

SUPREME COURT OF NIGERIA
3RD APRIL, 2009. SC. 84/2003
CORAM:- D. MUSDAPHER, G. A. OGUNTADE,
I. F. OGBUAGU, F. F. TABAI,
M. S. MUNTAKA-COOMASSIE, JJSC

MALLAM YUSUF OLAGUNJU

(now deceased)

(Head of Ojumu-Doyin Family)

(Substituted by

ALHAJI ABDULKADIRI BELLO

On 15/11/2006)

AND

1. CHIEF E. O. ADESOYE

..... APPELLANT/
CROSS/RESPONDENT

2. ATTORNEY-GENERAL &

COMMISSIONER FOR JUSTICE

..... 1ST RESPONDENT/
CROSS/APPELLANT

..... RESPONDENT

EVIDENCE - Facts not pleaded - Evidence thereon - Effect - Appellant did not plead the name of their first forefather to come to Offa - Evidence on that fact therefore goes to no issue (H1)

EVIDENCE - Counsel's address - Evidential value - It is not in evidence that the name 'Bashorun' is the same as 'Osinnolohun' - It is in counsel's address but his address cannot take the place of evidence (H2)

APPEALS - Concurrent findings - Interference - Basis - Appellate court will not interfere - Unless findings are shown to be perverse - Which is not the case herein (H3)

FACTS

The 1st respondent, as plaintiff, had sued the appellants in suit No. KWS/OF/19/94 claiming declaration of title to the land in dispute on the basis of a state grant of a right of occupancy. The appellants also sued the 1st respondent in Suit No. KWS/OF/21/94 claiming declaration of title to the land on the basis of inheritance. The two suits were consolidated and heard.

There was evidence that government not only acquired the

land and allotted same to 1st respondent but it also made 1st respondent pay compensation to those affected by the acquisition. Appellant's DW4 admitted receiving compensation for his farm from 1st respondent. After hearing, the learned trial judge dismissed the appellants' claim and gave judgment to the 1st respondent. Aggrieved, the appellants appealed to the Court of Appeal which dismissed the appeal. Hence they have brought this further appeal to the Supreme Court. With the leave of court the 1st respondent also cross-appealed against a portion of the judgment which held that the appellants proved how the land devolved on them.

ISSUE FOR DETERMINATION

"Whether the appellant proved his title to the land in dispute in this case."

HELD (Unanimously dismissing the appeal and allowing the cross-appeal per **MUNTAKA-COOMASSIE JSC**)

Facts not pleaded - Evidence thereon - Effect

1. From the above it is clear that these pieces of evidence are not only in conflict, they do not also arise from the pleadings. While the DW1 stated that their ancestor was Bashorun, 2 DW2 stated that the name of the ancestor was Osinnolohun. It is to be noted that the appellant did not specifically plead the name of their first forefather who first came to Offa. Also the fact pleaded was that the appellant's forefather was the first to settle on the land, while the evidence adduced is to the effect that the land was an outright gift from Oloffa to their ancestor. I have no difficulty whatsoever in holding that these pieces of evidence go to no issue. (p. 960 A)

Counsel's address - Evidential value

2. Though the appellant tried strenuously to convince this court that the name "BASHORUN" is the same as "OSINNOLOHUN", nowhere in the proceedings was such evidence given or explained. It is trite that the counsels' address cannot take the place of evidence. (p. 960 D)

APPEALS - Concurrent findings - Interference - Basis

3. These findings are concurrent findings of the two lower courts; it is trite that this court will not ordinarily interfere in a concurrent finding

of the two lower courts, unless it is shown that the findings are perverse or not supported by the evidence in the records.

With tremendous respect I do not see from these finding could be said to be perverse as they were based on the evidence adduced in the records. With due respect again, I will not disturb these findings of the two lower courts. It is for this reason that I will dismiss this appeal. (p. 961 B)

NOTABLE POINTS OF INTEREST

OGBUAGU JSC

1. Ownership could be inferred from long possession

It is settled therefore, that a plaintiff in a declaration of title, who succeeds (as in instant case leading to this appeal) in establishing that such acts, not only extend over a sufficient length of time, but also that they are numerous and positive enough, to warrant the inference of exclusive ownership of such land, is and will be entitled to the declaration. It will be safe and imperative to conclude that the party exercising such acts, is the exclusive owner of the land. (p. 966 F)

2. Title to land - More than one method could be relied on in proof

As to the pleading of gift and/or settlement by the appellant, it is also settled that a party claiming a declaration of title to a Statutory or Customary Right of Occupancy, does not need to plead and prove, any more than one of the five methods of proving title. As it sometimes happens (as in the instant case), the claimant pleads and/or relies on more than one method to prove his title, he merely, does so ex abundante cautela as proof of one single root, is sufficient, to sustain the claim. (p. 966 H)

REPRESENTATION

A. O. Mohammed Esq. [Messrs. Wale Obadofin & Rotimi Oyagbola with him] for the appellant.

Rotimi Oguneso Esq. [Miss Oluwakemi Balogun and Miss Adenike Okunoye with him] for 1st respondent/cross-appellant

Dr. J. O. Olatoke [Messrs. Soji Olowolafe, B. A. Ogun and S. Z. Michael with him] for the 2nd respondent.

CASES REFERRED TO

- A-G Bendel State Vs Aideyan (1989) 9 SCNJ 80
Alhaji Gam Kyari V Alh. Chiroma & Ors. (2001) 5 SCNJ 421
Ogunloye V Oni (1990) 4 SCNJ 65 at 83
B Savannah Bank Ltd. & Anor. Vs Ajilo (1989) 1 SCNJ 169 at 183
Abioye Vs Yakubu (1991) 5 NWLR (pt 190) 130 at 146
Rabor Oniague Vs Integral Robber Production Nigeria Ltd. & Anor
(1997) 3 SCNJ 39 at 42
C Garuba Abioye Vs Yakubu (1991) 5 NWLR (pt.190) 130 at 305
Eyo Ogboni & Ors Vs Chief Oja Ojah (1996) 6 SCNJ 140 at 158
Lewis Peat Vs Akhimien (1976) 1 All NLR 460 at 465
Egbunike Vs ACB (1995) 2 SCNJ 58 at 70
Oseni V Dawodu & Ors (1994) 4 SCNJ 197

D

STATUTES REFERRED TO

- Public Lands Acquisition (Ordinance) as amended by No. 18 of 1918,
Cap 167 L. F. N., 1951, ss. 3, 5, 8 and 9
Native Rights Ordinance, 1916
E Evidence Act, s. 74

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

- This is an appeal against the Judgment of the Court of Appeal
Ilorin Division, herein after referred to as Court below. The Judg-
F ment was given on 22/01/2003 in which the appellant's appeal against
the Judgment of the trial court delivered on 9/05/2002, by Oyeyipo
C.J was dismissed and the trial court's decision affirmed.

- I think the facts of this case are straightforward and brief. It is a
G land matter. The 1st Respondent, Chief E. O. Adesoye, applied for a
grant of certificate of occupancy from the Kwara State Government
for the construction of a Secondary School, which application was
granted Vide Exhibit Im herewith reproduced as follows;-

MGOLSPD

- H Telephone Ilorin
031-22173
Telegrams

Ref. No LAN/ARO /COMM/IV: 117/11
Military Governors Office

Dept. of Lands, Survey & Physical Development
Private Mail Bag 1425
Ilorin
Kwara State.

Chief E. O. Adesoye,
18A Sultan Road,
P.O. Box 510, Kaduna.
Dear Sir,

B

RE: EXTENSION OF LAND AREA TO ADESOYE COLLEGE
R. OF O. NO KW/56/56 C

I am directed to acknowledge the receipt of your letter dated 22nd February, 1989 in connection with the above subject matter and to inform you that your request herein therefore considered.

2. Having seen the developments carried out so far Government highly appreciate (sic) your effort in contributing your own quota towards the improvement of the educational standard in Nigeria. However due to scarcity of land in Oyun Local Government Area and considering protection of your own interest in making sure that you do not run into conflict with other communities, Government has decided to allocate you an additional 25 Hectares on the following conditions: -

E

i) *That the name on the title to be granted should read ADESOYE COLLEGE*

ii) *That the 25 Hectares offered as extension should be limited to the existing side of the College.* F

iii) *That all compensation payable to the affected people should be settled.*

iv) *That the rift between you and Mr. R. A. Shofoshonlu be resolved.* G

v) *The compensation of the Alhaji Saka Oyebole on the existing site should be paid,*

If the above conditions are acceptable to you please indicate in writing and link up with Lands Division to show the location of the extension would be sited. Please do this soonest to enable me process your papers for issuance of necessary title documents. H

Yours faithfully
Signed "G. O. Pada"

Ostensibly the 1st Respondent complied with the conditions of the letter and started work on the land. It was at this juncture that the appellant appeared and claimed the ownership of the land. As a result, the 1st respondent instituted an action before the Kwara State High Court, in Suit No KWS/OF/19/94. On the other hand, the
B appellant's instituted another action against the 1st respondent in Suit No KWS/OF/21/94. Both Suits were later consolidated and heard together.

