

SUPREME COURT OF NIGERIA
10TH DECEMBER, 2010. SC. 8/2002
CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,
J. A. FABIYI, O. O. ADEKEYE, B. RHODES-VIVOUR, JJSC

TIJANI JOLASUN APPELLANT
AND
NAPOLEON BAMGBOYE RESPONDENT

EVIDENCE - Registration of titles - First registration - Proof required
- An applicant for first registration must satisfy the registrar of his ownership - Through such evidence as is ordinarily required by conveyancers (H1)

EVIDENCE - Registration of titles - First registration - Opposition to application - Duty on objector - An objector has the burden of satisfying the registrar - That the land sought to be registered is a family land (H2)

EVIDENCE - Redemption of property - Burden of proof - Incidence
- Respondent has the burden of proving redemption - As burden of proof lies on the party - Who asserts the affirmative of an issue (H3)

FACTS

The applicant/appellant applied in the Land Registry of Lagos for first registration in his favour of title to the property known as No. 43, Shifawu Street Surulere, Lagos, pursuant to section 9(2) of the Registration of Titles Law, Cap 121, Laws of Lagos State. The application was supported by the relevant documents, including three Deeds of Conveyances - Exhibits 'A', 'B' and 'C' - which traced the original title in the property to Oloto Family. Apparently satisfied by the application, the registrar had asked applicant to come back for the certificate of Registration. However, before the certificate could be issued to applicant, the objector/respondent filed an objection to the application whereupon the application was set down for hearing by the registrar.

From the evidence led at the hearing, the parties were in agreement that the property had at some point in its history be-

longed to the respondent's father and that he had mortgaged it to a mortgage company. While appellant maintained that the property was never redeemed but was sold to him through public auction, respondent asserted that it was redeemed. Nonetheless, respondent neither tendered any Deed of Release nor any other evidence of the payment of mortgage sum. After hearing, the registrar dismissed the objection and granted the application for first registration. Aggrieved, respondent appealed to the High Court but his appeal was dismissed. However, his further appeal to the Court of Appeal was allowed and the registration set aside as the Court held that appellant had the burden of proving that the property was not redeemed but failed to discharge the burden. Dissatisfied, appellant has brought this appeal against the judgment of Court of Appeal.

ISSUES FOR DETERMINATION

1. *"Wasn't the Court of Appeal in error by holding that it is the Respondent who needed to show that he had a good title to the land in dispute who bore the burden of proof? If the answer to this issue is in the affirmative, did the Respondent in this appeal discharge the onus on him to show that his father redeemed the mortgage on the property so as to give him the locus standi to defend the interest of the family in the property."*

2. *Whether long and undisturbed possession can be basis for registration under the Registration of Titles (sic) Act CAP 121 Laws of Lagos State."*

HELD (Unanimously allowing the appeal per **MOHAMMED JSC) ***Registration of titles - First registration - Proof required*****

1. From the evidence adduced before the Registrar of Titles, it appears the registrar was satisfied with the evidence of ownership brought by the Applicant comprising the Deeds of Conveyances in respect of the property to be registered - that is Exhibits 'A', 'B' and 'C' respectively which traced the title in the property to the Oloto family when the applicant was asked to come back for the certificate of registration. This is in line with the requirement of Section 9 of the law that the Registrar of Titles shall, in investigating a title with a view to first registration, accept and act on legal evidence or evidence ordinarily required by conveyancers, and if satisfied register accordingly.
(p. 2939 C)

Registration of titles - Opposition - Duty on objector

2. It is quite clear from the provisions of Sections 9 and 10 of the law, that while Section 9 enjoined the registrar on being satisfied with the legal evidence or evidence ordinarily required by conveyances that the Applicant is entitled to be registered as owner of the whole or part of the land claimed, proceed to register the same, Section 10(1) of the law on the other hand empowered the registrar to dismiss the application where any person opposing the application for first registration claims and proves to the registrar that the land is family land under customary law. Therefore under the law, the burden of proof lies both in the Applicant to prove his ownership of the land to the satisfaction of the registrar to be entitled to registration, while the Objector or person opposing the registration to prove to the satisfaction of the registrar that the land being the subject matter of the application for first registration, is a family land to justify the application being dismissed by the registrar. (p. 2939 H)

Redemption of property - Burden of proof - Incidence

3. From the above findings which are clearly based on the evidence before the Registrar of Titles, the only remaining area of dispute or contention between the parties from the evidence therefore is whether or not late Bamboye had redeemed the mortgaged property before his death in 1935. In his oral evidence under cross-examination the Respondent had asserted that the property had been redeemed by his late father in 1926. By this assertion in his opposition to the application for first registration by the Appellant/Applicant, the burden is clearly on the Respondent by virtue of Section 10(1) of the Registration of Titles Law to call reliable evidence to establish the fact in contention that the property the subject of the application had been redeemed by his late father as asserted by him. The law is trite. There can be no doubt that the burden of proving a particular fact lies on the party who substantially asserts the affirmative of the issue. (p. 2941 E)

REPRESENTATION

Dr. J. O. Olatope with B. A. Ogun for the Appellant
Oladosu Ogunniyi for the Respondent

CASES REFERRED TO

- Seatrade v. Awolaja (2002) 2 SC (Pt. 1) 35
Osawaru v. Ezeiruka (1978) 6-7 S.C. 135 at 145
Bakare v. A.C.B. Ltd. (1986) 3 N.W.L.R (Pt. 26) 47
Okubule v. Oyabola (1990) 4 N.W.L.R. (Pt. 147) 723
B Olaniyi v. Aroyehun (1991) 5 N.W.L.R. (Pt. 194) 152
Echi & Ors. v. Nnamani & Ors. (2002) 5 SC 62 at 70
Odukwe Ogunbiyi (1998) 8 N.W.L.R. (Pt. 561) 339 at 352
Udeze v. Chedebe (1990) 1 N.W.L.R. (Pt. 125) 141 at 162
C Itanma v. Ikpe-Ime (2000) 12 N.W.L.R. (Pt. 680) 156 at 159
Seven-Up Bottling Co. v. Adebawale (2004) 4 NWLR (Pt. 862) 183
Majekodomi & Ors. V. Abina (2002) 3 N.W.L.R. (Pt. 755) 720 at 750
Eperokun v. University of Lagos (1986) 4 N.W.L.R. (Pt. 34) 162 at 167
D Onagoruwa v. Akinremi & Ors. (2001) 13 N.W.L.R. (Pt. 729) 38 at 56
Edopolo & Co. Ltd. V. Ohenhen (1994) 7 N.W.L.R. (Pt. 358) 511 at 519
E Agbanebo v. Union Bank of Nigeria Ltd (2000) 7 N.W.L.R. (Pt. 666) 534 at 549

