

SUPREME COURT OF NIGERIA
10TH JUNE, 2011. SC.63/2004
CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,
M. S. MUNTAKA-COOMASSIE, O. O. ADEKEYE,
S. GALADIMA, JJSC

HIS HIGHNESS, ALHAJI
A.G. MOMOH APPELLANTS
(IKE-EBE II, THE OTARU
OF AUCHI) & ORS
AND
HIS HIGHNESS, ALHAJI
I.M. UMORU RESPONDENTS
(THE AIDONOGIE OF
SOUTH IBIE) & ORS

EVIDENCE - Evaluation - It is the primary function of the court that saw and heard the witnesses - To assess their credibility - And to believe or disbelieve any of them (H1)

APPEALS - Concurrent findings of fact - Supreme Court does not interfere - Except where appellant shows that the decision is perverse - But this has not been shown in this case (H2)

EVIDENCE - Perverse finding - Meaning - Finding is perverse when it runs counter to the evidence and pleadings - Or where it is shown that the judge considered extraneous matters - Or when the finding occasioned a miscarriage of justice (H3)

FACTS

Appellants (in this instant appeal) as plaintiffs first commenced this action in 1981 before the High Court of Edo State (formerly Bendel State), Auchi. Judgment was delivered in 1984 whereby learned trial judge refused to grant the declaratory reliefs and the order of injunction sought by appellants. In the said judgment learned trial Judge gave what he termed as “a compromise solution” judgment. Dissatisfied with that decision appellants appealed to Court of Appeal, Benin which allowed the appeal but made consequential

order remitting the case to High Court for rehearing de novo. Their further appeal to Supreme Court was struck out. Appellants were thereby left with no legal option but to revert to the earlier order of the Court which was to re-hear the case de novo. The rehearing commenced before a new judge. However, upon the creation of Delta State out of former Bendel State and the subsequent deployment of the latter judge to Delta state Judiciary, the case was again reassigned to another judge. This time the Court decided in favour of respondent in 1994.

It is of note that in their 3rd Further Amended Statement of Claim, appellants claimed the following reliefs inter alia: A declaration that in accordance with Auchu Customary Law and tradition, appellants, the people of Auchu are the persons vested with all existing rights to the use and occupation of all that piece or parcel of land lying and situate in Auchu, in the Etsako Local Government Area of Bendel State and within the jurisdiction of this Honourable Court, and verged pink in plan No. 1092 filed herewith (the said land though well known to respondents is as shown). Respondents on their part filed a 2nd Further Amended Statement of Defence. Appellants called a total of 5 witnesses. In addition, 3rd and 4th appellants also testified while on the part of respondents, 1st respondent testified. After evaluating the evidence adduced, the Court subsequently gave judgment in favour of respondents. Dissatisfied with the judgment, appellants appealed to Court of Appeal sitting in Benin City. The Court resolved the issues against appellants. The appeal was accordingly dismissed. Aggrieved, appellants further appealed to Supreme Court.

ISSUE FOR DETERMINATION

Whether the Learned Justices of the Court of Appeal were right in law and on the facts in holding that the appellants failed to prove their case at the Court of first instance.

HELD (Unanimously dismissing the appeal per **GALADIMA JSC) **EVIDENCE - Evaluation****

1. The Court of Appeal in this case noted that the appeal before it “revolves principally around the appraisal and evaluation of oral and documentary evidence of witnesses”, it was not in as good position as the trial court to examine them before forming its opinion. The court

rightly proceeded to analyze the oral and documentary evidence tendered at the trial. It rightly decided on the extent of the area of occupation of each community. After painstaking consideration the court below came to the conclusion that the evaluation of evidence by the learned trial judge was not perverse. It is trite that the primary function of the trial court that saw and heard the witnesses is to assess the credibility of those witnesses and to believe or disbelieve any of them. The court below came to the conclusion that the Appellants by their own admission in paragraph 20 of the Amended Statement of Claim and from the evidence at the trial they conceded that compensation paid to the respondents for the crops destroyed by DUMEZ, a road Construction Company, that constructed Benin/Auchi/Okene Express Road, was clear acknowledgment by the Appellants of Respondents' possession or possessory rights.

It is quite clear to me and the court below rightly held that the learned trial judge made his findings on facts based on both oral as well as documentary evidence and these cannot be faulted. In effect, the court below agreed with the findings of the learned trial Judge that the legal and evidential burden of proof placed on the appellants, as plaintiffs at the trial court was not discharged. (p. 1965 H)

APPEALS - Concurrent findings of fact

2. I agree with the learned counsel for the Respondents herein that the decision appealed against by the appellants are concurrent findings of fact. The principle of law as stated in so many decisions of this court, notably in *AMAYO V. ERINMWINGBOVO* (2006) 5 SC 1 at p. 11 per Katsina-Alu JSC as he then was (now CJN) is as follows:

"The attitude of this court where there are concurrent findings of fact by the lower court is that it will not disturb such findings unless they are shown to be perverse."

In this appeal, regarding this point, it is clear on the records that the court below at page 444 lines 10 - 15 held that the findings of the learned trial judge could not be faulted. The court was in clear agreement with the findings of the trial court. It becomes its findings. In order to set aside the decision of the court below the Appellants must show that the decision is perverse. This has not been shown in this case. (p. 1966 F)

Perverse findings - Meaning

3. A finding is said to be perverse when it runs counter to the evidence and pleadings or where it has been shown that the trial judge took account of matters which he ought not to have taken into account or shuts his eyes to the obvious or when such finding has occasioned a miscarriage of justice. The findings of the trial court do not in any way run counter to the evidence proffered. The trial court did not take into consideration extraneous matters and there is certainly no miscarriage of justice. (p. 1967 B)

NOTABLE POINTS OF INTEREST
CHUKWUMA-ENEH JSC

1. Land law - Establishment of title - Onus on plaintiff

It is settled law and with regard to this case that the onus is on the plaintiffs to prove their case in accordance with their pleadings that they have acquired title to the land in dispute under native law and custom; and not merely to show a better title than the defendants and to succeed on the strength of their case based on the preponderance of evidence in the case and they cannot rely on the weakness of the defence case except where such weakness supports their case.

It is also settled that in cases as this one the onus does not shift on the defendant until the plaintiff has successfully discharged the onus on him. (p. 1969 F)

ADEKEYE JSC

2. Civil cases are decided on balance of probability

Civil cases including declaration of title to land are decided on balance of probabilities. Before a judge comes to a decision as to which evidence he accepts and which evidence he rejects, he should first of all put the totality of the evidence adduced by both parties on each side of the imaginary scale. He will then assess which is heavier, not by the number of witnesses called by each party but the quality or the probative value of the testimony of those witnesses.

On the other hand, what is required of a plaintiff in an action for declaration of title is at least to establish his claim by preponderance of evidence. It is often enough that he has produced sufficient and satisfactory evidence in support of his claim. The test is whether

the plaintiff has been able to prove to the satisfaction of the court that he has a better title than the defendant. Thus, the standard of proof in a claim for declaration of title is not different from that which is required in civil cases generally. The only difference rests on the fact that the burden of proof is on the plaintiff and it never shifts to the defendant throughout the trial. (p. 1996 A)

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REPRESENTATION

C.O. Chikogu, for the Appellants

A.O. Okeaya-Inneh SAN with A. Lawal (Miss), for the Respondents

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CASES REFERRED TO

Dokubo v. Omoni (1999) 8 NWLR (Pt.616) Pg.647

Adelaja v. Alade (1999) 6 NWLR (Pt.608) Pg. 544

Lakoy v. Olojo (1983) 2 SC NLR 121 at 131- 132

D

Ngene v. Igbe (1991) 7 NWLR (Pt.203) 358 at 361

Adeleke v. Asani (1994) 1 NWLR (Pt.322) pg.536

Okoko v. Dakolo (2006) 14 NWLR (Pt.1000) pg.401

Elewaju v. Onisaadu (2000) 3 NWLR (Pt.647) pg.95

Ogun v. Akinyelu (1999) 10 NWLR (Pt.624) Pg. 671

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Echolor v. Osayande (1992) 8 NWLR (Pt. 249) 524 at 526

Afolayan v. Osunrinde (1990) 1 NWLR (Pt.127) 369 at 383

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

PAN AFRICAN V. SHORELINE LIFEBOATS 42 NSCQR P.25 at 38

F

POPOOLA & ORS v JOSHUA ADEYEMO & ANOR (1992) 8

NWLR (Pt.257) 1 at

OLOKO TINTI V. SARUMI (2002) 7 S.C. (Pt.1) P. 152 and (2002)

13 NWLR (Pt.784) 307 at 317

G

STATUTE REFERRED TO

Evidence Act Cap. 112 LFN 1990, ss. 46, 135 (1) (2)

LEAD JUDGMENT BY GALADIMA JSC

This case has a chequered history- The court below was saddled with the task of having to hear the appeal for the second time under the following circumstances. The present appellants as plaintiffs first commenced the action in 1981, before the High Court of Auchin in suit No. HAU/46/81 presided over by Akpovi (J) (as he then

H

was). Judgment was delivered in 1984 whereby the learned trial judge refused to grant the declaratory reliefs and the order of injunction being sought by the plaintiffs. In the said judgment the learned trial Judge gave what he termed as “a compromise solution” judgment.

Dissatisfied with that decision the plaintiffs appealed to the court below, which allowed the appeal but made consequential order re-mitting the case to the High Court Auchu for re-hearing de novo. Their further appeal to this court was struck out. The plaintiffs were thereby left with no legal option but to revert to the earlier order of the court which was to re-hear the case de novo.

The re-hearing commenced before Maidoh (J). But upon the creation of Delta State out of former Bendel State and the subsequent deployment of Maidoh (J) to the Delta state Judiciary the case was assigned to Sadoh (J) who decided in favour of the Defendants in 1994.

In their 3rd Further Amended Statement of Claim, the Plaintiffs claimed the following reliefs:

“(a) A declaration that in accordance with Auchu Customary Law and tradition, the plaintiffs, the people of Auchu, are the persons vested with all existing rights to the use and occupation of all that piece or parcel of land lying and situated in Auchu, in the Etsako Local Government Area of Bendel State and within the jurisdiction of this Honourable Court, and verged pink in plan No. 1092 filed herewith, (the said land though well known to the defendants is as shown).

(b) A declaration that the plaintiffs, the people of Auchu or Auchu Community by virtue of Auchu Customary Law and tradition, are the persons entitled to the Customary and/or Statutory Right of Occupancy in respect of the said piece or parcel of land.

(c) An order of perpetual injunction restraining the defendants whether by themselves, their servants, agents or any person claiming through or under them or whatsoever from entering re-entering or remaining upon the said piece or parcel of land in purported exercise of any right in relation to the possession, use and occupation of the land or any part thereof in derogation to the plaintiff’s vested rights or interests therein.

(d) Additionally, the plaintiffs seek forfeiture or declaration of forfeiture by the defendants of the area of plaintiffs land (Sabo Quar-

ters) occupied by the defendants with the permission or tacit permission of the plaintiffs before disputes arose between the parties, and by reason of defendants' claim of title thereto and denial of the plaintiff's title."

The defendants on their part filed a 2nd Further Amended Statement of Defence. B

The Plaintiffs called a total of 5 witnesses. In addition, the 3rd and 4th plaintiffs also testified while on the part of the defendants the 1st defendant testified.

At the close of the case for the parties, learned Counsel each addressed the Court. Following this the learned trial Judge gave judgment in favour of the Defendants. C

Dissatisfied with judgment the plaintiffs appealed to the Court of Appeal sitting in Benin City.

On 19/1/2000, the lower court, delivered its judgment in which D all the issues canvassed by the Appellants were resolved against them. The appeal was accordingly dismissed and the judgment of the learned trial Judge was affirmed.

The Appellants herein being dissatisfied with the judgment further appealed to this Court on SEVEN grounds issues formulated by the Appellants for determination of this Court are set out as follows:- E

“(1) Was the Lower Court right when it upheld the judgment of the learned trial judge and held that the evaluation of evidence by the learned trial judge was not perverse? (Ground 1)

(2) Whether the Lower Court was right when it agreed with the learned trial Judge that the traditional histories pleaded and given in evidence by the parties as to the point of arrival and from where the parties migrated are conflicting. (Ground 2) F

(3) Whether the Lower Court did not misdirect itself when it G held that the learned trial judge was right in his criticism of Exhibit “A”. (Ground 3).