The 1st respondent in his writ of summons claimed against the
C appellant as follows: -

"A. A DECLARATION that the Certificate of Occupancy No KW 5676 dated 4/8/86, registered as No. 247 at page 247 in Volume XVI at the Land Registry, Ilorin and subsequently extended by Certificate of Occupancy No KW 5676 and registered as 230 at page
D 230 in volume XVII was validly issued.

B. A DECLARATION that the Plaintiff is entitled to the grant of certificate of Occupancy No. KW 5676 and entitled to quiet enjoyment.

C. A DECLARATION that the plaintiff having paid all the hold-
E ers compensation for improvements and economic trees is entitled to undisturbed possession, and

D. PERPETUAL injunction restraining the Defendant, his agents,
F Servants and Privies from further acts of trespass on the plaintiff's land covered by certificate of Occupancy No KW 5676 ".

The Appellant in his own Amended Statement of claim claimed against the 1st respondent as follows:-

"a. A declaration that the plaintiff's family known as Ojomu-Doyin family of Offa is the exclusive owner of a large parcel of land
G situate and being along Igosun Road, Offa covering an area of about 222,500 square metres and covered by an Alienation permit and that the Plaintiff's family is exclusively entitled to a certificate of occupancy thereon.

b. An order setting aside and declaring as irregular, wrongful,
H null and void the purported certificate of occupancy No. KW5676 of 23rd April, 1988 or any other certificate or title document(s) whatsoever unlawfully obtained by 1st Defendant over Plaintiff's family land.

c. A mandatory order of court Restraining the 1st Defendant to the area of land already developed, and occupied by Adesoye

College covering about 500 plots of land and to keep within same upon paying the monetary value herein demanded.

d. An order of perpetual injunction restraining the Defendants, their Servants, Agents or privies from committing any further act of trespass on Plaintiff's family land.

e. N25,250,000 (Twenty-five Million Two Hundred and Fifty Thousand Naira) being special and General Damages from 1st Defendant as follows: -

SPECIAL DAMAGES AND PARTICULARS:-

i. N25,000,000 (Twenty-five Million Naira.) being the value of the 500 plots of Plaintiff's family land used and occupied by Adesoye College at N50,000 per plot.

ii. N500,000 being the value of Cash Crop Trees to wit: 11 palm trees, 13 locus beans, 9 heads of banana, 2 kola nut trees. 13 cashew trees, 300 heaps of cassava, and 2 acres of rice belonging to members of the Plaintiff's family destroyed by the 1st Defendant/his Agents and Servants.

iii. 200,000 as General Damages for acts of trespass on Plaintiff's family land".

All parties filed and exchanged pleadings and called witnesses in proof of their case. PW1 was called to produce documents i.e. file No. LAN/ARO/COMM/10.117, certified True copy of plan No ILRC. 49 of 12/5/56 and plan No. URS/OF/1C Designation of Urban Area 1978 and T.P.O plan 119 OFFA which were all admitted as Exhibits 1, 2, 3, 4, 5, and 6 respectively.

PW2, a principal land officer in the Ministry of Land, testified that the 1st respondent was allocated plots of land at the G.R.A Offa for the construction of a Secondary School, subject to the payment of compensation on any unexhausted improvement on the land. Government carried out assessment of compensation payable on the unexhausted improvement on the land which the 1st respondent paid all the beneficiaries and there was no complaint. (See Exhibit 6). After the payment of compensation, the government issued a certificate of occupancy to the 1st respondent. The 1st respondent thereafter applied for an extension of the initial grant which was granted subject to same conditions, and the 1st respondent again effected payment of compensation for the unexhausted developments on the land; and he was given a new Certificate of Occupancy cover-

ing the whole land i.e. Exhibit Im. He stated that the land granted to the 1st respondent has been under the control of Government as far back as 1956. He stated that all the processes for the Issuance of certificate of occupancy were followed. This witness stated that by exhibit 4 the land was designated as Urban Area since 1998. He
 B stated that some members of the appellant's family recollected compensations.

The 1st respondent gave evidence and stated that he applied for land in G.R.A as he did not want any contest with any person.
 C That after approval the Kwara State Government gave him the comprehensive list of all those entitled to compensation for the unexhausted development on the land and he paid all of them including members of the appellant's family. After the initial grant, he applied for an extension which was also granted and he was asked to
 D pay compensation for the unexhausted development which he did. He stated that at the time he was put in possession neither the appellant nor any other person was in possession. It was in 1994 that the appellant came to the site with cutlasses and *guns laying blocks for the mosque.*

E The appellant called Kadim Bello as DW1 who stated that the land in dispute belongs to the appellant's forefathers. His ancestral father came from Oyo and the name is Bashorun, who was friendly to Olofa Olatoni, the founder of Offa. They both came from Oyo.
 F When they got to Offa, the Oloffa told Bashorun to stay at Oke-Agba. Bashorun was then put in control of that piece of land at Oke-Agba and the land in dispute now is part of that land which Oloffa Olalomo gave to their ancestor Bashorun, with authority to control. The land was given as an outright gift to Bashorun who later became
 G Ojomo on arrival at Offa. He stated that in 1977 when one Ogun-tade wanted to establish a saw-mill Ojomo gave him a portion with the consent of Oloffa. He tendered an application for permit and a plan as Exhibits D11 and D12 and the land in dispute is within Exhibits D11 and D12. He stated further that part of the land has been
 H given to some other people, including the police for the construction of a Police Station. The witness then tendered Seven (7) certificates of land allocation from Ojomo-Doyin family as exhibit D14.

He also stated that in 1976 they started to build a Mosque on the land and the foundation is still on the land till date. He knew that

the 1st respondent has a school on the land. He could not remember when he built the school but he or his family members did not stop him when he was constructing the school because they were happy that the school being built would do good to Offa. He also stated that the land did not belong to the Government but to his family from time immemorial. This witness admitted that they do not have power to allocate land. It is only the government but anybody who wants land from them must apply. B

Appellant also called one Alhaji Murtala Oleyinji as DW2 who testified that he is an Ojomu-Doyin. He saw their ancestor who accompanied Oloffa from Oyo who was called Osinrolahum. There are three owning families in Ojomu family. They are the owners of the land in dispute; if anybody needs land he would apply. Ojomu was settled by Oloffa. He did not know the entire history of Ojomu family at Offa except his own part of the family. Under cross examination he admitted that he did not know whether or not the 1st Ojomu was Ojomu Gedegbe or not. C D

Appellant's DW3 was one Chief Ganiyu Adesina Olagunju. He testified that when the first respondent started constructing the school, his father and the Appellant called a family meeting and he was mandated to invite the 1st respondent, this is because the first respondent's sister married in their compound. He states that their families are farming on the land and there was no time they were stopped farming on the land. Whereas they planted cash crops and they also allocated some plots to some other people. He tendered a survey plan in evidence as Exhibit D21. He said that he did not want the college built on the land removed. But he wants the certificate issued to the 1st respondent revoked. Under cross-examination he admitted that they started construction of Mosque on the land in 1994. He agreed that Exhibit D20 was not signed by Surveyor General nor signed by a surveyor. E F G

The Appellant's DW4 was one Raimi Ademola Shogo who testified that he had a fish pond and piggery farm along Igosun Road on Ojomu family land which he started in 1970 and he was given additional plot in 1952 by Ojomu Doyin family. His fishery farm was destroyed by the 1st respondent as a result of which he lodged complaint to his lawyer; and he was paid a compensation of N118.00 by the 1st respondent. He admitted executing some contract for the 1st H

respondent on the land in dispute.

