

SUPREME COURT OF NIGERIA
22ND JANUARY, 2010. SC. 234/2002
CORAM:- G. A. OGUNTADE, F. F. TABAI,
I. T. MUHAMMAD, J. A. FABIYI, O. O. ADEKEYE, JJSC

EMMANUAL CHIJIJOKE ORLU APPELLANT
AND
CHIEF (DR.) MPAKABOARI GOGO-ABITE RESPONDENT

CUSTOMARY LAW - Customs relied on - Proof - Need for - It is important that custom should be strictly proved - Unless the particular custom is such - That court should take judicial notice of (H1)

LAND LAW - Title - Succession - Proof by documents - Appellant could have proved title by production of title documents - But he had no documents to depict - That the property had been legally assigned to him (H2)

LAND LAW - Evidence - Untendered evidence - Presumption against interest - Though appellant claimed to have been collecting rent - He failed to tender any receipt issued to any tenant - So section 149 (d) of Evidence Act operates against him (H3)

EVIDENCE - Document - Signed by an illiterate - And third party claims - While the writer of such document cannot take advantage thereunder - Persons other than the writer can do so (H4)

EVIDENCE - Proof - Onus - Whether misdirected - There is no trace of misdirection as to onus - As the findings of facts by trial judge - Were amply supported by evidence on record (H5)

FACTS

The plaintiff/appellant sued defendant/respondent before the High Court of Port Harcourt claiming declaration of title to the land in dispute and injunction. The case of appellant was that it was originally leased to one James Orlu, his grandfather, through whom he inherited the land under Ikwere native law and custom. The case of respondent was that the said James Orlu was originally granted the

land for seven (7) years towards the end of which period he entered into a building agreement - Exhibit A - with one Urum Kalu Ude, respondent's predecessor-in-title, to put up the building on the land and collect rents therefrom until the realisation of his outlay. Accordingly, on the same date, he gave an irrevocable power of Attorney - Exhibit F - to Mr. Ude. Subsequently however James Orlu decided to sell the property to Mr. Ude, and one Sunday Orlu, the original plaintiff to this suit, witnessed the sale. Consequently, James Orlu wrote to the then Government of Eastern Nigeria- via Exhibit H for consent to assign the land to Mr. Ude in 1961.

Though it appears that James Orlu died shortly after Exhibit H in 1961, it was in reliance thereon that the Government assigned the land to Mr. Ude in 1962, renewing the lease for another sixty (60) years from 1964. Eventually, Mr. Ude assigned the unexpired term to respondent with the necessary Government consent. After hearing, the trial court held that appellant failed to prove his case. Aggrieved, appellant appealed to Court of Appeal but the appeal was dismissed. Still dissatisfied, appellant has come on a further and final appeal to Supreme Court. His contention is that the trial court misplaced the onus of proof on him instead of the respondent which had the onus on the state of pleadings.

ISSUES FOR DETERMINATION

"(i) Given the state of the pleadings and evidence, which of the parties, appellant or respondent, bears the onus of proof in this case? In the alternative

Whether the onus of proof in this case is not on the respondent.

(ii) Whether the respondent successfully discharged the onus on him to prove that James Orlu (Appellant's father) divested himself of his original right/title to the property in dispute to his (Respondent's) vendor, Urum Kalu Ude."

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

Customs relied on - Proof - Need for

1 .I completely agree with the two courts below. It is extremely important that custom should be strictly proved. Though such proof is not by the number of witnesses called, it is not enough that one who asserts the custom should be the only witness. Another witness who is

versed in the alleged custom should also testify.

In this matter, the appellant, who rooted his claim on inheritance vide Ikwerre Native Law and Custom failed to adduce any serious evidence in that direction. Both the appellant and his witness, PW2 failed to adduce any evidence on the point despite the fact that the custom being relied upon has not been so frequently used by the courts that judicial notice would be taken of it without evidence required in proof, as found by the learned trial Judge. (p. 401 B)

LAND LAW - Title - Proof by documents

2. There is another option open to the appellant. It is for him to prove ownership of the property by production of title document(s). Unfortunately for him he had no letters of Administration to administer the estate of the late Sunday Orlu. This is as provided in section 2 of Administration (Real Estate) Law, Cap 3, Laws of Eastern Nigeria 1963. The appellant had no documents to depict clearly that the property had been legally assigned to him. The appellant who asserted that he had relevant documents has the onus of proof to establish such facts vide the provision of section 135 (1) Evidence Act, 1990. (p. 401 F)

Untendered evidence - Presumption against interest

3. It is on record that the original plaintiff occupied only one room out of 34 rooms in the property in dispute. He said he put in tenants who were paying rent but stopped doing so. He failed to tender any receipt issued to any tenant. As well, he did not call any tenant to testify on his behalf. The learned trial judge was right in arriving at the conclusion that there were no documents for receipts and property rates to be tendered by the appellant. The provision of section 149 (d) Evidence Act should operate against him. (p. 402 B)

Document - Signed by an illiterates - And third party claims

4. While the writer or preparer of a document signed by an illiterate cannot take advantage under it unless the provisions of the Illiterate Protection Law are strictly complied with, where the document creates legal right between the illiterate and the person other than the writer or the preparer of the document, not only is the document admissible but all pieces of evidence may be adduced or introduced

to prove what happened at the time the document was prepared and signed. In this matter, the respondent is not the maker of the document but the appellant's father, James Orlu. I agree with the court below that Exhibit F is admissible in evidence. (p. 403 F)

B Proof - Onus - Whether misdirected

5. The findings of fact by the learned trial judge were amply supported by the evidence on record. The court below was right in affirming the findings. I see no trace of misdirection as to the onus of proof of title. This court will not interfere unless for compelling reasons clearly depicted. I cannot see my way clear in interfering with the concurrent findings of fact ably arrived at by the two courts below.