(4) Was the Lower Court right when it upheld the Trial Court's decision that the Justice Obi's Commission of Enquiry Report on the boundary between the parties in this appeal was binding on the appellants? (Ground 4), H

(5) Was the Lower Court right when it upheld the learned trial judge's finding that title to the land in dispute could not be declared in the appellants' favour because the payment of compensation to

the respondent by Dumez and the establishment of Ekhabhele Primary School, Iyakpi were positive and numerous acts of ownership and possession of the land in dispute by the respondents?. (Ground 5).

B (6) Was the Lower Court right in upholding the judgment of the Trial Court? (Grounds 6 and 7).

Sole issue was presented by the Respondents for determination thus:

C *“Whether the Learned Justices of the Court of Appeal were right in law and on the facts in holding that the appellants failed to prove their case at the Court of first instance.”*

D On 15th day of March, 2011, this appeal was heard. Learned Counsel for the Appellants, C.O. OHIKOGU Esq., referred the Court to the Appellants’ brief of argument dated and filed on 07/03/2005, but after been granted an enlargement dated and filed on 07/03/2005, but after been granted an enlargement of time to file it was deemed filed on 25/03/2005. He urged us to allow the appeal. In the same vein, the learned senior counsel for the Respondents having identified his brief of argument deemed filed on 20/08/2008 urged us to dismiss the appeal.

E From the issues formulated by the parties in this appeal, I am of the respectful view that the sole issue formulated by Respondents can properly and effectively determine the appeal. But before going into the arguments of the parties to resolve the issues raised, it is apt and necessary to give a brief narrative of the facts, which form the basis of the claims of the respective parties.

G The Appellants’ side of the story is that their ancestor Uchi, together with his five sons namely Usagun, Akpekpe (Afekpe) Aibotse, Igbei and Ekhei migrated from Udo in Benin, which is within the present day Ovia West Local Government Area of Edo State to settle in the place now called AUCHI. The original settlement encompassed an area marked by the site of the Uchi Market at Auchi. Uchi’s settlement grew in size because of the demand for land for farming and hunting purposes and also as a result of the sons’ movement to settle in area bearing their names and farming quarters or villages of Auchi.

H The boundary neighbours of the Auchi people are named as the people of Warrake and Ivbiaro (Iyaro) to the West, the people of Avia to the North, Jattu (Uzarue) to the North East, Ibienafe people of the South, Ibie clan to the East and the people of Ugioli (Aviele) to

the South. That their boundary with Ibie Nafe is marked by an Albino mound on an old ancient footpath.

It is the case of the Appellants that in 1964 - 65 the people of Auchi as represented by the Otaru gave the parcel of land on which Auchi Polytechnic (formerly Mid-West Technical College). It was then that the first direct and overt assertion of adverse title by Iyakpi people to the land in dispute came when the Respondents claimed to be the owners of the said land in order to benefit from compensation payable by Government. The Appellants also claimed to have left the Respondents on the land in dispute because they were subjects of the 1st Appellant from 1920 to 1950. The appellants went to court when the Respondents became unfriendly by teaming up with Uzairue people against the appellants.

The Respondents on the other hand assert that their ancestors migrated from Benin in about the 15th century and settled at their present site. It was from this site that the founders of the other South Ibie villages migrated to where they now occupy. That "Ibie Nafe" means people that ran away from home. That Iyakpi is the original settlement of the South of Auchi Polytechnic was done with their permission. Other positive acts of ownership by the Respondents, as they claim are the possession of 100 houses, Ekhabhele Primary School and farms. The Respondents accepted the decision of the Justice J.A. Obi's Commission of Inquiry which was set up by the government to establish the boundary between the Plaintiffs'/Appellants' Community and its neighbours.

Now turning to the issues for determination, it should be observed that the learned senior counsel for the appellants in the brief of argument argued issues 1, 2, 3 and 6 together. This is in view of the fact that those issues are intertwined and cannot be properly dealt with without touching on matters surrounding them which are unduly proliferated but are ably subsumed in the sole issue raised by the Respondents. In the main, it is the contention of the appellants counsel that the lower court was wrong when it held that the evaluation of evidence by the trial court was not perverse. He submitted that the lower court came to this conclusion without showing how it arrived at same. That apart from reproducing the evidence led at the trial, the lower court did not marry the issues raised by the appellants in their brief of argument touching on the said evidence so led That

once an issue is raised for determination, the court has duty to determine same, relying on the case of AFOLAYAN v. OGUNRINDE (1990) 1 NWLR (Pt 127) 369 at 383.

On the traditional histories as pleaded by the parties, it is the submission of Learned Senior Counsel for the appellants that the lower court was not right when it agreed with the learned trial judge that the traditional histories pleaded and given in evidence by the parties as to the point of arrival and settlement on the disputed land and from where the parties migrated are conflicting. It is the contention of the appellants that they pleaded their traditional history in paragraphs 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 18(a) of the 3rd Further amended Statement of claim. Summarizing the paragraphs' the Appellants have claimed that by Auchi Native Law and Custom all lands are communally owned and are subjected to the overriding interest or rights of the community. That the Otaru of Auchi is the traditional trustee of all Auchi lands and he alienates any parcel of land on the recommendation of the Land Allocation Committee. That the land in dispute was originally occupied by Iyekhei people of Igbei quarter or village of Auchi. That the people left the land in dispute for the present day Iyekhei sub-quarter of Auchi. After the said Iyekhei left the land in dispute, the people of Igbei who are their brothers spread in and occupied same by erecting buildings and farming.

On the question of boundaries of the disputed land, learned senior counsel in his brief in paragraphs 4.11 alluded to the pleadings of the appellants in paragraphs 17, 18 and 18(a) and summarized them thus:

“(a) That people of Warrake and Ivbiaroto the West, those of Avia to the North, Jattu (Uzairue) to the North East, those of Ibief Nafe of South Ibief clan to the East and those of Ugioli (Aviele) to the South.

(b) The land in dispute is encompassed by Auchi land to the West and abuts Auchi Polytechnic land granted to the then Government of Midwestern Region by the Otaru of Auchi on behalf of Auchi Community.

(c) On the north-west of the Auchi Polytechnic land is the Igbei quarter or village of Auchi.

(d) Also the boundary with the land in dispute to the South is the land of the Ugioli (Aviele) people, on the East-north is the Ibief

Nafe people and to the far North is the Otaru Grammar School, Auchi.

(e) The Intelligence report of Mr. H. Spottiswood boundaries settlement ordinance enquiry between Auchi and Uzairue clans and that of Mr. S. J. Henry between Auchi and Aviele clans."

In their further quest to strengthen their case the appellants in paragraphs 4 .12 of their brief summarized the traditional history in the following terms:

- (i) That Akpi is the ancestor of Iyakpi people of South Ibie;
- (ii) That the original home of Atse was Ibie-Nafe (meaning of Ibie people at the place where all the Ibies once settled);
- (iii) That Atse begat Akpi and other sons;
- (iv) That Akpi like other sons of Atse broke away from their father;
- (v) That Akpi, after breaking away, settled on part of Ibie-Nafe land to the East and South-East of Auchi known a Iyakpi;
- (vi) That the Native Authority School was established on a small portion of the land in dispute;
- (vii) The land on which the school was sited which was later taken in by Sabo quarters turn out to be the land in dispute as a result of the acts of trespass carried out by Iyakpi people who squatted and built houses on part of the land which they nicknamed Sabo.
- (viii) This initial act of trespass by Iyakpi people was accommodated by the Auchi people who before the advent of the 1st respondent as the Aidonogie of South Ibie clan acknowledged the overlordship of the Otaru of Auchi, assumed an alarming proportion in the wake of 1964 - 1965.
- (ix) As a result of this alarming rate of trespass, there became a threat of violent clashes and this led to three (4) inconclusive Government Commissions of Inquires.

As I have noted the learned senior counsel for the Appellants conveniently argued issues 1, 2, 3 and 6 together. I agree with him that the argument on issue 1 cannot be entirely dealt with without touching on those matters surrounding issues 2, 3 and 6. But as I have equally observed the sole issue raised by the Respondents has most comprehensively covered all the six issues set out by the Appellants. In the circumstance, I shall consider the findings of fact made by the learned trial judge based on both oral as well as documentary

evidence vis a vis their evaluation since the lower court came to the conclusion that the evaluation, of evidence by the trial judge was not perverse.

The Appellants as plaintiffs at the trial court in their 3rd Further Amended Statement of Claim inter alia, sought for a declaration that in accordance with Auchi customary law and tradition themselves, and the people of Auchi are the persons vested with the title, use and occupation of all the disputed land lying and situate in Auchi, East of Etsako Local Government Area of Edo State.

At the trial the learned trial judge identified the issue for determination at pages 248 - 249 of the records therein thus:

“The issue for determination therefore in the case is, which of the two communities i.e. the plaintiffs or the defendants own the land in dispute in this case. The parties being different communities, the determination of the boundary between the plaintiffs and the defendants is the burden for the determination of the ownership of the land in dispute in this case.”

Then to his findings on the same page:

“The Auchi Community being the plaintiffs in this case have put the area in dispute as per their survey plan filed in this case, exhibit A; as 280.383 hectares. The plaintiffs did not put the area occupied by Auchi Polytechnic within the area in dispute. The defendants put the area in dispute as 548.97 hectares as per their survey plan exhibit Q. The area occupied by Auchi Polytechnic its staff quarters is put in dispute. This area is twice the Area put in dispute by the plaintiffs. It is however pertinent to point out that the defendants did not counter-claim any land in this suit. In the end whether the plaintiffs’ claim succeeds or fails will be related to the area claimed by them.

The learned trial judge went into considering some authorities on what plaintiff must prove in a land case (as in *IDUNDUN v OKUMAGBA* (1976) 9-10 SC.227 and he quickly reverted into the evidence of traditional history and held as follows:

“Reverting once more to the traditional histories pleaded and given in evidence by the parties to his suit, I hold that the said traditional histories are conflicting as to the point of arrival and from where the parties migrated and also on the boundary between the plaintiffs and the defendants. It has been held by the Supreme Court in the

case of POPOOLA & ORS v JOSHUA ADEYEMO & ANOR (1992) 8 NWLR (Pt.257) 1 at ratio 1 that where there is such conflict, the proper course open to the court in resolving the conflict is to test the traditional history by reference to the facts in recent years established by evidence and by seeing which of the competing histories is more probable”. (Underlined for emphasis). B

Indeed the learned trial judge accordingly resorted to the examination of Exhibits ‘C’ and ‘D’. He found that these exhibits tendered by the Appellants’ which are inter-tribal boundary proceedings between Auchi and Aviele and between Auchi and Uzairue clan respectively to be of little help in the determination of the boundary between the Appellants and the Respondents. The learned trial judge also examined the survey plans Exhibits ‘A’ and ‘Q’ tendered by the Appellants and Respondents respectively and found that Exhibit ‘A’ did not represent the correct position of things on the ground especially with respect to the positions of IYAKPI, a boundary neighbour to Auchi. He disbelieved that the boundary between the Appellants and the Respondent was correctly reflected in Exhibit ‘A’ He then found that the numerous acts shown in the area in dispute such as buildings and farms were acts of ownership properly exercised by the Defendant/Respondents within the land in dispute. C D E

At page 255 lines 15-20 of the Records the learned trial judge while considering Exhibit ‘F’ - “Short History of South Ibie Clan” on which Pw5 was called and examined, held as follows:

“...With respect to exhibit ‘F’, I have no difficulty in coming to the conclusion that exhibit ‘F’ cannot be relied upon as an authority on the subject matter of the book” F

With regard to the Justice Obi’s Commission of Inquiry in respect of the land in dispute between the parties learned trial Judge G held that:

“.....Hon. Justice Obi’s Commission of Inquiry set up by virtue of the provisions of the Commission of Inquiry Law cap 41 should enjoy the benefit of a judicial tribunal whose findings and decision should, subject to the review of the Government that set it up to be conclusive and guiding on the parties concerned.” H

The Court of Appeal in this case noted that the appeal before it “revolves principally around the appraisal and evaluation of oral and documentary evidence of witnesses”, it was

not in as good position as the trial court to examine them before forming its opinion. The court rightly proceeded to analyze the oral and documentary evidence tendered at the trial. It rightly decided on the extent of the area of occupation of each community. After painstaking consideration the court below came to the conclusion that the evaluation of evidence by the learned trial judge was not perverse. It is trite that the primary function of the trial court that saw and heard the witnesses is to assess the credibility of those witnesses and to believe or disbelieve any of them. The court below came to the conclusion that the Appellants by their own admission in paragraph 20 of the Amended Statement of Claim and from the evidence at the trial they conceded that compensation paid to the respondents for the crops destroyed by DUMEZ, a road Construction Company, that constructed Benin/Auchi/Okene Express Road, was clear acknowledgment by the Appellants of Respondents' possession or possessory rights.