2nd Respondent called one Ayo Opadokun as DW1. But his evidence was expunged from the records by the reason of the trial court's ruling dated 21/11/2001. Thereafter one Mohammed Olaitan Adedayo was called as DW2. A Civil Servant and an Acting Director
 B of lands in the State Ministry of Lands and Housing and was the Area
 Land Officer at Offa between 1984 - 1990. He stated that the 1st
 respondent applied for land on which to erect Adesoye College which
 application was granted by the Kwara State Government. About 81.3
 C hectares was initially granted. This was in 1985. Again he applied for
 an extension, as a result of which the Original C of O was withdrawn
 and a fresh one issued to him to cover the entire 130.5 hectares by
 the Government. On instruction from his office he got the land sur-
 veyed at Offa G.R.A. In the course of the Survey he saw cash crops
 D on the land and announcement was made for the owners of the cash
 crops to report to the site. The people concerned reported and an
 assessment was done and sent to the headquarters. The 1st respon-
 dent made payment to all affected people through his office at Offa.
 All the beneficiaries signed indemnity certificates and he counter-signed
 E - Exhibits 5 and 6. Until 1990 when he left Offa nobody made any
 complaint to him. Immediately the grant was made to the 1st re-
 spondent he took possession and started the construction of the school.
 He stated that before the creation of Kwara State the land in dispute
 had been designated G.R.A and a Police Barracks was located on the
 F part of the land in 1953, by Exhibit 3 the whole land falls within the
 G.R.A. In 1978 some four areas were designated Urban Areas within
 Oyun Local Government, and Offa G.R.A is one of the centres so
 designated as Urban Areas in 1978. Under cross-examination he
 G admitted that the total land granted to the 1st respondent was 130.3
 hectares. He carried out the survey of the total land showing fish
 pond where it was overlapping the land granted to the 1st respon-
 dent, and he wrote to the Ministry of land. He further stated that
 there was no foundation of any mosque as at 1985 or 1987 when he
 H surveyed the land.

Under re-examination the witness said that the Police Station is built on the G.R.A Offa and not on the appellant's land.

One Olayiwola Amos Dipe gave evidence as the Second witness for the 2nd respondent. He is a surveyor in the Ministry of land

and Housing. He Identified exhibit 2 as the plans of G.R.A Offa with the beacons bounding the extent of G.R.A. Some of the beacons are FBI. 2683. FBI. 2693, FBI, 2680 which show the extent of G.R.A Offa. He identified Exhibit 4 as Oyun Urban Area, designated area, I key number 1, 2, 3 and 4. The first is the proposed commercial layout, the second is Oyun Industrial layout I with the heading as TPO 146 A comprising Kwara Breweries, the third is TPO 119 layout and the fourth is Commercial Industrial Layout 2. He also identified Exhibit Im as the certificate of Occupancy which is extracted from TPO 119, it is the land granted to the 1st respondent the beacons in Exhibit IM are reflected on TFO 119 as BP 1, 2693. BP1, 2696 and BP1 2697. Under cross-examination this witness admitted that he was one of the surveyors who worked on Exhibits 2, 3 and 4. He further stated that Exhibit D12 with no coordinating beacons. It does not show the distance between the locations of the main town to the location of the land and it is difficult to determine the exact location of the land. He also stated that exhibit D2 is not a survey plan as it gives no vivid description of the land it covers.

After both parties have closed their respective case, written addresses were filed and exchanged. The learned trial Judge Oyeyipo C.J, thereafter delivered his considered Judgment in which he dismissed the Appellant's claim and gave Judgment for the 1st respondent. The learned trial Judge Oyeyipo CJ on pp 280 - 281 of the Record of Proceedings stated as follows:-.

"In the light of all that I have said above, I have come to the conclusion that the 1st defendant Mallam Yusuf Olagunju has failed to sustain his claim for a declaration of title to the land in dispute, I accordingly resolve the 5th formulated issue against him. In the result I feel no hesitation that the plaintiff Chief E. O. Adesoye (vide suit No. KWS/OF/19/94) has amply established his case before me on the preponderance of evidence. He is entitled to judgment in his favour against the 1st defendant for all the reliefs he claimed in paragraph 23 of his amended statement of claim. Accordingly the plaintiff (sic) case succeeds and all the reliefs claimed as per paragraph 23 of his amended statement of claim are hereby granted in their entirety. On the other hand the claim of Mallam Yusuf Olagunju (vide suit No. KWS/OF/21/94) for and on behalf of his Ojomu Doyin against the 1st and 2nd defendants herein fail and is hereby dismissed in its en-

tirety”.

It is against this decision that the Appellant had unsuccessfully appealed to the lower court.

The lower court in its unanimous Judgment dated 22/01/03 affirmed the decision of the trial High Court and dismissed the Appellant’s appeal.

Although the learned Justice of the court below Onnoghen, JCA (as he then was) has slightly castigated the learned trial Judge in not fully evaluating the evidence adduced by the appellant. He nonetheless also arrived at the same conclusion with that of the learned Chief Judge. On page 500 of the Record Onnoghen JCA, (as he then was) has this to say:-

“I have gone through the judgment of the lower court and I confirm that though the learned trial Chief Judge did summarise the evidence of the appellant he did not fully evaluate same, particularly the exhibits tendered by the appellant. That being the case and applying the principles of law on evaluation of evidence stated Supra; I am of the view that this is a proper case for this court, being an appellate court to interfere by properly evaluating the evidence adduced before the lower court”.

The learned justice then embarked on proper evaluation of the evidence adduced. The learned Justice who delivered the lead Judgment in the court below equally condemned the attitude of the learned counsel for the Appellant in accusing the learned Chief Judge Oyeyipo CJ of bias or partiality see pages 514 and 515 of the record. The conclusion of the court below is as contained in the lead judgment of Walter Onnoghen JCA, (as he then was) thus;-

“..... I have gone through the record of proceedings and the judgment of the lower court and I agree with the learned counsel for the 1st respondent that the findings of the learned trial Chief Judge flow naturally from the evidence before him and from his observation of the witnesses when they testified before him, which is his primary constituency. I find no trace of bias or a real likelihood of bias in support of the charge of impartiality levelled against the Chief Judge in the issue under consideration. A man who behaves the way Shogo did in view of the facts can best be described as one who decides to run with the hare while hunting with the hound. I therefore resolve the issue against the appellant”.

In conclusion, I am of the considered view that there are no merits in this appeal which is accordingly dismissed.

The Judgment of the lower court in Suit No KWS/OF/21/94 delivered on 9th May, 2002 by Hon. Justice T. A. Oyeyipo Chief Judge of Kwara State is hereby affirmed”.

It is against the above judgment that the appellant has appealed to this court, and filed 15 grounds of appeal. (See pp 521 - 526).

With the leave of the lower court, the 1st respondent also filed a cross-appeal against part of the Judgment of the lower court. The Sole ground of appeal as contained in the cross-appeal is herewith reproduced as follows:-

The learned Justices of the court below erred in law and on the facts when they held in the course of the judgment as follows:-

“However when one looks at the evidence, one agrees with the learned counsel for the appellant that contrary to the view of the learned Chief Judge there is evidence before the court to show how the land in dispute devolved from Bashorun to the appellant” And this occasioned mis-carriage of Justice”.

In accordance with the provisions of the rules of this court, all the parties filed and exchanged their respective brief of argument. The Appellant in his appellant’s amended brief of argument formulated five issues for determination as follows:-

(1) Whether the appellant’s family is dispossessed of the land in dispute by the operation of the Natives Rights Ordinance of 1916 and the Land Use Act, and / or whether Government compulsorily acquired the land in dispute in accordance with the relevant laws (Grounds 1, 6, & 7).

(2) Whether 2nd respondent, by his pleadings and evidence led thereon proved that the land in dispute was government land either through compulsory acquisition “taken over by the Government” by operation of law, designation as G.R.A. Or Urban Area (Grounds 3 & 4)

(3) Whether evidence led by the appellant at the trial court is at variance with his pleadings (Grounds 2 & 8).

(4) Whether the court below was right when, after holding that the appellant proved how the land in dispute devolved from Bashorun to the appellant and that the trial court failed to fully evalu-

ate appellant's evidence, it still held that the appellant did not prove his title to the land in dispute. (Grounds 10, 11, 12, 13 and 14).

