

**SUPREME COURT OF NIGERIA**  
16TH DECEMBER, 2011. SC. 90/2004  
CORAM: - **W. S. N. ONNOGHEN, J. A. FABIYI,**  
**O. O. ADEKEYE, B. RHODES-VIVOUR,**  
**M. U. PETER-ODILI, JJSC**

FRANCIS ADESINA AYANWALE ..... APPELLANT  
AND  
OLUMUYIWA OLUMIDE ODUSAMI .....RESPONDENT

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LAND LAW - Title - Identity of the land - Must be clearly ascertained  
- And it is only in dispute if defendant in his pleadings - Disputes the  
area or location of the land (H1)

LAND LAW - Pleadings - Identity of the land - Counsel's argument  
on same without pleadings is irrelevant - Since submissions cannot  
take the place of legal proof (H2)

LAND LAW - Title - Proof - Plaintiff succeeds on the strength of his  
case - And not on the weakness of the defence (H3)

LAND LAW - Title - Establishment of - *Idundun v. Okumagba* - Lays  
down five ways to prove ownership of a piece of land (H4)

LAND LAW - Title - Proof - Plaintiff is to plead his root of title - And  
he must lead evidence to sustain his pleadings (H5)

LAND LAW - Title - Arising from a common owner - Proof - Where  
both parties trace their title to a common owner - The 1<sup>st</sup> party to  
purchase the land has a better claim in law and equity (H6)

LAND LAW - Documents - Proof - Under Evidence Act s. 123 -  
Court will presume as valid - Documents which are not less than 20  
years at the time of trial (H7)

LAND LAW - Title - Presumption - It is presumed that the person  
with title is in possession - And once ascertained - Claim for trespass  
and injunction is sustained (H8)

### **FACTS**

This action commenced before the High court of Lagos State. Plaintiff/appellant claims a declaration of Statutory Right of Occupancy to the plot of land in contention, damages and order of injunction against defendant/respondent. He relied on two (2) documents to wit: Deeds of Assignment Exhibits B and C. He traced his title to Ojomo Eyisha Family (original owners of the land). He pleaded same in paragraphs 8-10 of the further amended statement of claim and adduced evidence and same was admitted by defendant. Exhibit B shows that plaintiff bought the land in 1961 while defendant purchased the same land vide Exhibit J in 1973. At the end of hearing, the court granted the reliefs sought by plaintiff.

Dissatisfied, defendant lodged an appeal in the Court of Appeal, Lagos Division. The court reversed the judgment of the trial court. Aggrieved, plaintiff has appealed to the Supreme Court. His counsel submitted that plaintiff was the first to purchase the land and so had a better title than defendant. Reference was made to Exhibits B and C. Counsel further submitted that there is a presumption of regularity with Exhibits B and C since both exhibits were over twenty years old at the time of commencement of this action. On the other hand, learned counsel for defendant tried to make an issue in respect of the identity of the land in dispute. Same was not pleaded and so there was no iota of evidence in that regard.

### **ISSUE FOR DETERMINATION**

*Whether, in view of the evidence before the court, the Court of Appeal was right in dismissing the Plaintiff's claim for declaration of Statutory right of occupancy.*

**HELD** (Unanimously allowing the appeal per **RHODES-VIVOUR JSC**)

#### ***Identity of the land - Must be clearly ascertained***

1. In a claim for declaration of title to land, the starting point is the identity of land. The identity of the land must be clearly ascertained. The identity of land would be in issue if, and only if the defendant in his pleadings disputed either the area of the land or its location. If pleadings are to be of any value the parties must be held bound by them.

In paragraph 2 of the further amended statement of claim the

plaintiff/appellant pleaded the identity of the land as follows:

“2. The defendants are squatters on a piece of land situate lying and being at 2A Adeshiyan Street Palm grove, Ilupeju, off Ikorodu Road. The Plan of which is attached herewith.”