It is quite clear to me and the court below rightly held that the learned trial judge made his findings on facts based on both oral as well as documentary evidence and these cannot be faulted. In effect, the court below agreed with the findings of the learned trial Judge that the legal and evidential burden of proof placed on the appellants, as plaintiffs at the trial court was not discharged.

I agree with the learned counsel for the Respondents herein that the decision appealed against by the appellant are concurrent findings of fact. The principle of law as stated in so many decisions of this court, notably in *AMAYO V. ERINMWINGBOVO* (2006) 5 SC 1 at p. 11 per Katsina-Alu JSC as he then was (now CJN) is as follows:

"The attitude of this court where there are concurrent findings of fact by the lower court is that it will not disturb such findings unless they are shown to be perverse."

(See also *OLOKO TINTI V. SARUMI* (2002) 7 S.C. (Pt.1) P. 152 and (2002) 13 NWLR (Pt.784) 307 at 317; *NWORAH V. AFAM AKPUTA* (2010) 42 NSCQR 302; *ATTAH V. THE STATE* (2010) 42 NSCQR 350, and *PAN AFRICAN V. SHORELINE LIFEBOATS* 42 NSCQR P.25 at 38.)

In this appeal, regarding this point, it is clear on the records that the court below at page 444 lines 10 - 15 held that the findings of the learned trial judge could not be faulted. The court was in clear agreement with the findings of the trial court. It becomes its findings. In order to set aside the decision of the court below the Appellants must show that the decision is perverse. This has not been shown in this case. A finding is said to be perverse when it runs counter to the evidence and pleadings or where it has been shown that the trial judge took account of matters which he ought not to have taken into account or shuts his eyes to the obvious or when such finding has occasioned a miscarriage of justice. The findings of the trial court do not in any way run counter to the evidence proffered. The trial court did not take into consideration extraneous matters and there is certainly no miscarriage of justice.

In conclusion, I hold that this appeal is devoid of any merit. It fails. The decision of the trial court and its affirmation by the Court of Appeal is hereby affirmed. The Respondents are entitled to costs against the Appellants which I assess at N50,000.

MOHAMMED JSC

I have had the opportunity before today of reading in draft the judgment of my learned brother Galadima, JSC, which has just been delivered I entirely agree with him that this appeal is devoid of merit justifying its dismissal.

Although as many as 6 issues for the determination of the appeal were distilled from the grounds of appeal filed by the Appellants in this simple land dispute between two neighbouring communities, the learned trial Judge after very carefully examining the evidence placed before him by the disputing parties came to the right conclusion, in my view, when he said at page 248 of the record -

“The issue for determination therefore in this case is, which of the two communities i.e. the Plaintiffs or the Defendants own the land in dispute in this case. The parties being different communities the determination of the boundary between the Plaintiffs and the defendants is the hurdle for the determination of ownership of the

land in dispute in this case.”

Therefore, the finding of the trial Court in favour of the Defendants was clearly based on the evidence before that Court and as such the affirmation of that decision on appeal by the Court below is quite in order. I see no reason at all to disturb these concurrent judgments of the two Courts below. Accordingly, I also dismiss the appeal and affirm the judgments of the courts below with N50,000 00 costs in favour of the Respondents.

C

CHUKWUMA-ENEH JSC

The claim in this matter has been set out in the lead judgment of my learned brother Galadima JSC; I adopt it for this contribution.

This is a difficult case, indeed it is difficult to follow the sequence of the facts and events of the divergent traditional histories of both parties as they seem in places to tail into incoherent stories and this is not made any easier by the fact that this matter is coming to this court on appeal for the second time. The traditional history of the plaintiffs/appellants has ranged from facts and events dating as far back as 500 years ago into history when the plaintiffs/appellants father ancestor i.e. Uchi, the ancestor of Auchi people migrated from Udo in Benin to settle in Auchi with his five children, they comprise the five villages of Auchi to wit: Usogun, Akpekpe (Afekpe), Aibotse, Igbei and Iyekhei. The quarters or villages in which each of the children settled bear the name. The plaintiffs have alleged that when Iyekhei people left the land in dispute for their present abode Igbei people, their relations spread out and occupied the same by exercising acts of possession of erecting buildings and farming thereat.

On the part of the defendants their father ancestor Ibie left Benin migrated to their present abode in South Ibie in the 14th century and at the time their father ancestor arrived from Ugboka in the ancient Benin Kingdom; and as they have alleged, the other communities in Etsako have not come to settle in the area, and particularly he settled at Iyakpi with his children; they founded the villages of Iyakpi, Ibiense, Ugiede, Iyereku and Ugiekha lying on the old Auchi/Agenebode Road. The land in dispute according to the plaintiffs' claim is as known to the parties and as delineated in the plaintiffs/appellants' survey plan received in evidence and marked Exhibit 'A' in this

matter. The land in dispute according to the appellants' case is encompassed by the lands of Auchi people. The plaintiff's claim the ownership of the land in dispute; the defendants/respondents have not counter-claimed. As found by the trial court and affirmed by the lower court the conflicting traditional histories of the parties are as to "the point of arrival and from where they migrated and also on the boundary between the plaintiffs and the defendants"; ultimately, what is in issue in this case is resolving the extent of the area of occupation of each community. In other words, the issue for determination simply put, is which of the two communities that is, the plaintiffs or the defendants own the land in dispute in this case; and the parties being of different communities, resolving of the boundary between the plaintiffs and the defendants is at the bottom line of this matter. B C

The plaintiffs as the Auchi Community have put the area in dispute as power their survey plan Exhibit 'A' as 290.385 hectares excluding the Auchi Polytechnic. The defendants have put the area in dispute as 548.97 hectares including the Auchi Polytechnic. The defendants as I have said above have not counter-claimed. The plaintiffs' survey plan therefore determines the land in dispute. (See Wilfred Okpalaeke & Ors. v. Ben Ume and Ors. (1976) 9 - 11 SC. 269 at 287, Mabiaku Owotaire & Ors. v. Benitie Onokposo & Ors. (1984) 12 SC. 19 at 37.) D E

What the plaintiff must prove in a land case consists of one at least of the five ways of proving ownership of land in dispute as decided and adumbrated in the case of Idundun & Ors. v. Okumagba (1976) 9 - 10 SC.227 at 246 - 250 and I will come to them anon. F

It is settled law and with regard to this case that the onus is on the plaintiffs to prove their case in accordance with their pleadings that they have acquired title to the land in dispute under native law and custom and not merely to show a better title than the defendants and to succeed on the strength of their case based on the preponderance of evidence in the case and they cannot rely on the weakness of the defence case except where such weakness supports their case. G

It is also settled that in cases as this one the onus does not shift on the defendant until the plaintiff has successfully discharged the onus on him. I think I should state these prepositions of the law early enough so as to position the above trial court's findings of fact in the storm's eye in this appeal in their proper contexts. (See Echolor v. H

Osayande (1992) 8 NWLR (Pt. 249) 524 at 526, Kodilinye v. Odu 2 WACA 336, Woluchem v. Gudu & Anor. 5 SC.291; (1981) 12 NSCC 214 also see Ngene v. Igbe (1991) 7 NWLR (Pt.203) 358 at 361.)

The crucial question arising from the trial court's decision is the finding of conflicting traditional histories of the parties, that is, as to the point of arrival and where the parties migrated from also the boundary between the parties i.e. the plaintiffs and the defendants.

The next question to examine, on the trial court having found the traditional histories of the parties conflicting are whether the trial court rightly has resolved the cases of the parties in this matter on the evidence of the recent acts of ownership and possession of the land in dispute as expounded in the cases of UBA & Anor. v. Agwuncha & Ors. (1976) 6 SC 83 at 85 - 87, Ayo Wale v. Ogunbiyi (1986) ANLR 442, Akinloye A.M.A. & Ors. v. Bello Eyidola & Ors. (1968) NMLR 93, also see Kojo II v. Bonsie (1957) 1 WLR 1223.

More facts of the matter have been clearly stated in the lead judgment of my learned brother Galadima JSC, and I have had the preview of it before now; I adopt them for this contribution.

Being dissatisfied with the trial court's decision the plaintiffs/appellants have appealed to the lower court which also has dismissed their appeal. They have now appealed to this court. They have exchanged their briefs of argument.

On the part of the appellants the issues raised for determination in their brief of argument in this appeal are as follows:-

“(1) Was the lower court right when it upheld the judgment of the learned trial judge and held that the evaluation of evidence by the learned trial judge was not perverse? (Ground 1).

(2) Whether the lower court was right when it agreed with the learned trial judge that the traditional histories pleaded and given in evidence by the parties as to the point of arrival and from where the parties migrated are conflicting. (Ground 2).

(3) Whether the lower court did not misdirect itself when it held that the learned trial judge was right in his criticism of Exhibit 'A'. (Ground 3).

(4) Was the lower court right when it upheld the trial court's decision that the Justice Obi's Commission of Enquiry report on the boundary between the parties in this appeal was binding on the appellants? (Ground 4).

(5) Was the lower court right when it upheld the learned trial judges finding that title to the land in dispute could not be declared in the appellants favour because the payment of compensation to the respondent by Dumez and the establishment of Ekhabhele Primary School, Iyakpi were positive and numerous acts of ownership and possession of the land in dispute by the respondents. (Ground 5). B

(6) Was the lower court right in upholding the judgment of the trial court? (Grounds 6 & 7)”

The sole issue formulated by the respondents for determination in their brief of argument is to wit:

“Whether the learned Justices of the Court of Appeal were right in law and on the facts in holding that the appellants failed to prove their case at the court of first instance”. C

If I may repeat the most crucial findings of fact in the trial court’s judgment as affirmed by the lower court in this appeal and in regard to the question of the traditional histories of the parties and on the boundary between them is as per its holding as at p.257 LL. 4 - 10 of the record and I quote:

“Reverting once more to the traditional histories pleaded and given in evidence by the parties to this suit, I hold that the said traditional histories are conflicting as to the point of arrival and from where they migrated and also on the boundary between the plaintiffs and the defendants.” E

Earlier, the trial court has also at 248 LL.12 - 34 to p.249 Line 1 reached the following conclusion that; F

“The traditional history pleaded on both sides could have been necessary if the founding of each community was relevant to the determination of who owns the land in dispute in this case. There is no doubt in my mind that each community was founded years ago. Whether Auchi community comes from the north or from Benin Kingdom does not for one moment detract from the fact that they now occupy the area now known as Auchi. What is important in this case is the extent of the area of occupation of each community. Another preliminary observation worth making is that the administration of the communal life of the community of the plaintiffs and the defendants is also not relevant in the determination of the issues joined in this case. H

The issue for determination therefore in this case is, which of

the two communities, i.e. the plaintiffs or the defendants own the land in dispute in this case. The parties being different communities, the determination of the boundary between the plaintiffs and the defendants is the hurdle for the determination of the ownership of the land in dispute in this case.”

B In a nutshell the foregoing is a succinct analysis of this matter which has thereby dealt with the crucial questions for resolution in the matter vis a vis whether the said findings of fact are perverse as canvassed by the appellants. The lower court in the same vein at p.45 lines 10 - 15 of the record held to the same effect, and I quote:

C *“The findings of fact made by the learned trial judge based on both oral as well as documentary evidence cannot be faulted. It is my view that the evaluation of evidence by the learned trial judge is not perverse. It is the primary function of the trial court which saw and D heard the witnesses to assess the credibility of those witnesses and to believe or disbelieve any of them.”*

I have highlighted the foregoing abstracts of the two lower courts as they constitute the concurrent findings of fact on the issue of the traditional histories of the parties in this matter and the attitude of this E court to questions of concurrent findings of fact from the age-old decision in Kofi v. Kofi 1 WACA 284 is not to disturb them unless they are perverse. (See Okoya v. Santilli (1994) 4 NWLR (Pt.338) 256 at 107 paragraphs E - G and Scrimati Bibhabati Devi v. Kumar Ramendro Narayan Roy 62 TC 549 (Privy Council) cited with approval in Etowa F Enang & Ors. V. Fidelis Ikor Adu (1981) 11 - 12 SC.17. The appellants have therefore attached the above concurrent findings of fact adding that there is otherwise credible evidence on the record to support their contention that the instant findings of fact as per the G above abstracts are perverse. For the appellants to meaningfully attack the findings of concurrent fact in this matter they must show the exceptional circumstances to justify this court’s intervention to re-evaluate the facts afresh and I must observe that it is an uphill task. See: The Stool of Abinabina v. Chief Kojo Enyimadu (1953) 112 H WACA 171 at 173 and Kofi v. Kofi (supra).

