akapo. Grounds 6 and 9.*

*3. Whether the Court of Appeal properly considered the issues of admissibility and probative value of the documentary and oral evidence raised by the 1st -12th appellants in the determination of the appeal before them. Grounds 3, 6, 8, 10, 11 and 12.*

*4. Whether the plaintiffs/respondents proved that the 1st - 12th appellants, the 1st set of defendants/appellant were their customary tenants. Grounds 2 and 4."*

In the appellant's brief filed by counsel on behalf of the 13th appellant, the issues for determination were stated to be these:

*"1. Whether on the state of the pleadings and admissible evidence before the court, the plaintiff could be said to have proved title to the land in dispute.....*

*2. Whether there is evidence that the 24th defendant/13th appellant's family are customary tenants of the plaintiffs.....*

*3. Whether the evidence in support of the 24th/13th appellant's case is sufficient to grant the counterclaim....."*

It is appropriate that the pleadings of the parties upon which the case was tried be discussed in order to expose the standpoints of the parties on the germane issues in this appeal. The plaintiffs/re-

spondents in paragraphs 2, 3 and 4 of their amended Statement of claim pleaded thus:

*"2. The land in dispute forms a portion of a large area of land which belonged to the Ojora Chieftaincy Family absolutely under Yoruba Native Law and Custom,*

*B 4. The Ojora Chieftaincy Family is one of the Idejo Land owning Chieftaincy Families of Lagos and its traditional head is the Chief Ojora, a Lagos Idejo White Cap Chief.*

*C 5. The whole of the land originally owned by the Ojora Chieftaincy Family (hereinafter referred to as the Ojora Land) were known generally as Iganmu and have been in the possession of the said family (sic) from time immemorial and is bounded on the East by the Lagos Lagoon and part of Lagos Island and Ebute-Metta; on the North by the land of Oloto Chieftaincy Family Abebe Creek, Iguru D Swamp and Itire Land; on the West by the land of Amuwo and of Alahun and on the South by the land of the Oluwa Chieftaincy Family, and more particularly shown on a plan dated December 1918 made by Herbert Macaulay (now deceased.)"*

*E The respondents subsequently went on to plead the diverse acts of possession spanning several years and how the ancestors of the defendants/appellants became their customary tenants. In paragraphs 46 to 57, the plaintiffs/respondents pleaded thus:*

*F "46. The Plaintiffs aver that several other villages such as Odi Village, Tinubu Village, Dodoro and several others were occupied by customary tenants of the Plaintiffs family and they all paid tribute and later rent in the form of cash to the Plaintiff's family and many of the occupants of such villages still acknowledge the ownership of the Plaintiff's family.*

*G 47. The Plaintiff's family have exercised maximum accts (sic) of ownership over the land in dispute and other surrounding villages which form part of their land at Iganmu by:-*

*H (i) Placing tenants upon and collecting tribute and rents as afore-said from the villages hereinbefore mentioned as well as others such as Apapa, Oguntayo, Obadiya, Alaiyabiagba Tokosi, Amukoko Ajegunle, Aiyetoro, Mosafejo Alaba Metta, Onikere, Olongo, Layeni, Dodoro, Agidimo Apapa Elemu (before compulsory acquisition) Tinubu and several others.*

*(ii) Appointing or approving the appointment of the Baale of*



*each of the said villages where necessary.*

(iii) Prosecuting several litigation over the years against trespassers or other claimants to other portions of the Ojora Chieftaincy Family lands such as:-

(a) Suit No. 113/1939 Chief Ojora V. Lawrence Gardozo in respect of land upon which the present Gaskiya College is now built. B

(b) Suit No. LD/48/75 Chief Lawani Akapo v. Latunde Lawrence in respect of the same land.

(c) Suit No. LD/375/68 Chief A. L. Odunsi Ojora v. Muniratu Ajiwun & Ors. in respect of land at Apata Village. C

(d) Litigation against a branch of the Amuwo Odofin Family as to the ownership of land which forms part of the South-Western boundary of Ojora lands aforesaid in HK/94/60 Yaba Lemonu & Ors. v. Ajayi & Ors.

(iv) Granting or dedicating lands to Local Authorities and Local communities for Public use e.g. Markets (Ajegunle) Cemeteries, Local Government Council offices.

48. All the customary tenants of the Plaintiffs originally paid tribute in the form of farm products and homage until 1922 when the customary tribute was converted to small cash payments. E

49. The Defendants with many of the other tenants have quite recently formed themselves into a group that now variously described themselves as the 'Iganmu community' 'Iganmu Family & Council' and 'The Ilupeju Iganmu United Movement Group' and have as such claimed to be absolute owners of the land and have been granting leases of the land to strangers and to themselves as absolute owners. F

50. The Defendants have set up officers in various parts of the land in dispute and chose several of the other members of their group to the offices and to It (sic) or sell out portions of the land in dispute to strangers. G

51. The Plaintiffs further aver that individuals who belong to the said group have also commenced to lease and/or set the Plaintiffs Family land individually and have collectively denied the ownership and overlordship of the Plaintiff. H

52. Defendants by their servants and agents have repeatedly prevented the grantees of the Plaintiffs from taking possession of the lands lawfully granted to them by the plaintiffs.

53. The defendants have on several occasions used great vio-

*lence on the Plaintiffs and their agents and grants and have repeatedly attacked the members of the Plaintiffs Family on the land and have generally established a reign of terror in the area.*

B 54. *In a Public Notice appearing above the name of the 1st Defendant as alleged Baale of Iganmu and published in the issue of the Daily times of the 12th June 1971 the 1st Defendant claimed ownership of the land in dispute for the Defendants -therein described as the Iganmu Community Council.*

C 55. *On the 17th of November 1972 the Defendants led by the 1st, 2nd and 11th Defendants and their relations and thugs forcibly entered Ama Li'l's house declaring that they would kill him for not joining them to claim the land in dispute against the Plaintiff Family.*

D 56. *The said Defendants also threatened to attack other tenants of the Plaintiffs who did not join them and who maintained good relations with the Plaintiffs Family.*

57. *On the 16th of November 1972 the Defendants fully knowing that Monday Ugbogu was the Plaintiffs Surveyor's employee engaged in the survey of the land in dispute for the purpose of this case assaulted the said Ugbogu on the land in dispute."*