(5) *Whether the court below was right in failing to consider other methods of proving title to land pleaded and proved by the appellant and other substantial issues of law raised and argued in appellant's brief and whether the failure has not occasioned miscarriage of Justice (Grounds 8, 9, & 15) “*

The 1st respondent in turn formulated four (4) issues as arising for determination in this appeal as follows:-

(i) *Whether the land in dispute was vested in the 2nd respondent at the time it granted Certificate of occupancy over it in favour of the 1st respondent - (Grounds 1, 3, 4, 6 and 7).*

(ii) *Whether the 1st respondent satisfied the requirements for the issuance of the certificate of occupancy over the land in dispute to him (Ground 5)*

(iii) *Whether on the face of the pleadings of the appellant and the evidence adduced by him and on his behalf, he established title to the land in dispute (Grounds 2, 8, 9, 10, 11, 12 (13) (sic) and 14).*

(iv) *Whether the court below considered all the issues raised before it and (if the answer is no) whether there was any miscarriage of Justice occasioned thereby. (Ground 15)*

While in the cross-appeal, the 1st respondent distilled the sole issue for determination as follows:-

Whether the court below was right when it held that the learned trial Chief Judge was wrong in his conclusion that the appellant did not devolved (sic) from Bashorun to him ”

The 2nd respondent in turn, formulated three issues as arising for determination in the appeal as follows:-

(1) *Whether the evidence led by the appellant at the trial court is sufficient to warrant the grant of declaration of the title to the land in dispute in his favour (Grounds 2, 8, 9, 10, 11, 12, 13 and 14)*

(2) *Whether or not the 2nd respondent pleaded or led sufficient evidence at the trial court to show that the land in question was government land (Grounds 1, 4, 6 and 7)*

(3) *Whether the lower court properly considered all methods of proving title to land and other substantial issues of law raised as alleged by the appellant or not? (Grounds 5, 9 and 15).*

The appellant in reply to the cross-appeal filed an appellant/

cross respondent's brief in which he adopted the sole issue formulated by the 1st respondent in respect of the cross appeal.

At the hearing, the learned counsel to the appellant adopted his brief of argument and I urged this court to allow the appeal. In respect of the first issue formulated by the appellant, it was submitted that the relevant law at the material time the land in dispute was alleged designated as G.R.A in 1956 was the Land and Native Rights Ordinance 1916. It was the learned counsel's contention that the trial High Court did not specifically mention the section of the ordinance which the land in dispute was designated G.R.A in 1956. The court only referred to the Native Authority (control of settlement Regulation 1949 (not of 1950). While the Court of Appeal held that Section 4 of the 1916 Ordinance vested the title of the land in the Governor of former Northern Nigeria, it was submitted that the court below affirmed that the land in dispute was not compulsorily acquired by government and that the appellant proved by evidence how the land devolved from his ancestor centuries ago to the appellant. It is therefore established that the appellant was in occupation and use of the land in dispute prior to the time the Government allegedly took over the land in 1956 via designation of same as G.R.A, or when it became vested by the operation of law. It was therefore submitted that the Government could not acquire the land except in accordance with the relevant law i.e. Section 4 of the Land and Native Rights Ordinance of 1916. Cases of:- A - G Bendel State Vs Aideyan (1989) 9 SCNJ 80, Alhaji Gam Kyari V Alh. Chiroma & Ors. (2001) 5 SCNJ 421; and Ogunloye V Oni (1990) 4 SCNJ 65 at 83 were cited.

Learned Counsel also submitted that at the material time the land was allegedly taken over there was also, in operation, the public lands Acquisition (ordinance) as amended by No 18 of 1918 Cap. 167 Laws of the Federation 1951 which co-existed with the land and Native Rights Ordinance of 1916. He referred to sections 3, 5, 8 and 9 of the Public Lands Acquisition Ordinance of 1918, and submitted that it spelt out the procedure to be followed for acquisition of land for public purpose or use by the government which required Notice to be given to the owner and payment of compensation to the owners, but none of these was followed in the instant case. Also he submitted that sections 3 and 4 of the Land and Native Rights Ordinance

of 1916 do not intend to dispossess occupiers of land of their rights and interest in such land. The cases of Savannah Bank Ltd. & Anor. Vs Ajilo (1989) 1 SCNJ 169 at 183, Abioye Vs Yakubu (1991) 5 NWLR (pt 190) 130 at 146; 1 Rabor Oniague Vs Integral Robber Production Nigeria Ltd. & Anor (1997) 3 SCNJ 39 at 42 were cited.

- B Learned counsel further submitted that the interpretation of Section 1 of the Land Use Act by the lower court as having barred the appellant of claiming declaration of title since the Section vest all the land in the State or the State Governor is wrong and cannot be correct.
- C The case of Garuba Abioye Vs Yakubu (1991) 5 NWLR (pt.190) 130 at 305, and Eyo Ogboni & Ors Vs Chief Oja Ojah (1996) 6 SCNJ 140 at 158 were cited. He therefore submits that though Section 1 of the Land Use Act vests all land in the State or Governor of the State it does not bar the appellant from seeking declaration of title to the
- D land in dispute within the permissible limit allowed by the Act, that the word “exclusive” use in the claim was against the 1st respondent.

- On the 2nd issue, it was contended that the grant to the 1st respondent could only be valid if the Kwara State Government has good title or prove ownership of the land. He then submitted that
- E the burden is on the Kwara State Government to prove that it owns the land. The 2nd respondent did not plead any acquisition or take-over of the land in dispute and neither was it pleaded that the land in dispute belongs to the Government by the operation of law. Only
- F that the land in dispute was designated G.R.A in 1956 and Urban Area in 1978. That the 2nd respondent did not join issue on the appellant’s claim to possession, except for the general traverse which he submitted could not without more amount to an admission of the appellant’s case. He cited the case of Lewis Peat Vs Akhimien (1976)
- G 1 All NLR 460 at 465; Egbunike Vs ACB (1995) 2 SCNJ 58 at 70 and Oseni V Dawodu & Ors (1994) 4 SCNJ 197. He therefore submitted that the burden of proof placed on the appellant is discharged upon the 2nd Respondent’s admission that the appellant was in possession. He referred to sections 27 and 75 of the Evidence Act, ACB
- H V Egbunike (1988) 4 NWLR (pt.88) 350 at 365. Learned counsel further submitted that the 2nd respondent did not prove that the land in dispute was designated as G.R.A in 1956 and later as Urban Area in 1978.

On Issues Nos. 3 and 4, the appellant submits that evidence

led by him and his witnesses are not at variance with its pleading but they were not properly evaluated and applied by the lower court. It was submitted that the lower court was in grave error to have accepted the conclusion of the trial court that the appellant failed to prove its title to the land in dispute even after debunking the main reason preferred by the trial court that the appellant did not show by evidence how the land in dispute devolved from Bashorun to the appellant. It was submitted that there was no conflict whatsoever in the evidence of 1 DW1 and 1 DW2 concerning the names of their ancestor.

On the evaluation of evidence adduced by the appellant learned counsel submitted that the court below predetermined his case without assessing his evidence on record when it held that by operation of law, that is. Section 4 of the Land and Native Rights Ordinance of 1916 and section 1 of the Land Use Act, the land in dispute had become vested in the Government and appellant cannot legally seek a declaration of title to same. Even though the lower court subsequently evaluated the appellant's evidence it was not properly done. It was also his contention that the lower court did not consider two other methods of proving ownership which was pleaded i.e. proof of Long Possession and enjoyment and proof by acts of ownership over the land in dispute; and thereby occasioned miscarriage of justice. He cites in support *Onwugbufo Vs Okoye* (Supra).

On the issue No 5, the learned counsel submits that this is a proper case worthy of interference by this Honourable Court; this is so because the lower court failed to consider substantial issues of law raised by the appellant. Such issues as designated and acquisition under the Land Use Act, acquiescence why the grant to the 1st respondent should be declared null and void, and the Government acquisition and taking over Land for public use and grant same to a private individual.

The 1st respondent's Senior Counsel adopted his Brief of argument and urged the court to dismiss the appeal. On the 1st issue, it was the learned counsel's submission that the court below was right when it held that the 1st respondent based his claim or origin of his title on the Land use Act; he referred to the evidence of the 1st respondent on how he applied for government land and the evidence of PW1. He submits that the totality of the evidence shows conclu-

sively that the land in dispute forms part of the land vested in the defunct Northern Region Government and subsequently the Kwara State Government by operation of law. He referred to Sections 3 and 4 of the Land and Native Rights Ordinance 1916 and sections 2 and 3 of the Land Use Act. It was the counsel submission that the issue of “takeover of land” did not arise in the pleading as irrelevant. None of the parties pleaded that Government took over the land from anybody hence the appellant’s argument on this issue in his Brief is misconceived, at any rate the concurrent findings of the two lower courts in that the appellant did not prove his title to the land in dispute is clearly there and stated.

It was also the submission of the learned counsel that all the submissions made by the appellant on the Public Land Acquisition Ordinance No. 18 of 1918 are misconceived because Section 2 of the said Public Land Acquisition Ordinance excludes native land from its application. Whereas the designation of Native Lands in land and Native Rights Ordinance covers the land in dispute. Thus the provisions of the Public Lands Acquisition Ordinance does not apply to the land in dispute. The learned Senior Counsel pointed out that the decision of this court in *Abioye V Yakubu* (Supra) was misquoted by the appellant, that the Land Use Act land in excess of half hectare is vested in the State Governor. It was submitted that the 1st respondent in paragraph 5, 7 and 8 of the amended statement of defence pleaded the facts of the regulations and the designation of the land as G.R.A, in 1956 and as Urban Area in 1978.