In response, the defendant averred in paragraph 2 of the defendant’s pleadings that:

“2. The defendant denies paragraph 2 of the statement of claim and avers that he is in lawful possession of the property at No. 2A Adeshiyan Street .....” (p. 2555 G)

***Identity of the land*** - Counsel’s argument on same

2. There is no doubt from the pleadings that No. 2A Adeshiyan Street, Palm Grove, Ilupeju Lagos is the identity of the land in dispute. The defendant did not dispute the area of the land or its location in his pleadings and so the identity of the land is not in issue. Arguing the issue of identity of the land in his brief without pleading, it goes to no issue since counsel submissions no matter how alluring can never take the place of legal Proof. (p. 2556 C)

***Title - Proof - Plaintiff succeeds on the strength of his case***

3. In a claim for declaration of title the plaintiff succeeds on the strength of his case and not on the weakness of the defendant’s case and the onus lies on the plaintiff to satisfy the court on the evidence he adduced that he is entitled to a declaration of title. If the plaintiff fails to discharge the onus, his claim fails and his action is dismissed. (p. 2556 E)

***Title - Establishment of***

4. Now, title to land or ownership of land may be proved in any of the following five ways:

1. by traditional evidence;
2. by production of documents of title which are duly authenticated;
3. by acts of Selling, Leasing, Renting out all or part of the land or farming on it or on a portion of it;
4. by acts of long possession and enjoyment of land and;
5. 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. (p. 2556 G)

***Plaintiff is to plead his root of title***

5. One of the ways to succeed in a claim for title to land is for the plaintiff to plead a continuous chain of devolution. That in effect amounts to tracing his root of title. Thereafter he must lead evidence to sustain the pleadings. Productions of documents of title are necessary as they make oral evidence more credible. (p. 2557 C)

***Title - Arising from a common owner - Proof***

6. Furthermore all the relevant facts in the relevant exhibits which show root of title of the plaintiff were pleaded. Where the plaintiff and the defendant trace their title to an established owner, the 1st to purchase the land is regarded as the owner of the land. He who is first in time has a better claim in Law and Equity.

My Lords, the plaintiff/appellant and the defendant/respondent trace their title to an established owner, the Ojomo Eyisha family. How the Ojomo Eyisha family came on the land is not in issue as none of the parties contests that family's ownership of the land. Exhibit B shows that the plaintiff/appellant purchased the land in 1961, while Exhibit J shows that the defendant purchased the land in 1973. The plaintiff/appellant has a better title to the land. He is the rightful owner of the land in dispute. (p. 2558 D)

***Documents - Proof - Under Evidence Act s. 123***

7. Where a person has been in possession of land for 20 years or a long time and he produces from his custody his title deeds, the custody is proper. By the provisions of section 123 of the Evidence Act if documents are not less than 20 years at the time of trial in which they are to be used, the court will presume that they were properly signed by the person whose signature they bear.

This reasoning is founded on necessity and convenience bearing in mind that it is difficult and at times impossible to prove the signature, handwriting or execution of documents over 20 years old as most of the people acquainted with the signature, etc would be dead, or if alive their memories may have faded. (p. 2559 A)

***Title - Presumption***

8. Evidence led and quite rightly found by the learned trial judge is that the respondent was in trespass. Proof of ownership is prima facie proof of possession. The presumption being that the person with title to the land is in possession. Once the court finds that a party has a better title to the land, a claim for trespass and injunction are easily sustained, did (sic) the injunction pronounced is of the perpetual type that is for all time. (p. 2559 E)

***REPRESENTATION***

Paul C. Ananaba for the Appellants

O. O. Ojutalayo with V. O. Shoneye Esq. for the Respondents

***CASES REFERRED TO***

Lawson v Ajibutu (1997) 6 NWLR (Pt.507) p.14

Bello v NBN (1992) 8 NWLR (Pt.246) P.206

Ishola v Ajiboye (1998) 1 NWLR (Pt. 532) p.74

Kodilinye v Odu (1935) 2 W.A.C.A. p.336

Abisi v Ekwealor (1993) 6 N.W.L.R. (Pt.302) p.43

Salami v Gbodolu (1997) 4 NWLR (Pt.449) p.377

Idundun v Okumagba (1976) 9/10 SC p.227

Adelaja v Faroiki (1990) 2 NWLR (Pt 131) P.137

Obodo v. Olumo & Anor. (1987) 3 NWLR 111 at 123

Ayoola vs. Odofoin (1984) 11 SC 120

Ewo vs. Ani (2004) 17 NSC Q.R 36

Nkado vs. Obiano (1997) 5 NWLR (pt. 503) pg.31

Nkwo vs. Iboe (1998) 7 NWLR (pt. 558) pg.334

Oyadare vs. Keji (2005) 7 NWLR (pt.925) pg.571

Ohiaeri vs. Akabele (1992) 2 NWLR (pt.221) pg.1

***STATUTE REFERRED TO***

Evidence Act LFN 1990, s. 123

***LEAD JUDGMENT BY RHODES-VIVOUR JSC***

The appellant as plaintiff on a further amended statement of claim, claimed from the respondent as defendant the following:

1. Declaration of Statutory right of occupancy to the piece or parcel of land situate, lying and being at Adesiyan Street, Palm grove,

Ilupeju, off Ikorodu Road, Lagos State.

2. N500 damages for trespass;

3. An order of injunction restraining the defendant jointly and severally, their respective servants and/or agents from committing further acts of trespass on the said parcel of land.

B The plaintiff gave evidence to show that he was entitled to a declaration of title to the land in dispute. The defendant and one Mr. John Ayo Adegboye gave evidence contending that it is the defendant that is the lawful owner of the land. Fourteen documents were admitted in evidence as exhibits. In a considered judgment delivered on the 24th day of November, 2000, the learned trial judge granted all the plaintiff's reliefs. The learned trial judge reasoned as follows:

C *"I prefer the evidence of the plaintiff and his witnesses to that of the defendant and his witness. The 3rd defendant failed to call the proprietor of the school whom he claimed to have given a portion to testify for him. From the evidence before me it is my finding and I so hold that the plaintiff in this case has a better title. On the whole, having gone through the whole evidence and having given my most careful scrutiny, I have come to the conclusion that the plaintiff's case must succeed"*.

D Dissatisfied, the defendant lodged an appeal in the Court of Appeal, Lagos Division. That Court reversed the judgment of the learned trial judge. In allowing the appeal the Court of Appeal said:

F *"In the instant case, the plaintiff/respondent on whom lay the onus of proof failed to give evidence as to how Ojomo Eyisha family came on the land. He did not, by evidence link his Deeds of Conveyance to the established land owning family. As I said all he did was to tender bare Deeds of Conveyance...the Learned trial Judge was wrong in granting a declaration of title to the respondent..."*

G This appeal is against that judgment. In accordance with rules of this Court briefs were filed and exchanged. The appellant's brief was duly filed on the 7th of June, 2004, while the respondent's brief was duly filed on 1st of September, 2004.

H From the Notice of Appeal filed on 11th December 2002, but deemed duly filed on 4/10/11 a sole issue was formulated for determination. It reads:

*"Whether, in view of the evidence before the court, the Court of Appeal was right in dismissing the Plaintiff's claim for declaration*

*of Statutory right of occupancy."*

Learned Counsel for the respondent also formulated a sole issue for determination. It reads:

*"Whether the Court of Appeal was right in dismissing the appellant's claim for Declaration of title when the appellant merely tendered two Deeds of Conveyance (Exhibits B and C) in proof of his claim but failed to give traditional evidence of his root of title."* <sup>B</sup>

Both issues ask the same question, and so this appeal shall be heard on the issue formulated by the appellant.

At the hearing of the appeal on 4th of October, 2011 both counsel adopted their briefs and urged this court to find as per their respective conclusions. Arguments in the briefs run as follows: <sup>C</sup>

Learned Counsel for the appellant observed that both parties traced their title to the Ojomo Eyisha family, the original owner of the land in dispute. He submitted that the appellant was the first to purchase the land and so had a better title than the respondent. Reference was made to Exhibits B and C. <sup>D</sup>

He further submitted that there is a presumption of regularity with Exhibits B and C since both exhibits were over twenty years old at the time of commencement of this action. Concluding, learned Counsel contended that the judgment of the Court of Appeal was erroneous and ought to be set aside. <sup>E</sup>

Learned Counsel for the respondent observed that the area of land in Exhibit B is more than the area in Exhibit C contending that both deeds of conveyance are irreconcilable. In further argument he observed that the mere tendering of documents is not enough to prove title to land. Reference was made to *Lawson v Ajibutu* (1997) 6 NWLR (Pt.507) p.14, *Piaro v Tenalo* 12 SC p.31. <sup>F</sup>