E The 1st - 12th defendants/appellants in paragraphs 5 - 44 of their amended Statement of Defence pleaded thus:

*"5. Their land (including the site of their original palace) was acquired many years ago by Government.*

F 6. *The land so acquired was in Iddo Island and was owned and occupied by the Ojora Family who were paid compensation for the said land.*

G 7. *As the entire Family was by this acquisition dispossessed of all their land and following appeals made by them to the then Colonial Government and consequent upon the agreement reached between the Ojora Family and the Government, by a lease dated 19th December 1925 and registered as No. 39 at Page 39 in Volume 195 Lagos, the Government of Nigeria granted a large parcel of land to the Ojora Family 'in place of the said lands so acquired'.*

H 8. *These defendants aver that the Ojora Family built a new Palace for their then Chief Ojora, one Bakare Faro, (otherwise known as Bakare Faro Olugbode) on a plot within the land leased to them and two minor palaces for their Chiefs Odofin of Ijora and Aro of Ijora.*

9. *Plan HU/LA/3400 of the 2nd October, 1986 which, inter alia, shows the land originally owned by the Ojora Family and the land on which they were resettled by Government as tenants of Government.*

10. *These defendants will contend that the Ojora Family never owned any land to the North West or South of the area granted to them by Government and now own no such land.* B

11. *These defendants aver that they have never paid any tribute or terminal dues of any kind to the Ojora Family in their lifetime and that their forbears did not tell them that they had paid any payments as customary tenants to the said Ojora Family.* C

12. *These defendants aver that although about one half of the land subject matter of the plaintiffs claim has been acquired by Government, the plaintiff's family did not put up and has not up to the date hereof put up any claim to compensation for the land so acquired.* D

13. *These defendants aver that the original 1st defendant was late Abudu Gafar Oyewole Bello, Baale of Orile Iganmu who succeeded his father Quadri Bello (Deceased) as Baale in 1964.*

13a. *These defendants aver that Quadri Bello (deceased) succeeded his father Abudu Bello (dec'd) as Baale of Orile Iganmu in 1944* E

13b. *These defendants aver that late Gafar Oyebowale Bello, the original 1st defendant and his predecessors as Bale of Orile Iganmu never told them that they are tenants of Ojora family on Iganmu land.* F

14. *With regard to Tapa Village, one Abudu Bada, a native of Bida, was the first settler there.*

15. *Abudu Bada was an itinerant drummer and first reached G what is now Orile Iganmu where he met Oke, the first settler at Iganmu.*

16. *Abudu Bada later moved on and settled at the spot now known as Tapa Village.*

17. *Bada begat Gbogboji who begat Rufai who begat the 15th defendant.* H

18. *These defendants aver that the plaintiff knows nothing about the several villages mentioned in the Amended Statement of Claim and are now merely scouting for information about them.*

19. *In this regard these defendants will point out that the genealogy of the Gbogboji Family as presented by the plaintiff is wrong and that Momo Gbogboji had five children, namely, Saka, Rufai, Aminotu, Asana and Yekini.*

B 20. *The 151 defendant avers that neither her father nor her grand-father, both of whom she grew up to know, told her that they were customary tenants of the Ojora Family.*

21. *The 2nd defendant a native of Aloko Village, is aged over 80 years and is very ill and immobile.*

C 22. *One Yisa, a Hausaman and catapult hunter arrived in the course of his journeying settled at Aloko Village.*

23. *Yisa begat Abu and Abu begat the 2nd defendant.*

D 24. *These defendants aver that there was no Momoh Aloko at Aloko Village and that the derivation of the name of the Village is 'Eniti o loko ni ido-Oro'.*

25. *The 5th defendant is a son of Lawani Ajagbe, whose forbear Ajagbe, a native of Offa, first settled at Ajagbe Village (sic) 100 years ago.*

E 26. *The 7th defendant lives in Osho Village, his ancestors has first settled there for over 100 years ago.*

27. *The 9th defendant avers that his grandfather was one Momoh Tapa (Nupe) who came to meet his kinsman Momodu Gbogboji (sic) what is now Tapa Village.*

F 28. xxxxxxxxxxxxxxxxxxxx 29.

30. *The 3rd and 4th defendants are natives of Savage Village.*

31. *They are descendants of one Aina Agbenotefon a hunter, who first settled at the spot now known as Savage Village.*

G 32. *He begat one Ajayi who begat one Buraimoh Moroun. When Buraimoh was of school age his father agreed to his being called Moroun Savage to facilitate the lad's admission to a Christian school.*

33. *When he grew up he lived in the village and the village took his name Savage.*

H 34. *One Oke, who hailed from Ile-Ife, a hunter on a hunting expedition reached Isunba, a place near the present Kirikiri where he stopped.*

35. *The area was swampy and he made expeditions from there and on one of such expeditions he sighted an elephant which he*

attacked.

36. *The elephant travelled a distance and then fell and died; Oke called the spot 'Egan yi mu' i.e., this ground is fertile,*

37. *These defendants aver that the spot up to this day remains the Ojubo of the god of iron at Iganmu.*

38. *Oke and his people then left the swampy Isunba for his new settlement on hard soil which he named 'Egan yi mu', now Iganmu.*

39. *Oke was later joined by more people and consequently, among others, the several villages mentioned herein, among others, came into existence under the paramount rule of Oke and his successors as the head of his Family. The 1st defendant is a descendant of Oke.*

40. *These defendants aver that their traditional history as herein set out is what their fathers and forbears told them and they had no reasons for disbelieving them.*

41. *These defendants aver that the capacity or capacities in which they are sued is not a juristic person or one known to the law.*

42. *These defendants aver that each and every one of them holds his or her respective portion of land in his or her individual capacity and will therefore contend that the plaintiffs claim against them jointly is misconceived and invalid for misjoinder,*

43. *These defendants aver that they have not either as individuals or as a body been authorized to defend this action by any-body.*

44. *These defendants aver that the plan filed by the plaintiff is vague and bad in law for the purposes of this case as it does not show the portion alleged to have been given to each of these defendants."*