The 2nd respondent also tendered exhibits 2, 3 and 4 and led evidence to show that the land in dispute falls within the area designated as G.R.A and later Urban Area. The learned Senior Counsel submitted that the 1st and 2nd respondent’s are not required to tender regulations made Gazetted pursuant to a statute. It is subsidiary legislation and the court is enjoined to take judicial notice of same by virtue of the provisions of Section 74 of the evidence Act. The cases of *Adetipe V Amodu* (1969) NMLR 62 at 69. *Benson Vs Ashiru* (1967) ANLR 195 at 200 and *Finnih Vs Imade* (1992) 1 NWLR (pt.219) 511 at 542 were cited. It was submitted that the 2nd respondent joined issue with the appellant on the ownership of the land; counsel referred to paragraphs 4, 12, 13 and 16 of the 2nd respondent’s amended statement of defence. It is pleaded and proved by the 1st

respondent that the 2nd respondent had been in possession of the land since the early 20th century. It is therefore the submission of counsel that this court should not disturb the concurrent findings of the two lower courts since same have not occasioned miscarriage of Justice. He relies on the following cases:-

- (i) Samuel Odeniji Vs Adeyemo (1996) 7 NWLR (pt 557) 174; B
- (ii) U.A.C. NIG. LTD. Vs FASHEYITAN & Anor (1998) 11 NWLR (pt 573) 179.

The counsel further submitted that the mere preparation and the fixing of beacons on the land in 1956 is sufficient evidence of possession by the 2nd respondent, the cases of: -Ajada Vs Olanrawaju (1969) ANLR 374 at 380. Lydia Thompson Vs Arowolo (2003) 7 NWLR (pt.818) 163 at 232 were cited in support. C

On issue No 2 the learned Senior Counsel submitted that this court is always loathe at re-evaluation or interference with the concurrent findings of the two lower courts without clear proof that the findings were patently perverse, and a result of improper exercise of judicial discretion. Cases of Abideye Vs Alawode (2001) 6 NWLR (pt 709) 463 at 473; and Re - Adewunmi (1988) 1 NWLR (pt 83) 483 were cited. Thus the findings of the two lower courts that the 1st respondent properly applied and was validly granted statutory right of occupancy could not be faulted as the findings were based on the evidence placed before the court. Counsel referred to Section 5 of the Land Use Act and submits that it is manifest that the prerogative to issue a statutory right of occupancy is in the Governor. The prerogative to impose any condition or waive same vested in the Governor to whom the power to administer all land in Urban Areas is vested. It is therefore not within the province of the appellant to complain about the alleged non-compliance with the conditions listed in exhibit 1m. E F G

On the issue No 3, the learned counsel submitted that since it was the case of the appellant that the family first settled on the land, which is denied, he was duty bound to proffer credible evidence in proof of his averment, and having omitted to call evidence in support of his averment he is deemed to have abandoned the same. See Yusuf Vs Oyetunde (1998) 12 NWLR (pt.579) 483 at 497 - 498. It was the counsel submission that it is not sufficient for a party who relies for proof of original title to land on tradition to merely plead H

that his predecessors in title had owned and possessed the land in dispute without more. Material and necessary facts to sustain such a claim must be clearly averred and proved. See *Onwugbufor V Okoye* (Supra). The evidence of the root of title led by the appellant is clearly unreliable as there is a confusion of who was the 1st Ojomu of Offa.

B From the appellant's evidence was it Bashorun Or Osinrolahin. It is not in doubt that no particulars or material facts concerning the original ownership or devolution was ever pleaded. Thus, in the absence of cogent pleading supported by evidence of who founded the land, how he founded the land and particulars of the intervening owners head of family through whom the appellant claims, his action was bound to fail. Cases of *Onwugbufor Vs Okoye* (Supra) *Alade V Awo* (1975) 4 S.C. 215 and *Dike V Okoleodo* (1999) 10 NWLR (pt 623) 377 were cited in support.

D On issue No 4, learned counsel submits that the issue of acquiescence and whether government can acquire land and give same to private individuals are not covered by any grounds of appeal and do not arise from Ground 15 of the grounds of appeal filed by the appellant, and that this court should discountenance it. The case of *Alli Vs Aleshinloye* (2000) 6 NWLR (pt.660) 177 at 212 B - C. It was the submission of counsel that the decision of the court below is not to the effect that the government of the then Northern Region took over the land in dispute by designating same as G.R.A as erroneously argued by the appellant, but that the land vests in the government by the operation of law. That the issue of compulsory acquisition does not arise and that the Land and Native Rights Ordinance and subsequently the Land Use Act vested the land in the Governor of the Region Or State. That there is no provision in the Land use Act to the effect that there must be first compulsory acquisition of land before the Governor can designate such land as Urban Area.

H On the cross - appeal, the learned counsel to the 1st respondent submits that the finding of the court below is that though the cross - respondent pleaded for settlement by his ancestors as his root of title, the evidence he led is contrary to his pleading as it was to the effect that the land was a gift to his ancestors by the founder of Offa Olalomi, thus this evidence, not being supported by the pleading, goes to no issue. Secondly, there is a confusion as to the name of the ancestor of the cross-respondent who was allegedly given the land

by Olofa., Olalomi and thus renders his root of title un-reliable and also the cross-respondent did not call anybody from the family of Olofa Olaloni to testify in support of the alleged gift of the land to the cross-respondent's ancestor. That in spite of these findings, the court below held that the cross-respondent had proved how the land devolved from Bashorun to the appellant. It was the submission of the learned counsel that this finding of the lower court cannot be correct since the court had held that there is no clear evidence as to who the progenitor of the cross-respondent family is; as between Bashorun and Oshinlahun. The same court cannot make a sudden turn around and hold that there is evidence of how the property devolved from Bashorun to the cross-respondent. Therefore since the appellant could not establish his root of title over the land, the issue of devolution of the land from his ancestor to him does not even arise. It is therefore the submission of learned counsel that the court below was wrong to have set aside the finding of the trial court that the appellant had failed to prove his root of title over the land in dispute and how the land devolved on him and substituted its own finding. See *Layinka Vs Makinde* (2002) 10 NWLR (pt. 795) 358; *ACMC Builders Ltd. Vs K.S.W.B* (1999) 2 NWLR (pt. 590) 288 and *Uzouchi Vs Onyenwe* (1999) 1 NWLR (pt. 587) 339 at 345.

The learned counsel to the 2nd respondent at hearing the appeal adopted his Brief of argument and urged us to dismiss the appeal. On his issue No 1 it was the counsel's submission that the appellant led evidence which is at variance with his pleading. The ancestor of the appellant was not clear was it Bashorun Or Oshinolahun? Since the alleged gift from Olofa Olalomi to his ancestor was not pleaded, the evidence led on it goes to no Issue. See *Allied Bank of Nigeria Vs Akubueze* (1997) 6 SCNJ 131 - 132. He denied that the 2nd respondent admitted that the appellant was in possession and exercising any right of ownership on the land in dispute. It was submitted that a party laying claim for declaration of title to land on tradition must plead and establish by hard facts:-

- (a) Who founded the land
- (b) How he founded the land and;
- (c) Particulars and names of the intervening owners through whom they claim. See *Ewovani* (2001) 1 SCNJ 273 at 381.

The appellant, he continues, in this case had failed to prove

these facts; hence the lower court was right to hold that the appellant had failed to prove his title to the land in dispute.

On its issue No 2, the learned counsel submitted that the second respondent in its amended statement of defence in paragraph 4, 11 and 12 dated October 2000 pleaded that the land granted to the 1st defendant had since been designated Urban Area by the Governor of Kwara State in 1928 pursuant to the powers conferred on him by the land use Act. Learned counsel referred to paragraphs 4, 5, and 13 of his pleading where issues were joined with the appellant on issues of long possession and ownership. He then submitted that the 2nd respondent pleaded and led sufficient evidence to the effect that the land in dispute is Government land. It was further submitted that the land in dispute has been designated as G.R.A since 1956 pursuant to the Land and Native Right Ordinance 1916. He referred to Exhibit I. (Plan No I LRC 49 of 2/5/56) which shows that the land allocated to the 1st respondent falls within the area designated as G.R.A Offa. Also Exhibit 3 was referred to i.e. plan No. URB/OF/1. Designated of OYIN URBAN AREA, 1978 and Exhibit 4 TPO which, despite the residential layout marked 3 in Exhibit 3. The land allocated to the 1st respondent forms part of that depicted in TPO 113.