Concluding he observed that the Court of Appeal was right in dismissing the case of the appellant. <sup>G</sup>

***In a claim for declaration of title to land, the starting point is the identity of land. The identity of the land must be clearly ascertained. The identity of land would be in issue if, and only if the defendant in his pleadings disputed either the area of the land or its location. See: Ezeudu & Ors v Obiaewu (1986) 2 NWLR (Pt. 21) p. 208. If pleadings are to be of any value the parties must be held bound by them.*** <sup>H</sup>

***In paragraph 2 of the further amended statement of***

**claim the plaintiff/appellant pleaded the identity of the land as follows:**

**“2. The defendants are squatters on a piece of land situate lying and being at 2A Adeshiyan Street Palm grove, Ilupeju, off Ikorodu Road. The Plan of which is attached herewith.”**

**B In response, the defendant averred in paragraph 2 of the defendant’s pleadings that:**

**“2. The defendant denies paragraph 2 of the statement of claim and avers that he is in lawful possession of the property at No.2A Adeshiyan Street .....”**

**C There is no doubt from the pleadings that No. 2A Adeshiyan Street, Palm Grove, Ilupeju Lagos is the identity of the land in dispute. The defendant did not dispute the area of the land or its location in his pleadings and so the identity of the land is not in issue. Arguing the issue of identity of the land in his brief without pleading, it goes to no issue since counsel submissions no matter how alluring can never take the place of legal Proof. See Bello v NBN (1992) 8 NWLR (Pt.246) P.206, Ishola v Ajiboye (1998) 1 NWLR (Pt. 532) p.74. The identity of the land is not in issue.**

**F In a claim for declaration of title the plaintiff succeeds on the strength of his case and not on the weakness of the defendant’s case and the onus lies on the plaintiff to satisfy the court on the evidence he adduced that he is entitled to a declaration of title. If the plaintiff fails to discharge the onus, his claim fails and his action is dismissed. See Kodilinye v Odu (1935) 2 W.A.C.A. p. 336, Abisi v Ekwealor (1993) 6 N.W.L.R. (Pt.302) p.43, Salami v Gbodolu (1997) 4 NWLR (Pt.449) p.377.**

**G Now, title to land or ownership of land may be proved in any of the following five ways:**

- 1. by traditional evidence;**
- 2. by production of documents of title which are duly authenticated;**
- H 3. by acts of Selling, Leasing, Renting out all or part of the land or farming on it or on a portion of it;**
- 4. by acts of long possession and enjoyment of land and;**
- 5. 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.**

See *Idundun v Okumagba* (1976) 9/10 SC p.227

In allowing the appeal the Court of Appeal said that all that the plaintiff did was to tender bare deeds of conveyance. Reference was made to the judgment of this Court in *Lawson & Anor v Ajibutu & Ors* (1997) 6 NWLR (Pt. 507) p.14, where Ogunbare JSC said that:

*“production of documents of title alone is not sufficient to discharge the onus on a plaintiff to prove the title he claims; he must go further to trace the root of his title to one whose ownership of the land has been established”.*

**One of the ways to succeed in a claim for title to land is for the plaintiff to plead a continuous chain of devolution. That in effect amounts to tracing his root of title. Thereafter he must lead evidence to sustain the pleadings. Productions of documents of title are necessary as they make oral evidence more credible.**

In tracing the root of his title the plaintiff/appellant pleaded in paragraphs 1, 7, 8, 9, and 10 as follows:

1. The plaintiff is the Administrator and sole surviving beneficiary of the estate of Yussuf Ayanwale who died intestate in Lagos on the 29th day of July, 1982.

7. Under and by virtue of deeds of conveyance dated the 12th day of July 1954 and registered as No. 7 at page 7 in volume 1003 of the register of deeds kept in the office at Lagos and another dated the 17th day of July, 1961 and registered as No.36 at page 36, in volume 489 of the register of deeds kept in the office at Ibadan, now Lagos the said piece or parcel of land was vested in the late Yussuf Ayanwale and his predecessor in title in fee simple free from all incumbrances.

8. The plaintiff further avers that the said parcel of land forms a portion of Ojomu Eyisha family land which has been in the possession of the said family from time immemorial until in 1913 a portion including the land in dispute was sold by the said family to the predecessor in title of Yussuf Ayanwale.

