

SUPREME COURT OF NIGERIA
29TH JANUARY, 2010. SC.125/2002
CORAM:- M. MOHAMMED, W. S. N. ONNOGHEN,
C. M. CHUKWUMA-ENEH, M. S. MUNTAKA-COOMASSIE,
O. O. ADEKEYE, JJSC

1. IREJU
2. JAMES OGBUANUKU
3. ISRAEL OKOROMA APPELLANTS
4. SUNDAY ORJI
(for themselves and on behalf of
Umunwangwo family of Kreigani Village)
AND
1. MARK OKANU
2. GERMAN ELEBACHI RESPONDENTS
(for themselves and on behalf of
ALINSO-OKANU family of Kreigani Village)

LAND LAW - Declaration of title - Identity of land - Whether considered - Contrary to opinion of appellants - Trial court considered the issue - And found that both parties agree as to the land - From the pleadings and evidence led (H1)

LAND LAW - Title - Competing traditional evidence - Evaluation - Duty of court - Court has a duty to examine both evidence - To decide which is more probable - By testing each against the other evidence (H2)

EVIDENCE - Documents - Exhibits P1 to 3 - Effect - All the documents tendered operated against the interest of appellants - In favour of respondents - Trial court was therefore right to prefer respondents' evidence (H3)

COURTS - Title - Finding - That appellants failed to prove title - Basis - Trial court considered all five ways of proving title - Before making the finding - Particularly the acts of long possession by respondents (H4)

JUDGMENTS - Proof - Land law - Where plaintiff fails to prove his case - Proper verdict - Judgment should be in favour of defendant - As it is plaintiff who failed to prove - That he is entitled to what he claims (H5)

FACTS

The plaintiffs/appellants sued defendants/respondents before the High court of Rivers State claiming declaration of title to the land in dispute, damages for trespass and perpetual injunction. From the state of pleadings filed, both parties admitted being natives of Kreigani, and that the land in dispute was within Kreigani Town. However, while appellants called the land "Aliazulo," respondents called it "Ncharata bush." Nevertheless it became obvious from the survey plans respectively filed by the parties and the evidence led at trial that the parties were referring to one and the same land. It was in evidence that one chief Ellah had at one time sued respondents over a certain piece of land, which suit was successfully defended by respondents. It was also in evidence that respondents had also at one time given a certain piece of land to one Anumudu to build on. Both of these acts had transpired to the knowledge of appellants who did nothing to contest either act. But while respondents allege that both pieces of land were part of the land now in dispute, appellants allege that they were never part of the land.

Finally, though appellants tendered certain deeds of lease - Exhibits P1-3 executed in favour of Niger Company Limited in 1910, and Nigerian Properties Limited and Niger Company in 1927, over certain parts of the land now in dispute, Exhibits P1-3 were actually executed by members of respondents' family. After hearing, learned trial judge dismissed appellants' claims in their entirety. Aggrieved, appellants appealed to Court of Appeal but their appeal was dismissed. Still dissatisfied, appellants have come on a further and final appeal to Supreme Court.

ISSUES FOR DETERMINATION

(1) Whether the judgment of the Court of Appeal was consistent with the evidence tendered at the hearing of this case in the High Court.

(2) Whether the evidence tendered in the High Court by the parties did in any way show that the land respectively called by par-

ties as Aliazulo in Kreigani on the one hand and Ncharata in Aligwu on the other hand were one and the same land.

(3) Whether the finding that the appellants were guilty of standing by was justified by the evidence tendered before the court and the plan of the land in dispute tendered by the plaintiff which clearly pointed to the piece of land over which Chief Ellah sued and the other piece of land on which Anumudu built as outside the land in dispute.

(4) Whether the Court of Appeal was in error when it failed to hold that the finding of the trial court to the effect that the finding of this court is that from the totality of the evidence given the defendants are the owners of the entire land in dispute which is edged yellow in their survey plan amounted to a declaration of title to or affirmation of ownership of the entire land on the defendants who did not counter claim for such declaration or at all.

(5) Whether reference by the appellants to the Lands Transfer Ordinance was intended as constituting proof of title by production of document only and whether the appellants unchallenged evidence that their predecessors were grantors noted in the Niger Lands Transfer Ordinance and the agreement of 4th January 1897 was not sufficient to tilt the scale in favour of the appellants.

HELD (Unanimously dismissing the appeal per **ADEKEYE JSC**)
Declaration of title - Identity of land - Whether considered

1. Contrary to the opinion of the appellants, the trial court adequately considered the issue of the identity of the land in dispute. At pages 121-122 of the Record, the learned trial judge made the undermentioned findings of fact: -

(1) That from the pleadings and the evidence led, both the plaintiffs and the defendants agree as to the land they are disputing over.

The burden or primary duty of the plaintiffs seeking a declaration of title to land will not arise, where the defendant by his pleadings admits the description, location, features and dimension of the land, the identity of the disputed land will not be a question in issue and does not therefore require proof.

From the pleadings of the parties and the evidence before the court, the parties know the extent and description of the disputed

land going by their survey plans and the evidence of their boundary men who turned up as witnesses in court and river Orashi.
(pp. 343 G/344 F)

Competing traditional evidence - Evaluation - Duty of court

- B 2. In the scenario before the court, where the case is fought on evidence of traditional history - which in other words becomes a matter of hearsay upon hearsay which is the nature of traditional evidence, the trial court in its traditional role of an umpire has a duty to examine the evidence of the parties and come to the conclusion which is more probable in the circumstances of the case, by testing it against the other evidence. Where witnesses of one party contradict each other or the traditional history relied upon the trial court will be right to reject the traditional history. If the evidence adduced on one side is D supportive of the traditional history relied on by the other side, the trial court will be right in accepting the traditional history. It is only when it can neither find any of the two histories probable nor conclusive that he will declare both inconclusive and proceed to decide the case on numerous and positive acts of possession and ownership.
E (p. 348 H)

EVIDENCE - Documents - Exhibits P1 to 3 - Effect

3. The learned trial judge concluded that Niger Lands Transfer Ordinance Laws of Nigeria 1923 Cap 86 and 1948 Cap 149 - do not F connect the plaintiffs to any of the lands mentioned therein Exhs. P1 - 3 which are Deeds of Lease executed in favour of Niger Company Limited in 1910, Nigerian Properties Limited and Niger Company in 1927 were executed by Chief Okanu of Anazoh (Alinso) and Chief G Osia members of the respondents family. All the documents tendered operated against the interest of the appellants in favour of the respondents. The learned trial judge concluded in the judgment that: -

“The clear result of the evaluation of the evidence tendered on every aspect of this case is that of the defendants’ witnesses weigh H more and is more credible and believable than those given by the plaintiffs’ witnesses.”

The lower court had this to say about the judgment of the trial court:

“I see no basis whatsoever to interfere with the judgment of the trial judge which in my respectful view is solid”

I agree entirely with the reasoning and conclusion of the two lower courts. I resolve issues 1, 2 and five in favour of the respondents. (p. 349 G)

Title - Finding - That appellants failed to prove title - Basis

4. The learned trial judge considered all the five ways of proving title to land in favour of the appellants before coming to the conclusion that the appellants have failed to prove that they are the owners of the land in dispute. Under proof by long possession and enjoyment of the land in dispute, the court discovered from the evidence of PW1 that the defendants gave land to Chief Anumudu to build a store. When Chief Ellah entered into part of the land in dispute without the consent of the respondents, he was sued to the Ahoada High Court. Chief Ellah settled the issue with the respondents before he was allowed to occupy the portion of land. The finding of the learned trial judge was that these two incidents occurred to the knowledge of the appellants yet they failed to take positive steps to ward off the trespass as the owners of the land. (p. 350 E)

Where plaintiff fails to prove his case - Proper verdict

5. Where in a claim for declaration of title, the evidence is unsatisfactory, the judgment should be in favour of the defendant on the ground that it is the plaintiff who seeks relief but has failed to prove that he is entitled to what he claims. If the defendant is able to adduce evidence oral or documentary which has the effect of discrediting the plaintiffs' case, such a declaration should be refused and judgment must be for the defendant. (p. 351 F)

NOTABLE POINT OF INTEREST
ONNOGHEN JSC

1. There was no award of title to respondents

It is very clear from the record that the trial court merely made a finding of fact based on the pleadings of the parties and the evidence adduced in support of same. Before arriving at the finding, the court critically evaluated the case of the parties in support of their contention that they are the original founders of the land in dispute.