In conclusion, I see no merit in the appeal and it is hereby dismissed. I affirm the judgment of the court below. (p. 404 C)

NOTABLE POINTS OF INTEREST
OGUNTADE JSC

1. Grounds questioning admissibility are grounds of law

It is manifestly clear from the first and second grounds of appeal above that the grouse of the appellant is that two documents tendered by the respondent at the trial ought not have been received in evidence. The documents were exhibits 'F' and 'O'. These grounds being complaints about wrongful admission of evidence are grounds of law for which *no* leave is required. (p. 406 H)

2. Burden of proof was on respondents

The important thing to bear in mind is that on the pleadings, the defendant agreed that the land in dispute was originally leased to James Orlu, the plaintiff's father. It is settled law that once it is proved that the original ownership of property is in a party, the burden of proving that that party has been divested of the ownership rests on the other party. In the light of the state of the law, the onus was clearly on the defendant/respondent to show that the title to the land in dispute which he agreed once resided in plaintiff/appellant's father was validly transferred to the defendant's immediate/predecessor in interest Urum Kalu Ude. (p. 410 F)

3. *James Orlu could not have signed Exhibit O*

It seems clear on the pleadings and evidence called that it was abundantly established that James Orlu who died in 1961 could not have executed exhibit 'O' on 28/4/62. It is manifest therefore that exhibit 'O' is a spurious document. The trial court in its judgment had reasoned concerning Exhibit 'O'. thus: B

"The plaintiff is claiming the property through James Orlu. It is now proved even beyond doubt that James Orlu divested himself of the property in dispute since 28/4/62 by assigning the same to Urum Kalu Ude as evidence in exhibit 'O'" C

I am satisfied that the two courts below were wrong in their conclusion that James Orlu divested him of the ownership of the property in dispute vide exhibit 'O'. (p. 412 C)

4. *Proof of public document is by mere tender of CTC* D

The usual method of proving a public document is by the production of a certified copy of it. Once it is certified as such copy, it is unnecessary to call a witness to verify it. It is clear therefore that the defendant would not be expected to do more than he did to have exhibit 'F' tendered in evidence. If it was the case of the plaintiff/ E
appellant that the exhibit 'F' was spurious or not genuine, it was for him to impugn the said document by calling evidence to show that it was a forgery. He could also have subpoenaed the relevant volume of the Register to Deeds to be brought to court for inspection. Since F
there is a presumption of Law in favour of the validity or genuineness of exhibit 'F', it is my firm view that the said exhibit was properly admitted in evidence. (p. 412 H)

5. *In view of Exhibit H respondent's title is valid* G

There is no doubt that the Government of Eastern Nigeria had placed reliance on exhibit 'H' written by plaintiff's father, to assign the land to Urum Kalu Ude vide exhibit 'G'. The plaintiff /appellant whilst attacking the validity of exhibit 'O' has not challenged the authenticity of exhibit 'H'. H

The conclusion to be arrived at therefore is that the defendant/respondent who derived his interest on the land in dispute from Kalu Urum Ude must be left to enjoy the possession of the land unless and until the plaintiff/appellant succeeds in invalidating exhibit

‘H’.

It is my view therefore that the two courts below were right in their Conclusion. I would therefore dismiss this appeal and affirm the judgments the two court below. (p. 415 B)

B REPRESENTATION

E. A. Amadi Esq. with him, K. K. G. Ogbonna for the Appellant.
A. Akintunde Esq. for the Respondent.

C CASES REFERRED TO

- Jules v. Ajani (1980) 5-7 SC 96 at 105
- Oduntan v. Akibu (2000) 7 SC (Pt. 2) 106
- Are v. Ipaye (1990) 2 NWLR pt. 132 pg. 298
- Elias v. Disu (1961) All NLR (Pt. 1) 215 at 220
- D Ibenye v. Agwu (1988) 11 NWLR pt. 574 pg. 372
- Aromire v. Awoyemi (1972) 1 All NLR (Pt. 1) 101
- Amadi v. Orisakwe (2005) 7 NWLR pt. 924 pg. 385
- Oseni v. Dawodu (1994) 4 NWLR (Part 334) 390 at 404
- Mogaji v. Cadbury Nig. Ltd (1985) 2 NWLR pt. 7 pg. 393
- E Onyejekwe v. Onyejekwe (1999) 3 NWLR pt. 596 pg. 482
- Salami v. Savannah Bank (Nig) Ltd. (1990) 2 NWLR (Pt. 120) 100
- Seven Up Bottling Co. v. Adewale (2004) 4 NWLR (Pt. 862) 183
- Atuyeye & Ors. V. Emmanuel O. Ashamu (1987) 1 NWLR (Part 49) 267 at 282
- F Nwadike Ors. & V. Cletus Ibekwe & Ors. (1987) 4 NWLR (Part 67) 718 at 733

STATUTES & RULES REFERRED TO

- G Administration (Real Estate) Law, Cap 3, Laws of Eastern Nigeria, 1963, s. 2
- Evidence Act, ss. 135, 146 and 149
- Land Instrument Registration Law, Cap 72, Laws of Eastern Nigeria, 1963, ss. 17 and 27
- H Supreme Court Rules, 1999, O. 2 r. 9

LEAD JUDGMENT BY FABIYI JSC

This is an appeal against the judgment of the Court of Appeal, Port Harcourt Division (hereinafter referred to as the court below)

which on 5th March, 2002 upheld the decision of Ungbuku, J. (as he then was) of the High Court of Justice, Port Harcourt dated 10th April, 1991 dismissing the Plaintiff/Appellant's suit for failure to prove his case.

The claim of the plaintiff at the trial court as depicted in paragraph 13 of the Statement of Claim reads as follows:-

"(1) A declaration that the plaintiff is entitled to the statutory right of occupancy over and in respect of the property known as No. 21 Nsukka Street Mile 1, Diobu Port Harcourt.

(2) A declaration that No. 21 Nsukka Street, Mile One Diobu was never an abandoned property within the meaning of law and that the purported sale or assignment of the said property to the defendant by the Rivers State Government or its agent is null and void.

(3) A perpetual injunction restraining the defendant by himself or agents or servants from interfering with the plaintiffs use and enjoyment of the said property."

It is pertinent to depict briefly the case put up by the parties based on their pleadings as filed and exchanged. The appellant, as plaintiff, maintained that the property in dispute was inherited by him as the first son of his father in accordance with Ikwerre native law and custom. It was originally leased to James Orlu by the then Eastern Nigeria Government for seven years and when same expired, the said government gave him a new building lease and transferred it to him (Plaintiff). The Ministry of Lands wrote Exhibit L to the tenants. Thereafter he started to collect the rents from the tenants. He renovated the house and also paid property rates.

The case put up by the respondent is that the area known as mile 1, Diobu, Port Harcourt was originally called Rumuwoji Village. In 1956, the government of Eastern Nigeria cleared the village for the purpose of development. James Orlu, the plaintiffs grandfather as one the original owners of the land was allocated Plot 15 block 220 otherwise called no. 21 Nsukka Street, Mile 1, Diobu, Port Harcourt for seven (7) years. When the duration of the lease was running out, James Orlu entered a building agreement with a contractor, Drum Kalu Ude to put up the building and collect rents from the house until his outlay was realised vide a building agreement Exhibit A dated 22nd March, 1961. James Orlu also donated an Irre-

vocable Power of Attorney, Exhibit F to Urum Kalu Ude on the same date.