The 24th defendant before the trial court, and now the 13th G appellant in his 2nd Further Amended Statement of defence pleaded in paragraphs 4-9 thus:

*"4. The land in dispute forms portion of a larger area of land owned by Yesufu Adeosi's family by right of inheritance and consists of IGANMU DISTRICTS made up as follows:*

*(i) Orile Iganmu with all its villages namely: Coker, Tapa, Aloko, Imoru, Oso-Offin, Tokosi, Savage, Sabisi, Ajagbe, Laniyonu, Aleilo, Oso-Olodo, Sari and Bankole (formerly Fatula).*

*(ii) (a) Oguru or Eguru otherwise known as Iguru*

(b) *Ita Mea* otherwise known as *Tameda* with all their villages namely:

*Aguda, Falohun, Sla, Padumo, Soluade and Suberu.*

5. In 1865, Eguru and Tameda were acquired by the said Yesufu Adeosi and his son-in-law Abdul Kadiri Laguda was the first to farm on the land hence the name Aguda Village,

5(a). The defendant denies that Iganmu land is bounded on the north by Iguru swamp as Iguru is part of Iganmu.

6. The said Yesufu Adeosi (deceased) is the grandfather for the defendant and Tesilimi Adewusi who died in 1974, whose son Isiaka Adewusi has now been replaced as 7th defendant to this suit,

7. Yesufu Adeosi (deceased) was born in Iganmu by one Adetona and Adetona was born by Adewuyi and Adewuyi was born by Adewunmi and the said lineal ancestors of the said Yesufu Adeosi had lived and fanned as reputed.

8. Yesufu Adeosi's ancestors settled in Iganmu at a time when the place was a jungle with no sign of human habitation. Iganmu derives its name from 'Egan' meaning thick bush or farm. 'Egan Muiyiwa' meaning the farm or bush produces fruits, vegetables, rice, milk from cows, meat and even grass that animals feed upon. Hence the name 'Egan Muiyiwa' was corrupted to Iganmu. Iganmu has taken its name before the Tapas came.

9. Several years after the said Yesufu Adeosi's ancestors' settlement in Iganmu, people came one after another attempting to settle in Iganmu and its suburbs, but they went back to other places when they discovered that Yesufu family was mere."

It is apparent from a close perusal of the extracts from the parties' pleadings reproduced above that this case was not fought on strictly the basis of traditional evidence. The plaintiffs/respondents claim of ownership was based on acts of possession spanning several years and the fact that the defendants/appellants' ancestors were their customary tenants. The 1st- 12 appellants on the other hand anchored their resistance on the fact that whatever land that had previously belonged to the plaintiffs/respondents had been acquired by the Government. They also denied being the Customary tenants of the plaintiffs/respondents. The 13th appellant pleaded that the land in dispute had belonged to his ancestor by name Yesufu Adeosi. He pleaded further that his ancestor was the first person to settle on the

land in dispute.

Against the background of the issues joined by the parties, I now proceed to consider the issues raised for determination by the 1st to 12th appellants. The four issues raised by them would appear to be different perspectives of the same issue which is whether or not on the totality of the evidence called by the plaintiffs/respondents they were entitled to the judgments given in their favour by the two courts below. It was the contention of the appellants' counsel in his brief that the plaintiffs/respondents had not before the trial court called evidence as to the specific holding of each of the defendants and further that persons to whom the receipts exhibits E, F, G, G2, J, Jl, K, Kl, AA3, AA7, M, N, Nl, Z and Z2, Fl, Gl, AA1, AA2, AA4, L1, L2, O, P and Q were issued were not called as witnesses. It was submitted that the receipts amounted to hearsay and were therefore incapable of establishing the ownership asserted by the plaintiffs/respondents. Counsel relied on *Umeojiako v. Ezenamuo* [1990] 1 NWLR (Pt.126) 253 at 267; *Lord St. Leonards v. Ashburner* [1870] 2 L.T. 595 at 596 and *Omega bank Plc. v. O.B.C. Ltd.* [2005] 1 S.C. (Part 1) 49 at 72-74. It was further submitted that the plaintiffs/respondents did not make any attempt to prove the signatures on exhibits E, F, G, G2, J, Jl, K, Kl, AA3, AA7, M, N, Z, Zl and Z2 as required under Section 100 of the Evidence Act. Counsel argued that the respondents did not prove that they were in exclusive possession of the land in dispute since the 9th P.W. called by them that is, Chief T. A. Lawal Akapo had admitted under cross-examination that a portion of the land in dispute was leased to the plaintiffs'/ respondents' family in 1925 by the colonial Government. Counsel relied on *Ogundairo v. Okanlawon* [1963] 1 All NLR 358; *Faleye v. Otapo* [1995] 3 NWLR (Pt 381) 1 at 32 - 22; *Uchendu v. Ogboni* [1999] 4 S.C. 1 (Part II) and *Ekpo v. Ita* 11 NLR 68.

Now PW.9 Chief Taoheed Akanni Lawal Akapo, the head of the Plaintiffs/Respondents' family in the course of his testimony on 19-1-89 under cross-examination said:

*"My ancestors had no palace in Orile Iganmu. They were using bamboo at the time to build houses. I do not know anything about shrine at Orile Iganmu. Our land was acquired by the government and they leased a portion of the land to my family at one shilling per year for 999 years. This is the document. Tendered, no ob-*

*jection, admitted and marked exhibit AA5. It is the land given to us by the government. The government did not acquire all the area of land to which we lay claim in 1925. They acquired a portion. I agree to what is in exhibit AA5. We lost a case against Sheteolu. We also lost against Gaskiya College because of laches."*

B The above piece of evidence is what the appellants' counsel has latched on to contend that the respondents did not show that they have been in exclusive possession of the land in dispute.