I agree with the lower court that the above findings/holdings do not constitute an award of title to the land in disputed to the

defendants when the defendants did not counter claim for same.
(pp. 354 F/355 A)

REPRESENTATION

- Mr. S. Larry with him, A. Ekong Bassey, O. Odanwu, I. Tabai (Miss),
B A. Ndubuisi (Miss) for the Appellants.
Mr. E. C. Ukala, SAN with him, A. K. Allotey and O.T. Iheko (Miss)
for the Respondents.

CASES REFERRED TO

- C Odofin v. Ayoola (1984) 11 SC pg.72 at pg. 119
Onwuka v. Ediala (1989) 1 NWLR pt. 96 pg. 182
Alli v. Alesinloye (2000) 6 NWLR pt. 660 pg. 177
Fasoro v. Beyioku (1988) 2 NWLR pt. 76 pg. 263
D Atuyeye v. Ashamu (1987) 1 NWLR pt. 49 pg. 267
Olosunde v. Oladele (1991) 4 NWLR pt. 188 pg. 713
Agbonifo v. Aiwerioba (1988) 1 NWLR pt. 70 pg. 325
Adigun v. A-G Oyo State (1987) 1 NWLR pt.53 pg. 678
Agbeniro v. Aiwereoba (1988) 1 NWLR pt. 70 pg. 325
E Ugo v. Obiekwe (1989) NWLR pt. 99 pg. 566 at pg. 580
Makanjuola v. Balogun (1989) 3 NWLR pt. 108 pg. 192
Awote v. Omodunni (No.2) 1987 “NWLR pt. 57 pg. 367
Mogaji v. Cadbury Nigeria Ltd. (1985) 2 NWLR pt. 7 pg. 393
F Ogundare v. Okonlawon & Ors. (1963) ANLR pg 358 at 361
Akibu v. Oduntan (2000) 3 NWLR pt. 685 pg. 446 at 462- 463

STATUTES & RULES REFERRED TO

- Niger Lands Transfer Ordinance, Cap. 86 of Laws of Federation 1923,
G schedule 3.
Niger Lands Transfer Ordinance, Cap. 149 Laws of Federation 1984,
schedule 4
Supreme Court Rules, O. 8, r. 4.

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LEAD JUDGMENT BY ADEKEYE JSC

This appeal is against the judgment of the Court of Appeal, Port Harcourt Division delivered on the 31st of October 2001. The judgment of the Court of Appeal upheld that of the High Court of

Rivers State which dismissed the claim of the plaintiffs before the Court in its entirety. This appeal by the appellants before the court is designed to set aside the concurrent judgments of the court below and the trial court.

The plaintiffs-appellants maintained the action in a representative capacity on behalf of themselves and the Umunwangwo family of Kreigani village in Ogba/Egbema District of Ahoada Local Government Area against the defendants/respondents who also defended the suit in a representative capacity for themselves and on behalf of the Alinso-Okanu family of Kreigani in Ogba/Egbema District.

The claim of the plaintiffs-appellants as pleaded in paragraph 26 of the Further Amended Statement of Claim, page 31 of the Record of appeal reads as follows:-

(1) A declaration that they are the persons entitled to the customary right of occupancy of all that piece or parcel of land known and called "Aliazulo" lying situate and being at Kreigani in Ogba/Egbema District in Ahoada Local Government Area, Rivers State, which is verged Red on the plaintiffs' survey plan.

(2) N6,000.00 (six thousand naira) general damages for various acts of trespass committed on the plaintiffs' land about 1970 and since then.

(3) A perpetual injunction restraining the defendants whether by themselves, their servants or agents or otherwise however from committing further acts of trespass on the said land.

At the trial court, parties exchanged pleadings and each side called five witnesses in support of their case. Both parties admitted being natives of Kreigani, and that the land in dispute is within Kreigani Town. The plaintiffs-appellants identified the land in dispute as "Aliazulo farm land" lying, situate and being in Kreigani along orashi river. Aliazulo in Ogba language means "land behind the house". The land is properly delineated and verged red on an amended survey plan No. 372 dated the 17th of November 1983, filed along with the Statement of Claim. The land is bounded as follows: -

On the North by the land of Umuchikere family of Omoku.

On the South by the lands of the plaintiffs

On the East by the land of the plaintiff and that of Umuodu family of Okposi, and the land of Umunkaru family of Omoku.

On the West by Orashi river.

The plaintiffs-appellants claimed ownership of the land in dispute through their ancestor called Ngwor who during a hunting expedition came to a place where he saw a narrow fast running stream, and screamed “Kerri Ngene”. He acquired the area by settlement and developed the stream into Orashi River. Other people joined the
B ancestors of the plaintiffs in the area. They not only settled at Kreigani, they also farmed across the river. The defendants/respondents referred to the area in dispute as Ncharata Land. The land and its boundaries are clearly verged yellow on the defendants’ plan filed in this
C suit. The plaintiffs live south of the defendants who are owners of Aliazulo land, Aliazulo land is distinct from and has nothing in common with Ncharata land. The defendants-respondents claimed ownership of the land in dispute from time immemorial through their ancestor Akpu who first settled on the land in the area as a virgin
D forest and called the place “Aligwu”. The entire land includes the land in dispute Ncharata land and Aliazulo the latter now home of the plaintiffs. The defendants claimed that they are distinct people and ancestors of the defendants gave land Aliazulo backyard to Ngwor the ancestor of the plaintiffs. Ngwor, his wives and descendants did
E menial jobs for him. Both plaintiffs and defendants claimed the entire Kreigani including the land in dispute, relying on traditional history and various acts of ownership and possession exercised by their ancestors down the line. The learned trial judge after a review and evaluation of the evidence of the parties in his considered judgment
F declined to grant the declaratory reliefs of the plaintiffs as the evidence in support was not strong and credible as required in the circumstance of the case. In his conclusion in the judgment at pages 103 to 141 of the Record, the learned judge held that: -

G “I have carefully gone through the case by the pleadings of the respective parties, their survey plans and the evidence given by their witnesses. The clear result of the evaluation of the evidence tendered on every aspect of this case is that, that of the defendants witnesses weigh more and is more credible and believable than those given by
H the plaintiffs witnesses. See *Mogaji v. Odofin* (1978) 4 SC 97 at page 93. So that the finding of this court is that, from the totality of the evidence given, the defendants are the owners of the entire land in dispute which is verged yellow on their survey plan No. OK/RSD/5/77 made on the 9th May 1977 and tendered in this case as Exhibit D

15. I have earlier in this judgment and after reviewing the plaintiffs case held that the plaintiffs have failed to prove that they are the owners of the land in dispute by any of the modes. That conclusion, coupled with my final finding that the defendants are the owners of the land in dispute show that the plaintiffs case in the suit have failed and accordingly I dismiss their claims in this suit against the defendants in their entirety.” B

In an appeal to the Court of Appeal Port Harcourt, that Court was able to identify that there was no dispute that needed to be resolved in relation to the fact that the land in dispute is in Kreigani - as aligwu itself being within Kreigani. The entire case was fought on the question of who was the original owner of the disputed property. The Court of Appeal also concluded in the leading judgment prepared by J.O. Ogebe, JCA (as he then was) that: - C