On the issue No. 3, the learned counsel finally submitted that the lower court considered all the issues placed before it by the parties before it arrived at its decision.

The appellant herein also filed a cross-respondent's Brief in respect of the cross-appeal dated 8/11/07 wherein he submitted that the cross-respondent proved how the land in dispute devolved on Bashorun to the cross-respondent. The cross-respondent cannot correctly be expected to call evidence of gift. Both lower courts were in error to have interpreted the evidence of DW1 as evidence of gift. This evidence ought to have been ignored since it was not pleaded. See *Onwuka V. Omogu* (1992) 3 SCNJ 98 at 115. The learned counsel finally contended that the name of the appellant's ancestor was Bashorun Ojomu Osinolohun and that Bashorun and Osinnolohun mean the same thing.

Now, I think the crucial issue that calls for determination in this appeal is whether the appellant proved his title to the land in dispute in this case. This can only be determined by examining the appellant's pleadings and the evidence adduced in support. The appellant's root

of title is pleaded in paragraphs 4, 5, 7, 8, 11 and 14 of the amended statement of claim as follows:-

4. *The plaintiff's Ancestors migrated from the old Oyo Empire in the present Oyo State centuries ago and settled at Offa.*

5. *The plaintiff's Ancestors brought along with them from the old Oyo Empire a shrine known as "Iyemaji-Goddess which is located in a part of the family land which land the first defendant is allegedly laying claim to.*

7. *The Ojomu-Doyin family land is situate, lying and being along both sides of Igosun Road Offa and covers an area of about 222, 560 square metres and is well known to all the people of Offa and beyond.*

8. *The said Ojom —Doyin family land described at paragraph 7 above is an ancestral land fist inhabited by the Ojomu-Doyin family ancestors and has passed to several generations of the family to date without hinderance or interference.*

11. *The plaintiffs family has permitted and still permits many customary tenants to farm on the land who pay to the plaintiffs family annual rent in cash and kind among them are S. A. Adeneyi, Tiamiyu Ogunlomu, Folorunsho Raji, Bella Elemosho, Lawan Soja, Salawu Ibitoye, kelani Adejanye and many others who still pay annual rent to the plaintiff's family to date.*

14. *The plaintiff avers that among various acts of possession and ownership exercised over the land by the family for many years apart from those enumerated at paragraphs 11 and 12 above are the existence on the land assorted crops and cash trees planted by members of Ojomu-Doyin family members of the family also farm and still farm on the land every year".*

In support of these averments, the appellant called DW1 and DW2 who stated briefly as follows:-

1. *"DW2 - The land in dispute belongs to our fore —fathers. Our ancestors came to possess this land from time immemorial. Our ancestor was Bashorun at Oyo. He was friendly with Oba Ololomi the founder of Offa. He came in company of Olofa from Oyo to Offa. They both arrived Offa. The Olofa Ololomi told my father the Bashorun to stay at Ose-Ogba. Our great ancestor was put in total control of all pieces of land at Okegba. The land now in dispute is part of the land over which Olofa Ololomi gave our ancestor Bashorun*

who became Ojomu on arrival at Offa “.

2. “DW2 - Our forefathers who accompanied Olofa from Oyo is catted Osinnulahun, Our forefather came to Offa with YEMUJO while Olofa came with Onumoke “.

From the above it is clear that these pieces of evidence are not in conflict, they do not also arise from the pleadings. While the DW1 stated that their ancestor was Bashorun, 2 DW2 stated that the name of the ancestor was Osinnolohun it is to be noted that the appellant did not specifically plead the name of their first forefather who first came to Offa. Also the fact pleaded was that the appellant’s forefather was the first to settle on the land, while the evidence adduced is to the effect that the land was an outright gift from Oloffa to their ancestor. I have no difficulty whatsoever in holding that these pieces of evidence go to no issue. Though the appellant tried strenuously to convince this court that the name “BASHORUN” is the same as “OSINNOLOHUN”, nowhere in the proceedings was such evidence given or explained. It is trite that the counsels’ address cannot take the place of evidence. On this point the trial Chief Judge found as follows:-

“Further more it has been held that it is not enough for a party to say that the land in dispute belong to his family from time immemorial, must show how the family got to the land from other persons and the authority of succession. If these are not proved satisfactorily, his claim must fail. *Dike V. Okoledo (1999) 7 S.C. (pt. 3) 35 at 41.* I have said elsewhere in this judgment, I find a serious flaw in the case of 1st defendant, who as plaintiff is asking for a declaration of title to land. The failure of the 1st defendant’s case to contain credible evidence of his family’s radical title to the land he claimed, is fatal to his claim.....

..... In my view, the 1st defendant’s family cannot use long possession which is essentially a weapon more of defence than of offence to establish a claim for declaration of title to land. In my view the 1st defendant Mallam Yusuf Olagunju claim stands or fails on establishing a good title derived from Olofa family. In the light of all that I have said I have come to the conclusion that the 1st defendant Mallam Yusuf Olagunju has failed to sustain his claim for a declaration to the land in dispute “.

Similarly the Court of Appeal, herein court below affirmed this finding of the trial High Court when it held as follows:-

“That the burden of establishing the title claimed is on the appellant and that the appellant failed to discharge the burden as found by the Chief Judge. That Exhibits D 11 and D 12 do not assist the case of the appellant in that Exhibit D 11 is an application to alienate land and there is nothing on it to show that it was ever approved by anybody”

These findings are concurrent findings of the two lower courts; it is trite that this court will not ordinarily interfere in a concurrent finding of the two lower courts, unless it is shown that the findings are perverse or not supported by the evidence in the records. See A.G. Lagos State Vs. Eko Hotels (2006) 9 SCNJ 104 at 127; United Bank for Africa Vs. B. T. L. Industries Ltd. (2005) 12 SCNJ 217.

With tremendous respect I do not see from these finding could be said to be perverse as they were based on the evidence adduced in the records. With due respect again, I will not disturb these findings of the two lower courts. It is for this reason that I will dismiss this appeal.

However before I am done, the lower court found at page 45 of its judgment thus :- *“It is not in dispute that the appellant never called a member of the family of the original alleged grantor of the land to his progenitor it is my view that having introduced the issue of acquisition of the land in dispute by way of gift from the first Olofa of Offa it was the duty of the appellant to prove that root of title - granted that it was pleaded -so as to be entitled to judgment by calling a member of the Olofa’s (sic) family to testify in support of that root of title particularly as the 1st respondent in paragraph I of the Amended State (sic) of Defence specifically denied the relevant paragraphs of the appellant’s pleadings“.* Having so held the lower court surprisingly proceeded to hold that *learned Chief Judge, there is evidence before the court to show how the land in dispute devolved from Bashorun to the appellant”.*

My Lords, this finding with respect is not supported by the evidence before the court. The appellant having failed to prove his title has nothing to devolve on him either from Bashorun or

Osinnolohun, consequently, this finding is set aside and the cross-appeal is hereby allowed.

Finally, I have no hesitation in holding that the 1st respondent's claim based on the grant from the Kwara State Governor is well founded. Based on provisions of Land and Native Rights Law and
 B the Land Use Act. This appeal lacks merit and it is hereby dismissed. The cross-appeal is meritorious same is allowed. N50,000 costs is awarded in favour of the respondent.

C

MUSDAPHER JSC

I have read before now the judgment of my Lord, Hon. Justice Muhammad Saifullah Muntaka-Coomassie, JSC just delivered with which I agree. There is no merit in this appeal and it is dismissed
 D by me. I allow the cross-appeal, I abide by the order for costs proposed in the lead judgment.

OGUNTADE JSC

E I have had the advantage of a preview of the lead judgment by my learned brother Muntaka-Coomassie JSC. The lead judgment boils down to the unwisdom and inappropriateness of this court interfering with the concurrent findings of facts by the two courts below
 F in this appeal. I agree with the conclusion and would also dismiss the appeal with costs as assessed in the lead judgment.

OGBUAGU JSC

G This is an appeal against the Judgment of the Court of Appeal, Ilorin Division (hereinafter called "the court below") delivered on 22nd January, 2003 dismissing the Appellant's appeal and affirming the decision of the trial High Court, Kwara State -per Oyeyipo, C.J. delivered on 9th May, 2002 dismissing the Appellant's suit in the two
 H consolidated suits and finding in favour of the 1st Respondent in his own suit.