STATUTE REFERRED TO

- F Registration of Titles Law, Cap 121, Laws of Lagos State, ss. 8, 9, 10

LEAD JUDGMENT BY MOHAMMED JSC

- The Appellant in this appeal was the Applicant in the Land Registry of Lagos in Lagos State in respect of first registration in his
G favour of an interest in the property known and described as No. 43, Shifawu Street Surulere, Lagos. This application was made on 16th April, 1966 pursuant to Section 9(2) of the Registration of Titles Law, Cap 121 of the Laws of Lagos State. The application which was supported by the relevant documents of the title to be registered was
H duly advertised by the Registrar in accordance with the requirements of Section 8 of the law. Following the advertisement, the Respondent filed his notice opposing the Appellant's application for first registration of the property as an objector on the main ground that the property belong to his late father.

The Respondent's objection and the application for registration were set down for hearing by the Registrar of Titles where both the Appellant/Applicant and the Respondent/Objector, were duly represented by their respective Counsel. The matter was heard between 29th October, 1975 and 21st March, 1979 by B. O. Martins, the Registrar of Titles before arriving at his decision to dismiss the Respondent's objection to the first registration of the property in question, No. 43 Shifawu Street Surulere in favour of the Applicant who is now the Appellant. B

The Respondent who lost was not happy and therefore appealed to the High Court against the decision of the Registrar of Titles. The appeal was heard by the High Court and in its judgment delivered on 19th January, 1994, dismissed the appeal and affirmed the decision of the Registrar of Titles. However, on further appeal to the Court of Appeal Lagos Division against the judgment of the High Court, the Respondent who was the Appellant in that Court, was successful when his appeal was allowed and the judgment of the High Court was set aside while the Appellant's application for the first Respondent of the Property No. 43 Shifawu Street Surulere was dismissed in the judgment of the Court of Appeal given on 11th December, 2000. Aggrieved by that decision, the Appellant is now on a further and final appeal to this Court. C D E

The case of the Appellant who was the Applicant for first Registration of title before the Registrar of Titles was that the land the subject matter of his application originally belonged to the Oloto family. That the Oloto family sold a large expanse of the land including the land the subject of the application to the late Joseph Samuel Bamgboye who was the father of the Respondent and Objector before the Registrar of Titles. That the Respondent's late father in turn mortgaged the said land to the Scottish Nigeria Mortgage and Trust Company Limited. That on failure of the Respondent's father to redeem the Mortgaged property, the same was sold by public auction to one Mr. Ola Dawodu who in turn sold it to Surakatu Ogunsanya Kiyomi who in turn sold the same to Jacob Ade Osinowo who eventually sold it to the Appellant. The Appellant supported his application for first registration with documentary evidence comprising Deeds of Conveyances Exhibits 'A', 'B' and 'C' which were duly registered in the Land Registry and duly executed between the parties on 25th F G H

October, 1951, 16th December 1948 and 27th April, 1920 respectively. The Appellant/Applicant in the course of the hearing before the Registrar of Titles also gave oral evidence and called one other witness who testified in support of his application which was also published in the Daily Times and Gazette No. 77 Vol. 53 of 8th August B 1966 as required by the law. It was while the Appellant/Applicant was waiting to receive his certificate of first registration after the submission of his title documents including the resurveyed plan of the property on 4th May, 1967 that the Respondent/Objector filed his C objection to the registration of the property.

The case of the Respondent/Objector on the other hand who testified in support of his objection to the first registration of the property at No. 43 Shifawu Street Surulere in the name of the Appellant/Applicant, also testified before the Registrar of Titles and called two D other witnesses. His ground of objection to the registration of the property was -

“that the parcel of land intended to be registered is covered by a Deed of Conveyance dated 17th April, 1920 registered as No. 133 at page 437 in volume 133 Lagos Land Registry and registered E in favour of his late father J. S. Bamgboye.”

He testified that his late father left six children including himself and four of whom had executed a power of Attorney empowering him to challenge the registration of the property. He stated that in F 1918 his late father bought large parcel of land including the property No. 43 Shifawu Street Surulere from the Oloto family who executed a Deed of Conveyance duly registered in 1920. While he specifically denied that his late father ever sold the property in question before his death in Kaduna in 1935, he disclosed that his late G father sold his other properties to other people as reflected in the Deed of Conveyance received in evidence as Exhibits ‘M’, ‘N’ and ‘O’. The Respondent/Objector who denied in his evidence in chief that his father had mortgaged his property including No. 43 Shifawu Street Surulere to the Scottish Nigeria Mortgage and Trust Company H Limited, admitted under cross examination that the mortgage transaction between his late father and the Scottish Nigeria Mortgage and Trust Company Limited indeed took place but claimed that the property was not sold by auction to settle the loan granted to his late father but that the property was redeemed by his late father. He

could not however say if any deed of release was executed or registered in the Land Registry before 1927 to support this claim. The Respondent/Objector's reaction to these questions was that his late father merely told him by his own words that the mortgaged property had been redeemed.