“I see no substance in any of the complaints of the appellants, D they failed to prove their claim before the lower court and the lower court was justified in dismissing their claim. I see no basis whatsoever to interfere with the judgment of the trial judge which In my respectful view is solid. Accordingly, I dismiss the appeal and affirm the judgment of the trial court. I award costs of N5,000.00 in favour of the Respondents.” E

Being dissatisfied with this judgment, the appellants made a further appeal to this court. At the hearing of the appeal on 2/11/09 - the appellants adopted and relied on the appellants’ brief deemed F filed on 26/3/03, and the appellant reply brief filed on 29/9/03. The appellants filed five grounds of appeal from which they distilled five issues for determination as follows: -

(1) Whether the judgment of the Court of Appeal was consistent with the evidence tendered at the hearing of this case in the High Court. G

(2) Whether the evidence tendered in the High Court by the parties did in any way show that the land respectively called by parties as Aliazulo in Kreigani on the one hand and Ncharata in Aligwu on the other hand were one and the same land. H

(3) Whether the finding that the appellants were guilty of standing by was justified by the evidence tendered before the court and the plan of the land in dispute tendered by the plaintiff which clearly pointed to the piece of land over which Chief Ellah sued and the

other piece of land on which Anumudu built as outside the land in dispute.

(4) Whether the Court of Appeal was in error when it failed to hold that the finding of the trial court to the effect that the finding of this court is that from the totality of the evidence given the defendants are the owners of the entire land in dispute which is edged yellow in their survey plan amounted to a declaration of title to or affirmation of ownership of the entire land on the defendants who did not counter claim for such declaration or at all.

(5) Whether reference by the appellants to the Lands Transfer Ordinance was intended as constituting proof of title by production of document only and whether the appellants unchallenged evidence that their predecessors were grantors noted in the Niger Lands Transfer Ordinance and the agreement of 4th January 1897 was not sufficient to tilt the scale in favour of the appellants.

The respondents adopted and relied on the respondents' brief filed on 22/5/03. The respondents raised one sole issue for determination as follows:-

"Whether upon the preponderance of evidence and the law governing the role of an Appellate Court, the Court of Appeal was in error when it sustained the decision of the High Court dismissing the plaintiffs-appellants claim in its entirety."

At this stage, the respondents' learned counsel drew attention of the court to preliminary issues arising from this appeal as follows: -

(1) The appellants' issues for determination are prolix, in that Issues No.1 and 2 were distilled from Ground 1 of the Ground of Appeal which is the omnibus ground. It is not permissible in law to formulate more than one issue from one ground of Appeal. The court is to discountenance Issues No.1 and 2 formulated by the appellants and the argument in their support. Ground 2 of the appellants' ground of appeal did not arise from the judgment of the Court of Appeal or of the High Court. There was no issue formulated by the appellants from Ground 2 of the Ground of Appeal. The ground is therefore deemed to be abandoned and must consequently be discountenanced. Issue No.2 was not formulated from any ground of appeal, and the appellant cannot rely on the omnibus ground of Appeal to sustain it. The court is urged to discountenance Issues Nos. 1 and 2 raised by the appellants. The respondents supported the

submission with cases

Ugo v. Obiekwe (1989) NWLR pt. 99 pg. 566 at pg.580.

Ogunbiyi v. Ishola (1996) 6 NWLR pt. 452 pg. 12 at pg. 20.

Din v. African Newspapers Ltd. (1990) 3 NWLR pt. 139 pg. 392 at pg. 403.

Akibu v. Oduntan (2000) 3 NWLR pt. 685 pg. 446 at 462- B
463.

Iyaji v. Eyigebe (1987) 3 NWLR pt. 61 pg. 523 at pg. 528.

Calabar East Co-op v. Ikot (1999) 4 NWLR pt.638 pg. 225
at pg. 246.

Ndiwe v. Okocha (1992) 7 NWLR pt. 252 pg. 129 at pg.139- C
140.

In the reply brief filed by the appellants on 29/9/03, the respondents were alleged to have misconceived the import of the appellants argument that issues numbers 1, 2 and 5 were taken together and that issues numbers 1 and 2 relate to the omnibus ground expressing that the judgment of the Court of Appeal was against the weight of evidence. The Ground 2 complained against the failure of the Court of Appeal to make a finding on the status of Aligwu and Kreigani in respect of the disputed land. The appellant submitted that while the attack on the competence of ground 2 may relate to the merit of the appeal, it cannot constitute a preliminary point of law to give grounds for objection. Ground 2 has not been abandoned - it is subsisting and valid. Issue No. 2 is from ground 2 of the ground of appeal. The issue of identity of the land in dispute was before the trial court. D
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The respondents formulated a single issue in respect of the appeal in the respondents' brief thereafter which was argued along the line of the issues raised by the appellant regardless of the preliminary issues already considered. The appellants filed five grounds of appeal and distilled five issues for determination in the appeal itself. While arguing the appeal, the appellant decided to combine Issues one, two and five together and made submission on them jointly. The appellant argued that issues Nos. 1 and 2 relate to the omnibus ground that the judgment of the Court of Appeal was against the weight of evidence. This submission obviously carries the impression that issues one and two are formulated from the omnibus ground. The appellant argued that the complaint is against the finding of the G
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trial court in respect of a specific issue of the identity of the land in dispute. It is noteworthy that an omnibus ground of appeal is a general ground of fact complaining against the totality of the evidence adduced at the trial. It is not against a specific finding of fact or any document and it cannot be used to raise any issue of law or error of law. For a complaint on a finding of fact on a specific issue, a substantive ground of appeal must be raised challenging that finding. It cannot be covered by an omnibus ground.

Ajibona v. Kolawole (1996) 10 NWLR pg. 476 pg. 22.

The other four grounds of appeal against the judgment relates to the error in law and misdirection spotted in the findings of the lower court before arriving at its conclusion in the judgment. This to my mind could have been covered by the omnibus ground raised by the appellant. The complaint made on the omnibus ground is that the judgment of the Court of Appeal is against the weight of evidence. The four grounds of appeal challenged the evidence before the court and findings of the lower court in view of the evidence. In effect when an appellant complains that a judgment is against the weight of evidence, all he means is that when the evidence adduced by him is balanced against that adduced by the Respondent the judgment given in favour of the respondent is against the weight which should have been given to the totality of the evidence. The five issues raised relate to the five grounds of appeal filed, particularly issue one fits into the omnibus ground - while ground 2 is not abandoned. Since none of the grounds offend against the provisions of Order 8 Rule 4 of the Supreme Court rules, the objection is over ruled. It is however my observation that the sole issue raised by the Respondent is all embracing as it covers all the five issues formulated by the appellant.

I intend to be guided by the issues formulated by the appellants being specific in nature. The appellant argued Issues Nos. 1, 2 and 5 together.

Issue One

Whether the judgment of the Court of Appeal was consistent with the evidence tendered at the hearing of this case in the High Court.

Issue Two

Whether the evidence tendered in the High Court did in any

way show that the land respectively called by the parties as Aliazulo in Kreigani on Aligwu on the other hand were one and the same land.

Issue Five

Whether reference by the appellants to the Lands Transfer Ordinance was intended as constituting proof of title by production of title document only and whether the appellants unchallenged evidence that their predecessors were the grantors noted in the Niger Lands Transfer Ordinance and the agreement of 4th January 1897 was not sufficient to tilt the scale in favour of the appellants.