Dissatisfied with the said Judgment, the Appellant has now appealed to this Court. In his Notice of Appeal, there are (15) fifteen grounds of appeal. He has formulated (3) three issues for determina-

tion which it is stated, are some of the issues which this Court will be requested to pronounce upon in this appeal. They read as follows:

“(1) *Whether section 4 of the Land and Native Rights Ordinance of 1916 automatically divested land owners in the former Northern Nigeria of the rights and interest they exercised over occupied lands including the Appellant herein as held by the Court of Appeal.* B

(2) *Whether by virtue of Section 1 of the Land Use Act, nobody can claim for a declaration of title to land as held by the Court of Appeal.* C

(3) *Whether designation of Land as Government Residential Area means Government takeover of the land by virtue of Section 4 of the Land and Native Rights Ordinance of 1916.* C

I note that thereafter, it is stated that “the above issues of law are some of the issues this Court, will be requested to pronounce upon in this appeal”. I am aware and this is also settled that when an issue or issues for determination, is or are not formulated or placed before an Appellate Court, it has no business whatsoever, to deal with it or them. See the cases of *Olusanya v. Olusanya* (1983) 3 S.C. 41 and *Alli & anor. v. Chief Alesinloye & ors.* (2006) 6 NWLR (Pt. 660) 177 @ 212; (2000) 4 SCNJ, 264, just to mention but a few. E

On his part, the 1st Respondent, formulated (4) four issues for determination, namely,

“1. *Whether the land in dispute was vested in the 2nd Respondent at the time it granted a Certificate of Occupancy over it in favour of the 1st Respondent. (This issue is formulated from grounds 1,3,4,6 and 7 of the Notice of Appeal).* F

2. *Whether the 1st Respondent satisfied the requirements for the issuance of the Certificate of Occupancy over the land in dispute to him (Ground 5).* G

3. *Whether on the face of the pleadings of the Appellant and the evidence adduced by him and on his behalf, he established title to the land in dispute (Grounds, 2,8,9,10,11,12, 12 (sic) meaning 13, and 14).* H

4. *Whether the court below considered all the issues raised before it and (if the answer is no) whether there was any miscarriage of justice occasioned thereby (Ground 75)”.*

The 2nd Respondent, formulated, three issues for determina-

tion, namely,

1. *Whether the evidence led by the appellant at the trial court is sufficient to warrant the grant of declaration of the title to the land in dispute in his favour (Grounds 2,8,9,10,11,12,13 and 14).*

B 2. *Whether or not the 2nd Respondent pleaded or led sufficient evidence at the trial court to show that the land in question was Government land (Grounds, 1,4,6 and 7).*

C 3. *Whether the lower court properly considered all methods of proving title to land and other substantial issues of law raised as alleged by the Appellant or not? (Grounds 5,9 & 15)".*

The 1st Respondent/Cross-Appellant formulated a lone issue which

has been adopted by the Appellant/Cross-Respondent. It reads as follows:

D “*Whether the court below was right when it held that the learned trial Chief Judge was wrong in his conclusion that the Appellant did not show how the land in dispute devolved from Bashorun to him*”.

E On 13th January, 2009 when this appeal came up for hearing, Mohammed, Esqr., the leading learned counsel for the Appellant, adopted their Brief and he urged the Court, to allow the appeal and dismiss the 1st Respondent/Cross-Appellant’s appeal. He submitted that there are two conflicting Judgments of the trial court and the court below.

F The leading learned counsel for the 1st Respondent - Oguneso, Esqr., also adopted their Brief and he urged the Court to dismiss the main appeal and allow the Cross-Appeal. The leading learned counsel for the 2nd Respondent - Dr. Olatoke, adopted their Brief and he urged the Court to dismiss the appeal. He told the Court that they G did not respond to the Cross-Appeal. That they paid compensation in 1984 to the farmers on the land and not to the Appellant. After referring to the Additional Authority they filed, Judgment, was reserved till to-day.

H I will deal with issue 3 of the 1st Respondent/Cross-Appellant, issue 1 of the 2nd Respondent and the sole issue of the Appellant/Cross-Respondent which in my respectful view, are substantially similar although differently couched. In my humble but firm view, these are partly crucial, to the determination of this appeal. The court below - per Onnoghen, JCA (as he then was), after evaluating the evi-

dence before the trial court, (as it was entitled to do) - See the cases of *Fatoyinbo v. Williams* 1 FSC 87 and *Adeleke v. Iyanda* (2001) 13 NWLR (Pt. 725) 1 @ 20: (2001) 6 SCNJ. 101, it held and stated at page 510 of the Records inter alia, as follows:

"However when one looks at the evidence one agrees with learned counsel for the appellant that contrary to the view of the learned Chief Judge, there is evidence before the court to show how the land in dispute devolved from Bashorun to the appellant - See the evidence of I.D.W.1 (supra)".

The evidence of I.D.W.1 in-chief is at pages 197-201 and under cross-examination from pages 201-202 of the Records. My perusal of pages 197 and 198 thereof, in my respectful view, supports this finding of fact and holding of the court below. I note that the said evidence of the IDWI, was and remained unchallenged by the Respondents. In fact and indeed, at page 259 of the Records, the learned trial Chief Judge, while reviewing the evidence of the IDWI, stated inter alia, as follows:

"The land according to the lucid historical traditional evidence given by DW1 (same as IDWI) whose evidence was supported the (sic) (meaning by) the evidence of IDW2, IDW3 and IDW4 was said to be given to the 1st defendant's Ojomu-Doyin family by Olafa Olalomi.....".

[the underlining mine]

At page 280 of the Records, the trial court stated inter alia, as follows:

"In my view the 1st defendant's family cannot use long possession which is essentially a weapon more than a defence than an offence to establish a claim for declaration of title to land...".

Finally, at page 193 of the Records, the 1st Respondent testified on oath inter alia, as follows:

"After the allocation Government asked me to pay compensation for economic trees and cash crops on the site. There were about eighty of them. I paid by each cash cheque addressed directly to each beneficiary....."

I see Exhibit 1 . In compliance with it, I sought out (sic) (meaning sort) the issues between me and one Raimo Shogo and one Saka Oyebode..... With regard to Shogo, he said that 121 was too small for him. He asked for a major contract in the development of the

school which I did. Also at his request I took him to Minister for Agriculture for fertilizer contract. He secured a contract quite alright but he was never satisfied. I had to take him to court because of his constant harassment.....”

B At pages 194 to 195 of the Records, under cross-examination by the Appellant’s learned counsel - Mohammed, Esq., he stated inter alia, as follows:

“-..... *It is true that reasons were given by Government why they would not give me land at my first request. I never owned any*
C *land in the whole area allocated to me before..... I got my first C of O on the 4/8/86”.*

[the underlining mine]

I note that Raimo Shogo, was the tenant of the Appellant’s family who was granted a portion of the land in dispute where he
D established a piggery and fish pond thereon. The 2nd Respondent, admitted that the Appellant, was in possession and therein exercising acts of ownership. See Sections 27 and 75 of the Evidence Act.

I have gone this far because, as can be seen from the excerpts above, the IDWI and the Plaintiff, also gave evidence of acts of ownership and possession of the land in dispute before the said grant of
E Certificate of Occupancy to the 1st Respondent/Cross-Appellant, extending from time immemorial and over a long period of time. In these circumstances and on the decided authority of *Onwugbufo &*
F *ors. v. Okoye & ors. (1996) 1 NWLR (Pt.424) 253 @ 280; (1996) 1 SCNJ. 1 @ 20* - per Igguh, JSC, a plaintiff, will be entitled to a declaration because, there will be the inference by the court, that he is the true owner.

It is settled therefore, that a plaintiff in a declaration of title,
G who succeeds (as in instant case leading to this appeal) in establishing that such acts, not only extend over a sufficient length of time, but also that they are numerous and positive enough, to warrant the inference of exclusive ownership of such land, is and will be entitled to the declaration. It will be safe and imperative to conclude that the
H party exercising such acts, is the exclusive owner of the land.