I have, however, to examine the issues raised for determination in this appeal; they have put on the front burner the questions ranging from the evaluation of evidence of the parties and their witness to the ascription of probative value to their evidence as received

by the trial court. And as rightly posited by the lower court it is an area in which the trial court has pre-eminence as it has at first hand seen, heard and watched the demeanour of the witnesses (an opportunity which this court hasn't had) and so in a better position to believe or disbelieve them; but as regards documentary evidence this court has as much the same forensic leverage as the trial court to form its own opinion on them. (See *Okoya v. Santilli* (supra), *Amayo vs. Erinwingbo* (2006) 5 S.C. (Pt.1) 1 at 11.)

Following from the appellants' strenuous contention that the two lower courts' findings of fact on the above points are perverse, I think I should sort out firstly that question and so examine when a finding of fact is said to be perverse. Thereafter, I will come to the question of whether the trial court rightly has relied on the acts of recent possession in their proper contexts in resolving the instant land dispute; again, I will come to deal with this point later on.

Meanwhile as per the decided authorities, a finding of fact is perverse when it runs counter to the evidence and pleadings or where it has been showed that the court has taken into account matters which ought not to have been taken into account or shut its eyes to the obvious or where it has occasioned a miscarriage of justice or when the circumstances of the finding of fact is most unreasonable. See *Kofi v. Kofi* (supra) and *The Stool of Abinabina & Ors. Enyimadu* (supra). I have come this far in espousing the plenitude of the principle of concurrent finding of fact in this case so as to define the ambit of the principle in the circumstances to enable an appellate court as this court to determine when to intervene as a matter of course, it is a burden duty on the appellants to bring the instant case within the ambit of one or the other of the grounds as stipulated above otherwise it is a non-starter. In this regard they have particularly challenged the findings of fact as per the decisions of the two lower courts as running counter to the evidence and pleadings and thus leading to a miscarriage of justice in this matter. It is also their specific challenge of the mode of approach of the lower court in failing to decide the critical issue submitted to it that is, as to whether the traditional histories pleaded and given in evidence by the parties as regards the said findings, that is to say whether "the point of arrival and from where the parties migrated are conflicting." They have contended that the lower court has abdicated its functions in this respect by failing to

pronounce on this issue properly raised before it as it constitutes a legal duty for a trial court as well as the appellate court to determine all issues properly raised before them. See *Afolayan v. Osunrinde* (1990) 1 NWLR (Pt.127) 369 at 383 paragraph B per Obaseki JSC. It is further their contention that the said issue cannot be resolved simply by the instant lower court denoting with approval the trial court's holdings as at p. 248 of the record as replicated in the above abstract of its judgment. I find and observe here that this is a valid point to take as the appellants are saying in other words, that to constitute a legal judgment in the face of the issues raised in this matter before the instant lower court, or any other appellate court for that mater; the court must on its own examine the evidence afresh to satisfy itself that the appeal has been properly tried and that the questions raised by the parties for adjudication before the trial court have been duly considered and resolved. Following from this proposition of settled law, I think it is a matter of legal duty in this judgment as the instant decision of the lower court has been challenged as perverse to duly examine afresh the findings of fact and the reasons thereof for the instant decision on appeal so as to be satisfied that the decision has been properly arrived at. I will come to further deal with the question of the perversity of the said lower court's findings of fact and matters arising therefrom anon. That is to say, not before resolving the issues encompassing other relevant questions as set out thereunder and upon which my reasoning and conclusions in resolving this appeal have to be premised.

In this matter the appellants have copiously pleaded their traditional history in paragraphs 8, 9, 10, 11, 12, 14, 15, 16, 17, 18 and 18a of the 3rd further amended statement of claim at page 129 - 132 of the record. The defendants on the other hand have also pleaded their traditional history in paragraphs 5, 6, 7 and 8 of the 2nd further amended statement of defence at page 397 of the record. Issues inter-alia have been joined on the parties' traditional history and on the boundary between the two communities.

H In order to set out chronologically the traditional histories of both parties in this matter on the backdrop of their arguments in their respective copious pleadings in this matter comprising the 3rd further amended statement of claim and the 2nd further amended Statement of Defence. I have satisfied myself that the appellants have

done a good job of it by the summary of the traditional histories of both parties as set out in paragraph 4.10 at p. 12 to paragraph 4.15 at p.17 of their brief of argument filed in this matter and I reproduce the same as follows:

(a) That Uchi was the ancestor of Auchi people who migrated about five hundred years ago from Udo in Benin. B

(b) That Uchi migrated with 5 of his sons namely: Usogun, Akpekpe (Afekpe), Aibotse, Igbei and Ekhei

(c) That the settlements of Uchi and his children became comprehensively known as Auchi meaning “the settlement of Uchi’s children or descendants”. The quarters or villages in which each of them settled were named after them. C

(d) That the land in dispute forms part of the land of Igbei village or quarter of Auchi.

(e) That by Auchi native law and custom all lands are communally owned and all such lands are subject to the overriding interest or rights of the community. D

(f) The Otaru of Auchi is the traditional trustee of all Auchi lands and he alienates any parcel of land on the recommendation of the land Allocation Committee. E

(g) That the land in dispute was originally occupied Iyekhei people of Igbei quarter or village of Auchi.

(h) That Iyekhei people left the land in dispute for the present day Iyekhei sub-quarter of Auchi.

(i) After Iyekhei people left the land in dispute, the people of Igbei who are their brothers spread in and occupied same by erecting buildings and farming. F

On boundaries, the appellants pleaded in paragraphs 17, 18 and 18a in a nutshell as follows: G

(a) The people of Warrake and Ivbiaro to the West, those of Avia to the North, Jattu (Uzairue) to the North-East, those of Ibie-Nafe of South Ibie clan to the East and those of Ugioli (Aviele) to the South.

(b) The land in dispute is encompassed by Auchi land to the West and abuts Auchi Polytechnic land granted to the then Government of Midwestern Region by the Otaru of Auchi on behalf of Auchi community. H

(c) On the north-west of the Auchi Polytechnic land is the

Igbei quarter or village of Auchi.

(d) Also in boundary with the land in dispute on the South is the land of Ugioli (Aviele) people, on the East-north is the Ihie-Nafe people and to the far North is the Otaru Grammar School Auchi.

B (e) The intelligence Report of Mr. H. Spottiswood boundaries settlement ordinance enquiry between Auchi and Uzairue clans and that of Mr. S. I. Henry between Auchi and Aviele clans.

The appellants pleaded the traditional history of the respondents in paragraphs 19 and 20 in a nutshell as follows:-

C (i) That Akpi is the ancestor of Iyakpi people of South ibie.

(ii) That the original home of Atse was Ibie-Nafe (meaning the Ibie people at the place where all the Ibies once settled.)

(iii) That Atse begat Akpi and other sons.

D (iv) That Akpi like other sons of Atse broke away from their father.

(v) That Akpi, after breaking away, settled on part of Ibie-Nafe land to the East and South-east of Auchi known as Iyakpi.

(vi) That the Native Authority School was established on a small portion of the land in dispute.

E (vii) The land on which the school was sited which was later taken in by Sabo quarters turn out to be the land in dispute as a result of the acts of trespass carried out by Iyakpi people who squatted and built houses on part of the land which they nicknamed Sabo.

F (viii) This initial act of trespass by Iyakpi people was accommodated by the Auchi people who before the advent of the 1st respondent as the Aidonogie of South Ibie clan acknowledged the overlordship of the Otaru of Auchi, assumed alarming proportion in the wake of 1964 - 1965.

G (ix) As a result of this alarming rate of trespass, there became a threat of violent clashes and this led to three (3) inconclusive Government Commission of Inquiries.

H On their parts the respondents pleaded their traditional history in paragraphs 5, 6, 7 and 8 of the 2nd further amended statement of defence which are reproduced at pages 397 lines 1 - 53 and page 398 line 1 - 38.

In a nutshell, the traditional history as pleaded by the defendant can be summed up as follows:-

(a) That South-Ibie was original settlement of one Ibie from

Ugboka in ancient Benin Kingdom.

(b) That he and his followers settled at Iyakpi where the shrines of Erua and Iyua, which situates on the spot where Ibie and his wife lived, commemorates their names.

(c) After the death of Ibie, his first son by name Akpi remarked at Iyuakpi (the original place where Ibie settled). His second son by name Atse moved to other places with his children. B

(d) Atse's children founded Ibie-Nafe and Iyerekhu.

(e) Other followers of Ibie and their successors founded Ugiede and Ugiekha. C

(f) All the villages of Iyuakpi, Ibienafe, Ugiede, Iyereku and Ugiekba lie on old Auchi/Agenebode Road.

(g) That at the time that South-Ibie was founded by Ibie Auchi was part of the land of Uzairue.

Still on traditional history, the respondents by their paragraphs 7 & 8 D put the traditional history of the appellants thus:

(a) That at the time that South-Ibie was founded by Ibie, Auchi was part of the land of Uzairue.

(b) That palm-wine sellers were the first people that settled in Auchi. E

(c) That Abhitsi centre is the name of the place where the settlers sold their palm-wine.

(d) That at this Abhitsi centre, the people of Uzairue and South-Ibie sold palm wine and slaves to Nupe people from the Northern part of Nigeria. F

(e) That Abhitsi was corrupted to Auchi by Colonial masters who could not pronounce Abhitsi in Nupe dialect.

(f) That Uzairue people granted the settlers permission to trade on slaves around the palm wine food centre and settled thereon. G

(g) That the area granted to them became too small to accommodate them and as a result they started boundary disputes with all their neighbours namely; Warrake, Uzairue, South-Ibie and Avele."

At the close of pleadings in this matter the foregoing resume as culled from the appellants' brief of argument represents the state of the parties' averments in their pleadings in this matter and on which they have joined issues for resolution before the trial court. H

On the appellants' traditional history and the evidence proffered in support thereof relating to their ancestral place Udo in Benin

and the point of time of arrival from Benin as well as the boundary between the two communities have been given by PW.1 - the licensed surveyor and PW2 i.e. the 3rd plaintiff from Igbei village in Afighagu and also the PW3 i.e. the 4th plaintiff, he also has testified on the traditional history and so also the PW4; they have testified and have been cross-examined in this matter. On their traditional history the appellants in sum, have in their pleading and evidence stated that their ancestor father Uchi migrated from Udo in Benin and stated with his 5 children to settle in the present place now known as Auchi. As for the defendants, they allege that Akpi migrated from Benin to Ibie-Nafe i.e. their first settlement or the home of the Ibies and later settled on Ibie-Nafe land at a place called Iyakpi towards Auchi. The traditional boundary between the parties, they have alleged, is marked by a mound or a heap of earth in which an Albino is said to have been buried. Iyakpi is situated on Ibie-Nafe land to the East and South-East of Auchi. The foregoing narrative in a nutshell has represented the traditional evidence of the respondents. The appellants have called PW1, PW2, PW3 and PW4, if I may repeat, to establish by their testimonies the traditional history and the boundary between the parties. On documentary evidence: Apart from Exhibit 'A' i.e., the appellants survey plan, the appellants have tendered and also relied on Exhibits C a boundary document prepared by Spottiswood and it shows the boundary between Auchi and Uzairue; Exhibit D is also a boundary document between Aviele and Auchi clans prepared by Mr. S.J. Henry (District Officer under the then Kukuruku Native Authority) under the inter tribal boundary settlement Ordinance. The appellants further have relied on Exhibits E & E1 i.e. the Denton's Intelligence Report of 1936 and Exhibit G - a short history of Benin by Dr. Egharevba to buttress their case in this matter.

The respondents on the other hand have established according to their traditional history that Ibie their ancestor father founded the South Ibie and that he migrated from Benin to South Ibie in the 14th century at the time none of the other communities has come to settle at Etsako. And that at his death he left his children at Iyakpi where he first settled on arrival from Benin. And that his son Atse then left Iyakpi and founded Ibie-Nafe whilst his other son Akpi remained at Iyakpi. The respondents called DW1, DW2 and DW3 to

establish their case.