The Registrar of Titles in his findings from the evidence led or brought before him on the Respondent/Objector's objection to the first Registration of the property No. 43 Shifawa Street Surulere, found that the main contention between the Appellant and the Respondent who were parties before him on the objection to the registration of the property, was the question of the existence or otherwise of the mortgage transaction between the Scottish Nigeria Mortgage and Trust Company Limited and Mr. J. S. Bamgboye, the late father of the Respondent. The Registrar then found that the failure of the Respondent/Objector to produce any evidence in support of his claim that the property in question had been redeemed, such as Deed of Release of the Mortgaged property, was fatal to his objection to the registration of the property and therefore proceeded to dismiss the objection.

Although the Objector's appeal to the High Court of Justice was dismissed and the decision of the Registrar of Titles was affirmed, his further appeal to the Court of Appeal Lagos was successful where the appeal was allowed and the decisions of High Court and the Registrar of Titles were set aside and the Appellant/Applicant's application was dismissed hence the present appeal by the Applicant/Appellant.

In the Appellant's amended brief of argument filed on 27th April, 2004, two issues for the determination of the appeal were formulated. There are-

"Wasn't the Court of Appeal in error by holding that it is the Respondent who needed to show that he had a good title to the land in dispute who bore the burden of proof? If the answer to this issue is in the affirmative, did the Respondent in this appeal discharge the onus on him to show that his father redeemed the mortgage on the property so as to give him the locus standi to defend the interest of the family in the property."

Issue No. 2.

2. Whether long and undisturbed possession can be basis for

registration under the Registration of Titles (sic) Act CAP 121 Laws of Lagos State.”

In the Respondent’s brief of argument however, the following two issues for determination were identified from the two grounds of appeal filed by the Appellant.

B “1. *Whether the Court of Appeal was right when they held that the Applicant for first registration under the Registration of Titles Law CAP 121 has the burden to prove that he was the owner of the land claimed.*

C 2. *Whether the Court of Appeal was right in holding that the presumption as to the truth of the contents of documents over 20 years old at the date of contract as provided in Section 130 of the Evidence Act did not operate in favour of the Applicant Tijani Jolasin (Appellant) in this case.*”

D Having regard to the 2 grounds of appeal filed by the Appellant in this appeal, the issues as identified in the Appellants brief of argument are indeed the issues for determination. In support of the first issue, it was submitted for the Appellant that the Appellant had been in possession of No. 43 Shifawu Street Surulere which he bought
E from Jacob Ade Oshinowo in 1950 and a Deed of Conveyance executed on 25th October, 1951 in this respect, was in evidence as Exhibit ‘A’; that having been satisfied of his root of title, the Appellant between 1959 and 1973 developed the land by putting up a story building without any challenge from any person; that the Appellant
F having applied for registration which was objected by the Respondent, the burden was on the Respondent to show a better title to the property in order to stop the registration. The Appellant relied on the case of Udeze v. Chedebe (1990) 1 N.W.L.R. (Pt. 125) 141 at 162
G where this Court said there is a presumption of ownership in favour of any person in possession of land by virtue of the provisions of Section 45 of the Evidence Act which put the burden of proof on the other side which is asserting the contrary to prove that the person in possession is not the owner of the land as was also decided by this
H Court in Onobruhare v. Esegene (1986) 1 N.W.L.R. (Pt. 19) 799; Itanma v. Ikpe-Ime (2000) 12 N.W.L.R. (Pt. 680) 156 at 159 and Olohunde v. Adeyoju (2000) 10 NWLR (Pt. 676) 568.

On the question of the redemption of the mortgage of the property by the late father of the Respondent, learned Appellant’s

Counsel referred to the evidence of the Appellant at page 39 of the record and the evidence of the Respondent under cross-examination at page 52 of the record and concluded that the Respondent having clearly admitted that his late father Bamgboye had mortgaged the property to the Scottish Mortgage Company, the need for the Appellant to have relied exclusively on the recital in the Deed of Conveyances in Exhibits 'A' and 'B' to prove such mortgage was no longer necessary as what was admitted needed no further proof taking into consideration the cases of Agbanebo v. Union Bank of Nigeria Ltd (2000) 7 N.W.L.R. (Pt. 666) 534 at 549 and Edopolo & Co. Ltd. V. Ohenhen (1994) 7 N.W.L.R. (Pt. 358) 511 at 519; that as it was the Respondent who after the admission of the existence of the mortgage that went ahead to assert that his late father had redeemed the mortgaged property, the onus remained on him to have proved the redemption by evidence as those facts were within his peculiar knowledge. Learned Counsel relied on the cases of Okubule v. Oyabola (1990) 4 N.W.L.R. (Pt. 147) 723; Osawaru v. Ezeiruka (1978) 6-7 S.C. 135 at 145 and Odukwe Ogunbiyi (1998) 8 N.W.L.R. (Pt. 561) 339 at 352. Thus with the failure of the Respondent to prove the redemption, the property which is the subject of the Appellant's application, was properly dealt with on 26th November, 1921 to justify the same supporting the application of the Appellant, concluded the learned Counsel who urged the Court to allow the appeal.

For the Respondent however, it was argued that by virtue of Section 9 of the Registration of Titles Law CAP 121, for an Applicant for first registration to succeed, he has to satisfy the Registrar that he is entitled to be registered as the owner of the land claimed; that at the hearing of the objection filed by the Respondent before the Registrar of Titles, the Appellant agreed that the Oloto Chieftaincy family were the original owners of Shifawu Street Surulere and that they had sold the land to the Respondent's father since 1920 as shown on the Deed of Conveyance Exhibit 'C' who in turn mortgaged it to the Scottish Nigeria Mortgage and Trust Company Limited as reflected on the Deed of Conveyance Exhibit 'B' Learned Respondent's Counsel then quoted part of the judgment of Court of Appeal at pages 281 to 282 where the Court said –