9. Since 1913 the predecessor in title of the said Yussuf Ayanwale remained in possession and exercised maximum rights/acts of ownership thereon without let or hindrance until same was

conveyed to the Late Ayanwale in 1961.

10. The Late Yussuf Ayanwale remained in peaceable possession and exercised maximum acts of ownership on the said parcel of land without let or hindrance until his death in 1982.

He led evidence in support of his pleadings thus:

- B “I know the land in dispute at No. 2A Adeshiyan Street Palm Grove. The land was originally owned by Ojomo Eyisha family, my late father bought the land from one Alimi Orishasola....this is the Deed of Transfer - Exhibit B. - the document vesting title in Alimi Orishasola was passed to me. This is the document - Exhibit C.
- C I know late Yusuf Ayanwale. He was my father. He died on the 29th July 1982. After his death I obtained letters of Administration. This is the Letter of Administration” (see Page 123 of the Record of Appeal).

To my mind the above extract from the testimony of the plaintiff/appellant shows that he traced the root of his title to Ojomo Eyisha family whose ownership of the land has been established and he linked his deed of conveyance to the established land owning family.

**Furthermore all the relevant facts in the relevant exhibits which show root of title of the plaintiff were pleaded. Where the plaintiff and the defendant trace their title to an established owner, the 1st to purchase the land is regarded as the owner of the land. He who is first in time has a better claim in Law and Equity.** See: *Adelaja v Faroiki* (1990) 2 NWLR (Pt 131) P.137.

**My Lords, the plaintiff/appellant and the defendant/respondent trace their title to an established owner, the Ojomo Eyisha family. How the Ojomo Eyisha family came on the land is not in issue as none of the parties contests that family's ownership of the land. Exhibit B shows that the plaintiff/appellant purchased the land in 1961, while Exhibit J shows that the defendant purchased the land in 1973. The plaintiff/appellant has a better title to the land. He is the rightful owner of the land in dispute.**

Section 123 of the Evidence Act states that:

- H “123. Where any document, purporting or proved to be twenty years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that persons handwriting

*ing, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested”.*

***Where a person has been in possession of land for 20 years or a long time and he produces from his custody his title deeds, the custody is proper. By the provisions of section 123 of the Evidence Act if documents are not less than 20 years at the time of trial in which they are to be used, the court will presume that they were properly signed by the person whose signature they bear.***

***This reasoning is founded on necessity and convenience bearing in mind that it is difficult and at times impossible to prove the signature, handwriting or execution of documents over 20 years old as most of the people acquainted with the signature etc would be dead, or if alive their memories may have faded.***

***Exhibits B and C are Conveyances which show the plaintiffs/appellants root of title. They were executed in 1954 and 1961, well over 20 years before proceedings commenced in this case. The presumption is that the documents supra are genuine. This is so as the adverse party does not dispute them, and they are over 20 years as at the time proceedings in which they were to be used commenced. Evidence led and quite rightly found by the learned trial judge is that the respondent was in trespass. Proof of ownership is prima facie proof of possession. The presumption being that the person with title to the land is in possession. Once the court finds that a party has a better title to the land, a claim for trespass and injunction are easily sustained, did (sic) the injunction pronounced is of the perpetual type that is for all time.***

***In the light of all that I have been saying, the appeal is allowed. The judgment of the Court of Appeal is set aside and the judgment of the High Court is restored. The appellant is entitled to the costs of this appeal which I assess as N50,000.00.***

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**ONNOGHEN JSC**

I have had the benefit of reading in draft, the lead judgment of

my learned brother RHODES-VIVOUR, JSC just delivered. I agree with his reasoning and conclusion that the appeal has merit and should be allowed.

I accordingly allow the appeal and abide by the consequential orders made in the said lead judgment including the order as to costs.

B Appeal allowed.

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### **FABIYI JSC**

C I have had a preview of the judgment just delivered by my learned brother, Rhodes-Vivour, JSC. I agree with d(sic) to arrive at the conclusion that the appeal is meritorious and deserves to be allowed.