The appellants and respondents have adverted to the above mentioned exhibits to support their respective cases in this appeal. Let me examine the exhibit further. It has to be so as the appellants have taken serious exception to the pronouncement by the lower court to the effect that the findings of fact made by the trial court on both the oral as well as documentary evidence in this matter cannot be faulted. I will marry discussion of the documentary evidence to my findings on the oral testimonies of the parties later on in this judgment. On exhibit 'A' i.e. the appellants survey plan of the land in dispute on which the judgment ought to be tied has been severally faulted and the trial court has unleashed scathing remarks although substantiated to the effect, that it is at variance with paragraph 18 of the 3rd further amended statement of claim for failing to show that the land in dispute is not encompassed i.e. encircled by Auchi lands contrary to their pleading and that it has not showed the position of Iyakpi as a boundary neighbour to Auchi as has been averred by the appellants. In short as the most crucial document in the matter that exhibit 'A' i.e. the survey plan of the appellants has not represented the correct positions of things on the ground. Even more ominously that it has not showed the numerous acts of ownership as buildings and farms properly exercised by the defendants within the land in dispute and therefore it is not a credible documentary evidence to be relied on. And the trial court has rightly so found.

On exhibits C and D, the trial court in my view rightly has found that they do not relate to the land in dispute and of no help in demarcating the boundary between the plaintiffs and defendants vis-a-vis the land in dispute. As regards Exhibits F and F1 the trial court has again rightly found that they can be relied upon as constituting an authority on the subject matter of the book, that is, as regards the traditional histories of the parties in this matter and therefore has to be discountenanced.

Coming to the report of the Commission of Enquiry on the boundary between the plaintiffs and the defendants by Justice Obi. Without belabouring the issue I entirely agree with the findings of the trial court in this respect as at 257 LL.1 - 7 and I quote:

'In this regard, I have no doubt in my mind that Hon. Justice Obi's Commission of Inquiry set up by virtue of the provisions of the

Commission of Inquiry Law Cap. 41 should enjoy the benefit of a judicial tribunal whose findings and decision should, subject to the review of the Government that set it up be conclusive and binding on the parties concerned.”

B The findings and decision of the Commission of Inquiry constitute Res judicata against the appellants: they have not been set aside and so extant and subsisting. The other acts of ownership which the trial court rightly in my view has accepted relate to the payment of compensation to the respondents by Dumez Construction Company. C These findings have put paid to the appellants’ claim for a declaration of title as otherwise they go to strengthen the positive and numerous acts of ownership and possession of the land in dispute by the defendants. And I so hold.

D I have now to come back to my earlier poser of whether the trial court rightly has reached the finding of conflicting traditional histories of the parties on the principle as laid down in *Kojo II v. Bonsie* (1957) 1 W.L.R. 1223 and whether the trial court has rightly examined the applicability of the principle against the inconclusive traditional histories of both parties by reference to their acts of recent E possession. (See: *Jacob Popoola & Ors V Joshua Adeyemo & Anor.* (1992) 8 NWLR (Pt 257) 1 - 4.) This question is made the more pertinent by the appellants’ contention; vide paragraph 4.47 at page 12 of their brief of argument by wherefore contending that on the F preponderance of evidence adduced by the Appellants to prove their traditional history that and I quote, “there was therefore no need for the trial judge to have looked for evidence of recent possession of the land in dispute before granting the declaration sought”. (See: *UBA & Anor. v. Agwuncha & Ors.* (1976) 6 SC. 83 at 85 - 87, *Awoyale v. G Ogunbiyi* (1986) ANLR 442 also *Akinloye A.M.A. & Ors. v. Bello Eyidola & Ors.* (1968) NWLR) Ratios 1 and 3.” It is settled as per the decision in *Jacob Popoola & Ors. v. Joshua Oyeyemi Adeyemo & Anor.* (1992) 11 NWLR (Pt.257), that the proper cause to follow is to test the traditional history of both parties by reference to the facts H in recent years as established by other evidence before the court and by resolving which of the two competing histories is more probable. The principle in *Kojo II v. Bonsie* (supra) is invoked where the court particularly a trial court is in difficulty as to which of the parties’ traditional evidence to accept. A court so confronted by this difficulty must

advert to and consider other evidence of acts of recent possession available on the evidence before it to assist it to resolve the question. From the printed record before me I hold that it is the trial court duly has resolved this question on the basis of the principle in *Kojo II v. Bonsie* (supra) which principle it has rightly invoked in this matter.

I think the appellants have totally misconceived the solid and substantiated findings of fact by the two lower courts on this question. I agree with their findings of fact and I have showed so from the review of the cases of both parties vis-a-vis the said findings of fact above. And if I may expatiate further, there is this reference to a mound in which an albino is said to have been buried, and which both parties have also agreed as demarcating their boundary. The plaintiffs have said the mound is located on an old foot part as per their survey plan, exhibit 'A', the defendants have said it is in located in a valley in the premises of Auchi Polytechnic. In recent times the Benin/Auchi/Okene expressway has been constructed and the defendants have said the mound on the left hand side of the road coming from Benin to Auchi, the plaintiffs have said it is on the right hand of the said road coming from the same direction. The trial court in the circumstances of these contentions should have settled this crucial point by visiting the locus quo, it is regrettable to have missed this wonderful opportunity to sort out and settle this point conclusively; besides none of parties have sought for it.

In regard to their boundary the plaintiffs on whom the onus lies in this matter have tendered 2 inter tribal boundary proceedings to wit exhibit D between Auchi and Aviele and Exhibit C is between Auchi and Uzairu clan. The two exhibits (i.e. C and D) have been found and rightly so by the trial court as not helpful to the plaintiffs' case as they do not relate to the boundary between the plaintiffs and the defendants in this matter and I am at one with the findings. Also exhibit N i.e. the certified true copy of the survey plan made by one A. Bola Cole dated 15/3/49 has showed the boundary between Auchi and Agbede; and the issue here is the boundary between Auchi and Iyakpi in South Ibie and not with Agbede and therefore exhibit N is not material to this case. And I agree with the finding.

As between the survey plans filed by the plaintiffs and the defendants that is, exhibits A and Q respectively; In Exhibit 'A' the boundary between the plaintiffs and the defendants is misleading and con-

fusing as Exhibit A shows on the north the land in dispute as bordering the land of Ibie Nafe not in dispute and not Iyakpi South Ibie the defendants here. Even more so Exhibit A shows Iyakpi South Ibie land not in dispute with no boundary marks having been showed as the boundary between Auchi and Iyakpi south-Ibie, the defendants in this matter. It also shows Iyakpi sought Ibie as located after Ibie Nafe and as not the immediate neighbour of the plaintiffs and so cannot have boundary with the Plaintiffs. The evidence shows that one has to get to Iyakpi before Ibie Nafe to Auchi, which evidence is incongruous and unacceptable. Exhibit A, the plaintiffs' survey plan is at variance with paragraph 18 of the plaintiffs' further amended statement of claim that has pleaded the land in dispute as encompassed by Auchi lands; this is not the position on the ground and it is trite law that evidence which is at variance with the pleadings goes to no issue. See *National Investment V. Thompson Organization & Ors.* (1969) Vol. 1 NWLR 99; and I so hold in this regard.

On acts of ownership, PW4 in his testimony has accepted that all the buildings in Sabo part of the land in dispute are owned by Iyakpi people thus the appellants have conceded one major act of ownership of recent times and further that there is no grant of any land in Sabo by the Otaru of Auchi to any Iyakpi man even as the whole Sabo is a built-up area. He also accepted that Iyakpi is located between Auchi and South Ibie although Iyakpi is South in South Ihie and that one has to get to Iyakpi before Ibie Nafe and significantly that Iyakpi people are still in the same place they have settled originally. The plaintiffs also admit that Ikhavbele Primary School was built by the south Ibie people i.e. the defendants. And so the trial court has rightly found that exhibit A has not represented the correct positions of the things on the ground especially as to the relative positions of Iyakpi and Auchi vis-a-vis the land in dispute and also that the numerous acts of ownership showed in the survey plan such as buildings, farms and other acts of possession are exercised by the defendants that is within the land in dispute.

From my reasoning above I find and I hold that the trial court rightly has found that the traditional histories of the parties are conflicting as to "the point of arrival and from where they migrated and also on the boundary between the plaintiffs and the defendants". In that regard I have set out above their traditional bistouries side by

side each other and in their respective contexts. I am satisfied the principle as postulated in *Kojo II v. Bonsie* (supra) has been correctly invoked in the circumstances of this matter. I uphold the said findings of fact. I find also that appellants have woefully failed to show that the said findings of fact are perverse. The appellants have not discharged the onus on them in regard to showing that the said findings of fact are perverse. And so, the trial court as affirmed by the lower court again rightly has resolved the cases of the parties on the evidence of recent acts of ownership and possession vis-a-vis the land in dispute in the respondents' favour. See *Kojo II v. Bonsie* (supra). And this is sufficient to sustain the decisions of the two lower courts.

On the other issues raised in this appeal what has so far emerged from my findings above is that the appellants who are claiming a declaration of title to the land in dispute have to prove their title based on the principles laid down in the case of *Idundun vs. Okumagba* (supra). And so they must show in a nutshell to wit:

“(1) Ownership proved by traditional evidence.

(2) Ownership proved by production of title documents.

(3) Ownership proved by acts of ownership provided the acts extend over a sufficient length of time and are numerous and positive enough to raise the inference that the person is the owner. See *Ekpo v. Ita II* NLR 69.

(4) Act of long possession and enjoyment of the land as prima facie evidence of ownership of the land with reference to which such acts are done.

(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. See Section 46 of Evidence Act.

The question calling for the appellants' answer is whether they have established their claim of declaration of title to the land in dispute by proving and relying on one or all of the ways of proving title to land in dispute as per the foregoing cited case.

As observed by the trial court at P250 LL.18-20 with which I entirely agree and I quote:

“It is however not necessary that all the five ways must be proved by the plaintiff. It suffices if one of them is proved and the item to be proved will depend upon the claim of the plaintiff and the particular

facts and circumstances of each case.”

In short, from my findings above, the appellants have failed to prove ownership of the land in dispute by traditional evidence as it is not supported by recent acts of ownership and possession. Their attempt to show that the land in dispute is encompassed by their land also has failed having been debunked by Exhibit A. Their claim for declaration as based on long possession and enjoyment of the land in dispute cannot stand and this is so particularly that the claim is not for trespass. In the result the appellants have failed to prove their claim to the land in dispute in this matter.

I have herein established that the onus of proof in this regard is on the plaintiff here. See *Kodilinye v. Odu* (supra). The two lower courts from any reasoning and findings above rightly have found that the appellants in both their oral and documentary evidence have failed to discharge the onus on them in this matter not to talk of their having filed to meet the standard of proof vis-a-vis on the balance of probability as laid down in *Mogaji v. Odofin* (1978) 4 SC. 9.

And so, the plaintiffs/appellants’ claim in this matter must fail and it fails. I therefore agree with the lead judgment of my learned brother Galadima JSC that this appeal is most unmeritorious and should be dismissed. I too dismissed and endorse all the orders contained in the lead judgment.

F

MUNTAKA-COOMASSIE JSC

This is an appeal against the concurrent findings of both the trial High Court and the Court of Appeal in which it was found that the appellants have failed to prove the ownership of the land in dispute in this case. The trial High Court in its judgment found as follows at pp 259 per Sadoh J.

“On the issue of acts of ownership, the plaintiff said that it is true to say that all the buildings on Sabo are owned by Iyakpi people. That there is no grant of any land in Sabo by the Otaru of Auchi to any Iyakpi man. The 4th Pw also said that Iyakpi village is located between Auchi and South Ibie, though he said Iyakpi is in South Ibie. He stated further that before the construction of Agene Bode road, any person going from Auchi to Ibie Nafe will follow a foot path and he will get to Iyakpi before going to Ihie Nafe. That Igakpi is still in the

place where they settled originally. The plaintiffs also admitted that Ikhaubele primary school was built by the people of South Ibie. The defendants, on the other hand, said that the houses they built at Sabo are about N1,000 and that they farm on the vacant land.

In the light of all have reproduced above, I find as a fact that the plan Exhibit A filed by the plaintiffs did not represent the correct position of things on the ground, especially with respect to the positions of Iyakpi as a boundary neighbour to Auchi. In this regard, I do not believe that the boundary between the plaintiffs and the defendants is correctly reflected in Exhibit A.

I also find as a fact that the numerous acts showed in the area in dispute as buildings and farms are acts of ownership properly exercised by the defendants within the land in dispute”.

Finally, on page 258, the trial court concluded thus:-

“Finally, in the light of my findings above, I hold that the case of the defendants is more probable than that of the plaintiffs when the evidence adduced in the case on either side put on an imaginary scale laid down in the case of *A.P. Mogaji & Ors. v. Rabiatu Odofin & Ors* (1978) 4 SC 91. On the whole the plaintiffs claim fail in its entirety and same is accordingly dismissed with cost which I assessed at N1,000.00 in favour of the defendants”.