C Appellants' counsel in his submission referred to the evidence of the 5th Defence Witness Alhaji Tesilimi Aremu Hussain concerning the land acquired from the plaintiffs/respondents' family by the government. At pages 97-98 of the record of appeal, 5th D.W. testified thus:

D *"The area verged Red in Exhibit A is the same with the one verged blue in Exhibit AA6. The area verged green in Exhibit AA6 is the original Ijora Settlement acquired by the government. After the acquisition the government gave the plaintiff another area of land within the area coloured Red in Exhibit AA6. The area given to them after the acquisition was not shown in Exhibit A. The land edged Red*  
 E *in Exhibit AA5 is the area coloured Red in Exhibit AA6 and that is the new Ijora Settlement. The area claimed by the plaintiff is marked blue in Exhibit AA6.*

F *The area edged Red in Exhibit A is the same as the area marked blue in Exhibit AA6. The area coloured Red in Exhibit AA6 is within the area verged red in Exhibit A. In 1958, the Western Region government acquired 5,000 acres of land and this is edged green in Exhibit AA6 (See Notes No. 7) and it was published in Western Region Gazette No.28 Vol. 7, Page 223 of 24/4/58. What is edged green*  
 G *is just a portion of the 5,000 acres acquired by the government. After the Lagos State was created, the Western Region Government released part of the acquired land to the Lagos State Government. This falls within the area edged Red in Exhibit A. Lagos/ Badagry Road goes across the Land in dispute. Apapa road was not shown in the*  
 H *plan Exhibit A but shown in my own plan exhibit AA6. I was not born in 1918 when Exhibit A was prepared."*

The trial court did not comment in its judgment on the evidence of D.W.5 but the court below at page 58 said:

*"It is, therefore, not impossible the Ojora family continued not-*



*withstanding the acquisitions, for inexplicable reason, to exercise their right over the land as customary overlord or landlord. There is nothing in exhibit AA5, AA6 and AA11 coupled with the testimony of the fourth defence witness which could inure to the first set of appellants, if it is remembered that appellants' occupation, according to the respondents, is that of a customary tenant. The witness also did not touch upon exhibit AA11.* <sup>B</sup>

*I agree it is puzzling for a person who claims exclusive title to a piece of land shown in exhibit A, and has been exercising right of ownership as per the 1918 survey plan, for 500 years would turn around in 1925 and take a lease of a portion of the land in exhibit A. I have said my bit on this part earlier in this judgment and do not propose to say anything further hence I be charged of speculating and am not given to speculation see : Orhue v. NEPA [1998] 5 SCN/J 128, There is, however, no evidence excluding the possibility of the colonial government providing the respondents with resettlement on their own land. The propriety of the respondents using the remaining land outside the portion given to them in 1925 or otherwise is not in issue in this appeal. It is also not open to the defendants to cry; it is for the acquiring authority to protest. This is because trespassers such as respondents, without so deciding, can maintain an action against the whole world including the appellants except the true owner. See Amakpor v. Obiefuna [1974] 1 All NLR (Pt.1) 119, [1974] NMLR 331. “* <sup>E</sup>

*The above views of the court below ought to be considered along with the findings of fact made by the trial court. At pages 228-230 of the record of proceedings the trial court said:* <sup>F</sup>

*“The first set of defendants - 1st to 5th, 7th to 11th, 15th and 16th defendants forms the group that now describe itself as the ‘Iganmu Community’ and the ‘Ilupeju/Iganmu United Movement Group’ in recent documentation and correspondence which began to surface from about 1965 upwards. From these documents and the evidence of the 8th and 9th plaintiffs, witness, it is clear that the membership of this group consisted of the descendants of customary tenants who had been placed on the land by the Ojora Chieftaincy Family and who had paid tribute in the form of farm produce and later rent, as evidenced by the documentary records of the Ojora Chieftaincy Family dating back some 70 years or more. The docu-* <sup>H</sup>

ments are Exhibits E, F, F1, G, G1, G2, J, J1, H, H1, K, K1, L, L1, L2, M, N, N1, O, P, Q, Z, Z1, Z2, AA1, AA2, AA3, AA4, AA7. All that the defendants have said in response to these Exhibits was that they knew nothing about them and their ancestors never told them about them. I accept the evidence of the 9th Plaintiffs' Witness and other witnesses who belong to the families who were and are still tenants on the land that the Ojora Chieftaincy extracted farm produce from tenants until 1922 when they began to collect cash, and that they issued receipts to them and other tenants. The letter Exhibit 9 written in 1926 to the then Bale of Iganmu, a brother of the original 1st defendant is clear confirmation of the rights of ownership exercised by the Ojora over their lands.

Exhibits R and S, the Minutes of the meeting of the first set of defendants and their letter of apology to Chief Ojora made it abundantly clear that up till 1965 the Iganmu Community and the persons describing themselves by other names recognized the ownership rights of the Ojora Chieftaincy Family over Iganmu and recognized the right of Chief Ojora as the consenting authority whenever a Bale is to be chosen over any part of their lands including the land in dispute.

Exhibits R and S constitute a most damning combination of admissions of the overlordship and ownership rights of the Ojora Chieftaincy Family or the Ojora lands at Iganmu. It is clear to me that the Ojora Chieftaincy has exercised ownership rights over the land in dispute from time immemorial. They were able to produce the supporting evidence of their boundarymen in respect of the whole land. The defendants were not even able to suggest to these witnesses 1st Plaintiff Witness, 2nd Plaintiff Witness, 3rd plaintiff Witness, and 7th Plaintiff Witness -that their evidence was untruthful, much less produce evidence of boundarymen of their own. It is of course literally true, that they called the 6th Defence Witness to say that the Animashaun families were their boundarymen. As I said earlier on, I do not accept his evidence and I consider it a disaster for the defence. Again, there was evidence of the Laniyonu Family asking for land from the plaintiffs again in recent times. (See Exhibits V and W) which confirms the evidence of the plaintiffs' witnesses in relation not only to Laniyonu Village but in respect of other villages, that the Ojora Family were exercising acts of ownership over the lands in Iganmu.