“The Respondent in order to succeed needed to trace his title to Bamgboye who had acquired the title to the land in dispute from

mutually agreed original owners - the Oloto family. It is in attempt to do this that the Respondent gave evidence that Bamgboye mortgaged the land and that the mortgaged (sic) through the auctioneer later sold the land to one Dawudu and later one Kiyomi. The Respondent however did not tender the deed of mortgage by which
 B *Bamgboye mortgaged the land. Neither did he call the evidence of the mortgage Company. The result is that there was no evidence before the Court that the mortgage Company caused Bamgboye's property to be sold to one M. Ola Dawodu or later to Kiyomi."*
 C *and proceeded to defend the same in his argument pointing out that the Appellant had failed to trace his title to Bamgboye, the father of the Respondent in the absence of the notice of public auction, deed of reconveyance of the property to mortgagor, deed of transfer of land to Surakatu Ogunsaya Kiyomi and receipt of purchase issued to*
 D *Kiyomi, tendered before the Registrar of Titles by the Appellant/Applicant. In such circumstances, learned Counsel argued, the Court below was right in allowing the appeal and in dismissing the Appellant/Applicant's application particularly when from the evidence brought by the Respondent in Exhibits 'M', 'N', D, and R, the Re-*
 E *spondent had proved a better title to the property sought to be registered.*

In resolving this issue, I note that this appeal arose out of the application by the Appellant to register his interest in the property described as No. 43 Shifawu Street Surulere, Lagos under the Regis-
 F *tration of Titles Law CAP 121 of the Laws of Lagos State. Cases in which registration is permitted are specified in Section 6(1) of the law which says*

"6(1) subject to the provisions of this law -
 G *(a) any person who has power to sell, or, entitled at law or in equity, to estate in fee simple, in any land, whether subject or not to encumbrances, may apply to be registered in the registry as the owner of the fee simple of that land; and*
(b) any person entitled, at law or in equity, to a lease of any
 H *land for an unexpired term of not less than five years, whether subject to encumbrances or not, may apply to be registered in the registry as owner of that lease."*

The section has clearly specified categories of persons who may apply to be registered as owners of land under the law. See also

Majekodomi & Ors. V. Abina (2002) 3 N.W.L.R. (Pt. 755) 720 at 750. It was by virtue of these interests in land permitted to be registered under the law that the Appellant applied to the Registrar of Titles under Section 9, of the law to be registered as the owner of No. 43 Shifawu Street Surulere. That Section of the law states -

“9(1) In investigating a title with a view to first registration the registrar shall accept and act on legal evidence or evidence ordinarily required by conveyancers.

(2) If after investigation of an application for first registration the registrar is satisfied that the applicant is entitled to be registered as the owner of the whole or part of the land claimed, he shall be registered accordingly. In every other case the application shall be dismissed.”

From the evidence adduced before the Registrar of Titles, it appears the registrar was satisfied with the evidence of ownership brought by the Applicant comprising the Deeds of Conveyances in respect of the property to be registered - that is Exhibits ‘A’, ‘B’ and ‘C’ respectively which traced the title in the property to the Oloto family when the applicant was asked to come back for the certificate of registration. This is in line with the requirement of Section 9 of the law that the Registrar of Titles shall, in investigating a title with a view to first registration, accept and act on legal evidence or evidence ordinarily required by conveyancers, and if satisfied register accordingly. See Onagoruwa v. Akinremi & Ors. (2001) 13 N.W.L.R. (Pt. 729) 38 at 56. It is significant to note that it was while the applicant was awaiting the certificate that the Respondent filed his objection to the first registration before the registrar. The question then is what was the Respondent required to do under the law in challenging the registration? The answer is in Section 10(1) of Law which provides as follows -

“10(1) If any person opposing an application for first registration claims and proves to the registrar that the land is family land under customary law, the registrar shall, unless the family should consent to registration dismiss the application.”

It is quite clear from the provisions of Sections 9 and 10 of the law, that while Section 9 enjoined the registrar on being satisfied with the legal evidence or evidence ordinarily

required by conveyances that the Applicant is entitled to be registered as owner of the whole or part of the land claimed, proceed to register the same, Section 10(1) of the law on the other hand empowered the registrar to dismiss the application where any person opposing the application for first registration claims and proves to the registrar that the land is family land under customary law. Therefore under the law, the burden of proof lies both in the Applicant to prove his ownership of the land to the satisfaction of the registrar to be entitled to registration, while the Objector or person opposing the registration to prove to the satisfaction of the registrar that the land being the subject matter of the application for first registration, is a family land to justify the application being dismissed by the registrar.

In the case at hand, the evidence on record before the Registrar of Titles shows that No. 43 Shifawu Street Surulere forms part of the Oloto family land that was conveyed to the late father of the Respondent Mr. Bamgboye on or about 7th April, 1920 by a Deed of Conveyance received in evidence as Exhibit 'C.' There is evidence from both parties in this case that this property owned by late Bamboye had been mortgaged by him to the Scottish Nigeria Mortgage and Trust Company Limited. The evidence of the existence of the mortgage is not only contained in the Deed of Conveyance Exhibit 'B', previous Court proceedings brought by the Respondent Exhibit 'Q', where the particular mortgage dated 29th May, 1920 was registered as No. 115 at page 421 Vol. 130 certified true copy of which was received in evidence as Exhibit 'E' but was also admitted in no uncertain terms by the Respondent under cross-examination in spite of his earlier denial of its existence in his evidence in chief. As the existence of the mortgage had been admitted by the Respondent, what had been admitted needed no further proof- see *Agbanebo v. U.B.N. Plc.* (2000) 7 N.W.L.R. (Pt. 666) 53 at 549 and *Edopolo and Company Limited v. Ohenhen* (1994) 7 N.W.L.R. (Pt. 358) 511 at 519. It may I believe, throw more light in the determination of this issue if the findings of the Registrar of Titles on the evidence adduced before him by the parties on the existence of the mortgage of the property and its alleged redemption or otherwise as affirmed by the High Court on appeal, are brought out clearly. In coming to the conclusion that

the Respondent's late father did not redeem the mortgage affecting the property No. 34 Shifawu Street Surulere Lagos, the Registrar said at pages 93 - 94 of the record and as follows –

“From the above I have no doubt in my mind that the landed property was put into public auction on the 26/11/21 and that Kojilabelu was the auctioneer. Similarly I have no doubt in my mind that the public auction of 26/11/21 was with the consent of the mortgagees and that as at that date i.e. 26/11/21 the mortgagor has not redeemed the mortgage and what was sold at the public auction of 26/11/21 can never be redeemed again. If there was any redemption at all it must be what was left unsold on the 26/11/21. The land which is the subject matter of this application from the evidence before me and the exhibits tendered falls within the portion of the land which was sold at the public auction of 26/11/21. The objector to be able to succeed must show evidence that before the public auction of 26/11/21, there was a redemption of their fathers landed property. The evidence nearest to this came from Exhibit M and N. Exhibit ‘M’ was dated 31/12/21 which was after the public auction. Exhibit ‘N’ was in 1927. Time is an essential factor to the date of redemption in this case.”