The appellants relate the issues to the omnibus ground which said that the judgment of the Court of Appeal was against the weight of evidence, in that the pleadings and evidence of the parties did not establish the fact that Ncharata land in Aligwu claimed by the defendants-respondents as the land in dispute was the same land as Aliazulo land situate at Kreigani claimed by the plaintiffs-appellants. The appellant submitted that the question whether the land was at Ncharata in Aligwu or Aliazulo in Kreigani was a substantial point of disagreement between the parties. The Court of Appeal and the trial court committed the single error of regarding the description of the parties as being the same as the description of the land in dispute. The Court of Appeal held that the question whether the land is in Kreigani or in Aligwu was never really in dispute in the court of trial. The appellant disagreed that it was certainly in dispute in the trial court, it was a major issue which ought to have been decided which was unfortunately not decided. The respondents pleaded that their own land is distinct and has nothing in common with the land described by the appellants. The description of the land on the survey plans of the parties did not tally either.

The appellants pleaded that it was their ancestors who leased the land - in the agreement shown in the Niger Lands Transfer Ordinance Cap 86 and Cap 149 of 1923 and 1948 respectively Schedules 3 and 4 of Cap 149. There was also the land the agreement of which was dated 4th of January 1897. The case of the parties was that their respective ancestors leased land to the Royal Niger Company Chartered and Limited. The fourth schedule to the Ordinance dealing with the Niger Lands Transfer describes the land as the piece of land at Kreigani known as the Niger Company's Station surrounded by red border line on the plan. The plaintiffs-appellants pleaded and

gave evidence that the lessors named in the agreement of 4th January 1897 and referred to in the Niger Lands Transfer Ordinance were their ancestors. The defendants-respondents did not deny the existence of the agreement which was in respect of a land in Kreigani and not Aligwu. The appellants maintained that the respondents must
B have leased the land through their ancestors to the Royal Niger Company through false representation in 1897. The land document was signed by Okanu and Osia in a representative capacity as agent or trustee of the plaintiffs-appellants family. The trial court and the lower
C court did not examine the capacity in which the documents were executed. Okanu and Osia who executed the documents were related to the appellants' family on the female line. The appellants submitted that both parties relied on traditional history to claim title to the land.

D Kojo v. Bonsie (1957) 1 WLR 1223 was cited to resolve the conflicts in the traditional evidence of the parties relying on events relating to the land in dispute capable of tilting the evidence on one side.

The respondents admitted that Aliazulo farmland is no longer
E part of Aligwu land or Ncharata land and the Court of Appeal was wrong to have ignored such express concession which strengthen the plaintiffs' case. The appellants further submitted that if the respondents had pleaded that they were from Kreigani, and the land in
F dispute was at Kreigani, such pleading would be deemed abandoned in view of the evidence of the respondents on oath. The respondents had admitted an essential part of the plaintiffs' case. The appellants further submitted that the land document Exhibits P1 - P3 executed by Okanu and Osia, the defendants-respondents ancestors at Kreigani
G were not done as their personal property but as communal representatives. Whereas the trial court and the lower court limited the exercise to them as individuals instead of as representatives of Kreigani. The documents were in possession of the plaintiffs-appellants who tendered them as Exhibits P1 - P3. The documents were in custody
H of the appellants; any obligation created in favour of the respondents have been discharged. The respondents replied that the appellants had made an issue out of a non-issue in respect of the identity of the land in dispute. There was no dispute that both parties are from Kreigani town. The question of substantial point of disagreement be-

tween the parties as to whether the land in dispute was at Ncharata in Aligwu or Aliazulo in Kreigani - is not supported by pleadings or evidence. Aligwu was the original name for the town before the advent of the European visitors of the founder of Kreigani. The name Kreigani emerged from the adulteration of the word "Kirikiri" which the founder used to describe the extent of his land to the European visitors. B

The learned trial judge from the pleadings of parties and the evidence led during the trial concluded that the parties were aware of the land in dispute. The appellants identify the land as Aliazulo farm land; the respondents refer to the land in dispute as Ncharata bush. It is a vast area verged red on the appellants' survey plan Exhibit P8, and verged yellow on the respondents' survey plan Exhibit D15. The respondents submitted that in the process of the evaluation of the evidence of both parties, and relying particularly on their survey plans Exhibits P8 - D15, the learned trial judge came to the conclusion that: - C D

(a) Although the parties referred to the land in dispute by different names, they were both in agreement as to the land.

(b) The land had common features in the survey plans, like the Orashi River and families of Okposi - Umuezelu/Umukeru and Umuodu have piece of land which form the eastern boundary with the land in dispute. E

(c) The learned trial judge concluded that what the parties seriously disputed was the founderships and ownerships of the land in dispute. F

(d) The court of appeal came to the conclusion that the identity of the land in dispute was never an issue before the lower court.

(e) The appellants did not draw attention to factors which render the concurrent findings of the two courts perverse. G

(f) The fact that parties were in agreement as to the identity of the land in dispute was not challenged at the lower court.

This court is urged to uphold the conclusion of the trial court and the lower court as to the identity of the land in dispute. H

The respondents submitted that the learned trial judge evaluated the traditional evidence of the parties - particularly the evidence of witnesses and came to the conclusion that there was no cogent evidence as to the founding of the land in dispute by the appellants

ancestor Ngwor, or that he was the original founder of the land in dispute. The respondents referred to the proof by documentary evidence by the appellants and the fact that there was an averment in paragraph 10 of their Amended Statement of Claim that an agreement dated 4th of January 1897 was signed between the Royal Niger
 B Company Chartered and Limited and the plaintiffs' ancestors no such agreement was tendered in evidence. In the Land Transfer Ordinance - the lands vested and the type of rights vested - were linked with specific survey plans with reference to the land at Kreigani in the 4th
 C Schedule - the land referred to is the one surrounded by red border line on the plan. The rights vested by the lands ordinance, proves nothing as the access could be in respect of the area of land given to Akpu and not in respect of the area in dispute. The 1907 ordinance did not make reference to any of the members of the family of the
 D appellants. The learned trial judge rightly held that nothing in the ordinance constituted a proof of ownership of the land in dispute by the appellants. The respondents made reference to Exhibits P1, P2 and P3 deeds of leases made between 15th January 1910 to 1946 and found that the lessors in the leases were members of the respon-
 E dents' family. The collection of rents by the respondents was challenged by the appellants in Omoku Native Court in 1929. The court found in favour of the defendants-respondents. The conclusion of the learned trial judge who was in the vantage position of seeing and
 F hearing the witnesses was upheld by the court of appeal. This court is urged to discountenance the argument of the appellants and resolve issues one, two and five in favour of the respondents.

Issue Three

Whether the finding that the appellants were guilty of standing
 G by was justified by the evidence tendered by the plaintiff which clearly pointed to the piece of land over which Chief Ellah sued and the other piece of land on which Anumudu built as being outside the land in dispute.

The appellants referred to the evidence that Chief Ellah once
 H trespassed on the land in dispute. The attempt made by the respondents to prevent the trespass landed them in court. Chief Ellah sued the respondents in court, and though the appellants knew about the case, they stood by and did nothing. The respondents also pointed out that part of land was leased to Anumudu who put up a building

on the land in dispute without any protest by the appellants. The appellants explained that the area covered was in the past granted to the respondents to live and farm by the appellants. The area was verged brown on the appellants' plan tendered in court. The appellants could not be said to be guilty of standing by. There was no record of the suit instituted by Francis Ellah. Without knowing the facts of the case instituted by Francis Ellah, it would be wrong to condemn the appellants for standing by. The Court of Appeal was wrong to have come to such a conclusion and record the incidents as acts of recent ownership exercised by the respondents to the knowledge of the appellants and they did nothing. The above cannot prevent the appellants from asserting that they are owners of the land in dispute. There was no evidence that the conduct of the appellants constituted a representation to the respondents which representation they relied on and acted on to their detriment and prejudice.