*It is apparent from the evidence, both oral and documentary, produced at the trial that many tenants of the Ojora Family whose ancestors and themselves had been acknowledged tenants of the plaintiff have, with the sudden economic and industrial development in the area, and the prospect of their making money for themselves, first as land agents of Chief Ojora, turned round (when this prospect vanished with the refusal of Chief Ojora) and claimed to be new land owners, and to deny the overlordship of Chief Ojora. They banded themselves together under a new banner and now claim ownership under the aegis of the family of Oke whom the Ojora sent to Iganmu to help collect rents (but not as Bale) after the passing of Osho Cole (Osho-Offin), the first Bale. That the Ojora refused to approve Gafaru Bello as the next Bale is confirmed by Exhibits R and S.”*

It is the contention of the appellants’ counsel that exhibits R and S referred to in the judgment of the trial court were not admissible,

***I think that the 1st - 12th appellants have merely tried to make a mountain out of a mole hill concerning exhibits R and S. These were documentary evidence tendered by the plaintiffs/respondents to show that the 1st to 12th appellants had held a meeting with the plaintiffs/respondents’ family whereat they acknowledged the overlordship of the family over the land in disputes. The minutes exhibit ‘R’ were not signed by the maker as they should be. Exhibit ‘S’ is a letter said to have been written by the 1st - 12th appellants to apologize over their attempt to appoint a Bale for Iganmu village without the concurrence of the plaintiffs/respondents’ family.***

***I do not consider exhibits R and S inadmissible in evidence but being documents not bearing the signatures of the makers, they should attract little or no weight. In reacting to the argument of the 1st to 12th appellants before it, the court below at page 52 of the record observed:***

*“Exhibits R is the minutes of the meeting between the representatives of first set of appellants and the respondents at which the former requested for favours which tend to acknowledge the overlordships right of the respondents over the land in dispute. And when they went behind the backs of the respondents to achieve their ambition the latter obstructed their plan to have one of their members*

appointed Baale of Orile Iganmu. Hence an exhibit S was written conveying the tenants' apology to the respondents. Exhibits V and W are respectively minutes of meeting between Laniyonu family and the respondents whereby the Laniyonu family was seeking re-grant to them of pieces of land previously granted to their ancestor. **It is settled that where there is oral and documentary evidence, documentary evidence should be used as a hanger from which to assess oral testimony.** See *Kimdy v. Military Gongola State (sic)* (1988) 2 NWLR (Pt. 77) 445 and *Fashanu v. Adekoya* (1974) 6 S.C. 83,"

**I agree with the reasoning above of the court below.** The 1st to 121 appellants have in my view deliberately overlooked the overwhelming evidence against them in support of the plaintiffs/respondents case. There was the evidence called by the plaintiffs/respondents of their boundary owners. There was the fact that the plan of the land in dispute tendered by the plaintiffs/respondent Exhibit 'A' was made by Herbert Macaulay in 1918. There was the deed Exhibit AA5 which shows that in 1925, the colonial Government acquired a parcel of land from the plaintiffs/respondents which falls within the land depicted in exhibit 'A'. There was the fact that the 17th to 23rd defendants before the trial court agreed that the radical title in the land in dispute was vested in the plaintiffs/respondents' family. The 17th to 23rd defendants unsuccessfully tried to show that the plaintiffs' family sold the land to them. As to the tenancy of the 1st - 12th appellants, PW.9 at pages 59-60 of the record testified thus

*"Tokosi family were paying customary rent (Isakole) to my family from time to time. We even issued receipt to them. This is the receipt issued to them when payments are made, (tendered, objection raised by Mr. Dosunmu on the ground that the document is not pleaded. There is no notice to produce the original served on us. Mr. Sofola SAN also objects to the admissibility of the document. Mr. Adamu also objects to the admissibility on the grounds stated by the two counsel. Mrs. Okunola submits that she is tendering counterfoils and do not need to serve any notice to produce. I will however submit that the document be tendered for identification. Mr. Dosunmu objects to it being tendered for identification. Mr. Sofola associates himself with that objection and so is Mr. Adamu. Court: Tendered in and marked 'Rejected'). Adisa Saidi's father was a tenant on our*

land at Said Village. His father was paying customary rent (Isakole) to us. Receipts were issued to them after payments. The counterfoils are kept in our archives. These are the counterfoil receipts issued to them. Mr. Dosunmu objects to the document being tendered as it was not pleaded. Mr. Sofola submits that he has no objection. Mr. Adamu has no objection. Tendered, marked Exhibits II & III. I know Daniel Savage. He is one of our tenants in Savage Village, Iganmu. I also know the 3rd and 4th defendants. They are descendants of Daniel Savage. They are all tenants of my family and they were formerly paying Isakole (customary rent). From our archives, I got the counterfoils of the receipt issued to them. This is one of the counterfoils issued to them. Tendered, no objection, admitted and marked Exhibit J. This is also one of the counterfoil receipts. Tendered, no objection, admitted and marked Exhibit JI. I also know Lawal. His father was a tenant on our land at Ajegbe Village. They paid rents to us and we keep the counterfoils after issuing receipts to them. This is one of the counterfoils. Tendered, no objection, admitted and marked Exhibit J2. I also know the 16th defendant Alhaji Nurudeen Oko Osi (substituted for Nimota Bankole). His grandfather Pa Bankole was a tenant on our land known as Bankole Village (otherwise known as Iyalode). Both of them bought land from us for use. They were husband and wife and they got land from us. They were paying Isakole (customary rent) to our family. We issued receipts to them and we kept the counterfoils. Tendered, no objection, admitted and marked Exhibit K. This is also one of the counterfoils of the receipts issued to the father of the 5th defendant. The father was Lawani Ajagbe. Tendered, no objection, submitted and admitted as Exhibit KI. I also know Tinubu Village. It is part of..... issued receipts to them. The counterfoils are kept by us. This is one of such counterfoils. Tendered, no objection, admitted and marked Exhibit L. This is also one of the counterfoils of the receipts issued to one of the descendants of Tokosi on our land. Tendered, no objection, admitted and marked Exhibit LI. This is one of the counterfoils of the receipts issued to Rufai Igbohoji who is the father of the 15th defendant. Tendered, no objection, admitted and marked Exhibit L2. The land they got from us is at Abule Tapa (Tapa Village). I know the 111 defendant. His father was one of our tenants at Coker Village. The father's name is Afidipote. The father was paying Isakole to us and when