From the above findings which are clearly based on the evidence before the Registrar of Titles, the only remaining area of dispute or contention between the parties from the evidence therefore is whether or not late Bamboye had redeemed the mortgaged property before his death in 1935. In his oral evidence under cross-examination the Respondent had asserted that the property had been redeemed by his late father in 1926. By this assertion in his opposition to the application for first registration by the Appellant/Applicant, the burden is clearly on the Respondent by virtue of Section 10(1) of the Registration of Titles Law to call reliable evidence to establish the fact in contention that the property the subject of the application had been redeemed by his late father as asserted by him. The law is trite. There can be no doubt that the burden of proving a particular fact lies on the party who substantially asserts the affirmative of the issue. See *Osawaru v. Ezeiruka* (1978) 6-7 SC. 135 at 145; *Okubule v. Oyagbola* (1990) 4 N.W.L.R. (Pt. 147) 723 and *Odukwe v. Ogunbiyi* (1998) 8 N.W.L.R.

(Pt. 561) 339 at 352. On the state of the evidence on record and the law therefore, the Court below was in error when in its judgment now on appeal, it placed or heaped the burden of proof on the Appellant/Applicant who did not make the assertion of the redemption of the property. Taking into consideration the evidence on record
B that was before the Registrar of Titles, the Respondent who opposed the application for first registration of the property, having failed to satisfy the Registrar that the property the subject of registration had been redeemed by his late father before his death in 1935, the Registrar was right in dismissing the Respondent claim and in directing
C the first registration of No. 43 Shifawu Street Surulere in favour of the Applicant now Appellant. On this issue therefore the appeal must succeed.

The second issue is whether long and undisturbed possession can be basis for registration under the Registration of Titles Act (sic.) CAP 121 Laws of Lagos State. The issue as framed has not been addressed to the present case. It is an issue at large only requiring an academic answer which this Court or any other Court for that matter, is not allowed to embark upon. See *Eperokun v. University of Lagos* (1986) 4 N.W.L.R. (Pt. 34) 162 at 167; *Olaniyi v. Aroyehun* (1991) 5 N.W.L.R. (Pt. 194) 152; *Bakare v. A.C.B. Ltd.* (1986) 3 N.W.L.R (Pt. 26) 47. The types of evidence required to support application for first registration have been clearly stated in Section 9(1) of the Registration of Titles Law, CAP 121 of the Laws of Lagos State.
E
F Since the long and undisturbed possession in this issue has not been linked to the long and undisturbed possession by the Appellant/Applicant in the present case, I have no business to look into it in the determination of this appeal.

In the final result this appeal succeeds and it is hereby allowed. The decision of the Court of Appeal of 11 December, 2000 is hereby set aside. The decision of the Registrar of Titles given on 21 March, 1979 directing the registration of the Appellant/Applicant as the owner of the property known as No. 43 Shifawu Street Surulere,
G
H Lagos as affirmed on appeal by the High Court of Justice, Lagos, is hereby restored and affirmed.

I am not making any order on costs.

CHUKWUMA-ENEH JSC

I have read in advance in draft the leading judgment prepared and just delivered by my learned brother Mohammed JSC. He has dealt exhaustively with all the issues raised in the matter. I agree with his reasons and conclusion that the appeal being meritorious should be avowed. I abide by the order contained therein. B

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Mohammed, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal is meritorious and should be allowed. C

The appellant was the applicant in the Land Registry, Lagos D for first registration in his favour an interest in the property at No. 43 Shifawu Street, Surulere. The application was made on 16th April, 1986 pursuant to Section 9 (2) of the Registration of Titles Law of Lagos State, Cap. 121. The appellant supported his application with Deeds of Conveyances - Exhibits 'A', 'B' and 'C' which were duly E registered at the Land Registry upon due execution.

The respondent objected to the application by the applicant for first registration of his interest in the stated property. He maintained that the land belonged to his father. Under cross-examination, he admitted that his father mortgaged the property to the Scottish F Nigeria Mortgage and Trust Company Limited. He claimed that the property was redeemed by his late father. He did not produce a deed of release from the Land Registry to support his claim.

The Registrar of Titles after reviewing the evidence garnered G by him found at pages 98 - 99 of the Record as follows:-

"From the evidence before me and from the observation which I have made above I find that there is due execution of the Deed of Conveyance Exhibit 'A' to the applicant from Oshinowo, and from Kiyomi to Oshinowo Exhibit B and that the original owner H of the land which is the subject of this application was vested in Joseph Samuel Bamigboye. I also find as a fact that the ownership of the land the subject matter of this application has been taken from Joseph Samuel Bamgboye when the Mortgage Company exercised

their right of foreclosure in 1921 i.e. on the 26/11/21 and that late Joseph Samuel Bamgboye did not redeem the land the subject matter of this application as at 26/11/21."

On appeal to the High Court, Fernandez, J agreed with the above findings of the Registrar of Titles. He held at page 239 of the Record as follows:-

"I also agree with the findings of the Registrar of Titles at page 83 last paragraph of the record of proceedings that the ownership of the land had been taken away from Joseph Samuel Bamgboye when the Mortgage Company exercised their right of foreclosure on the 26 November, 1921 and that the said Bamgboye did not redeem the land the subject matter of this application as at 26th November, 1921".