The respondents submitted that in evaluation of the evidence before the court, the learned trial judge evoked the principle in *Kojo v. Bonsie* (1957) 1 WLR 1223 to review the more recent acts of possession over the land in dispute. The trial court found that the acts of possession were more consistent with the defendants claim to title over the land than the plaintiffs. The court of appeal affirmed this by reference to the encounter with Chief Ellah on the land and the portion granted to Chief Anumudu to build a store. These are instances of acts of recent ownership exercised by the respondents, to the knowledge of the appellants over the land in dispute to which the appellants did not react. The evidence of PW.1 confirmed this. The appellants choose to cover the issue of acts of possession with the technical doctrine of standing by - a specie of estoppel by conduct.

Issue No. 4

This issue relates to the judgment of the High Court which concluded inter alia: -

“So that the finding of this court is that from the totality of the evidence given, the defendants are the owners of the entire land in dispute which is verged yellow on their survey plan .OK/RSD5/77 made on 9th May 1977 and tendered in this case as Exhibit D15.”

The appellants' contention is that by this finding, the High Court had wrongly declared title for the respondents. This was confirmed by the Court of Appeal. Such declaration that the defendants were

the owners of the land in dispute was made without any claim or counterclaim by the defendants-respondents to that effect. The finding of the courts gave declaration of title to the respondents in circumstances which did not entitle them to such declaration of title of ownership. It is trite law that a court will not award to a party what he
 B has not claimed.

The appellants considered cases like
 Olosunde v. Oladele (1991) 4 NWLR pt. 188 pg. 713
 Kodilinde v. Odu 2 WACA pg. 136

C where it was held that

“in a claim for declaration of title, the dismissal of the plaintiffs’ claim does not automatically mean that the land in dispute, without a counter claim belongs to the defendant.”

The appellants concluded that the Court of Appeal was in error when
 D it failed to hold that the judgment of the learned trial judge to the extent that it awarded title to the defendants was given without jurisdiction which made the declaration null and void. In view of the submission made on the four issues canvassed, this court is urged to uphold this appeal and enter judgment for the plaintiffs/appellants.

E The respondents replied that the entire case was fought on the question of “who was the original owner of the disputed property. The court had to decide between the appellants and the respondents who had a better right of title over the land in dispute. Each party
 F based their case on traditional history and acts of ownership. The two courts came to the conclusion that from the totality of evidence given, the defendants are the owners of the entire land in dispute. The trial judge was under an obligation to make specific finding on the issue of ownership of the land in dispute. At the point where the learned trial
 G judge reached the conclusion that the defendants were owners of the land in dispute it had arisen directly from the evaluation of the evidence and followed merely as a finding of fact. The trial court was duty bound based on the evidence before him to settle the issue of who is the actual owner of the land in dispute. The appellants have in
 H the circumstance not put forward any satisfactory reason why this court should disturb the concurrent findings of the trial court and the court below. This court is urged to hold that this appeal is lacking in merit and it is accordingly dismissed.

I have painstakingly considered the submission of parties on

the issues formulated for determination in this appeal. It is worthy of emphasis that the major claim of the appellants before the trial court was for declaration that they are entitled to the Customary right of occupancy to the parcel of land at "Aliazulo" at Kreigani in the Ogba/Egbema District of Ahoada Local Government Area of Rivers State. The pleadings, evidence on oath and documentary evidence disclosed as observed by both lower courts that it was based on traditional evidence between two contesting parties to determine who was the original owner of the disputed property - according to the appellants' "Aliazulo" and the respondents' Ncharata bush.

I must at this stage and before considering the issues formulated for determination in this appeal, throw light into the tracts or attributes of a declaratory action - generally speaking the purpose of a declaratory action sought from court is essentially an equitable relief in which the plaintiffs prays the court in exercise of its discretionary jurisdiction to pronounce or declare an existing state of affairs in law in his favour as may be discernible from the averments in the statement of claim. In order to be entitled to a declaration, a person must show the existence of a legal right, subsisting or in the future, and that the right is contested. In other words, what would entitle a plaintiff to a declaration is a claim which a court is prepared to recognize and if validly made, it is prepared to give legal consequence to. A declaratory action is discretionary and it is exercised upon the trial of a suit.

Adigun v. A-G Oyo State (1987) 1 NWLR pt.53 pg.678.

Dantata v. Mohammed (2000) 7 NWLR pt. 664 pg. 176.

In a claim for declaration of title like in all civil matters, the onus is on the plaintiff to prove his case. He must in the process rely on the strength of his own case and not on the weakness of the defence, except where the weakness of the defendants' case tends to strengthen the plaintiffs' case. Unless a defendant files a counter claim, the plaintiff has the primary duty to establish his claims by credible and consistent evidence in accordance with his pleadings. He must satisfy the court that he is entitled on the evidence brought by him to the declaration claimed.

Odofin v. Ayoola (1984) 11 SC pg.72 at pg. 119

Okafor v. Idigo (1984) 1 SCNLR pg. 481.

In the circumstance of the case and the evidence in support of

the competing claims of the parties in respect of the land in dispute, the task before the trial court and lower court was to resolve the issue of the original owners of the land. The case was fought in a representative capacity. The pleadings and the evidence of both sides established that parties are both natives of Kreigani - and it is also of common ground that the land in dispute over which the plaintiffs-appellants claim customary right of occupancy is also within Kreigani town. While the plaintiffs-appellants refer to the land in dispute as "Aliazulo" the defendants-respondents identify the entire area in dispute as Ncharata land. In view of the fact that the defence pleaded in paragraph 3 of their amended statement of defence that "Aliazulo is distinct and has nothing in common with Ncharata land" the appellants are stuck with the opinion that the identity of the land needed the resolution of the court - particularly the position of the land in dispute. The appellants' counsel based this on the undermentioned factors: -

- (1) The defendants-respondents did not agree that the land was in Kreigani.
- (2) It was never settled that Ncharata land in Aligwu is another name for Aliazulo land in Kreigani.
- (3) There is no agreement by parties that the survey plan tendered by the plaintiffs to describe the land called Aliazulo in Kreigani tallied with the description in the defendants' survey plan for the land referred to as Ncharata in Aligwu.
- (4) There was no evidence that Aligwu was once known as Kreigani and vice versa.
- (5) The defendants had to plead and tender their own survey plan. Whereas the law is that where the identity of the land is not in issue, the mere production and tendering of the plaintiff's plan in evidence is enough to establish the identity of the land.

This leads me to appropriately consider the issue of the land in dispute in a claim for declaration of title. Where a plaintiff claims for declaration and injunction, the area of land in dispute must be properly identified in view of the order for injunction which cannot be granted in respect of an undefined area. It is therefore trite that a plaintiff who claims a declaration of title to land must prove clearly the area of land to which his claim relates and the boundaries thereof. The land must be described with certainty so as to entitle him to an

order of injunction. It is a basic step in a claim for declaration. If he failed to prove the boundaries of the land he asserts to be in dispute or did not satisfactorily describe the dimension and locality or the description contradicts the plan - the proper order to make is one of dismissal of claim. A relief of declaration of title being discretionary cannot be granted by any court when the identity of the land is not clearly and unambiguously established. Whenever a plaintiff fails to establish the identity of the land to which his claim of ownership or title relates his evidence at the trial whether oral or documentary cannot in law grant a declaration of title in his favour.

Baruwa v. Ogunsola (1938) WACA 159.

Awote v. Omodunni (No.2) 1987 "NWLR pt. 57 pg. 367.

Makanjuola v. Balogun (1989) 3 NWLR pt. 108 pg. 192.

Odichie v. Chibogwu (1994) 7 NWLR pt. 354 pg. 87

Agbeniro v. Aiwereoba (1988) 1 NWLR pt. 70 pg. 325.

Okedara v. Adebara (1994) 6 NWLR pt. 349 pg. 157.

The mere mention of the name of the land without stating clearly the area of the land to which the claim relates is not enough description.

Udofia v. Afia (1940) 6 WACA 216.

Oluwi v. Eniola (1967) NMLR pg. 339.