*Isakole was abolished he was paying rent to us. This is the counterfoil of the receipt of the rent issued by my family to them. Tendered, no objection, admitted and marked Exhibit Kl. This is also one of the counterfoils of the receipts issued to the father of Ganiyu Animashaun. Tendered, no objection, admitted and marked Exhibit N. I know Abu*  
 B *the father of the 2nd defendant. Yinusa Abu. He got land from us and was paying rent and receipts were issued to him. This is one of such receipt issued to him. I mean the counterfoil for the receipt. Tendered, no objection, admitted and marked Exhibit Nl. He got*  
 C *land from us at Aloko Village. I also know Lawani Coker. He got land from us at Coker Village. He was paying rent and receipts were being issued to him after Isakole was abolished. This is the counterfoil of the receipt we gave him. Tendered, no objection, admitted and marked*  
 D *Exhibit O. I know Banjoko Oso Olodo. He is the father of Oso Longe. They took land from us at Oso Olodo Village. This is the counterfoil of the receipt issued by us to Banjoko Osho Olodo for rent paid to us by him for our land. Tendered, no objection, admitted and marked*  
 E *Exhibit P. I also know Alaba Cole. He is the father of Oso Cole. They took land from us and were paying us rent after the abolition of Isakole. This is the counterfoil of the receipt issued by us to Aloba Osunofin. Tendered, no objection, admitted and marked Exhibit OQ. I am able to identify the villages on Exhibit A, showing the villages on our land, (Exhibit A shown to the witness and he mentioned the villages.) I can see Tapa Village, Aloko Village, Oshunofin Village, Tokosi*  
 F *Village, Orile Iganmu, Coker Village, Tinubu Village. All these villages are part of the land in dispute and they form part of our land. There is no Baale of Orile Iganmu now. The first Baale was Osho Cole. After Osho Cole was Bello. After Bello was Abudu Bello. My family has to*  
 G *approve the appointment of the Baale and we are the competent authority. The Baale represents Chief Ojora in the village and collects rents from the tenants and pay it to me. During the time of Isakole he does the same thing."*

***It ought to be borne in mind that the plaintiffs/respondents' case was that the 1st to 12th appellants were their customary tenants. The finding of the trial court which was affirmed by the court below was that the 1st- 12th appellants were the customary tenants of the Plaintiffs/respondents. There was adequate evidence on record to support these finding and***  
 H

**these being concurrent findings on an issue of fact, this Court will not interfere.** In *Kale v. Coker* [1982] 12 S.C. 255 at 271, this Court per Obaseki JSC observed:

*"This Court will not in the absence of special circumstances indicating obvious errors in the concurrent finding of fact by two lower courts allow the question of fact to be re-opened. See*

*Mogo Chinwendu v. Nwanegbo Mbamali & Anor* (1980) 3-4 SC. 31 at 75.

*Lamai v. Orbih* (1980) 5-7 S.C. 27

*Ikpe Ibodo v. Enarofia & Ors.* (1980) 5 S.C. 42 at 4.

*Victor Woluchem v. Simon Gudi* (1981) 5 SC. 319 at 326-330.

*The appellant has failed to show any special circumstances which establish that it is in the interest of justice to reopen the question. The Supreme Court has repeatedly pointed out that it will interfere only where not to do so will occasion a substantial miscarriage of justice. Akpere v. Barclays Bank of Nigeria Ltd. & Anor. (1977) 1 S. C. 1. The appellant has failed to satisfy me that there has been a miscarriage of justice in this case."*

There was the appellants' argument that the colonial government acquired from the plaintiffs/respondents' family a portion of the land in dispute as depicted on Exhibit 'A'. **In *Dada v. Ogunremi* [1967] NMLR 181, this Court per Coker JSC held that in a claim for declaration of title, where there is evidence before the trial court that the ownership of the land in dispute is in another person who is not a party to the proceedings, the court would refuse to grant a declaration of title. But in this case we have a situation where the evidence accepted by the court indicates that the land in dispute was granted to the 1st to 12th appellants as customary tenants. It is therefore not open to the appellants to argue that the ownership of the land granted to them by the plaintiffs/respondents was in another party not before the court, since the trial court had found that they were customary tenants to the plaintiffs/respondents. That would amount to granting them the license to deny their grantors' title. They did not derive their possessory rights from the colonial government or any other government. In *Anukanti v. Ekwonyease* [1978] 1 S.C. 37, this Court held that where a**

**party obtains possession of land from one person, he could not rely on title vested in another to defeat through a plea of *jus tertii* his grantor's title.** Indeed the argument of the appellants that the land was acquired from the plaintiffs/respondents in 1925 only reinforces the ownership of the plaintiffs/respondents because if  
 B the land indeed belongs to the appellants as they contend why did the colonial government acquire the land from the plaintiffs/respondents and not the appellants and why did the appellants not challenge the grant of the land back to the plaintiffs/respondents on tenancy terms. It is my firm view that the appeal of the appellants before  
 C the court below was rightly dismissed by that court. On the facts accepted by the two courts below, there could have been no other course open to them other than to uphold the case of the plaintiffs/respondents.

D The issues raised by the 13th appellant will be considered together. I observed earlier in the judgment that the 13th appellant pleaded that the land in dispute had belonged to his ancestor Yesufu Adeosi. ***It was pleaded that Yesufu Adeosi's ancestors settled in Iganmu at a time when the place was a jungle with no sign***  
 E ***of habitation. But there was the evidence which the trial court accepted that the 13th appellant was a member of the group created by all the customary tenants of the plaintiffs/respondents solely for the purpose of revolting against the plaintiffs/respondents by denying the title through which they and their***  
 F ***ancestors came on the land.*** At page 233-234 of the record, the trial court said concerning the 13th appellant:

*"Although the 24th defendant has pleaded and told a story different from that of the 1st to 5th, 7th to 11th, 15th and 16th*  
 G *defendants about how his ancestors first settled on the land in dispute, the oral evidence given on behalf of the plaintiffs as well as the documentary evidence show beyond doubt that the original 17th defendant, Tesilimi Adewusi, a descendant of Yesufu Adewusi was not only an ordinary customary tenant of the Ojora Chieftaincy Family*  
 H *like the other defendants, he also joined those defendants in the concerted rebellion of the Ojora tenants by becoming active member of the so called Iganmu Community and the Ilupeju/Iganmu United Movement Group. Exhibits R and S, minutes of the meeting of, and a copy of a letter by this group of new land adventurers at Iganmu*



have betrayed them as self-confessed tenants of Chief Ojora.