James Orlu applied for government consent in October 1961 to assign the property to Urum Kalu Ude. Sunday Orlu, the original plaintiff, signed as a witness to the application for consent. The application was approved and James Orlu assigned the property to Urum Kalu Ude.

James Orlu realised that he could not pay back Urum Kalu Ude the cost of the outlay and so he agreed to sell the property. Necessary statutory consent was obtained with the knowledge of his son, Sunday Orlu who turned round to deny that his father sold the property to Urum Kalu Ude. He now claims ownership of the property by inheritance. When the head lease for seven (7) years expired the then Government of Eastern Nigeria renewed the lease to Urum Kalu Ude for another term of sixty (60) years from January 1964 as extant in Exhibit P. The unexpired term of this lease was what Urum Kalu Ude assigned to the Respondent after the necessary consent of the Government.

The learned trial judge applied the relevant laws to the facts garnered by him. He found that the plaintiff failed to prove his case and dismissed it on 10th April, 1991. The plaintiff felt unhappy with the decision of the trial court and appealed to the court below which on 5th March, 2002 dismissed same. This is a further appeal to this court by the plaintiff/appellant who desires to try his chance.

Briefs of argument were filed and exchanged by the parties in this court. On 26th October, 2009 when the appeal was heard, learned counsel adopted appellant's amended brief of argument as well as amended appellant's Reply brief both filed on 13/3/09 and urged that the appeal be allowed. Equally, learned counsel for the respondent adopted respondent's brief of argument filed on 22nd April, 2004 and urged that the appeal be dismissed.

The two issues couched for the determination of the appeal by the appellant at page 5 of his brief of argument read as follows:-

"(i) *Given the state of the pleadings and evidence, which of the parties, appellant or respondent, bears the onus of proof in this case?*

In the alternative

Whether the onus of proof in this case is not on the respon-

dent.

(ii) *Whether the respondent successfully discharged the onus on him to prove that James Orlu (Appellant's father) divested himself of his original right/title to the property in dispute to his (Respondent's) vendor, Urum Kalu Ude."*

The three issues formulated for determination of the appeal by the respondent as contained on page 6 of his brief of argument read as follows:-

"(i) Having regard to the grounds of appeal and the particulars in support, whether the grounds are grounds of law alone or mixed law and facts in which case the appellant ought to have sought the leave of either the Court of Appeal or Supreme Court before commencing this appeal."

(ii) Having regard to the nature of the case, pleadings and evidence, who bears the burden of proof of title? And if the burden had shifted to the respondent, has he successfully discharged the onus of proof that James Orlu (the appellant's grandfather) divested himself of his original title to the property in dispute to respondent's vendor, Urum Kalu Ude"

(iii) Whether the learned Justices of the Court of Appeal were right in upholding the trial judge's decision in admitting in evidence the Irrevocable Power of Attorney donated by James Orlu to Urum Kalu Ude (Exhibit F) and the Deed of Assignment (Exhibit O)."

I need to say it here that the respondent's issue 1, as reproduced above, has no bearing with any of the grounds of appeal. In challenging the competence of the grounds of appeal, the respondent should have filed a Notice of Preliminary objection as dictated by Order 2 Rule 9 (1) and (2) of the Supreme Court Rules, 1999. Having failed to comply with the stated rule of court, respondent's issue I hangs on nothing and same should be discountenanced. I hereby pronounce accordingly.

The first issue formulated by the appellant, put simply, is which of the parties bears the onus of proof in this case?

It is now settled that in civil matters, a plaintiff has the burden of proof to establish his claim. It does not shift to the defendant. See: *Elias v. Disu (1961) All NLR (Pt. 1) 215 at 220*. The onus of proof in a suit for declaration of title, as in this appeal, lies on the plaintiff and he must succeed on the strength of his case and not on the weakness

of the defendant's case, if any. See: *Kodilinye v. Mbanefo Odu (1935) 2 WACA 336; Akinola v. Olumo (1962) 1 SCNLR 352, Mogaji v. Cadbury Nig Ltd. (1985) 2 NMLR (Pt. 7) 393.*

Let me also say it that as pronounced by this court in *Idundun v. Okumagba (1976) 9-10 SC 227*, there are five ways of proving ownership of land. They are as follows:-

1. By traditional evidence.
2. By production of documents of title.
3. Acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant the inference that the person is the true owner.
4. Acts of long possession and enjoyment of the land.
5. 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.

The plaintiff/appellant herein at the on-set, relied on traditional evidence. He claimed that he inherited the property as the first son vide Ikwerre native law and custom. On this point, the learned trial judge at page 92 of the Record of Appeal found as follows:-

"The plaintiff has by his pleading and evidence in court, brought into issue the Ikwerre Native Law and Custom on Administration of Estate and Succession/Inheritance. Native law and custom are matters of evidence to be decided on the fact presented before the court in any particular case, unless it is of such notoriety and has been so frequently followed by the court that judicial notice would be taken of it without evidence required to proof. See Giwa v. Erinmulokum (1961) 1 All NLR (Pt. 2) 294....."

Neither the plaintiff nor his witness PW2 gave evidence on the custom of inheritance in Ikwerre Land. The particular custom being relied upon by the plaintiff has not been so frequently used by the courts that judicial notice would be taken of it without evidence required in proof."

The court below, at page 145 of the record of appeal pronounced as follows on the point:-

"The Ikwerre Native Law and Custom on which he based his claim was not pleaded.

It is a fundamental principle of law that where a party intends

to set up and rely upon native law and custom, the custom alleged must be specifically pleaded.

The appellant failed woefully to plead and prove Ikwerre Native Law and Custom which governs inheritance upon which he predicated his claim."

I completely agree with the two courts below. It is extremely important that custom should be strictly proved. Though such proof is not by the number of witnesses called, it is not enough that one who asserts the custom should be the only witness. Another witness who is versed in the alleged custom should also testify. This is as pronounced by this court in the cases of *The Queen v. Chief Ozogula* (1962) WNLR 136; *Adeyemi & Ors. v. Alhaji Shitu Bamidele & Ors.* (1968) 1 All NLR 31. B
C

In this matter, the appellant, who rooted his claim on inheritance vide Ikwerre Native Law and Custom failed to adduce any serious evidence in that direction. Both the appellant and his witness, PW2 failed to adduce any evidence on the point despite the fact that the custom being relied upon has not been so frequently used by the courts that judicial notice would be taken of it without evidence required in proof; as found by the learned trial Judge. D
E

The conclusion on the point is clear. It is that the appellant has failed to prove his entitlement to the property through traditional evidence.