At the trial court, the appellant, as plaintiff thereat, claimed D declaration of Statutory Right of Occupancy to the plot of land in contention, damages and order of injunction. He relied on two (2) documents to wit: Deeds of Assignment Exhibits B and C. He traced his title to Ojomo Eyisha Family whose ownership of the land had been established. He pleaded same in paragraphs 8-10 of the further amended statement of claim and adduced evidence and same E was admitted by the defendant. Indeed, its common ground between the parties. Exhibit B shows that the plaintiff bought the land in 1961 while the defendant purchased the same land vide Exhibit J in 1973.

F The learned trial Judge found in favour of the plaintiff but on appeal to the Court of Appeal, Lagos Division ("the court below" for short) the judgment of the trial court was overturned. Hence, the appeal to this court was activated.

The issue formulated in his brief of argument read as follows:-

G *"Whether, in view of the evidence before the court, the Court of Appeal was right in dismissing the plaintiff's claim for declaration of statutory Right of Occupancy"*

H The appellant, as plaintiff did not rely on bare documents alone to prove his title as found by the court below. He pleaded and gave evidence which traced his title to Ojomo Eyisha Family whose ownership of the land had been established as enjoined by this court in Lawson & Anr. v. Ajibutu & Ors. (1997) 6 NWLR (Pt.507) 14. I should say it quietly that the stance of the court below was arrived at through misdirection of evidence and same led to erroneous conclu-

sion, with due respect.

The learned counsel to the respondent tried to make an issue in respect of the identity of the land in dispute. Same was not pleaded and so there was no iota of evidence in that regard. The learned counsel in the brief of argument made submissions galore on the point, all to no avail. This is because addresses are designed to assist the court. No amount of brilliance in a fine speech can make up for lack of evidence to prove and establish or else disprove and demolish points in issue. See: *Niger Construction Ltd. v. Okugbeni* (1987) 4 NWLR (pt.67) 787 at 792; *Obodo v. Olumo & Anr.* (1987) 3 NWLR 111 at 123. B  
C

As stated earlier on, the plaintiff bought the land as manifest in Exhibit B in 1961. On the other hand, Exhibit J shows that the defendant carried out his own purchase of the land in 1973. It needs no gainsaying that the plaintiff has upper hand over the defendant in law. Apart from that, he has priority in equity. A court of law as well as a court of equity must take note of this salient point in adjudicating over the affairs of men; as herein. In all spheres, it occurs to me that the plaintiff has a better title than the defendant. D

For the above reasons and more especially the detailed ones adumbrated in the lead judgment of my learned brother, I too, feel that the appeal is meritorious and should be allowed. I order accordingly and endorse all the consequential orders contained in the lead judgment; that relating to costs inclusive. E  
F

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### **ADEKEYE JSC**

I was privileged to read in draft, the judgment just delivered by my learned brother Rhodes-Vivour JSC. G

My lord had restated the background facts of the case and the issues raised for the determination of this appeal by the parties in their respective briefs. I agree in toto with the exhaustive reasoning and conclusion of my learned brother. I shall however chip in a few words by way of emphasis. H

The appellant, before this court Francis Adeshina Ayanwale as plaintiff before the High Court of Lagos according to the endorsement in the Writ of Summons and the averments in the penultimate paragraph of his statement of claim asked for relief's as follows: -

(1) Declaration of Statutory right of occupancy to the piece or parcel of land situate lying and being and at Adeshiyan street, Palm Grove, Ilupeju off Ikorodu Road.

(2) Five Hundred Naira (N500.00) damages for trespass committed jointly or severally by the defendants by breaking into the said  
B parcel of land without the knowledge and/or consent of the plaintiff.

(3) Injunction restraining the defendants jointly and severally, their servants and for agent from further acts of trespass on the said parcel of land.

C The plaintiff/appellant predicated his claim to the Statutory right of occupancy over the land in dispute to the purchase of the piece land by his deceased father in 1954. In furtherance of his claim the plaintiff/appellant tendered two conveyances more than twenty years old before the commencement of the action. His testimony which  
D confirmed the contents of both conveyances Exhibits B and C, was that the land in dispute belonged to one Ojomo-Eyisha family which sold the land to his deceased father's predecessor-in-title since 1913. His father acquired the land in 1954 and remained in effective and undisturbed possession until 1982. Under cross-examination during  
E the trial in the high court, the 3rd defendant/respondent admitted that Ojomo-Eyisha was the original owner of the land. The trial court granted the plaintiff's claim. The respondent successfully appealed against the judgment. The Court of Appeal in dismissing the appellant's claim for declaration of title held that the appellant had not  
F discharged the onus on him in a claim for declaration of title by merely tendering the Deeds of Conveyance without giving traditional evidence of his root of title. I agree with my learned brother in his lead judgment that the lower court overlooked vital areas of proof of  
G ownership in a claim for declaration of title and thereby inevitably arrived at a perverse decision.