Udeze v. Chidebe (1990) 1 NWLR pt. 125 pg. 149.

In other words where the identity of the land does not arise from the pleadings, particularly where the defendant by his pleadings admits the description, location, features and dimension of the land, the identity of the disputed land is not a question in issue and does not require proof.

Ogba v. Wokoma (2005) 14 NWLR pt. 944 pg. 118

Makanjuola v. Balogun (1989) 3 NWLR pt. 108 pg. 192.

Contrary to the opinion of the appellants, the trial court adequately considered the issue of the identity of the land in dispute. At pages 121 -122 of the Record, the learned trial judge made the undermentioned findings of fact: -

(1) That from the pleadings and the evidence led, both the plaintiffs and the defendants agree as to the land they are disputing over.

(2) It is the vast area of land verged red on the plaintiffs' survey Plan Exh. P8 and verged yellow on the defendants' survey Plan

Exh. D15.

(3) The plaintiffs call the land “Aliazulo” interpreted into English language means the land behind the house.

(4) The defendants call the land “Ncharata bush.”

(5) The two survey plans Exhs P8 and D15 and the evidence both parties agree that the vast area of land abuts the Orashi river, the Orashi river according to the two survey plans forms the entire western boundary of the land running from the southwest to the north west.

(6) From the two plans, the parties agree that the portions of land leased out to Niger Company United African Company (U.A.C.) Thomas Welsh and the Royal Niger Company Chartered and Ltd are within and are part of the land in dispute.

(7) On the plaintiffs’ survey plan Exh. P8 the portions leased to The Niger Company, U.A.C. and Thomas Welsh are verged yellow and all within the area claimed verged red, while the Area leased out to the Royal Niger Company Chartered and Ltd. is verged purple.

(8) On the defendants’ survey plan, the same area is verged brown and violet respectively.

(9) The land of the families of Okposi, particularly Umuezelu/Umukani and Umuodu form the Eastern boundary of the land in dispute.

It is settled that a court can compare plans in order to see the relationship between them.

Manus Ukaegbu & Ors. V. Mark Nwololo (2009)1 NSCR pg. 21

The burden or primary duty of the plaintiffs seeking a declaration of title to land will not arise, where the defendant by his pleadings admits the description, location, features and dimension of the land, the identity of the disputed land will not be a question in issue and does not therefore require proof.

From the pleadings of the parties and the evidence before the court, the parties know the extent and description of the disputed land going by their survey plans and the evidence of their boundary men who turned up as witnesses in court and river Orashi. I must say that the defendants/respondents were just being modest in their pleadings that Aliazulo is distinct and has nothing in common with Ncharata land. The respondents averred that Aliazulo was granted by their ancestor Akpu to the ancestor of

the plaintiffs-appellants Ngwor and could not in the circumstance be reckoned as inclusive in the land in dispute.

Ogbu v. Wokoma (2005) 14 NWLR pt. 944 pg. 118

Makanjuola v. Balogun (1989) 3 NWLR pt. 108 pg. 192.

Assani v. Okposin (2000) 10 NWLR pt. 676 pg. 659.

I therefore hold in unison with the trial and lower courts that there was no dispute which needed to be resolved in relation to the fact that the land in dispute was in Kreigani, what the parties have seriously disputed were the foundership and the ownership of the land in dispute. In resolving the question of the original ownership of the land in dispute, the learned trial judge reviewed the pleadings of, the documents, and the evidence of the witnesses of the parties, evaluated and ascribed probative value to the evidence and at pgs. 140-141 of the Record he concluded that: -

“The clear result of the evaluation of the evidence tendered on every aspect of this case is that that of the defendants’ witnesses weigh more and is more credible and believable than those given by the plaintiffs’ witnesses. See Mogaji v. Odofoin (1978) 4 SC pg. 91 at 93 so that the finding of this court is that, from the totality of the evidence given, the defendants are the owners of the entire land in dispute which is verged yellow on their survey plan No. OKRSD5/77 made on 9th May 1977 and tendered in this case as Exh. D15.”

The Court of Appeal in the judgment at page 226 of the Record of Appeal held that there was no basis whatsoever to interfere with the judgment of the trial judge which in their respectful view is solid.

The appellants under issue one of the issues for determination, and in the omnibus ground of appeal held that the judgment of the Court of Appeal was against the weight of evidence particularly, on the issue of the identity of the land in dispute. When an appellant complains that judgment is against the weight of evidence, all he means is that when the evidence adduced by him is balanced against that adduced by the respondent, the judgment given in favour of the respondent is against the weight which should have been given to the totality of the evidence before the court. In this case at hand, the learned trial judge meticulously evaluated the evidence and dismissed the appellants’ suit. The judgment of the lower court was affirmed by the Court of Appeal.

In determining the weight of evidence, the factors considered

are:

- (a) Admissibility
- (b) Relevance
- (c) Credibility
- (d) Conclusiveness

B (e) Probability of the evidence by which the weight of evidence of both parties is determined.

I have no doubt in my mind gleaned through the judgment of the learned trial judge that he evoked the foregoing factors in the evaluation of the evidence before the trial court. He came out attaching more weight to the evidence of the respondents.

Onwuka v. Ediala (1989) 1 NWLR pt. 96 pg. 182.

Mogaji v. Odofin (1978) 4 SC pg. 99.

Abisi v. Ekweabor (1993) 6 NWLR pt. 302 pg. 643.

D In civil trials where the finding or non-finding of fact by a trial court is questioned on appeal, the appellate court will seek to know the following:-

- (a) The evidence before the court.
- (b) Whether the trial court accepted or rejected any evidence upon the correct perception.

E (c) Whether the trial court correctly approached the assessment of the evidence before it and placed the right probative value on it.

F (d) Whether the trial court used the imaginary scale to weigh the evidence on either side.

(e) Whether the trial court appreciated upon the preponderance of evidence which side the scale weighed having regard to the burden of proof.

G Agbonifo v. Aiwerioba (1988) 1 NWLR pt. 70 pg. 325

MISR (Nig.) Ltd. v. Ibrahim (1975) 5 SC pg. 562

Egonu v. Egonu (1978) 11 - 12 SC pg. 111

Anyakora v. Obiakor (2005) 5 NWLR pt. 919 pg. 507.

H The appellants and respondents respectively claimed acquisition of the land in dispute as part of a larger piece of land through settlement by their ancestors.

The appellants claimed that their ancestor Ngwor during a hunting expedition came upon a fast running stream and he screamed out "Kiri Ngene" in amazement. He later settled with his people along

the bank of the fast moving stream. The area later developed into Kreigani when the Europeans came to trade in the area. The fast running stream was developed into Orashi river - a prominent feature in the boundary of the land in dispute. The land in dispute is now a very massive area of land as indicated on the appellants' survey plan Exhibit P8 which stretches from Kreigani Village at the South West to Umechikere family land in Omoku at the North. Ngwor and those who came to settle on the land farmed by and across the bank of Orashi River. Aliazulo in Ogba language means (backyard). B

The respondents claimed that the disputed land belonged to their family from time immemorial. It was acquired by their Ancestor Akpu through settlement. The land was hitherto a virgin forest unvisited by human civilization. The area was named Aligwu. Akpu settled and established his home on a portion of the land - he earmarked the rest for farming and hunting. The rest of the land include Ncharata land and Aliazulo which he Akpu granted Ngwor the ancestor of the appellants to settle upon. It was an area at the back of where Akpu lived. Where a plaintiff's existence on a land acquired by him either through grant, settlement, sale or conquest as the case may be is challenged, he has an option of five ways under the law to prove such title as follows - C

(a) By traditional evidence or

(b) By production of document of title duly authenticated and executed D

(c) By acts of ownership over a sufficient length of time numerous and positive enough as to warrant the inference of a true ownership or E

(d) By acts of long possession and enjoyment or

(e) By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition, be the owner of the land in dispute. F

Idundun v. Okumagba (1976) 9 - 10 SC 227.