There is another option open to the appellant. It is for him to prove ownership of the property by production of title document(s). Unfortunately for him he had no letters of Administration to administer the estate of the late Sunday Orlu. This is as provided in section 2 of Administration (Real Estate) Law, Cap 3, Laws of Eastern Nigeria 1963. The appellant had no documents to depict clearly that the property had been legally assigned to him. The appellant who asserted that he had relevant documents has the onus of proof to establish such facts vide the provision of section 135 (1) Evidence Act, 1990. In short, the appellant failed to prove ownership by tendering a subsisting title document as James Orlu, through whom he claimed, divested himself of the property in dispute since 28-4-62 by assigning his interest in Exhibit A to Urum Kalu Ude as evidenced in Exhibit F
G
H

O. The property was no longer available as from the said date to be inherited by the plaintiff or any other person claiming through James Orlu.

The appellant also tried to rest his title on long possession by virtue of section 146 of Evidence Act which provides that a person who claims title by being in possession must be shown to be in possession.

It is on record that the original plaintiff occupied only one room out of 34 rooms in the property in dispute. He said he put in tenants who were paying rent but stopped doing so. He failed to tender any receipt issued to any tenant. As well, he did not call any tenant to testify on his behalf. The learned trial judge was right in arriving at the conclusion that there were no documents for receipts and property rates to be tendered by the appellant. The provision of section 149 (d) Evidence Act should operate against him. He did not prove acts of ownership, long possession and I enjoyment sufficient, positive and numerous enough to warrant an inference that he is the true owner of the property in dispute. See: *Idundun v. Okumagba* (supra).

The respondent, on his own part, testified that he put in tenants and collected rents from them. He also paid ground rents to the Government and tendered Exhibits M, M1 and M2. It appears that he was able to show better title. See *Amakor v. Obiefuna* (1974) 1 ALL NLR 119, *Aromire v. Awoyemi* (1972) 1 All NLR (Pt. 1) 101.

The appellant failed to prove exclusive possession. His claim, no doubt, rest on shifting sand and should fail at the end. See: *Arabe v. Asanlu* (1980) 5-7 SC 78 at 81; *Kodilinye v. Odu* (Supra). It is clear to me that the appellant, who has the burden of proof failed in all directions. The burden of proof remains at the door steps of the appellant. It did not shift to the respondent since the appellant failed to establish his title by any know means.

I resolve issue one (1) against the appellant and in favour of the respondent.

Issue (ii) is ‘whether the respondent successfully discharged the onus on him to prove that James Orlu (appellant’s father) divested himself of his original right/title to the property in dispute to his (respondent’s) vendor, Urum Kalu Ude’.

On behalf of the appellant, it was seriously contended that

Exhibits F and O, Irrevocable Power of Attorney by James Orlu to Urum Kalu Ude and Deed of Assignment, respectively were not properly admitted by the learned trial judge. The appellant claimed that both exhibits are defective because the copies tendered were neither signed nor thumb printed and bore no jurat.

On behalf of the respondent, it was submitted that the respondent gave evidence that the originals of Exhibits F and O were missing and DW2, a Deputy Director of Lands gave evidence and tendered Exhibit O, a certified true copy of the original which conforms with section 17 (3) and section 27 Land Instrument Registration Law Cap. 72 Laws of Eastern Nigeria 1963 as applicable in Rivers State. The case of Jules v. Ajani (1980) 5-7 SC 96 at 105 was cited. Learned counsel stressed that Exhibit O complied with the law and was rightly admitted.

Learned counsel for the respondent observed that Exhibits A and F were made on the same day. He felt that since Exhibit A was thumb-printed and *jurat* was duly signed, the original of Exhibit F must also have been thumb-printed with *jurat* signed. Evidence was led that the original of Exhibit F was lost and certified true copy from the records of the Deeds Registry was tendered. He submitted that Exhibit F was properly admitted in evidence.

I do not see the rationale for the fuss generated with respect to the admission of Exhibits F and O by the learned trial judge. In *Salami v. Savannah Bank (Nig) Ltd.* (1990) 2 NWLR (Pt. 120) 100, it was held that ***while the writer or preparer of a document signed by an illiterate cannot take advantage under it unless the provisions of the Illiterate Protection Law are strictly complied with, where the document creates legal right between the illiterate and the person other than the writer or the preparer of the document, not only is the document admissible but all pieces of evidence may be adduced or introduced to prove what happened at the time the document was prepared and signed. In this matter, the respondent is not the maker of the document but the appellant's father, James Orlu. I agree with the court below that Exhibit F is admissible in evidence.*** See: *Ezeka v. Ndukwe* (1981) All NLR 564.

The contention of the appellant that Exhibit O was executed in 1962 while James Orlu was alleged to have died in 1961 was found

to lack substance by the court below on the ground that there is nothing to show that James Orlu died in 1961. I agree with the court below in that from my perusal of the record I cannot see any authentic evidence that he died in 1961.

B Apart from the above, Exhibits F and O were certified true copies of the documents tendered from proper custody by DW2, a Deputy Director of Lands and in compliance with the provisions of section 17 (3), section 27 of Land Instrument Registration Law I Cap. 72 Laws of Eastern Nigeria, 1963. See: *Jules v. Ajani* (supra).

C I must resolve issue 2 against the appellant and in favour of the respondent.

I am of the considered view that this matter principally has to do with findings of fact by the two courts below. ***The findings of fact by the learned trial judge were amply supported by the evidence on record. The court below was right in affirming the findings. I see no trace of misdirection as to the onus of proof of title. This court will not interfere unless for compelling reasons clearly depicted. I cannot see my way clear in interfering with the concurrent findings of fact ably arrived at by the two courts below.*** See: *Seven Up Bottling Co. v. Adewale* (2004) 4 NWLR (Pt. 862) 183; *Anaeze v. Anyaso* (1993) 5 NWLR (Pt. 291) 1; *Kale v. Coker* (1982) SC 252; *Oduntan v. Akibu* (2000) 7 SC (Pt. 2) 106.

In conclusion, I see no merit in the appeal and it is hereby dismissed. I affirm the judgment of the court below. The respondent is entitled to cost assessed at N50,000.00 against the appellant.

G **OGUNTADE JSC**

The appellant was the plaintiff at the High Court of Rivers State, Port-Harcourt where he claimed against the respondent as the defendant the following reliefs:

"(a) A declaration that the plaintiff is entitled to the statutory H right of occupancy over and ill respect ; of the property known as No. 2 Nsukka Street, Mile 1 Diobu, Port-Harcourt.