The case of the 24th defendant on the evidence was that his ancestor Adewunmi founded Orile Iganmu. He was the grand-father of Yesufu Adewusi who was born on the land and who settled on it and farmed it alone with two other parcels of land he had acquired at Iguru and Tanmeda, He has since surveyed the land and conveyed it to a company named Laguda Adeosi Housing Estate. The Deed of Conveyance is Exhibit AAS. He claims that his family had, as an act of compassion allotted various portions of the land to Sierra Leonian returnees who have settled thereon and these are now the villages known as Coker, Tapa, Takosi, Sabisi, Osho-Offin, Osho Olodo an Laniyonu Villages. When he was asked how his grandfather inherited the land, he answered that his grandfather had settled on the land when no one was there. This piece of evidence was inconsistent with his pleading that his grandfather had inherited the land from his ancestors."

The court below, considering the case made by the 13th appellant before the trial court said-

"It is manifestly clear that the 24th defendant, now 131 appellant, while supporting the case of seventh defendant clandestinely brought an action openly seeking a claim of title for the same land and for the family of Yesufu Adeosi. It, therefore, seems to me that there is substance in the submission of Chief Ajayi, SAN that, as Tesilimi Adewusi was an active member of the Ilupeju/Iganmu United Movement, whose activities were referred to in the meetings with Chief Ojora in exhibits R and S their acceptance of overlordship of Chief Ojora was also evidence against 13th appellant, who had closely identified himself with actions of Tesilimi Adewusi, whose interest in the land the 13th appellant admitted as the same as his own. Consequently the finding of the learned trial judge that Tesilimi Adewusi and the other persons represented by the first set of appellants were customary tenants of the Ojora family was equally a finding against the 13th defendants appellants who admitted attendance of meeting of the group as well as an identity of interest with the original seventh defendant. Twenty-fourth defendant admitted that seventh defendant was consulting him as the head of the family and that he once attended their meeting. A statement oral or written made by a party to civil proceedings and which statement is adverse to his case or

*interest is admissible in the proceedings as evidence against him of the truth of the facts asserted in the statement. See Seisemograph Service Nigeria Ltd. V. Chief Keke Ogbenekwe Eyaufe (1976) 9-10 SC 135, 146; (1976) F.N.R. 162 and Madumure v. Okafor (1996) 3-4 MAC 165. “*

B I am in agreement with the findings of the two courts below that the 13th appellant was acting in league with 1st to 12th appellants and had merely come into the proceedings to make a case different from the 1st - 12th appellants by way of a hedge in the hope  
C that one of the two would succeed. I have no reason to interfere with the concurrent findings of the two courts below.

The 13th appellant’s counsel has argued that the plaintiffs/respondents did not plead their traditional history in their Amended Statement of Claim. It seems to me that the 13th appellant’s counsel  
D did not advert his mind to the state of the law as to the ways in which the ownership of land may be proved. In *Piaro v. Tenalo* [1976] 12 S.C. 31 at 40-41, this court per Obaseki Ag. JSC. observed:

*“It is now settled law that there are 5 ways in which ownership of land may be proved and only two of the 5 methods were adopted  
E by the respondents in this case. They are:*

*1. Proof by traditional evidence. (Abinabina v. Chief Enyimadu [1953] A.C. 207 at 215-216); and*

*2. Proof of acts of ownership. This is normally provided by acts  
F of person or persons claiming the land such as selling, leasing, renting out all or part of the land or farming on it or on a portion of it or otherwise utilizing the land beneficially; all evidence of ownership provided they extended over a sufficient length of time and are numerous and positive enough to warrant the inference that he is the  
G true owner Ekpo v. Ita II N.L.R. 68 at 69”*

Similarly in *Ishola v. Abake* [1972] 5 S.C. 321 at 329-330, Ademola C.J.N. discussing long possession as a basis of ownership of land said:

*“..... .There is ample evidence of long possession and acts of  
H ownership by the plaintiff and his ancestors before him extending over a sufficient length of time numerous and positive enough to warrant the inference that they (plaintiff and his ancestors) were exclusive owners of the land in dispute to bring the case within the principles laid down in Ekpo v. Ita II N.L.R. 68. On this point we are*

*of the opinion that the learned judge had enough facts before him to come to the conclusion that the plaintiff had established his title to the land in dispute."*

See also Idundun v. Okumagba [1976] 9-10 S.C. 227.

***All the appellants made a great play out of the fact that part of the Land of the plaintiffs/respondents as depicted in exhibit A (made in 1918) had been acquired by the colonial government vide exhibit AA5. Even on that supposition, the plaintiffs/respondents case is further strengthened because this shows that the land contiguous to the land in dispute has been shown to belong to the plaintiffs/respondents.*** In Kaiyaoja v. Egunla [1974] 12 S. C. 55, Ibekwe J.S.C. at page 63 said:

*"It has been held that, in a claim for the ownership of land, the fact that the land in dispute is contiguous with other lands belonging to the plaintiff is enough to raise a probability (though not presumptuous that the land in dispute also belongs to the plaintiffs."*

***Lastly is the contention of the 13th appellant that his counter-claim for declaration of title was wrongly dismissed. This contention in my view is patently unsupportable having regard to the fact that the 13th appellant admitted before the trial court that his family had transferred its interest in the land to a limited liability company which was not a party to this proceedings.*** At pages 232 - 233 of the record, the trial judge said concerning the 24th defendant now the 13th appellant:

*"In paragraph 31 of the 2nd Further Amended Statement of Defence, the 24th defendant averred as follows:*

*'In furtherance of the wishes expressed by the testator Yesufu Adeosi in his foresaid Will, the beneficiaries have taken steps to constitute themselves into the limited liability company known as Laguda-Adewusi Housing Estate Ltd. charged with the responsibility of the development of the property into a Housing Estate.*

*The 24th defendant in his evidence on the 17th of January 1997 said as follows:*

*'We got a conveyance to transfer the land to Laguda Adewusi Housing Estate.'*

*He produced the said Deed of Conveyance in evidence as Exhibit AAO. Exhibit AA9 is a Deed, executed on 25th November 1976 by the 224th defendant and five others in favour of Laguda*