On appeal to the Court of Appeal, a contrary view was taken. It was found at page 284 of the Record as follows thereat:-

"The appellant in the course of his evidence admitted that his father Bamgboye mortgaged the property to the Scottish Mortgage Company. He said however that his father redeemed the mortgaged in his life time... If the evidence of the appellant was good enough to show that the property was mortgaged to a Scottish Mortgage Company, surely his evidence should also be good enough to show that the land was redeemed from mortgage in his father's life time."

With due respect, the above findings by the court below sounds rather simplistic. This is because it was the respondent who asserted that the property was redeemed by his late father after admitting that the property was mortgaged. The onus of proof that the mortgage was redeemed shifted to him. He needed to produce a deed of release from the Land Registry to support his claim if he desired to be taken seriously. The law still remains that he who asserts must prove same. See: Okubule v. Oyagbola (1990) 4 NWLR (Pt. 147) 72; Osawaru v. Ezeiruka (1978) 6-7 SC 135 at 145; Odukwe v. Ogubiyi (1998) 8 NWLR (Pt. 561) 339 at 352. The provision of Section 135 of the Evidence Act is also of moment at this point in time.

The respondent under cross-examination admitted that his late father mortgaged the said property. It is trite that facts admitted need no further proof. See: Edopolo & Co. Ltd. v. Ohenhen (1994) 7 NWLR (Pt. 358) 511 at 519; Agbenebo v. U.B.N. Ltd (200) 7

NWLR (Pt. 666) 534 at 549.

The Registrar of Titles and High Court of Appeal, Lagos State made concurrent findings of fact. Generally, an appellate court will not interfere unless compelling reasons are shown which justify interference. See: *Kale v. Coker* (1982) 12 SC 252; *Seatrade v. Awolaja* (2002) 2 SC (Pt. 1) 35; *Anaeze v. Anyaso* (1993) 5 NWLR (Pt. 291) 1; *Echi & Ors. v. Nnamani & Ors.* (2002) 5 SC 62 at 70; *Seven-Up Bottling Co. v. Adebawale* (2004) 4 NWLR (Pt. 862) 183; *Fajemirakun v. C. B. Nig. Ltd* (2004) 5 NWLR (Pt. 1135) 588 at 599. B

There was no compelling reason shown to justify interference by the court below as it did. The concurrent findings by the Registrar of Titles and the High Court on appeal did not run against the current of evidence as garnered. In short, the respondent had no firm stand in the objection taken by him. Having made this point, I wish to keep my peace. C D

For the above reasons and those well set out in the lead judgment, I too, feel that the appeal is, no doubt, meritorious and should be allowed. I order accordingly and abide by all the consequential orders made in the lead judgment. I too, make no order on costs. E

ADEKEYE JSC

I had the privilege to read before now the Judgment just delivered by my Learned Brother, Mahmud Mohammed, JSC. The Appellant was the Applicant in the Land Registry, Lagos for First Registration of an interest, as owner of a freehold property, No. 43, Sifawu Street, Surulere. The Applicant made this application before the Registrar of Title, on the 16th of April, 1986 pursuant to Section 9 (2) of the Registration of Titles Law of Lagos. The Respondent, Napoleon G Bamgboye, was the objector against the Appellant for the First Registration on the basis that the land belonged to his late father - Joseph Samuel Bamgboye. The then Registrar of Titles, Mr. B.O. Martins, took Evidence of the parties and on the 21st of March, 1979, dismissed the objection and ordered registration of the land in favour of the Applicant/Appellant - Tijani Jolasun, and in the circumstance, gave Order as follows:- F G H

“In the circumstances of this case I find the case of the Applicant proved and I dismiss the objection raised by the objector to this

application as being misconceived. I hereby enter Judgment in favour of the Applicant in accordance with the power vested in me under Section 12 of the Registration of Titles Law, Cap 121, Volume 6, Laws of Lagos State as follows:-

B *“That the Applicant’s application for the First Registration of the property known as No. 43, Sifawu Street, Surulere be processed in the name of the Applicant as the freehold proprietor of the said property.”*

C The objector - Napoleon Bamgboye, appealed against the decision to the High Court. His Appeal was dismissed on 19th January, 1994. He made a further Appeal to the Court of Appeal. On 11/12/2000, the Court of Appeal allowed his Appeal. The Applicant before the Trial Court, aggrieved by this decision, brought this Appeal.

D Two Issues were raised for the Determination of this Court as follows -

E (1) Wasn’t the Court of Appeal in error by holding that it is the Respondent who needed to show that he had a good title to the land in dispute who bore the burden of proof? If the answer to this issue is in the affirmative, did the Respondent in this Appeal discharge the onus on him to show that his father redeemed the mortgage on the property so as to give him a locus standi to defend the interest of the family in the property?

F (2) Whether long and undisturbed possession can be basis for Registration under the Registration of Title Act. Cap. 121, Laws of Lagos State?

The Respondent in his Brief, raised two Issues for Determination as follows:-

G (1) Whether the Court of Appeal was right when they held that the Applicant for first registration under the Registration of Title Law, Cap. 121, has the burden to prove that he was the owner of the land claimed.

H (2) Whether the Court of Appeal was right in holding that the presumption as to the truth of the contents of document over 20 years old at the date of contract as provided in Section 130 of the Evidence Act did not operate in favour of the Applicant, Tijani Jolasun (the Appellant) in this case.

My Learned Brother, in his Leading Judgment had considered these two Issues raised for determination extensively. I only wish to

add a few words. The lower Court was correct to observe that the duty of the Registrar of Titles under Section 9 of the Registration of Titles Law, Cap. 12, Laws of Lagos is not to adjudicate and award title to land.

I dare say that the duties are as specified in Section 9 of the law. B

Section 9 (1) Registration of Title Law, Cap. 121, provides that - Investigating a title with a view to first registration, the registrar shall accept and act on legal Evidence or Evidence ordinarily required by conveyances. C

9 (2) If after investigation of an application for first registration, the registrar is satisfied, the Applicant is entitled to be registered accordingly. In every other case the application shall be dismissed.