There are five ways of proving or establishing title to land or ownership of land. These are by:

- (a) Traditional evidence.
- H (b) Production of documents duly authenticated.
- (c) By positive acts of ownership extending over a sufficient length of time.
- (d) By acts of long possession and enjoyment of the land.
- (e) By proof of possession of connected or adjacent land in

circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

The law is that the establishment of one of the five ways is sufficient proof of ownership. *Ayoola vs. Odofin* (1984) 11 SC 120, *Ewo vs. Ani* (2004) 17 NSC Q. R 36, *Ndukuba vs. Izundu* (2007) 1 NWLR pt. 1016 pg. 432, *Nkado vs. Obiano* (1997) 5 NWLR pt. 503, pg.31, *Nkwo vs. Iboe* (1998) 7 NWLR pt. 558, pg. 334, *Adesanya vs. Aderounmu* (2000) 6 SC pt. 11, pg. 18. Evidence of traditional history is one of the accepted methods of establishing title to land. *Oyadare vs. Keji* (2005) 7 NWLR, pt. 925, pg.571, *Ohiaeri vs. Akabele* (1992) 2 NWLR pt.221, pg.1, *Idundun vs. Okumagba* (1976) 9 - 10 SC, pg.337.

The plaintiff/appellant relied on two conveyances Exhibits, B and C executed between his deceased father and the vendors of the disputed land. Production of a deed of Conveyance or document of title is one of the five ways of acquiring ownership or title to land. Even then production of a deed of conveyance or any document of title does not automatically entitle a party to a claim in declaration. Before the document of title is admitted as sufficient proof of ownership the court must satisfy itself that:-

- a) The document is genuine or valid
- b) It has been duly executed, stamped and registered.
- c) The grantor has authority and capacity to make the grant.
- d) The grantor has in fact what he proposes to grant.
- e) That the grant has the effect claimed by the holder of the instrument. *Romaine vs. Romaine* (1992) 4 NWLR, pt. 238, Pg. 650, *Kyari vs. Alkali* (2001) FWLR, pt.60, pg. 1481, *Dabo vs. Abdullahi* (2005) 29 WRN, 11 (2005) 7 NWLR, pt.923, pg.181.

Exhibits B and C relied upon by the plaintiff/appellant are conveyances over twenty years old at the time of the commencement of the action. Section 123 of the evidence Act stipulates that:

“Where any document purporting or proved to be twenty years, is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document which purports to be in the handwriting of any particulars person is in that persons handwriting and in the case of a document executed or attested, that it was duly executed

and attested by the persons by whom it purports to be executed and attested.”

In this appeal there is no dispute at any time about original owners of the land as both parties traced their root of to a common vendor - Ojomo Eyisha family. It was in evidence before the trial court by both parties that Ojomo-Eyisha family was the original owner of the land. Where two contending parties in a land in dispute derive title from a common vendor the first in time takes priority. This is summed up in the Latin maxim “quo prior est tempore, potior est jure” meaning the first in time has the strongest title. The plaintiff/appellant’s two conveyances, Exhibits B and C were prepared in 1954 and 1961 respectively. The respondent claimed that he made part payment for the purchase of the land a sum of N2,000 out of N3,500 in May, 1972. *Auta vs. Ibe* (2003) 13 NWLR pt 837, pg.247, *Ilona D vs. Idakwo* (2003) 11 NWLR pt.830, pg.53.

The resultant effect is that since the first to acquire title has a stronger title, then the later in time must give way to the earlier one. He cannot in the circumstance maintain an action against the one who first obtained title or interest in the property. The simple reason being that the grantor or original owner who divested himself of his title over the land in dispute to the first grantee would have nothing left to convey to the subsequent grantee. Where a party has satisfied the court as to his title to the land in dispute, the court need not inquire into the title of his predecessor - in - title. The party does not need to prove the title of his vendor except where it has become an issue. *Dosunmu vs. Joto* (1987) 4 NWLR pt. 63 and pg.293.