On appeal to the Court of appeal, hereinafter called the lower court, the findings of the trial court were affirmed. The lower court in its judgment held as follows:-

“The findings of the fact made by the learned trial judge based on both oral as well as documentary evidence cannot be faulted. It is my view that the evaluation of evidence by the learned trial Judge is not perverse. It is the primary duty function of the trial court which saw and heard the witnesses to assess the credibility of those witnesses and to believe or disbelieve any of them. I therefore agree with the submissions of learned counsel for the defendants that there was evidence to support the findings of the learned trial Judge who made a correct assessment of the evidence before By their own admission in paragraph 20 of the Amended Statement of Claim and the evidence which the plaintiffs conceded that compensation was also paid to the defendants for crops destroyed by Dumez, a construction company that construed Benin/Auchi/Okene road and the establishment of the Ekhaviela Primary School, Iyakpi, south Ibie

known in 1944 as south ibie Native Authority which was later re-named Etsako District council school, south Ibie in 1955 and then as Local Authority Primary School in 1958 all these being positive and numerous acts of ownership and possession of land in dispute left the learned trial judge in no doubt that title could not be declared in plaintiffs' favour. The complaint that the learned trial judge, not being a surveyor, cannot examine the survey plan and Exhibit A and criticize same to my mind is a non-issue and does not amount to a legal submission. Exhibit A being part of evidence adduced must be subjected to scrutiny like any other evidence before any evidential value can be placed on it by the trial judge. Lastly, any decision on an enquiry into boundary dispute in which the plaintiffs took part is conclusive and operates as res judicata. (See *Nwabia v. Adiri & 3 ors.* (1958) 3 FSC 112.) Since Exhibits C, D, E and 4 were already in existence when the then Bendel State Government appointed Justice J.A. Obi's commission of inquiry to among other things.

".....as certain and determine the boundary between the two communities or towns and between Auchi on the one hand and each of the other surrounding towns with which Auchi has common boundary on the other hand".

'This commission of inquiry presented the appellants with a golden opportunity to produce theses exhibits and any other evidence that showed the boundary between the plaintiffs and the defendants. In conclusions I resolve all the issues canvassed in the appeal against the appellants'. It is against the above findings that the appellants have appealed to this court.

The plaintiffs in their further amended statements of claim claimed against the defendants as follows:-

a) A declaration that in accordance with Auchi customary Law and traditions the plaintiffs, the people of Auchi, are the persons vested with all existing rights to the use on and occupation of all that piece of land lying and situate at Auchi in the Etsako Local Government Area of Bendel state and within the jurisdiction of this Honourable Court and verged pink in plan no 1902, filed herewith (the said land though well known to the defendants is as shown).

b) A declaration that the plaintiffs, the people of Auchi or Auchi community by virtue of Auchi customary Law and tradition, are the persons entitled to the customary and/or statutory right of occupancy

in respect of the said piece on Parcel of land

c) An order of perpetual injunction restraining the defendants whether by themselves, their servants, agents or any person claiming through or under their or howsoever from entering, re-entering or trespassing upon the said piece or parcel of land in purported exercise of any right in relation to the possession of land or use and occupation of the land or any part thereof in derogation of the plaintiffs vested right or interest therein. B

d) Additionally, the plaintiffs seek forfeiture or declaration of forfeiture by the defendants of the area of plaintiffs land (Sabo quarters) occupied by the defendants with the permission or tacit permission of the plaintiffs before dispute arose between the parties and by reason of defendants claim of title thereto and denial of the plaintiffs title". C

Parties then called their respective witnesses in support of their case, at the end of which the plaintiffs case was dismissed also the appeal to the lower court was dismissed, this led to this appeal in this case.

In accordance with the rules of this Court, both parties filed and exchanged their briefs of argument. The appellants in their Brief of argument dated 25/2/05 formulated six issues for determination as follows: E

"1) Was the lower court right when it upheld the judgment of the learned trial Judge and held that the evaluation of evidence by the learned trial Judge was not perverse? (Ground 1) F

2) Whether the lower court was right when it agreed with the learned trial Judge that the traditional histories pleaded and given in evidence by the parties as to the point of arrival and from where the parties migrated are conflicting. (Ground 2). G

3) Whether the lower court did not misdirect itself when it held that the learned trial Judge was right in his criticism of Exhibit "A". (Ground 3)

4) Was the lower court right when it upheld the trial court's decision that the Justice Obi's Commission of Enquiry Report on the boundary between the parties in this appeal was binding on the appellants? (Ground 4) H

5) was the lower court right when it upheld the learned trial Judge's finding that title to the land in dispute could not be declared

in the appellants' favour because the payment compensation to the respondent by Dumez and the establishment of Ekhabhele Primary School, Iyakpi and Possession of the land in dispute by the respondents. (Ground 5).

B 6) *Was the lower court right in upholding the judgment of the trial court? (Grounds 6 and 7)."*

The respondents' counsel in his brief of argument dated 20/8/2008 formulated only one issue for determination thus:-

C *"Whether the learned Justices of the Court of Appeal were right in law and on the facts in holding that the appellants failed to prove their case at the court of first instance"*

At the hearing, the learned senior counsel to the appellants adopted his brief of argument and urged this court to allow the appeal. In his brief of argument, the learned senior counsel argued his D issue Nos. 1, 2, 3 and 6 together, and argued issue Nos. 4 and 5 distinctly. On his first set of issues for determination, learned senior counsel submitted that the lower court was wrong in the approach it adopted in deciding the issues raised before it, as it failed to consider the issues raised by the appellants. Counsel referred to the averments E in his pleading on traditional history and contended that the Auchis' who are of Benin stock arrived during the time of Ozemua, Oba of Benin in 1500 A.D. before the arrival of the defendants he also referred to Exhibit H, H1 - H4 which he said are un-doctored works of F foreigners. He contended that historical works of such intelligent reports cannot be wished away by a stroke of the pen, he cited the case of Ojo V. Adejobi (1978) 11 NSCC 147 at 160. He further submitted that in view of these Exhibits there is no further need to have looked for evidence of recent possession of the land in dispute before granting the declaration sought, he relied on the case of UBA & Anor V. G Agwuncha & Ors (1976) 6 SC. 83/85; Awoyale V. Ogunbiyi (1986) ANLR 442. Learned counsel referred to the evidence of PW1, a licensed surveyor, who tendered Exhibit A which showed clearly the ancient foot-path linking Auchi through Igbei village, Auchi to ibie H Nafe South line and the mound or heap marks the traditional boundary between the two communities. He therefore submitted that the conclusion by the trial Judge that the traditional histories pleaded and given in evidence by the parties to this suit are conflicting and perverse and arose from the improper evaluation of the evidence led

in the case. And the lower court, counsel continues, was in great error when it affirmed the decision.

The learned senior counsel further submitted that the criticism of Exhibit A by the learned trial Judge is unbounded, that the mere use of the word “encompass” cannot derogate from the vivid description given by the pleading. Learned counsel then submitted that the lower court fell into the same error to properly re-evaluate the evidence led before affirming the evidence adduced at the trial court. This court is therefore entitled to re-evaluate and set aside the concurrent findings of the two lower courts, he relied on the case of Okoya V. Santilli (1994) 4 NWLR (Pt. 338) 256 at 302

On his 4th issue for determination learned senior counsel pointed out that the Justice Obi’s Commission of Inquiry was set up after the commencement of this suit and the recommendation of the commission that any person aggrieved could pursue existing land claims in court, and thus submitted that as a result the commission’s recommendation could not constitute *res judicata* and therefore not binding. A document cannot create a right and at the same time foreclose the right.

On the issue No. 5, learned senior counsel submitted that the learned trial Judge relied heavily on the acts of possession which according to him was given copiously by the respondents’ evidence this was done without taking into consideration the circumstances under which such brazen acts of possession were committed and also without taking into consideration the most relevant and legally acceptable acts of possession as given by the appellants, these include the building of Etsake Native Authority school in 1944 on Auchi land. That Iyakpi people were squatters and the wrongful allocation of land to strangers and the fact that the Otaru of Auchi was the district head of Auchi District from 1920 - 1950 which encompass the respondents. The learned counsel pointed out that the compensation paid to the respondents by Dumez was only in respect of the crops and not on the land Learned counsel then concluded that the totality of the above ex-ray acts of possession claim by the respondents, those acts of possession of the land in dispute, excluding Sabo enclave were made by the respondents against very strong protest by the appellants.

The learned senior counsel to the respondents adopted his

brief of argument, at the hearing before us, and urged this court to dismiss the appeal. In support of the sole issue for determination, he contended that the concurrent findings of the two lower courts on the issue of ownership of the land in dispute was clearly made, he then submitted that the court below was right in dismissing the appellants' appeal. The appellants in the trial court failed to prove their case, having failed to discharge the burden of proof placed on them by Section 135 (1) (2) of the Evidence Act. Learned counsel further submitted that the decisions appealed against are concurrent findings of the two lower courts and this in a plethora of cases courts held that they will not interfere with concurrent decisions of the two lower courts unless and until the decisions are perverse, he cited the following case.

Oloko Tunji V. Sarumi (2002) 7 SC (Pt. 1) p. 152, counsel D pointed out that the lower court held that the findings of the learned trial Judge could not be faulted. It was his further contention that in order to invite this court the appellants must show that the decision is perverse. In the instant case, the evidence put before the court of trial did not establish the claim, it is therefore the appellants' contention that the finding of the trial court does not in any form, run counter to the evidence proffered, the trial court did not take into consideration any extraneous matters and there is certainly no miscarriage of justice, he relied on the case of Owu V. Idu (2006) 6 SC. 58 at 76. The case being a claim for declaration of title to land, the appellant F has to comply with the principles enunciated in the case of Idundun V. Okumagba (1976) 9 10 SC. 227 at 246. He therefore submitted that the appellants woefully failed to prove any of the points stated in Idundun V Okumagba (Supra).

G I have earlier set out the concurrent findings of the two lower courts and I have equally set out the submissions of the two learned senior counsel to the parties in some details in this case, it is my view that central to the determination of this appeal is the determination of the issue formulated by the learned senior counsel to the respondents, and I will adopt same as the relevant issue for determination in this appeal. Learned senior counsel too the appellants have forcefully submitted that the lower court erred in law in affirming the findings and decision of the trial court.

He predicated his submission on the alleged failure of the lower

court to consider the evidence adduced before it and the pleadings on the facts on which issue were duly joined. Particularly it was the contention of the learned senior counsel that the trial court failed to consider the fact that the Auchu people were the first to settle on the disputed land and with this position any acts of possession exercise by the respondents would be at the behest of the appellants protests the alleged acts of ownership exercised by the respondents on the land in dispute. Learned counsel also pointed out that the Otaru of Auchu was the District head between 1920 - 1950 and the respondents were part of the district. Learned counsel criticized the findings of the lower court that the reports of Justice Obi commission of inquiry on the land in dispute is binding on the parties.

As I have pointed earlier in this judgment, this appeal is against the concurrent, findings of the two lower courts for this court to interfere the appellants must show that:

- a). That the decision is either erroneous or perverse
- b). That there is a miscarriage of Justice, and
- c). There exists special circumstance to warrant the interference.

(See the following cases:

- (i). Lakoy v. Olojo (1983) 2 SC NLR 121 at 131- 132
- (ii). Ojomu v. Ajao (1983) 2 SCNLR 158/168,
- (iii). Ibrahim v. Shagari (1983) 2 SCNLR 176 at 201,
- (iv). Sobakin v. The State (1981) 5 SC 75,
- (v) Okoya V. Santili, (1994) 4 NWLR (pt.338) 256 at 302 and
- (vi). Olokoitinti V. Sarumi (2002) 7 SC (pt. 1) 152.)

It is also trite that a finding is said to be perverse when it runs counter to the evidence and pleadings or where it has been shown that the trial Judge took into consideration/account matters which ought not to have been taken into account or shuts its eyes to the evidence or when it has occasioned a miscarriage of justice. (See Onu V. Idu (2006) 6 SC at 78.) Also where there are concurrent findings of fact by two courts, namely the High Court and the Court of Appeal, this court will not allow such question to be reopened unless and until there are particular circumstances dictating otherwise e.g. if the finding of fact is not justified by the evidence or by the surrounding circumstances of the particular case. I refer to Lukoyi V. Olojo (supra) at p. 131, Kale V. Coker (1952) 13 SC; 252, Okolo V.