In the interpretation of the foregoing, the Court has a duty to give it a plain, ordinary and literal meaning except where such interpretation will lead to manifest absurdity. The duty of the Court is to interpret the language of a statute in its grammatical meaning to convey the intention of the law maker. D

INEC v. Ray (2004) 14 NWLR (Pt.892) 92.

NBN Ltd. v. Opeola (1994) 1 NWLR (Pt.319) 126. E

Akinfosile v. Ijose (1960) SCNLR 447

Macaulay v. R.Z.B of Austria (2003) 12 S.C. (Pt. II) 22; (2003) 18 NWLR (Pt.61) 377.

PDP v. INEC (1999) 7 S.C. (Pt. II) 30; (1999) 11 NWLR (Pt.626) 200. F

Adewunmi v. A-G. Ekiti State (2002) 1 S.C. 47; (2008) 12 S.C. (Pt. II) 1; (2002) 2 NWLR (Pt.751) 474.

Abubakar v. Yar'Adua (2008) 1 S.C. (Pt. II) 77; (2008) 19 NWLR (Pt.1120) 1. G

The law requires, going by its Section 9, that:

In the course of investigation, the Registrar shall accept and act on H

(a) Legal Evidence or

(b) Evidence ordinarily required by conveyances.

And if after the investigation, the Registrar is satisfied that the Applicant is entitled to be registered - he shall do so accordingly and if not satisfied, he shall dismiss the application.

Section 10 (1) of the law states that

"If any person opposing an application for first registration claims and proves to the Registrar that the land is family land under Customary Law, the Registrar shall, unless the family should consent to registration, dismiss the application."

The lower Court was right when it held in its Judgment that the Registrar who is not a Judge or carrying on a duty of a Court, has no duty to take into consideration the Evidence of long possession before registering a successful Applicant as the owner of the land claimed. All he is required to do, is to act on legal Evidence or Evidence ordinarily required by conveyances. I cannot but take into consideration at this stage, Evidence as to ways and means of proving title to land which should form the bane of the legal Evidence before the Registrar.

The five ways are: -

D (1) Proof by traditional history or Evidence of tradition.
 (2) Proof by grant or the production of documents of title.
 (3) Proof by acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference that the person exercising such acts is the owner of the land.

E (4) Proof by acts of long possession.
 (5) Proof by possession of connected and adjacent lands in circumstances rendering it probable that the owner of such lands would in addition be the owner of the land in dispute.

F Faaunwa v. Adibi (2004) 7 S.C. (Pt. II) 99; (2004) 17 NWLR (Pt.903) 544 at 568.

Anukam v. Anukam (2008) 1-2 S.C. 34; (2008) 1-2 S.C. 34.

Onisaodu v. Elewuju (2006) 7 S.C. (Pt. II) 45; (2006) 13 NWLR (Pt.998) 517.

G Aji boye v. Ishola (2006) 6-7 S.C. 1; (2006) 13 NWLR (Pt.998) 628.

Madu v. Madu (2008) 2-3 S.C. (Pt.II) 109.

Abani v. Bosi (2006) 11 NWLR (Pt.991) 400.

H Aigbobani v. Aifuwa (2006) 2 S.C. (Pt.I) 82; (2006) 6 NWLR (Pt.976) 270.

Ojo v. Kamalu (2005) 12 S.C. (Pt. I); (2005) 18 NWLR (Pt.958) 523.

Idundun v. Okumagba (1976) 9-10 S.C. 227; (1976) 9-10 S.C. (Reprint) 140.

The mode applicable to the instant case is production of document of title. What is required to satisfy the Registrar, going by Section 9 of the Registration of Title Law is, Evidence ordinarily required by conveyances. The Appellant who was the Applicant, pursuant to Section 9 of the Registration of Title Law, Cap. 121, the root of title put forward by him was a conveyance. Exhibit B. The recital of Exhibit B was to the effect that the land was mortgaged by its owner, one Joseph Bamgboye to Scottish Mortgage Company. The land had to be sold by public auction when he failed to redeem the mortgage. The Appellant testified to the effect that he bought the land in dispute in 1950 from one Jacob Ade Oshinowo and the conveyance, Exhibit A, was executed to that effect. Before then, the land was sold by Scottish (Nig.) Mortgage Company through an auctioneer, Mojilabelu to M. Ola Daodu. The mortgage transaction and the eventual sale by Public Auction by the Mortgagee was recited in the conveyance, Exhibit B in 1948. The conveyance Exhibit A dated 25/10/51 was based on Exhibit B executed by the relevant parties on 16/12/48.

The lower Court allowed the Appeal of the Respondent, now Appellant on the grounds that -

(1) The Respondent in order to succeed must trace his title to Bamgboye - who had acquired the land in dispute from the original owner-the Oloto Family.

(2) That the Respondent did not tender the Deed of Mortgage by which Bamgboye mortgaged the land nor did he call Evidence of the Mortgage Company.

(3) That the recital in Exhibit B to the effect that the land was mortgaged and sold by public auction to the predecessor-in-title of the Respondent cannot avail the Respondent as Section 130 of the Evidence Act does not enure to his advantage.

The Respondent testified that his father was the owner of the property who in turn bought from the Oloto family - the original owners. The Respondent agreed that his father mortgaged the property to the Scottish Company but that his father redeemed the mortgage in his life time in 1921. The lower Court believed his Evidence and that the Respondent, as a member of the Bamgboye Family, can maintain an action to defend the family property.

I dare say that it is the Respondent who must proceed to trace

his root of title from the redeemed land after the mortgage, through Bamgboye his father, to the Oloto Family, the original owners of the property. From both sides, there was a lacuna before the lower Court that nobody could show Evidence to the effect that the land was redeemed. The Respondent relied on Exhibits. M, N and D from the
B supposed purchasers of the land from Bamgboye before he died. The lands were not related to the land to be registered by the Appellant.