*Adewusi Housing Estate Ltd. in respect of land at Iganmu, Tanmeda, Oguru and Aguda. Having pleaded and proved that the family of the 24th defendant has divested itself of its beneficial interest in the property it is claiming in this action, can the court now grant him a declaration of title in respect of the same? The 24th defendant having on his own pleadings and evidence asserted that his family have disposed of their interest in the land in dispute to third parties by virtue of a Deed of Conveyance, it becomes clear that the 24th defendant is in any case, no longer the owner of the land in dispute, even if it belonged to him. My humble view is that this court cannot therefore grant the defendant a declaration that he is owner of the same land."*

***It seems to me that there existed no basis upon which the two courts below could have granted the counter-claim of the 13th appellant when on the plethora of evidence before the trial court, the ownership of the land was vested in the plaintiffs/respondents, and when in any case, the 13th appellant having admitted that the land had been conveyed by his family to a limited liability company had no further interest in the land to protect.***

I am satisfied that these appeals by the 1st - 12th and 13th appellants have no merit. They were rightly dismissed by the courts below. I also dismiss them with N50,000.00 costs against each set of appellants in favour of the plaintiffs/respondents.

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### **MUSDAPHER JSC**

I have read before now the judgment of my Lord Oguntade, JSC just delivered with which I entirely agree. I with respect adopt the reasonings canvassed in the said judgment as mine and I also find the appeals by the 1 to the 12th Appellants and that of the 13th appellant as both unmeritorious. I accordingly dismiss them and affirm the decisions of the courts below. I award the plaintiffs respondents costs assessed at #50,000.00 against each set of the appellants.

**TABAI JSC**

I had preview of the lead judgment prepared by my learned brother Oguntade JSC and I entirely agree with him that the appeal lacks merit and is liable to be dismissed. The trial Court made specific findings of facts about the Defendants/Appellants customary tenancy to the Plaintiffs/Respondents. These findings were amply supported by oral and documentary evidence. The documentary evidence includes Exhibits E, F, FI, G, GI, G2, J, JI, N, NI, K, KI, L, LI, L2, M, N, NI, O, P, Q, 2, 21, 22, AA1, AA2, AA3, AA3, AA4, AA7. The learned trial judge also relied on Exhibits 9, R and S. With respect to Exhibit 9 the learned trial judge said:

*“The letter Exhibit 9 written in 1926 to the then Baale of Iganmu, a brother of the original 1st Defendant is a clear confirmation of the rights of ownership exercised by the Ojora over their lands.”*

And with regards to Exhibits R and S the trial Court had this to say:

*“Exhibits R and S, the Minutes of the meeting of the first set of defendants and their letter of apology to Chief Ojora made it abundantly clear that up till 1965 the Iganmu Community and the persons describing themselves by other names recognized the ownership rights of the Ojora Chieftaincy Family are Iganmu and recognised the right of Chief Ojora as the consenting authority whenever a baale is to be chosen over any part of their land including the land in dispute,”*

These findings cannot be faulted they having been amply supported by the evidence. It is not surprising, in the circumstances, that the findings and decision of the trial Court were affirmed by the Court below.

On the whole and for the detailed reasons contained in the lead judgment I also dismiss the appeal for lack of merit. I abide by the order on costs contained in the lead judgment.

**OGEBE JSC**

I read before now the lead judgment of my learned brother Oguntade, JSC just delivered and I agree entirely with his reasoning and conclusion. I also see no merit in the appeals of the 1- 12 appel-

lants and the 13th appellant and I hereby dismiss them with costs as assessed in the lead judgment.

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**MUNTAKA-COOMASSIE JSC**

B The Respondents herein were the plaintiffs before trial court (Lagos High Court) wherein they claimed against the defendants the following reliefs :-

C *"1. A DECLARATION of title under native law and custom to all that parcel of land being part of Ojora Chieftaincy Family land situate at Iganmu, Lagos comprising inter alia Orile Iganmu, Aloko Savage, Sari, Offa-Offin, Oso-Olodi, Tokosi, Coker, Ajabe, Laniyonu, Tapa Bankole, Imoro and adjoining villages shown on plan No. AL/641/1974;*

D *2. Forfeiture of the customary tenancy and occupational right of all the defendants and each of them in the land in dispute.*

*3. Possession of the said land",*

E The parties filed and exchanged pleadings. Trial commenced in earnest. Counsel filed their respective addresses after the conclusion of evidence on behalf of their clients. The trial court in a reserved judgment delivered on 13/12/2000 entered judgment in favour of the plaintiffs. The trial Judge stated on pp 235 - 237 of the Record, thus:-

F *"It is my finding from the totality of the evidence that the plaintiffs were the original owners of the land in dispute under Native Law and Custom. It is also my finding that the 17th to 23rd defendants and all other defendants herein are customary tenants, of the plaintiffs. It is also my finding that the 24th defendant is not entitled to*  
 G *possession of the land in dispute as per his counter-claim. It is conceded by the 17th to 23rd defendants that the plaintiffs were the original owners of the land under Native Law and Custom. I do not agree and would not say that the ancestors of the plaintiffs made an absolute grant to the ancestors of 17th to 23rd defendants of the*  
 H *area known as Tokosi Village. There is no credible evidence to support that assertion ..... the plaintiffs called the evidence of all the boundary men of Ojora Chieftaincy Family in respect of the whole land of the family as surveyed by Herbert Macaulay. None of the defendants was able to call such evidence of their boundary men*

*in respect of the area in dispute of which they claim ownership. None of the boundary men who came to give evidence was challenged in any way to prove the contrary that the land was not owned by Ojora Chieftaincy Family and none of them was cross-examined as to this fact”*

The counter claim of the 24th defendant and other counter B  
claims were all dismissed.

The defendants were dissatisfied with the judgment of the trial court and unsuccessfully appealed to the Court of Appeal Lagos Division, (hereinafter referred to as court below). The defendants finally appealed to this court. C

I have had the preview of the judgment rendered by my learned brother Oguntade, JSC, I entirely agree that this appeal is devoid of substance and merit and same ought to be dismissed based on concurrent findings of facts. I dismiss this appeal and abide by the consequential orders made by my learned brother Oguntade, JSC. I endorse the orders as to costs. D

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