(b) A declaration that No. 21 Nsukka Street, Mile 1, Diobu, was never an abandoned property within the meaning of the law and that the 4th purported sale or assignment of the said property to

the defendant by the Rivers State Government or its agents null and void.

(c) A perpetual injunction restraining the defendant by himself or his agents or servants from interfering with plaintiff use and enjoyment of the said property.

The parties filed and exchanged pleadings after which the suit was tried by Ungbuku J. (as he then was). On 10-4-91, the trial judge in his judgment dismissed the plaintiffs case. The plaintiff was dissatisfied with the judgment of the trial court. He brought an appeal against it before the Court of Appeal sitting at Port-Harcourt (hereinafter referred to as 'the court below'). On 5-03-02, the court below in its judgment dismissed the appeal affirmed the judgment of the trial court. Still dissatisfied, the plaintiff come before this Court on a final appeal. In the appellant's brief before this court, two issues were identified as arising for determination in the appeal. The issues are:

“(i) Given the state of the pleadings and evidence which of the parties Appellant or Respondent, bears the onus of proof in this case?”

“(ii) Whether the Respondent successfully discharged the onus on him to prove that James Orlu, (appellant father) divested him self of his right/title. to the property dispute to his (Respondent's) vendor, Urum Kalu Ude.”

The respondent in his brief has contended that the three grounds of appeal raised by the appellant are all of facts or mixed law and facts for which the appellant required the leave of the court below or this Court pursuant to section 233 (2) (a) of the 1999 Constitution of Nigeria. It was contended further that as no such leave was obtained, the appellant's appeal was liable to struck out.

The appellant in his Reply brief has argued that all the three grounds of appeal he raised were of law for which he did not require the leave of the court below or this Court.

I should first consider the objection raised concerning the competence of the appeal. In all the appellant raised three founds of appeal. Two were raised in the Notice of appeal filed on 23/05/02 and one in the amended notice of appeal filed on 30/9/02. The three grounds of appeal read thus:

GROUND 1

The learned justices of the Court of Appeal erred in law when

they held that Ext. 'F' (the Power of Attorney) in the proceedings was rightly admitted in evidence by the learned trial judge.

PARTICULARS

(i) The said Ext. 'F' did not comply with the mandatory provisions of the Illiterate protection Law Cap. 64, Law of Eastern Nigeria B 1963.

(ii) The document Ext. 'F' (the power of Attorney) cannot, on the face of it true copy of whatever document (if any) it purports to be.

(iii) The cases of *Oseni v. Dawodu* (1994) 4 NWLR (Part 334) 390 at 404 and *Salami v. Savannah Bank* (1990) 2 NWLR (Pt. 130) 106 at 122 relied upon by the court below are irrelevant in this case. C

(iv) The wrongful admission of the document Ext. 'F' in evidence occasioned a miscarriage of justice on the Appellant

D **GROUND 2**

The learned Justices of the Court of Appeal erred in law when they held that Ext 'O' (the Deed of Assignment) in the proceeding was rightly admitted in evidence by the learned trial Judge.

PARTICULARS

(i) The purported vendor of the said Ext. 'O' James Orlu, (original Appellant's father), did not sign thumbprint the document. E

(ii) The purported interpreter did not also sign the document.

(iii) The document, Ext. 'O' did not comply with the provisions of the Illiterate Protection-Law Cap. 64, Laws of Eastern Nigeria F 1963.

(iv) The purported Deed of Assignment Ext. 'O' did not carry on its face, as in normal, the certificate of consent of the Governor.

(v) The wrongful admission of Ext. "O' (the Deed of Assignment) in evidence occasioned a miscarriage of justice on the part of the Appellant." G

FOUND 3

The learned Justices of the Court of Appeal misdirected themselves in law in not directing themselves as to where the onus of H proof lay in this case when they concluded as follows:-

It is manifestly clear from the first and second grounds of appeal above that the grouse of the appellant is that two documents tendered by the respondent at the trial ought not have been received in evidence. The documents were exhibits 'F' and 'O'. These

grounds being complaints but wrongful admission of evidence are grounds of law for which *no* leave is required. See *Nwadike Ors. & V. Cletus Ibekwe & Ors. (1987)4 NWLR (Part 67) 718 at 733*: The 3rd ground/of appeal raised fee question of misplacement of the burden of proof in a civil case. The substance of the complaint under this ground is that whereas in the nature of the case made by parties in their pleadings, the defendant/respondent should have borne the burden of proof, the burden was erroneously placed on the plaintiff/appellant. The error complained of under the 3rd ground is therefore one of law. See *Atuyeye & Ors. V. Emmanuel O. Ashamu (1987) 1 NWLR (Part 49) 267 at 282*. The objection raised in the respondent's brief against the ground of appeal filed by the appellant must be and is accordingly overruled.

It is a helpful starting point to examine closely the case made by parties in their pleadings. In paragraphs 4 to 10 of his statement of claim, the plaintiff/appellant pleaded thus:

"4. Nearly the whole of what is now referred to as mile 1, Diobu including the building in dispute was originally a virgin land. The first possessor and occupier of the said virgin land was the plaintiff's ancestor called Woji several years ago. By virtue of the original settlement the said Land became the exclusive and absolute property of the said Woji in accordance with Ikwerre native law custom. The land was subsequently named after its founder and became known as Woji Village.

5. Woji had several sons and daughters who became known and called Rumuwoji. Portions of the land were allotted to his sons who farmed and lived in the land. The portion allotted to the plaintiff's own lineage was in accordance with Ikwerre native law and custom successfully inherited by the following Nti woji, Orlu Nti and James Orlu - the plaintiff's father.

6. The plaintiff's father built houses in his compound and Remained in possession with his wives and children until 1956 when the then Government of Eastern Region of Nigeria demolished most of the houses in Rumuwoji village, including the plaintiff's father's houses in order to make way for development and planning of Mile 1, Diobu. Like other natives, no compensation in cash was paid to the plaintiff's father, rather alternative plots of land were shown to the natives, including the plaintiff's father.