Piaro v. Tenalo (1976) 12 SC pg. 31. H

Fasoro v. Beyioku (1988) 2 MWLR pt. 76 pg. 263.

Amajideogu v. Onanaku (1988) 2 MWLR pt. 78 pg. 614.

In proving his title to land, it will suffice for a plaintiff to prove only one of the above five ways of proving title to land by cogent,

satisfactory and conclusive evidence. The parties relied on evidence of traditional history in establishing the ownership of the land in dispute. Such evidence where found to be cogent, not conflicting with that of the defendant, and accepted by court, can support a claim for declaration of title. The appellants in the instant case had the onus to show how their title was derived and the traditional evidence should be consistent, coherent and convincing.

Kalu v. Woluchem (1985) 1 NWLR pt. 4 pg. 610.

Onibudo v. Akilu 1982 SC 60.

By way of emphasis, a plaintiff relying on evidence of traditional history must plead his root of title by showing not only his ancestors, but also how they came to own and possess the land and eventually pass it to him.

Alli v. Alesinloye (2000) 6 NWLR pt. 660 pg. 177.

Akinloye v. Eyiola (1968) NMLR pg. 92.

Mogaji v. Cadbury Nigeria Ltd. (1985) 2 NWLR pt. 7 pg. 393.

Olujinle v. Adeagbo (1988) 2 NWLR pt. 75 pg. 238.

Adejumo v. Ayantegbe (1989) 3 NWLR pt. 110 pg. 417.

Piaro v. Tenalo (1976) 12 SC 31.

Both parties gave traditional evidence of acquisition of the land in dispute by settlement. In this circumstance there can be no question of proving original owners of the land. The original owners here are the ancestor of the appellants Ngwor and that of the respondents Akpu. The situation is that where traditional evidence including evidence of first settlement is satisfactorily placed before the court and is accepted, title to the land can be declared on such evidence of tradition alone.

Odofin v. Ayoola (1984) 11 SC 22.

Oluyole v. Olofa (1968) NMLR 462.

Alii v. Alesinloye (2000) 6 NWLR pt. 660 pg. 172.

The evidence of traditional history before the trial court were given by descendants of the two families and their boundary men who by virtue of the proximity to members of the respective families and the land in dispute are not strangers to the affairs of the family.

In the scenario before the court, where the case is fought on evidence of traditional history - which in other words becomes a matter of hearsay upon hearsay which is the nature of traditional evidence, the trial court in its traditional role of

an umpire has a duty to examine the evidence of the parties and come to the conclusion which is more probable in the circumstances of the case, by testing it against the other evidence. Where witnesses of one party contradict each other or the traditional history relied upon the trial court will be right to reject the traditional history. If the evidence adduced on one side is supportive of the traditional history relied on by the other side, the trial court will be right in accepting the traditional history. It is only when it can neither find any of the two histories probable nor conclusive that he will declare both inconclusive and proceed to decide the case on numerous and positive acts of possession and ownership.

On going through the traditional evidence of the parties, the learned trial court held that the plaintiffs/appellants failed to prove that they own the land in dispute by traditional evidence. In proving title to land, acts of ownership can only be considered and it will obviously follow where root of title is pleaded and established by coherent and convincing evidence. It is when root of title is properly established which paves the way for act of ownership.

Fasoro v. Beyioku (1988) 2 NWLR pt. 76 pg. 263.

After a consideration of traditional history, the learned trial judge went ahead to examine Exhibits 1-7 tendered by the 1st PW by way of proof by production of document of title, which is one of the five ways of establishing ownership or proving title to land. This means is distinct and can be successfully invoked on its own. The exhibits - particularly Exhibits 4-7 which are receipts for payment of compensation by Nigerian Agip Oil Company Limited for certain damaged items at Kreigani - the documents have nothing to do with the land in dispute nor confer any interests and hence do not satisfy the requirement of proof of title document - by which a party can prove ownership to land. ***The learned trial judge concluded that Niger Lands Transfer Ordinance Laws of Nigeria 1923 Cap 86 and 1948 Cap 149 - do not connect the plaintiffs to any of the lands mentioned therein Exhs. P1 - 3 which are Deeds of Lease executed in favour of Niger Company Limited in 1910, Nigerian Properties Limited and Niger Company in 1927 were executed by Chief Okanu of Anazoh (Alinso) and Chief Osia members of the respondents family. All the documents tendered oper-***

ated against the interest of the appellants in favour of the respondents. The learned trial judge concluded in the judgment that: -

“The clear result of the evaluation of the evidence tendered on every aspect of this case is that of the defendants’ witnesses weigh more and is more credible and believable than those given by the plaintiffs’ witnesses.”

The lower court had this to say about the judgment of the trial court: -

“I see no basis whatsoever to interfere with the judgment of the trial judge which in my respectful view is solid”

I have perused the evidence on record and given a microscopic examination to the documents tendered in support of this case, I agree entirely with the reasoning and conclusion of the two lower courts. I resolve issues 1, 2 and five in favour of the respondents.

Issue Three

Whether the finding that the appellants were guilty of standing by was justified by the evidence tendered before the court and the plan of the land in dispute tendered by the plaintiff which clearly pointed to the piece of land over which Chief Ellah sued and the other piece of land on which Anumudu built as being outside the land in dispute.

The learned trial judge considered all the five ways of proving title to land in favour of the appellants before coming to the conclusion that the appellants have failed to prove that they are the owners of the land in dispute. Under proof by long possession and enjoyment of the land in dispute, the court discovered from the evidence of PW1 that the defendants gave land to Chief Anumudu to build a store. When Chief Ellah entered into part of the land in dispute without the consent of the respondents, he was sued to the Ahoada High Court. Chief Ellah settled the issue with the respondents before he was allowed to occupy the portion of land. The finding of the learned trial judge was that these two incidents occurred to the knowledge of the appellants yet they failed to take positive steps to ward off the trespass as the owners of the land. The learned trial judge added these positive steps taken by the respondents to the

catalogue of acts of ownership and possession exercised by the respondents as true owners of the land in dispute. It is noteworthy that the evidence about Chief Anumudu's land was given by the 1st PW - while the plan in question was that tendered by the appellants. This issue for determination and the survey plan of the appellants have only succeeded on highlighting the contradictions and lapses in their evidence in proving title to the land in dispute. B

Issue Four

Whether the Court of Appeal was not in error when it failed to hold that the finding of the trial court to the effect that - C
 "the finding of this court is that from the totality of the evidence given the defendants are the owners of the entire land in dispute which is edged yellow in their plan" amounted to a declaration of title or affirmation of ownership of the entire land on the defendants who did not counter claim for such declaration or at all. D

I shall dispose of this issue by quoting from the judgment of the lower court the portion which reads that

"The entire case was fought on the question of who was the original owner of the disputed property and the trial court was merely saying the obvious, that from the evidence available the respondents were the owners of the disputed property as against the claim of the appellants. What it did finally was to dismiss the appellants case." E
 I endorse this reasoning and conclusion as it has adequately answered the question raised in that issue.

Where in a claim for declaration of title, the evidence is unsatisfactory, the judgment should be in favour of the defendant on the ground that it is the plaintiff who seeks relief but has failed to prove that he is entitled to what he claims. If the defendant is able to adduce evidence oral or documentary which has the effect of discrediting the plaintiffs' case, such a declaration should be refused and judgment must be for the defendant. F G

Ekun & 3 ors v. Baruwa & Ors. (1996) 2 ANLR pg. 211.

Ogundare v. Okonlawon & Ors. (1963) ANLR pg 358 at 361. H

I cannot fault the conclusion of the trial court and the lower court on this issue.