Uzoka (1978) 5 SC. 77 at 86.

In the instant case, I have carefully gone through the judgment of the trial court, and I have found that the trial court considered all the evidence adduced before it by the parties vis-a-vis the pleading before arriving at its judgment. All the issues raised and joined by the parties were all considered. It is my considered view therefore that the lower court was right when it held as follows:-

“The findings of fact made by the learned trial Judge based on both oral as well as documentary evidence cannot be faulted. It is my view that the evaluation of evidence by the learned trial Judge is not perverse”.

The appellants have not shown where the findings of the trial court could be said to be perverse or based on extraneous facts. Once a finding of fact by a trial court is supported by evidence an appellate court will be reluctant and slow to upset it. I am fortified by the decision in the case of *M. EGRI V UPERI* (1973) 11 SC 299 at p. 310. It is clear that the appellants have not shown any reason why this court should interfere with the concurrent findings of the two lower courts.

I was privileged to have had a preview of the illuminating lead judgment of my learned brother Suleiman Galadima JSC just delivered and I entirely agree with his Lordship’s reasoning and conclusions. In fact I adopt them with respect as mine.

For the reasons he adumbrated in the lead judgment I too hold that this appeal is, fortunately or unfortunately, devoid of any merit. It deserves to be dismissed, it is dismissed by me. The decision of the court below, in which it affirmed the findings of the trial court, is affirmed. I also endorsed the orders as to costs awarded to the respondent in the lead judgment.

Appeal is dismissed.

ADEKEYE JSC

I was privileged to read in draft the judgment just delivered by my learned brother S. Galadima JSC. My learned brother considered the issues formulated for determination exhaustively and I agree without reservation with his reasoning and conclusion. I however wish to elaborate on the points raised and considered by him by way of

emphasis.

This appeal came before the High Court of Edo State, Auchi Judicial Division by way of re-hearing on 7/9/72. In paragraph 27 of the 3rd Further amended statement of Claim as reproduced on pages 172-173 of the Record of Appeal, the plaintiffs now appellants before this court claimed as follows:-

a. Declaration that in accordance with Auchi customary Law and Tradition, the people of Auchi are the persons vested with a existing right to the use and occupation of all that piece or parcel of land lying and situate at Auchi. In the Etsako Local Government of Bendel (now Edo) State and within the jurisdiction of this honourable court and verged pink n plan No LSF 1902 filed herewith (The said and though well know to the defendant is as shown).

b. A declaration that the plaintiffs the people of Auchi community by virtue of Auchi customary Law aid Tradition are the persons entitled to the customary and/or Statutory Right of Occupancy in respect of lie said piece or parcel of land.

An order of perpetual injunction restraining the defendants by themselves their servants, agents or any other person claiming through or under them or whosoever from entering, re-entering or remaining upon the sad piece or parcel of land in purported exercise of any right in relation to the possession use and occupation of the and or any pan thereof in delegation of the plaintiffs' vested rights or interests therein.

d. Additionally, the plaintiffs seek forfeiture or declaration of forfeiture by the defendants or the area of plaintiffs land (Sabo quarters) occupied by the defendants with the permission or tacit permission of the plaintiffs before dispute arose between the parties and by reason of defendants' claim of title thereto and denial of the plaintiff's title.

In a considered judgment of the trial court delivered on 16/2/94, the plaintiffs/appellants claims were dismissed. The plaintiff/appellants being aggrieved by the decision of the trial court proceeded to the court of appeal Benin Division where they identified six issues for determination while the respondents raised four issues. The court of Appeal in the judgment delivered on 19/1/00 at page 445 of the Record lines 10-15 held after a meticulous consideration of the issues raised for determination in the appeal that-

“The findings of fact made by the learned fiat judge based on both oral as well as documentary evidence cannot be faulted.

The learned trial Judge had said in his judgment at page 257 lines 25 - 30 of the record that-

B “Finally in the light of my findings above, I hold that the case of the defendant is more probable than that of the plaintiffs when the evidence addressed in the case on either side (sic) put on an imaginary scale as laid down in the case of A.R. Mogaji & other v. Odofin & Others (1978) 4 SC 91.

C The Court of Appeal obviously agreed with the trial court that the plaintiffs/appellants failed to discharge the evidential burden of proof placed on them under section 135(1) and (2) of the evidence Act. This decision prompted the plaintiffs/appellants to further appeal to this court.

D The plaintiffs/appellants raised six issues for determination as follows

1. Was the lower court right when it upheld the judgment of the learned trial Judge and held that the evaluation of evidence by the learned trail was not perverse?

E 2. Whether the lower court was right when it agreed with the learned trial judge that the traditional histories pleaded and given in evidence by the parties as to the point of arrival and from where the parties migrated are conflicting.

F 3. Whether the lower court did not misdirect itself when it held that the learned trial Judge was right in his criticism of Exhibit A.

4. Was the lower court right when it upheld the trial court’s decision that the justice Obi’s commission of inquiry Report on the boundary between the parties this appeal was binding on the appellants?

G 5. Was the lower court right when it upheld the learned trial judge’s finding that title to the land in dispute could not be declared in the appellants’ favour because the payment of compensation to the respondent by Dumez and the establishment of Ekhvabele Primary School, Iyakpi were positive and numerous acts of ownership and possession of the land in dispute by the respondents?

6. Was the lower court right in holding the judgment of the trial court?

The respondents formulated a lone issue as follows-

“Whether the learned Justice of the court of appeals were right

in law and on the facts in holding that the appellants failed to prove their case at the court of first instance.”

The gravamen of the plaintiffs/appellant's claim before of the trial court is for declaration of title to the portion of land which is the subject-matter of the dispute. Whereas the bone of contention in the issues for determination in the appeal before this court is the evaluation and findings of facts of the learned trial judge which the lower court affirmed. B

Where a judgment of the trial court is attacked on the ground of finding or non-finding of facts or evaluation of facts the court of appeal will seek the following- C

- a. The evidence before the trial court
 - b. Whether it accepted or rejected any evidence upon the correct perception
 - c. Whether it correctly approached the assessment of the value on it D
 - d. Whether it used the imaginary scale of justice to weigh the evidence on either side.
 - e. Whether it appreciated upon the preponderance of evidence which side the scale weighted having regard to the burden of proof. E
- Daramola v. A-G Ondo State (2000) 7 NWLR (Pt.665) pg.400; Agbonifo v. Aiweroba (1988) 1 NWLR (pt.70) pg. 325; MSR (Nig) Ltd. v. Ibrahim (1975) 5 SC 55; Egonu v. Egonu (1978) 11-12 SC Pg. 111. F

A trial Judge has a primary duty to receive admissible evidence, assess the same, give it probative value and make specific findings of fact thereon. He must not impair the evidence either with his personal knowledge of matters not placed and canvassed before him or by inadequate evaluation and should endeavour to avoid vitiating the case presented by the parties through his own wrongly stated or mis-applied principle of law. He must carefully examine the evidence and clearly understand and appreciate the issues he has to resolve in the case and then proceed to resolve them. His duty is to reach a decision only upon the basis of what is in issue and what has been demonstrated upon the evidence by the parties and is supported in law. H

Bonnu Holdings Ltd. v. Bogoco (1971)1 All NLR 324
Adoniyi v. Adeniya (1972)4 SC 10

Shodeinde v. The Registered Trustees of the Ahmadiyya Movement-In-Islam (1933) 2 SCNLR 234

Adeleke v. Iyanda (2001) 13 NWLR 729 Pg.1.

Civil cases including declaration of title to land are decided on balance of probabilities. Before a judge comes to a decision as to which evidence he accepts and which evidence he rejects, he should first of all put the totality of the evidence adduced by both parties on each side of the imaginary scale. He will then assess which is heavier, not by the number of witnesses called by each party but the quality or the probative value of the testimony of those witnesses.

(Mogaji v. Odojin (1978) 4 SC 91; Mogaji v. Cadbury (Nig) Ltd. (1985) 2 NWLR (pt.7) pg. 393; Adeleke v. Asani (1994) 1 NWLR (Pt.322) pg. 536; Okoko v. Dakolo (2006) 14 NWLR (Pt.1000) pg. 401; Elewuju v. Onisaadu (2000) 3 NWLR (Pt.647) pg. 95.)

On the other hand, what is required of a plaintiff in an action for declaration of title is at least to establish his claim by preponderance of evidence. It is often enough that he has produced sufficient and satisfactory evidence in support of his claim. The test is whether the plaintiff has been able to prove to the satisfaction of the court that he has a better title than the defendant. Thus, the standard of proof in a claim for declaration of title is not different from that which is required in civil cases generally. The only difference rests on the fact that the burden of proof is on the plaintiff and it never shifts to the defendant throughout the trial.

I agree with the reasoning of the learned trial Judge where he concluded that-

"The issue for determination therefore in this case is; which of the two communities i.e. the plaintiffs or the defendants own the land in dispute in this case. The parties being different communities the determination of the boundary between the plaintiff and the defendants is the hurdle for the determination of the ownership of the land in dispute in his case.

Pg. 248 of the Record.

In the Court of Appeal, the learned justice observed that-

"this appeal will be decided on whether the plaintiffs/appellants proved exclusive possession of the land in dispute and the boundaries thereof."

Pg. 434 lines 16-19 of the Record of Appeal

Furthermore, at page 443 lines 45-50, the court said that-

“What is important in this case is the extent of the area of occupation of each community.”

The lower court also said at Pg.444 lines 7-13 of the Record that-

“The parties being different communities the determination of the boundary between the plaintiffs and the defendant is the hurdle for the determination of the land in dispute in this case. B

I must emphasize at this junction that what are of paramount importance to prove the land in dispute is not the genealogical background of the communities but

- a. The extent of the area of occupation of each community C
- b. The determination of the boundary of the plaintiff/appellants and the respondents
- c. Whether the plaintiff/appellants proved exclusive possession of the land in dispute D
- d. The extent of the land in dispute

The learned trial judge observed that the mere fact that the parties and all other communities in their neighbourhood acquired their respective lands by settlement is a convenient platform to launch the claim of the parties to the land in dispute. E

In a claim for declaration of title to land, the onus is on the plaintiff to establish his claim upon the strength of his own case and not upon the weakness of the case of the defendant. The plaintiff must satisfy the court that upon the pleadings and evidence adduced by him, he is entitled to the declaration sought. F

Gbadamosi v. Duro (2007) 3 NWLR (Pt.1021) pg.282; Dada v. Dosunmu (2006) 18 NWLR (pt.1010) pg.134; Onisaaodu v. Elewuju (2006) 13 NWLR (Pt.998) Pg.517; Ajiboye v. Ishola (2006) 13 NWLR (Pt.998) pg. 628; Otanrima v. Youdubagha (2006) 2 NWLR (Pt.964) Pg.337 Dike v. Okoloedo (1999) 10 NWLR (Pt.623) Pg.359; Eze v. Ataosie (2000) 6 SC (pt.) Pg.214; Elema v. Akenzua (2000) 6 SC (Pt.111) Pg29-30; Imama v. Akpe-Ime (2000) 7 SC (Pt.11) pg.24 at 30-31. G

The claim of the plaintiff/appellants is principally declaration of title to a disputed land. There are five accepted ways of proving or establishing title to or ownership of land as follows-

1. Traditional evidence of history.
2. Production of documents of title duly authenticated in the

sense that their due execution must be proved by positive acts of ownership extending over a sufficient length of time.

3. By acts of long possession and enjoyment of land

4. By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute. It is trite law that the establishment of one of the five ways is sufficient proof of ownership.

Idundun v. Okumagba (1976) 9 -10 SC Pg.337; Ayoola v. Odofin (1984) 11 SC Pg.120; Ewo v. Ani (2004) 17 NSCQR 36; Ndukaba v. Izundu (2007) 1 NWLR (Pt.1016) pg.432; Adeniyi v. Anwase (2006) 12 NWLR (pt993) pg.163; Nkwo v. Iboe (1998) 7 NWLR (pt.558) pg.354; Nkado v. Obiano (1997) 5 NWLR (Pt.503) pg. 31 at Pg.34; Adesanya v. Aderounmu (2000) 4 SC (pt.11) pg. 18; Piaro v. Tenalo (1976) 12 SC 31; Mogaji v. Odofin (1978) 4 SC 91.

The parties relied on the custom of their respective community and traditional history to establish their title to the land in dispute.

Evidence of traditional history is one of the five accepted methods of establishing title to land.