Generally speaking, where an Applicant is relying on an instrument of grant like a conveyance - mere production of a valid instrument of grant does not necessarily carry with it an automatic grant. The Applicant for a freehold interest in the property cannot succeed, unless certain questions are inquired into by the Court as follows-

- (a) Whether document is genuine and valid.
- D (b) Whether it has been duly executed, stamped and registered.
- (c) Whether the grantor had the authority and capacity to make the grant.
- (d) Whether the grantor had in fact what he purported to grant.
- E (e) Whether it had the effect claimed by the holder of the instrument.

- Enilobe v. Adegbesan (2000) 11 NWLR (Pt.698)611.
- Romaine v. Romaine (1992) 4 NWLR (Pt.698) 611.
- F Ngene v. Igbo (2000) 4 NWLR (Pt.651) 131.
- Ayorinde v. Kuforiji (2007) 4 NWLR (Pt. 1024)241.
- Dosunmu v. Dada (2002) 13 NWLR (Pt. 783)1.
- Kyari v. Alkali (2001) 5 S.C. (Pt II) 192; (2001) FWLR(Pt.60) 1481.
- G Dabo v. Abdullahi (2005) 2 S.C. (Pt. I) 75; (2005) 29 WRN 11; (2005) 7 NWLR (Pt.923)181.

The aspect of the conveyance, Exhibit B queried by the Court, was the recital because it did not comply with Section 130 of the Evidence Act, Cap. 112, Laws of the Federation. I believe that the
H point the Supreme Court is trying to make, is that you cannot transfer an interest in property when you have no prior legal or equitable interest in the property.

Section 130 of the Evidence Act, Cap. 112, Laws of the Federation, 1 990 provides that-

“Recitals, statements and descriptions of fact, matters and parties contained in deeds, instruments, Acts of the National Assembly or statutory declarations twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient Evidence of the truth of such facts, matters and descriptions.” B

The Appellant could not have produced Evidence that the land was redeemed because he did not purchase directly from the auctioneer. He relied on Conveyances A and B, through which the land to be registered was transferred to him. There is no ample Evidence before the Court that the land, 43, Sifawu Street was not validly transferred to the Appellant through the Deed of Conveyances, Exhibits B and A. C

I agree with the Leading Judgment that the Respondent also has the duty of establishing that his father redeemed the property from the Scottish Mortgage Company and that it had reverted to become part of the family land over which he could maintain an action. D

As was remarked earlier on, the Registrar of Titles does not have power to declare title but merely registers it after investigation. His duty does not involve settling contentious Evidence as to ownership of title between the parties wishing for first registration but is confined to investigating Evidence of title presented to him to ascertain if it is satisfactory for such registration. He will refuse first registration when it involves a decision as to ownership until the contending parties resolve their Claims to title in Court. E F

Majekodunmi v. Abina (2002) 1 S.C. 92; (2002) 3 NWLR (Pt.755) 750

Onagoruwa v. Akinremi (2001) 6 S.C. 35; (2001) 13 NWLR(Pt.729) 38. G

With fuller reasons given by my Learned Brother in the Leading Judgment, I agree that the Appeal be allowed. I also abide by the consequential Orders made therein. H

RHODES-VIVOUR JSC

There would be no point me restating the facts as this has been so well done by My Lord, Hon. Justice Mahmud Mohammed, JSC

in the leading judgment. Section 9 and 10 (1) of the Registration of Titles Law, Cap 121, Laws of Lagos State are applicable when a party seeks first registration of a property he claims to own.

Section 9 supra applies to the applicant. It reads

B *“9(1) In investigating a title with a view to first registration the registrar shall accept and act legal evidence or evidence ordinarily required by conveyance*

C *(2) If after investigation of an application for first registration the registrar is satisfied that the applicant is entitled to be registered as the owner of the whole or part of the land claimed, he shall be registered accordingly. In every other case the application shall be dismissed”*

D From the above, it is clear that the registrar ought to register an applicant for first registration if he is satisfied with evidence supporting the application.

Section 10 supra applies to the objector. It reads:

E 10(1) If any person opposing an application for first registration claims and proves to the registrar that the land is family land under customary law, the registrar shall unless the family should consent to registration dismiss the application.”

The Registrar should dismiss the application if the land to be registered is family land under Customary Law.

F It is thus clear that under the applicable Law supra both sides have a duty of proof.

(a) The applicant, that he is the owner of the land.

(b) The objector, that the land is family land subject to Customary Law.

G Now, how have both sides discharged the onus of proof placed on them. The appellant was able to satisfy the Registrar of Titles that he owns the land. He relied on Exhibits A.B.C. (Conveyances). The position of the law is that when documentary evidence supports oral testimony, such oral testimony becomes more credible. This is so because exhibits lend more credence to the oral testimony of the appellant (applicant). See

Kindley v MG of Gongola State 1988 2 NWLR pt. 77 p. 473
Omoregbe v. Lawani 1980 3 - 4 SC p. 117

What about the objector.

In cross examination he said inter alia.

"I agreed that in 1920 my father mortgaged his entire landed property to Scottish Nigerian Mortgage Investment Co. Ltd. My father redeemed the Mortgage in 1921."

On evidence of redemption. He said-

".....The relevant reconveyance was destroyed by fire, but I have evidence to prove that the mortgage was redeemed in 1921." B

Evidence to prove that the mortgage was redeemed was never led or produced at the hearing. A mortgagor has a legal right to redeem his property once the mortgaged debt is fully paid. When this is done the mortgagee should issue the mortgagor a Deed of release. A Deed of release is affirmative evidence that the property was redeemed. Evidence led by the objector, and accepted by the registrar that his father (the mortgagor) mortgaged No. 43 shifawu Street Surulere Lagos and that the property was redeemed in 1921 cannot be true in the absence of a Deed of Release or documentation, or evidence indicating full payment of the loan by the mortgagor. C D

The appellant (applicants) documentary evidence bears him out, plus the fact that the he has exercised right of ownership, undisturbed for over thirty years prior to the institution of his application on the 16th of April, 1966. The appellant is the owner of No. 43 Shifawu Street Surulere Lagos. I agree entirely with the leading judgment. The judgment of the High Court of Lagos State is accordingly restored and affirmed. E

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