It is a well established rule of practice that the concurrent findings of fact by the trial court and the court of appeal should not be

disturbed by the Supreme Court where there is sufficient evidence to support them, unless there is a miscarriage of justice and violation of some principle of law and procedure by the two lower courts which are glaring on the face of the record. This is not the position in this case - and in the circumstances, the appellants have not adduced any satisfactory reason why this court should interfere with the impeccable findings of the two lower courts.

Stool of Abinabina v. Enyimadu (1953) WACA 34.

Ibodo v. Enurofia (1980) 5 - 7 SC pg. 42.

Akinola v. Oluwo (1962) 1 SCNLR 352.

Fatoyinbo v. Williams (1956) SCNLR 274.

Are v. Ipaye (1990) 2 NWLR pt. 132 pg. 298.

Nwadike v. Ibekwe (1987) 4 NWLR pt. 67 pg. 718.

Atuyeye v. Ashamu (1987) 1 NWLR pt. 49 pg. 267.

In the final analysis, the appeal lacks merit and it is hereby dismissed. The judgment of the lower court is affirmed. N50,000.00 costs of this appeal is awarded in favour of the respondents.

E

MOHAMMED JSC

I have had the privilege of reading in advance a copy of the leading judgment of my learned brother Adekeye JSC, which has just been delivered. I entirely agree with the reasoning and the conclusion arrived at in resolving the issues arising for determination in this appeal. As I have nothing useful to add, I hereby adopt the judgment as mine. Accordingly, I too hereby dismiss the appeal and affirm the decision of the Court of Appeal with 50,000.00 costs to the Respondents against the Appellants.

G

ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, Holden at Port Harcourt in appeal NO.CA/PH/119/1997 delivered on the 31st day of October, 2001 in which the court dismissed the appeal of the appellants against the judgment of the High Court of rivers State, Holden at Port Harcourt, in suit NO. AHC/20/76 delivered on the 3rd day of June, 1996 in which the court dismissed the

H

claims of the plaintiffs/appellants in its entirety.

The appellants, as plaintiffs instituted an action against the respondents at the trial court claiming the following reliefs :-

“26. WHEREFORE the plaintiffs claim against the defendants jointly and severally:

1. A declaration that they are the persons entitled to the customary right of occupancy of all that piece or parcel of land known and called “Aliazula” lying and situate and being at Kreigani in Ogba/Egbema District of Ahoada Local Government Area, Rivers State, which is verged RED on the plaintiffs’ survey plan. B

2. N6,000.00 (six thousand naira) general damages for various acts of trespass committed on the plaintiffs and about 1970 and since then. C

3. A perpetual injunction restraining the defendants whether by themselves, their servants or agents or otherwise howsoever from committing further acts of trespass on the said land”. D

As stated earlier in this judgment the action was dismissed by the trial court as well as the appeal to the lower court. It is therefore important to note that the present further appeal by the plaintiffs/appellants is an appeal on the concurrent findings of facts by the lower courts. E

Learned senior counsel for the appellants, A. Ekong Bassey Esq, SAN now late, in the appellants’ brief of argument filed on the 8th day of August, 2002 formulated five issues for the determination of the appeal. One of the issues so formulated and which I intend to comment on is issue NO. 4 which states thus: F

“Whether the Court of Appeal was not in error when it failed to hold that the finding of the trial court to the effect that”....the finding of this court is that from the totality of the evidence given the defendants are the owners of the entire land in dispute which is edged yellow in their survey plan”, amounted to a declaration of title to or affirmation of ownership of the entire land on the defendants who did not counter-claim for such declaration or at all”. G

It is the contention of learned senior counsel for the appellants that by the above finding the High Court had wrongly declared title for the defendants/respondent and that the lower court was in error when it overruled that submission particularly as the judgment in question is a judgment in rem and binds not only the parties to the H

proceedings but the whole world; that the circumstances in which the declaration of title to the defendants was made do not entitle them to it particularly as the defendants never counter-claimed for declaration of title and the court is enjoined not to award to a party what he did not claim, relying on Ekpenyong vs Nyong (1975) 2. SC 71 at 80-81; Nig. Housing Dev. Authority vs Muonuni (1977) 2.SC 81; Ajayi vs Texaco (1987) 3 NWLR (Pt.62) 577 and Union Beverages vs Owolabi (1988) 1 NWLR (Pt. 68) 128; that the Court of Appeal, was in error when it failed to hold that the judgment of the trial court to the extent that it awarded title to the defendants was given without jurisdiction and consequently null and void.

On his part, learned counsel for the respondents, E. O Ukala Esq in the respondents' brief filed on 2nd day of May, 2003, stated that from the pleadings of the parties and the evidence on record the lower court cannot be faulted in holding that the entire case was fought on the question of "who was the original owner of the disputed property" which was stating the obvious.

Learned counsel state that the whole case is built on who had a better right of title to the land in dispute between the plaintiffs and the defendants and that the lower courts were right in making a finding as to who between the parties, owns the land; that the argument of learned counsel for the appellants failed to take note of the distinction between the granting of a relief and the making of a finding of fact; that there was nowhere in the judgment of the trial court where any declaration was made in favour of the defendants and urged the court to resolve the issue against the appellants.

It is very clear from the record that the trial court merely made a finding of fact based on the pleadings of the parties and the evidence adduced in support of same. Before arriving at the finding, the court critically evaluated the case of the parties in support of their contention that they are the original founders of the land in dispute. The trial court at page 138 of the record found as follows:-

"I have carefully gone through the case by the pleadings of the respective parties, their survey plans and the evidence given by their witness. The clear result of the evaluation of the evidence tendered on every aspect of this case is that of the defendants' witnesses weigh more and is more credible and believable than those given by the plaintiffs witnessesso that the finding of this court is that, from

the totality of the evidence given, the defendants are the owners of the entire land in disputed...”

I agree with the lower court that the above findings/holdings do not constitute an award of title to the land in disputed to the defendants when the defendants did not counter claim for same; that what the trial court did in the case

“was merely saying the obvious, that from the evidence available, the respondents were the owners of the disputed property as against the appellants”

and have found no reason to disturb that finding/holding.

This is clearly not the case of the court making a declaration of title in favour of a party who never claimed for same as contended by counsel for the appellants. It follows therefore that the authorities cited and relied upon by learned counsel for the appellants on a court not being allowed to award to a party what he never claimed are irrelevant and inapplicable to the facts of this case.

It is for the above reasons and the more detailed reasons contained in the lead judgment of my learned brother ADEKEYE JSC, the draft of which I had the opportunity of reading before hand, that I too find no merit in the appeal which is consequently dismissed by me.

I abide by the consequential orders contained in the said lead judgment including the order as to costs. Appeal dismissed.

CHUKWUMA-ENEH JSC

I have read the judgment of my learned brother Adekeye JSC just delivered and I agree that there is no merit in the appeal. The lead judgment has treated all the issues raised for determination in the appeal. I also dismiss the appeal and abide by the orders contained in the lead judgment including the order as to costs.

MUNTAKA-COOMASSIE JSC

I have read before now the lead judgment of my learned Lord Adekeye JSC, I entirely agree with his Lordship’s reasoning and conclusion. On the issue of concurrent decisions of the two lower courts,

I agree that this Court will not interfere with the two decisions of the lower court which are correct. The trial court correctly considered the points and dismissed the claim of the plaintiff. The court below rightly in my view agreed entirely with the trial courts decision and affirmed same. In this court there is nothing to make us deviate from the well tested principle, namely, that the appellate court shall not disturb the decision of the two lower courts especially where there is sufficient evidence to support the said concurrent findings of fact by the two lower courts. There is no evidence of any miscarriage of justice or violation of some principle of law and procedure by those two lower courts. I agree entirely with my learned brother in the lead judgment that the appeal lacks i merit same is dismissed. I endorse the order as to costs.

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