As to the pleading of gift and/or settlement by the appellant, it is also settled that a party claiming a declaration of title to a Statutory or Customary Right of Occupancy, does not need to plead and prove, any more than one of the five methods of proving title. As it some-

times happens (as in the instant case), the claimant pleads and/or relies on more than one method to prove his title, he merely, does so *ex abundante cautela* as proof of one single root, is sufficient, to sustain the claim. See the case of Onwugbufo & ors. v. Okoye & ors. (supra) and also the case of Chief Balogun & ors. v. Akanji & anor. (1988) Vol. 19 1 NSCC 180; (1988) 1 SCNJ. 104; (1988) 1 NWLR (Pt.70) 301 @ 321. B

This is because and it is also settled that proof of any one of the five different ways of establishing title to land, is the minimum the law requires. See the case of Nkado & 2 ors. v. Obianor & anor. (1997) 5 SCNJ. 33. C

I note that the trial court, very scantily mentioned for instance Exhibit D11 of the Appellant and in fact, did not evaluate it. Thirteen (13) documentary evidence, were tendered by the Appellant and his witnesses. Exhibits 1N, D13, and D14, were not mentioned at all by the trial court. I note also that at page 500 of the Records, the court below, stated inter alia, as follows: D

"I have gone through the Judgment of the lower court and I confirm that though the learned trial Chief Judge did summarize the evidence of the appellant he did not fully evaluate same, particularly the exhibits tendered by the appellant.....", E
[the underlining mine]

Afterwards, it is settled that evaluation of documentary evidence, is not the exclusive preserve of a trial court. See the cases of Abey & J ors. v. Chief Alhaji Ibrahim F. Alex & 2 ors. (1999) and Iwuohla & anor. v. Nigerian Postal Services Ltd. & anor. (2003) 4 SCNJ. 258 @ 278. F

I will add as this is also settled that a summary or restatement of evidence by a trial court, is not the same thing, as evaluation of evidence which entail the assessment of evidence, so as to give value or quality to it. See the case of Alhaji Oyekola & anor. v. Madam Ajibade & 3 ors. (2004) 17 NWLR (Pt.902) 356 @ 379 C.A. G

This is why it is firmly established that where a trial court, fails to make findings on material and important issues of facts or approaches the evidence called by the parties wrongly, the Appellate Court, will have no alternative, but to allow the appeal. See the case of Karibo & ors. v. Grend & anor. (1992) 3 NWLR (Pt.230) 426 @ 441; (1992) 4 SCNJ. 12 cited in the case of Morenikeji & 4 ors. v. H

968 Olagunju v. Adesoye (2009) 4 KLR Ogbuagu JSC
Adegbasin & 4 ors. (2003) 4 SCNJ- 105 @ 125 - 126 - per Iguh,
JSC.

I think,” *I have flogged*” these issues in order to show beyond any doubt, that the said findings of facts by the court below, that the Appellant, conclusively proved their ownership and possession of the land in dispute before the said grant of Certificate of Occupancy to the 1st Respondent/Cross Appellant by the Government of Kwara State, are correct and justified. But the appellant, is not entitled to a declaration of title, since by virtue of the Land Use Act, 1978, the land and all other lands in an Urban Area (such as in the instant case), were at the time of the said grant, under the control and management of the Governor of that State. I so hold. See Section 2 (1) of the said Act.

As regards the three Issues of the Appellant, issue 1 of the 1st Respondent/Cross-Appellant and issues 2 and 3 of the 2nd Respondent, I note that at page 510 of the Records, the court below stated inter alia, as follows:

“However, it is my view that in view of the state of the pleadings and the totality of the evidence adduced by the appellant; the learned Chief Judge is right in coming to the conclusion that the appellant failed to prove his title to the land in dispute.

Consequently, issue No. 3 is hereby resolved in favour of the respondents”.

I note that in the Appellant’s Brief - paragraph 3.03, although the above is reproduced, but it deliberately, did not include, the last sentence “consequently, issue No. 3 etc.”. Before arriving at that conclusion, the court below, had considered the said issue which is one out of the nine (9) issues formulated for determination,. The said issue which appears at page 342 of the Records, reads as follows:

“Whether having regard to the evidence before the trial court and in all the circumstances of the consolidated suits the land in dispute was acquired by any Government, and whether the 133.537 hectares of land and the certificate of occupancy No. KW 5676 of 23/4/88 thereof granted to the 1st Respondent by the Kwara State Government are valid and in accordance with the relevant laws, (Grounds 9, 10, 13 and 18).

In the Appellant’s Brief - paragraph 3.04, the argument and

submission show, with respect, a gross misconception and misapprehension of the circumstances that led to the said holding of the court below. It has given the impression regrettably, that the court below, was “*blowing hot and cold at the same time*” after the earlier finding that the trial court, was in error in holding that the Appellant, did not prove how the land in dispute, devolved from Bashorun to the Appellant. It is a pity. I say so because, the circumstances of the earlier holding and the subsequent holding, in my respectful view, are different and distinct. B

Now, it is not in dispute that the Government granted to the 1st Respondent, a Certificate of Occupancy and wrote Exhibit 1N. The issue, in my respectful view, is whether that grant, was valid in law and if so, what is the effect or consequence. My perusal of the Records, shows that the 1st and 2nd Respondents, pleaded that the land granted to the 1st Respondent/Cross-Appellant, had long ago, been designated an/as Urban Area by the Governor of Kwara State in 1978 pursuant to the powers vested in him by the Land Use Act (hereinafter called “the Act”)- In other words, the Respondents pleaded and gave sufficient evidence that the land in dispute, is Government Land. That the said land had been designated as G.R.A. since 1956. The existing law at that time, was/is Land and Native (called throughout in the 2nd Respondent’s Brief as “Nature”) Rights Ordinance, 1916 Cap. 96 L.F.N. 1958. Section 3 thereof, declared all lands whether occupied or un-occupied, as Native lands while Section 4, vests all Native lands and all rights over the same, on the Governor of the then Northern Region. See also the evidence of the PW1 - Acting Director of Land, also testified as 2DW2 and 2DW3 - The Surveyor in the Survey Department and Exhibit 2. The land allocated to the 1st Respondent/Cross-Appellant, is within the area so designated as G.R.A. C D E F G

It need be borne in mind and in fact stressed that Section 5(1) (a) of the Act provides as follows:

“It shall be lawful for the Governor in respect of land, whether or not in an urban area — H

(a) to grant statutory rights of occupancy to any person for all purposes;”

See also Sections 8 and 9 of the Act and the cases of *Alhaji Teniola & 5 ors. v. Alhaji Olohunkan (1999) 5 NWLR (Pt.602) 280*

@ 295, 297; (1999) 4 SCNJ. 92 - per Ayoola, JSC citing the case of Mrs. Gankon v. Ugochukwu Chemical Industries Ltd. (1993) 6 NWLR (Pt.297) 55; (1993) 6 SCNJ. 263 - per Karibi-Whyte, JSC. Also to be stressed, is that it is now settled that a Statutory Right of Occupancy, automatically, extinguishes all existing rights in respect of the parcel of land over which it is granted. See also the case of Titilayo & 4 ors. v. Chief Olupo & 4 ors. (1991) 7 NWLR (Pt.205) 519 @ 530; (1991) 9- 10 SCNJ. 20. Sections 2 and 5 of the Act, were interpreted in the case of Olohunde v. Prof. Adeyanju (2000) 6 SCNJ. 470

Since the said grant of the Certificate of Occupancy to the 1st Respondent/Cross-Appellant has been established, this appeal fails. In the light of this my finding as a fact, the issue of “take over by Government”, did not and does not arise in the pleadings and therefore, irrelevant. I agree with the 1st Respondent/Cross-Appellant submission under paragraph 4.1.4 of his Brief, that it was not an issue in both courts below and therefore, such an issue, cannot, with respect, be raised in this Court. In fact, at pages 484 to 485 of the Records, the court below, stated inter alia, as follows:

"None of the parties pleaded or adduced any evidence that Government took over the land from anybody hence the Appellant's argument on this in his brief is with respect, misconceived".

Before concluding this Judgment, although I have held that the said pronouncement of the court below that the Appellant proved how the land in dispute devolved from Bashorun to the Appellant, I need state and this is settled that the success of a party on an issue, does not necessarily result in allowing an appeal. See the case of The Vessel "Leona 11" & anor. v. Intergrated Oil & Gas Ltd. & anor. (2002) 12 SCNJ. 303 @ 325.

It is from the foregoing, that I too, dismiss the appeal and accordingly, affirm the Judgment of the court below. Apart from the order setting aside the said finding of the court below which order, I respectfully do not agree with, I abide by the consequential orders including that in respect of costs contained in the lead Judgment of my learned brother, Muntaka-Coomassie, JSC, just delivered and which I had the privilege of reading before now.

TABAI JSC

I was privileged to read in advance the lead judgment prepared by my learned brother Muntaka-Coomassie JSC and I agree with his reasoning and conclusion. The established evidence is that the land had been acquired and designated Urban Area by the Government of Kwara State pursuant to the Land Use Act 1978. There is also evidence that prior to that acquisition the land had been designated G.R.A. since 1956. I hold that the Statutory Right of Occupancy granted in favour of the 1st Respondent/Cross Appellant remains valid. There is no substance in the appeal which is therefore dismissed. I abide by the order on costs contained in the lead judgment.

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