The court however, owes a duty particularly where both parties agree that the title to land in dispute belongs to a common vendor for either side to succeed he must be able to trace his root of title to the common vendor. The plaintiff/appellant based on the available evidence had successfully traced his root of title to the disputed land to Ojomo - Eyisha family the original owners of the land.

With fuller reasons given in the lead judgment of my learned brother, I also allow the appeal, set aside the judgment of the Lower Court and affirm the judgment of the trial Court. I abide the consequential orders made by him including the order of costs.



**PETER-ODILI JSC**

I have had the privilege of reading the draft of the judgment prepared by my learned brother, Bode Rhodes-Vivour JSC and I agree with the decision he made and the reasoning therein.

The plaintiff /appellant sued (3) persons including the respondent's father herein. Two of the defendants did not defend the action. During the course of the trial the respondent's father died and the respondent was substituted for his deceased father as the defendant. The plaintiff herein claimed a declaration of Statutory Right of occupancy in respect of the parcel of land which his late father purchased from the purchaser who bought from the Ojomo/Eyisha family in 1954; the plaintiff also claimed that his father was put in possession and he exercised maximum rights of ownership upon the said parcel of land until his death in 1982, and after his father's death, he obtained letters of administration to administer his father's estate after which he brought this action. He tendered two conveyances in support of his claim. Both conveyances were more than twenty (20) years old before the commencement of the action. The Defendant on the other hand corroborated the story of the plaintiff as to the origin of title (i.e. Ojomo/Eyisha family). The defence of laches, acquiescence and standing by and statutes of limitation put up before the court by the defendant were rejected by the Court of Appeal. The Court of Appeal in its judgment was of the opinion that the plaintiff was not entitled to succeed because the plaintiff failed to trace his title to that of the radical owner.

In keeping with the rules of this court, the parties through counsel filed their Briefs. That of the appellant was filed on 7/6/04 and the respondent filed theirs on 1/9/04. Appellant through counsel raised a single issue which is as follows:

Whether, in view of the evidence before the court, the Court of Appeal was right in dismissing the plaintiff's claim for declaration of statutory right of occupancy.

The respondent also formulated a sole issue for determination which is as follows:

Whether the Court of Appeal was right in dismissing the appellant's claim for declaration of title when the appellant merely tendered two deeds of conveyance (Exhibits B and C) in proof of his claim but failed to give traditional evidence of his root of title.

On the 4/10/11 date of hearing learned counsel on behalf of the appellant argued that the plaintiff now appellant had established his title and that the Court of Appeal was wrong to expect more than was possible for him to produce.

Learned counsel on behalf of respondent disagreed submitting that the court below was right in dismissing the appellant's case saying the appellant failed to trace his title to the person with radical title from which he derived his.

The two Deeds of Conveyance, Exhibits B and C tendered by the appellant were Exhibit B, the conveyance of plaintiff/appellant's father dated 17th July 1961 No.36/36/409 and Exhibit C, the conveyance of his father's vendor dated 12th July, 1954 No.7/7/1003. These exhibits confirmed that the land in dispute belonged to the Ojomo/Eyisha family which sold same to the plaintiff/appellant's predecessor who had title since 1913. The evidence proffered by the appellant was to the effect that appellant's deceased father's predecessor-in-title and his deceased father remained in effective and undisturbed possession of the land in dispute until 1982 when he noticed the presence of the original three defendants in this suit at the court of first instance which included the respondent.

The respondent's challenge that the appellant had not established a nexus between the plaintiff/appellant and the radical owner cannot be sustained, the appellant have tendered two conveyances more than 20 years old and so Section 123 of the Evidence Act avail them since there are needed no further proof of the signatures and because there was really no contradiction from the other side.

Clearly the link between appellant and the radical owner was properly satisfied and the equity of the case resided in the appellant. Therefore the Court of Appeal proceeded from a misdirection and could only do what it did, arrive at an erroneous conclusion. I place reliance on the case of *Lawson v. Ajubulu* (1997) 6 NWLR (Pt.507) 14.

From what I have said above and the fuller reasons of my learned brother, I allow this appeal and set aside the judgment of the Court of Appeal while restoring the judgment of the trial High Court.