7. *Instead of outright conveyance of the plaintiff's father's own plot of land as the situation demanded, the then Government of Eastern Region of Nigeria only thought it fit to lease the plot of land then known as and called plot 21 in Block 220 in the Wobo Layout to the plaintiff's father. The building lease agreement between the plaintiff's father and the Eastern Region of Nigeria Government date the 10th of May, 1960 and registered at No. 38 at page 38 in Volume 237 of Register of Deeds kept at the Lands Registry Enugu shall be founded upon at the hearing of this case.*

8. *The plaintiff's father who could not immediately raise the money to develop the plot of land to specification and meet the time limit imposed by the said Government in the lease agreement engaged the service of one Mr. Urum Kalu Ude of No. 208 Bonny Street, Port Harcourt who erected the building now known as and called No. 21 Nsukka Street, Mile 1, Diobu, port-Harcourt the land in dispute. The agreement between the plaintiff's father and the said builder Mr. Urum Kalu Ude dated the 22nd of March, 1961 is hereby pleaded.*

9. *On completion of the building the plaintiff's father and his family took possession and exercised acts of ownership without let or hindrance. The coconut tree planted by the plaintiff's father is still conspicuously standing at the back of the building in dispute.*

10. *When the plaintiff's father died in late 1961 the plaintiff in accordance with Ikwerre native law and custom inherited the building in dispute, remained in possession with him family and relations, exercised acts of ownership without let or hindrance. The plaintiff who has no other home other than the building in dispute has lived there with his families and his blood relations almost all his life; let out some rooms to tenants and paid the property rates. All the documents and receipts relating to this are hereby pleaded and shall be founded upon."*

(underlining mine)

The defendant/respondent in paragraphs 7 (a) to 9 of his Amended Statement of defence pleaded thus

"7 (a) *In further answer to paragraph 6 of the Statement of Claim, defendant will contend at the trial that Woji Village was acquired by the Eastern Region Government some time in 1956, for development. The area was cleared, leveled and carved into building*

plots and named Wobo Layout Port-Harcourt.

(b) During the process one James Orlu was granted building lease in respect of Plot 15 Block 220 Wobo layout also known and called No. 21 Nsukka Street, Port-Harcourt and registered as No. 38 Page 38 in Volume 237 for a limited period of seven years, at the end of which the lease was granted to Urum Ude Kalu from whom the defendant acquired his title. B

8. Defendant admits paragraph 8 of the Statement of claim.

9 (a) Before completion of the buildings and in furtherance of the agreement dated 22nd March 1961, James Orlu (Plaintiff's father) on that day gave an irrevocable Power of Attorney in consideration of the Agreement. These documents are pleaded and will be relied upon. C

(b) In furtherance of paragraph 7 of the said Agreement, when at the stipulated time James Orlu could not pay the £5,000.00 now D N10,000.00 to Urum Kalu Ude the agreed the sum, James Orlu applied to the land Officer for the consent of Hon. Minister of Town Planning to assign Plot 15 Block 220 wobo Layout to Urum Kalu Ude . This letter dated 20^h October 1961 is pleaded and will be relied upon. A reply reference LP:3670 /54 February 1962 was received. This document is also pleaded. E

(c) Following the approval of the application for consent to assign the plot to Urum Kalu Ude, the Deed of Assignment dated 28^h April 1962 and registered as No.13 in volume 318 was granted to Urum Kalu Ude. This document is pleaded and will be relied upon. F

(d) Since the original lease to James orlu which was for only seven years, and the residue of which passed on the Urum Kalu Ude and expired on 31st December 1963, the Government of Eastern Region granted a new building lease to Urum Kalu Ude registered as G No. 91 page 91 in volume 377 and commencing on 1st January 1964. This document is pleaded. "

A few important observations ought to be made on the pleadings of Parties reproduced above. There was no dispute between the parties on their pleadings that the land in dispute was at some stage leased in 1960 to plaintiff's father following the acquisition of the land in 1956 by the Government of Eastern Region of Nigeria vide Deed Registered as No. 38 Page 38 in Volume 237. The lease commenced on 1-1-57 and was to expire At the end of December, 1963 H

.(See paragraph 4 of the Amended Statement of Defence). There was therefore no dispute as to the fact that plaintiff's Father had the leasehold interest in the land up to December, 1963. So when did such interest pass to the defendant's predecessor in title Mr. Urum Ude Kalu. The defendant pleaded that on 22-3-61, James Orlu, the plaintiff's father gave Urum Ude Kalu an irrevocable power of attorney in consideration of an agreement. In paragraph 7 (b) of the Amended Statement of defence, the defendant pleaded that the plaintiff's could not repay a sum of £5,000.00 owed to Urum Kalu Ude. It was further pleaded that James Orlu (plaintiff's father) sought the consent of the Hon. Minister for Town planning vide a letter dated 20-10 1961 that the land be assigned to Urum Kalu Ude.

Now, it was never in dispute that the plaintiff's father died in 1961. This raises a question very important. Did the plaintiff's father James Orlu on 20-10-61 ask the Minister of Town Planning to assign his interest in the land in dispute to Urum Kalu Ude following which a Deed of assignment was on 28-04-62 made in favour of Urum Kalu Ude ? It is also of interest to examine the evidence carefully to discover the import of the averment in paragraph 7 (d) of the Amended Statement of defence. Was the interest of James Orlu in the land at anytime determined by the Government of Eastern Region to enable the Government possess the power on its own to grant a fresh lease in favour of Urum Kalu Ude on 1 -1-64 without any recourse to the estate of James Orlu?

I have discussed the pleadings of the parties above in order to bring to therefore the issues which the trial court had to determine in it judgment. Against that background, it is easy to determine if the two court below were right in their judgments. The important thing to bear in mind is that on the pleadings, the defendant agreed that the land in dispute was originally leased to James Orlu, the plaintiff's father. It is settled law that once it is proved that the original ownership of property is in a party, the burden of proving that that party has been divested of the ownership rests on the other party. See Mosalewu Thomas v. Preston Holder [1946] 12 W.A.C.A. 78; Isiba v. Hanson [1967] 1 All N.L.R. 8. In the light of the state of the law, the onus was clearly on the defendant/respondent to show that the title to the land in dispute which he agreed once resided in plaintiff/appellant's father was validly transferred to the defendant's immedi-

ate/predecessor in interest Urum Kalu Ude.

At the trial, the defendant/appellant called two witnesses - D.W.1 and D.W.2. D.W.1 tendered in evidence as Exhibit 'E' the original of the building Lease granted to James Orlu on 10-05-60. The lease however commenced on 1st January, 1963. Paragraph (c) of the said lease reads: B

"Not to assign, sublet or otherwise part with possession of the land comprised in such lease without the previous consent in writing of the governor or other Officer to whom powers are delegated in that behalf."