Oyadare v. Keji (2005) 7 NWLR (Pt.925) pg. 571; Ohiaeri v. Akabeze (1992) 2 NWLR (Pt.221) pg.1; Idundun v. Okumagba (1976) 9-10 SC Pg.337.

Where the plaintiffs/appellants and respondent anchor their case on traditional evidence in proving ownership of the land in dispute, the duty of the trial court is to weigh their evidence on the imaginary scale and determine which evidence of the two is weightier. That was exactly what the learned trial judge did when he came to the conclusion at page 257 lines 25-30 of the Records that-

"Finally, in the light of my findings above, I hold that the case of the defendant is more probable than that of the plaintiffs when the evidence adduced in the case on either side is put on an imaginary scale as laid down in the case of Mogaji v. Odofin."

The parties gave evidence about their communities and the land in dispute and particularly the boundaries and numerous acts of possession and ownership on the land in dispute, where they migrated from to settle at their present site and when.

The plaintiffs/appellants gave evidence in respect of boundaries with the respondent and other neighbouring communities like

people of Warrake and Iyabiano to the West, Aria to the North, Jattu to the North-East and Ugioli (Aviele) to the south. The testimony is that the land is encompassed by Auchi land- to the West, Auchi Polytechnic land, Igbei quarter of Auchi and Otaru Grammar School to the far North.

The witness called by the plaintiffs/appellants PW1-PW4 gave evidence of the traditional boundary marked by a mound in which an albino was buried along a footpath. This was reflected in a survey may tendered by the plaintiffs/applicants as Exh. A. The mound is regarded as the traditional boundary between the two disputing communities.

The plaintiffs/appellants tendered and relied on Exhibit C which is the boundary documents between Auchi and Uzairue made by District Officer Spottiswood and Exh. D: a boundary document between Aviele and Auchi produced by another District Officer Mr. S.J. Henry.

Exh. E-E1 - Mr. D.O. Denton's Intelligent Report

Exhibit G -A short history of Benin by Dr. Jacob Egbarevba at page 86 indicating that the founder of Auchi came from Udo Ovia Local Government Area of Benin Kingdom. Exh. H the Political Intelligence Report on Uzairue clan by a District Officer Mr. J.H. Blair. When Auchi people noticed that the respondents were encroaching more and more on their land also alienating portions to strangers, the plaintiffs/appellants protested to the government and three commissions of inquires were set put namely Obanor, Ogbetuo and Olulo commission of Inquires. They did not complete their assignment. Another book, a short history of South Ibie written by Mr. B. Omo akede was tendered as Exhibit F. The Justice Obi Commission of Inquiry was also set up to neighbouring communities - Jattu, Warrake, Iybiara, Aviele and now with South Ibie. The white paper on the Obi Commission of Inquiry was tendered as Exhibit L.

The respondents gave evidence of their ancestry-when the clan settled in their present community, their boundaries with the appellants and their acts of ownership on the land in dispute. The respondents claimed that the land in dispute is occupied by the Iyakpi community and any other person on the land is a tenant of Iyakpi community Exh. D. shows that Auchi people have their own land so also Iyakpi people. Most of the houses at Sabo are owned by Iyakpi people.

ple. The traditional boundary between South Ibie and Auchi is located at the foot of a red hill in the Polytechnic on the old Auchi-Agbede road - which is quite distinct from Benin-Auchi-Okene road. The red hill is by the valley runs across the Polytechnic auditorium and it has the ancient foot path leading to the neighbouring Warrake village. At a spot in the valley-there is a mound with rocks where an albino was buried. The place marks the boundary between South Ibie and Auchi. The boundary runs through the bush to cut across the express road from Auchi to Okene to connect the boundary with Jailu people. It runs on the opposite side to link up with the Old Auchi-Agbede road up to mile 70. This description tallied to some extent with page 4 of Exhibit L - the Obi Boundary Commission Report. The people of South Ibie were compensated for their crops when the Polytechnic was built and during the construction of Benin-Okene road by Dumez Contraction Company. Part of the land in dispute was acquired by the defunct Bendel State Government in 1985. The respondents filed a survey plan admitted in evidence as Exhibit Q. The respondent's emphasized that Auchi and South Ibie are two neighbouring clans, while the area referred to as Sabo is on South Ibie land and not on Auchi land.

The primary duty placed on a plaintiff who comes to court to claim a declaration of title to land is to show the court clearly the area of land to which his claim relates so that the land can be identified with certainty. The plaintiff has to prove title to a defined area to which the declaration can be attached. Where the land being claimed is contained in a survey plan, it must show clearly the dimensions of the land, the boundaries and other features.

- Gbadamosi v. Dairo (2007) 3 NWLR (Pt.1021) Pg.282
- G Dada v. Dosunmu (2006) 18 NWLR (Pt.1010) Pg 134
- Ogedengbe v. Balogun (2007) 9 NWLR (Pt.1039) Pg.380
- Adedusola v. Akinde (2004) 12 NWLR (Pt.887) Pg.295
- Okochi v. Animkwai (2003) 18 NWLR (Pt.851) Pg.1.

Moreover where an action is for declaration of title to land and an injunction over a piece of land, the onus lies on the plaintiff or applicant as the case may be to show clearly the area of land in dispute.

- Sowa v. Amachree (1933) 11 NLR 82
- Udofia v. Afiza (1940) 6 WACA 216

Odicha v. Chigbogwu (1994) 7 NWLR (Pt.354) Pg. 78.

Both parties testified that the boundary mark between them is a mound in which an albino was buried. The only point of disagreement however is the location of the mound. Exh. A, the appellants' plan showed that the amount is located along an old footpath. But DW2, the surveyor who prepared Exh. Q, the plan of the respondents said that

"I see the pots on the albino mound but do not know is an old footpath where the boundary between the plaintiffs and the defendants is. If I have seen a footpath I would have shown it on Exhibit Q."

The evidence of both parties however show a disagreement as to the exact location of the boundary and its extent in Exhibits A and Q - the survey plans of both sides and the oral testimony of the witnesses. The pleading of the plaintiffs/appellants is at variance with eh plan. As the plan Exh. A did not show that the land in dispute is encompassed by Auchi land.

The plaintiffs/appellants put the area in dispute in the survey plan Exh. A as 280 383 hectares. The area excluded the area occupied by Auchi Polytechnic whereas the respondents put the area in dispute as 548.97 hectares in their survey plan Exh. Q which includes the area occupied by Auchi Polytechnic minus the staff quarters. Sabo quarters is reflected as 10% of the area in dispute on Exh. A.

The learned trial judge rightly observed that the traditional histories pleaded and given in evidence by the parties conflicted on the boundary between them. The learned trial judge concluded at page 254 of the Records lines 17 - 30 that-

"In the light of all I have reproduced above, I find as a fact that the plan Exh. A filed by the plaintiffs did not represent the correct position of things on the ground, especially with respect to the positions of Iyakpi as a boundary neighbour to Auchi.

In this regard I do not believe that the boundary between the plaintiffs and defendants is correctly reflected in Exh. A. I also find as a fact that the numerous acts shown in the area in dispute such as farms are acts of ownership properly exercised by the defendants within the land in dispute.

The Court of Appeal at pg. 445 lines 10 - 15 of the Record of Appeal had this to say-

“The findings of fact made by the learned trial judge based on both oral as well as documentary evidence cannot be faulted.”

Where and when the issue of evaluation of evidence is at stake - it is only where and when the trial court fails to evaluate such evidence properly or at all that a court of appeal can intervene and itself re-evaluate such evidence, by way of re-hearing as if it were a trial court.

The plaintiffs/appellants’ counsel gave a catalogue of the alleged shortcomings in the case of the respondents. My brisk answer to this is that in the base for declaration of title, a plaintiff has the burden of proving his case upon the strength of his own evidence and cannot rely on the weakness of the defendant’s case. The plaintiffs/appellants cannot take advantage of any evidence by the defence which supports their case when their case suffers the fundamental defect of not showing precisely the identity of the land in dispute by not ascertaining the boundaries. It is basic that where a plaintiff claims a declaration of title to land and fails to give the exact extent and identity of the land he is claiming his action should be dismissed. This is a condition precedent sine qua non to the success of the claim.

Gbadamosi v. Daiso (2007) 2 NWLR (Pt.1021) Pg. 282 SC

Dada v. Dosunmu (2006) 18 NWLR (Pt.1010) Pg. 134

Aribe v. Asanlu (1980) 5 - 7 SC Pg. 78

Adeniran v. Ashabi (2004) 2 NWLR (Pt.857) Pg. 375

Otanma v. Youdubagha (2006) 2 NWLR (Pt.964) Pg.337.

Moreover the appellants in the instant case had to succeed on the strength of their case because the respondents had not set up a counter-claim. The burden on them is just to defend after the appellants must have discharged the burden placed upon them.

Kodinlinye v. Odu (1935) 2 WACA 336

Ayoola v. Odojin (1984) 2 SC 120

Dokubo v. Omoni (1999) 8 NWLR (Pt.616) Pg.647

Adelaja v. Alade (1999) 6 NWLR (Pt.608) Pg. 544

Ogun v. Akinyelu (1999) 10 NWLR 9Pt.624) Pg. 671

Akinola v. Oluwo (1962) 1 SCNLR Pg. 352.

Exhibits K, L, L1 and J tendered by the respondents reveal that the government set up a Judicial Commission of Inquiry on 15/2/82 to look into community boundary dispute between the plaintiffs/appel-

lants and the respondents. Exhibit L1 is the Government while paper on the report of Justice J.A. Obi Judicial Commission of Inquiry. The Commissions finding is that-

“The boundary between Auchi and South Ibie Iyakpi is the old Benin-Auchi-Jattu road starting from the point near Mile 70 on the said road running to Jattu, that is, road near the EDC School.” B

The plaintiffs/appellants’ counsel regard the foregoing boundary as unclear and vague and cannot therefore be binding on the parties.

I cannot pinpoint any ambiguity in the foregoing boundary demarcation as the point near Mile 70 on Jattu Road, is the road near EDC School. The Justice Obi Commission made a consequential order relating to the interests in the land which remain unaffected by the boundary demarcation. Any aggrieved party is advised to pursue existing land claims in court or file fresh claims. C

The learned trial Judge however emphasized in his decision that the Obi Commission of inquiry having been initiated by statutory authority, its decision is conclusive and same operates as Res Judicata. The court relied on the case of George Nwabia v. Adiri & 3 Ors (1958) 3 FSC 112 where it was held at pg.114 that- D

“Any arbitrator or arbitrator or other persons or body of persons who may be vested with judicial authority to hear and determine particular dispute or class of dispute by consent of the disputants by an order of the court or by a provision of a statute is undoubtedly a judicial tribunal and its awards are as conclusive and unimpeachable as the decision of any of the courts of the realm.” E

In short, the findings and decision of a commission of inquiry subject to the review of the government that set it up is binding on the parties. This is good law. The respondents contended that the decisions now appealed against are concurrent findings of the two lower courts, the trial court and the court of appeal. F

The attitude of the Supreme Court to concurrent findings of fact of the two lower courts is that it will not disturb the findings of fact of both the trial court and the court of appeal unless- G

a. Substantial error apparent on the face of the record of proceeding is shown

b. Such findings are perverse or not supported by evidence

c. Such findings were reached as a result of a wrong ap- H

proached to the evidence

d. There was a wrong application of a principle of law or procedure.

The findings of fact of the two lower courts are not affected by any of the foregoing factors. Both courts agreed that the plaintiffs/
B appellants failed to discharge the legal and evidential burden of proof placed on them in their claim for declaration of title to the disputed land. This court agrees with this conclusion. Enang v. Adu (1981) 11-12 SC pg.25; Woluchem v. Gudi (1981) 5 SC Pg.291; Ike v. Ugboaja
C (1993) 6 NWLR (Pt.301) pg.539; Igwego v. Ezeugo (1992) 6 NWLR (pt.249) pg.561; Nwadike v. Ibekwe (1987) 4 NWLR (Pt.67) pg.718; Lamai v. Orbih (1980) 5-7 SC pg. 28; Ige v. Olunloyo (1984) 1 SCNLR pg.158; Olokotinti v. Sarumi (2002) 7 SC (Pt.1) pg.152 (2002) 13 NWLR (Pt.784) pg.307; Madam Amachi Orisakwe & 2
D Ors (2005) 1 SC (Pt.1) pg.35; Samson Owie v. Solomon E. Igbiwi (2005) 1 SC (Pt.2) pg.16

With the foregoing and fuller reasons given in the lead judgment of my learned brother, I also agree that the appeal lacks merit and I hereby dismiss same. I abide by the consequential orders in the
E lead judgment including the order as to costs.

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