Another important document tendered by D. W. 1 was exhibit 'A', a building development agreement wherein it was agreed that URUM KALU UDE, the defendant's vendor would expend £5,000.00 to develop a building for plaintiff's father. It was therein also agreed that should plaintiff's father default in paying the sum, the building lease exhibit "E" would be assigned to URUM KALU UDE or his nominee. C

D.W.1 also tendered two important documents in evidence as exhibits 'F' and 'K'. These are the documents to which appellants counsel strongly objected and around which the success or failure of this appeal revolves. D.W.2 testified for the defendant and tendered in evidence exhibit 'O'. E

Appellant's counsel has in his appellant's brief submitted that exhibits 'F' and 'O' ought not have been admitted in evidence. He submitted that Exhibits 'F' and 'O' were not valid and could not have transferred ownership of the property in dispute from James Orlu to Kalu Ude. The Objection to the admissibility of Exhibit 'F' was premised on four grounds namely: F

(i) That James Orlu an illiterate did not sign exhibit 'F' although in the Column for his signature were written the letters H.R.T.I. G

(ii) The *jurat* on exhibit 'F' was not signed by a sworn interpreter.

(iii) There is nothing exhibit 'F' to show that the person named as witness therein in fact signed it. H

(iv) The column meant for the magistrate's signature was empty.

With respect to exhibit 'O', it was submitted that James Orlu who died in 1961 could not have signed exhibit 'O' in 1962 as purported in exhibit 'O'. It was submitted that in fact, nobody signed

exhibit 'O' as an interpreter. It was further submitted that the exhibit did not conform with illiterate Protection law. It was finally submitted that there was no consent from the Government of Eastern Nigeria to the assignment.

I want to deal first with the appellant's counsel's submission as to the Spuriousness of exhibit 'O'. It was pleaded by the plaintiff/appellant in paragraph 10 of his statement of claim that his father James Orlu died in 'late 1961'. In his evidence-in-chief at page 30 of the record, the plaintiff/appellant testified thus:

"My father died in 1961. I inherited the house since my father died in 1961."

D.W.2. under cross-examination said in evidence:

"I don't know if James Orlu died in 1961."

It seems clear on the pleadings and evidence called that it was abundantly established that James Orlu who died in 1961 could not have executed exhibit 'O' on 28/4/62. It is manifest therefore that exhibit 'O' is a spurious document. The trial court in its judgment had reasoned concerning Exhibit 'O' thus:

"The plaintiff is claiming the property through James Orlu. It is now proved even beyond doubt that James Orlu divested himself of the property in dispute since 28/4/62 by assigning the same to Urum Kalu Ude as evidence in exhibit 'O'."

I am satisfied that the two courts below were wrong in their conclusion that James Orlu divested him of the ownership of the property in dispute vide exhibit 'O'

With respect to exhibit 'F', I am unable to agree with the appellant's counsel. Exhibit 'F' as a public document and Was tendered pursuant, to Section 113 (1) of the Evidence Law which provides:

"113. (1) The courts Shall presume every document purporting to be a certificate certified copy document which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized thereto to be genuine provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf."

The usual method of proving a public document is by the production of a certified copy of it .Once it is certified as such copy, it is

unnecessary to call a witness to verify it. See R v. Weaver 13 Cox 527. It is clear therefore that the defendant would not be expected to do more than he did to have exhibit 'F' tendered in evidence. If it was the case of the plaintiff/appellant that the exhibit 'F' was spurious or not genuine, it was for him to impugn the said document by pal-
ling evidence to show that it was a forgery. He could also have
subpoened the relevant volume of the Register to Deeds to be brought
to court for inspection. Since there is a presumption of Law in favour
of the validity or genuineness of exhibit 'F', it is my firm view that the
said exhibit was properly admitted in evidence.

I now consider the effect of the views I expressed above would
have on this appeal. Now in exhibit 'H', James Orlu, plaintiff/
appellant's father had written a letter dated 20-10-61 to the Land
officer, Lands Department, Port-Harcourt. The letter reads:

FROM: JAMES ORLU
C/O 208 BONNY STREET,
PORT HARCOURT
20TH OCTOBER, 1961

THE LAND OFFICER,
LANDS DEPARTMENT,
PORT HARCOURT.
SIR,

ASSIGNMENT OF LEASE OF PLOT
15 IN BLOCK 220 WOBO LAYOUT
PORT HARCOURT

I am applying for the consent of Hon. Minister of Town Plan-
ning to assign my plot above to Mr. URUM KALU UDE of 208 Bonny
Street, Port Harcourt, my Attorney, for a sum of £5,000.00 (five
thousand pounds).

In view of some domestic burdens I am forced to part with the
property. It is hoped that you will please inform the Minister accord-
ingly.

Yours faithfully,
(Sgd) His right thumb impression
James Orlu

Signature of Witness: S. H. Orlu
Occupation: Costain W. A. Ltd.
Address: No. 12 Lumumba St. Mille II D

R. C. R. C552915 of 4/5/88 for N30.00"

The approval for the request of James Orlu in exhibit 'H' above was conveyed vide exhibit 'J' which reads:

MINISTRY OF TOWN PLANNING

LAND OFFICE

PORT HARCOURT

15 February, 1.... (sic)

B

No. LP: 3670/54

Sir,

C

Assignment of Plot 15 in Block 220 Wobo

Layout, Port Harcourt

I am directed to refer to your letter 20th October, 1961 and to inform you that the Honourable Minister has approved in principle the assignment of the above property to the purchaser of the lease.

Would you please call at, this office and pay the following fees before I proceed to prepare the deed of assignment for execution.

Preparation £3.-

Registration 1.10.-

E

Stamping 75.-

£79.10

If you desire a counterpart, an additional stamp duty of 7/6d together with an adhesive stamp of the value of 3/9d should accompany the above amount.

F

I am,

Your obedient servant

(Sgd)

J. N. NNAJIDE

G

LAND OFFICER

I/C PORT HARCOURT

LCO

Mr. James Orlu,

No. 208 Bonny Street,

H Port Harcourt.

Mr. Urum Kalu Ude,

No. 208 Bonny Street,

Port Harcourt.

R. C. R. C552915 of 4/5/88 for N30.00

The building lease granted to James Orlu by the Government of Eastern Nigeria was to expire on 31st December, 1963. It would appear that at the expiry of the lease in 31/12/63, a new lease was issued in favour of Urum Kalu Ude for 60 years on 12/11/63. Urum Kalu Ude transferred his interest in the land to the defendant/respondent on 7/5/79 vide exhibit 'G'. B

It seems to me therefore that notwithstanding the views I expressed above concerning exhibit 'O', there is no doubt that the Government of Eastern Nigeria had placed reliance on exhibit 'H' written by plaintiff's father, to assign the land to Urum Kalu Ude vide exhibit 'G'. The plaintiff /appellant whilst attacking the validity of exhibit 'O' has not challenged the authenticity of exhibit 'H'. C

The conclusion to be arrived at therefore is that the defendant/respondent who derived his interest on the land in dispute from Kalu Urum Ude must be left to enjoy the possession of the land unless and until the plaintiff/appellant succeeds in invalidating exhibit 'H'. D

It is my view therefore that the two courts below were right in their Conclusion. I would therefore dismiss this appeal and appeal and affirm the judgments of the two courts below. The appeal is accordingly dismissed with N50,000.00 cost in favour of the defendant/respondent. E

TABAI JSC

I was privileged to read, in draft, the lead judgment of my learned brother FABIYI JSC. I agree entirely with the reasoning and conclusions therein that the appeal lacks merit. The result is that I also dismiss the appeal with costs as assessed in the lead judgment. F G

MUHAMMAD JSC

I have had the advantage of reading the judgment of my learned brother, Fabiyi, JSC. I agree with his reasoning and conclusion that the appeal lacks merit. I too, dismiss the appeal. H

I abide by all consequential orders made therein including order as to costs.

ADEKEYE JSC

I had read in draft the judgment just delivered by my learned brother J. A. Fabiyi, JSC.

The claim of the plaintiff now appellant before this court according to paragraph 13 of his statement of claim reads:

1. Declaration that the plaintiff is entitled to the statutory right of occupancy over and in respect of the property known as No. 21 Nsukka Street, Mile 1 Diobu Port Harcourt.

2. A declaration that NO. 21 Nsukka Street, Mile one Diobu was never an abandoned property within the meaning of law and that the purported sale or assignment of the said property to the defendant by the Rivers State Government or its agent is null and void.

3. A perpetual injunction restraining the defendant by himself or agents or servants from interfering with the plaintiffs use and enjoyment of the said property.

The trial court considered the respective case of the parties based on the evidence adduced by them on their pleadings, evidence and documents and found in favour of the respondent.

The plaintiffs appealed to the Court of Appeal on the 5th of March / 2002. The lower court dismissed the appeal. This prompted a further appeal to this court. The issues for determination were exhaustively considered by my learned brother in his leading judgment. I agree with his reasoning and conclusion. I however wish to add a few words. It is trite that a party to a suit is only required to prove relevant evidence to establish his case.

The appellant claimed that he inherited the property as the first son of James Orlu who was the original lessee/owner of the property in dispute which the government of the former Eastern gave to him. The land was in the circumstance acquired by his father James Orlu as a compensation plot following that government's acquisition of Rumuwoji village, their original habitat for the development of Wobo layout in Port Harcourt. He claimed that the land devolved on him through Ikwerre Native Law and Custom. This obviously called into question Ikwerre Native Law and Custom on administration of Estate and succession by inheritance. Native Law and Custom are matters of evidence to be decided on facts presented before the court,

unless it is of such notoriety and has been so frequently followed by the court that judicial notice would be taken of it without proof of evidence.

Giwa v. Erinmulokum (1961) 1 ALL NLR pt. 2 pg. 264

Ozugula v. Ekpenya (1962) 1 SCNLR 423

Onyejekwe v. Onyejekwe (1999) 3 NWLR pt. 596 pg. 482 B

Such evidence usually based on tradition, has to be averred on pleadings and proved in accordance with the custom of a particular family or community.

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

Ogunleye v. Oni (1990) 2 NWLR pt 135 pg. 745

Alii v. Alesinloye (1990) 2 NWLR pt. 135

The plaintiff/appellant made futile attempts to establish his claim to the disputed property through long possession. This is one of the five ways recognized by the court of proving title to land. He claimed to have lived in the building and put tenants therein who were paying rents. He failed to tender receipts of such rents collected from tenants as Landlord of the property. More important is the fact that his claim to possession cannot be possession is presumed in favour of one who has valid title to a disputed land, as the other party does not acquire possession by his act of trespass. D E

Akinterinwa v. Oladunjoye (2000) 6 NWLR pt. 659 pg. 92

Ayinla v. Sijuwola (1984) 1 SCNLR 410

Act of ownership can only properly be considered where root of title is pleaded and established by cogent and convincing evidence. F

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

Ibenye v. Agwu (1988) 11 NWLR pt. 574 pg. 372

The respondent claimed title to the land through Urum Kalu Ude, who in turn transferred his interest on the land to him by Exh. G H on 7/5/09. Urum Kalu Ude based his claim to the land on Exh H written by the plaintiffs father. The building lease granted to James Orlu, the plaintiffs father was to expire on 31st December, 1963. By the letter Exh C, James Orlu wrote to the Lands Officer, Lands Department Port Harcourt applying for consent to assign his plot to Urum Kalu Ude in view of domestic burdens which had forced him to part with the property. The approval for the request was conveyed through Exhibit J which gave approval to James Orlu to assign the property to Urum Kalu Ude. At the expiration of the lease on 31/12/ H

63, a new lease was issued in favour of Kalu Ude for a period of sixty years on 21/11/63. Urum Ude Kalu on the other hand transferred his interest in the property to the defendant/respondent on 7/5/79. Exhibit C, was executed as the document of transfer. Both the trial court and lower court preferred the case of the defendant/respondent. The claim to title of the plaintiff/appellant was refused by the trial court because he failed to prove his case.

It is true that a claim for declaration is a discretionary remedy for a person to be entitled to same, he must show the existence of a legal right, or a claim which the court is prepared to recognize and which if validly made -the court is prepared to give legal recognition. The lower court also refused the claim of the appellant by affirming the judgment of the trial court. Where there are concurrent findings of facts by the trial court and the Court of Appeal, the Supreme Court will not interfere with such findings where the findings are reasonably justified and supported by evidence, not perverse and where there is no substantial error apparent on the record, like a

- Amadi v. Orisakwe (2005) 7 NWLR pt. 924 pg. 385
 - Stool of Abinabina v. Enyimadu (1953) 12 WACA 171
 - Ibodo v. Enarofia (1980) 5-7 SC 42
 - Akinola v. Oluwo (1962) 1 SCNLR 352
 - Fatoy in b v. Williams (1956) SCNLR 274
 - Are v. Ipaye (1990) 2 NWLR pt. 132 pg. 298
- With fuller reasons given by my Lord in his leading judgment, I also find no merit in this appeal. It is accordingly dismissed. I adopt the consequential orders in the lead judgment as mine.

G

H