

SUPREME COURT OF NIGERIA
4TH MAY, 2012. SC. 295/2003
CORAM:- **I. T. MUHAMMAD, O. O. ADEKEYE,**
B. RHODES-VIVOUR, N. S. NGWUTA,
M. U. PETER-ODILI, JJSC

ALHAJI ADEBAYO AKANDE APPELLANT
AND
1. JIMOH ADISA
2. HRH ALHAJI I. SULLU-GAMBARI,
EMIR OF ILORIN RESPONDENTS

CHIEFTAINCY MATTERS - Appeals - Actions - Pleadings - Proof -
Plaintiff must rely on strength of his case - And not on weakness of
defence (H1)

EVIDENCE - Pleadings - Averment - Not supported by evidence -
Fate - Such averment is deemed abandoned - And is not to be relied
upon (H2)

APPEALS - Concurrent decision - Supreme Court does not interfere
- Unless it is shown to be perverse - Or contrary to known law (H3)

FACTS

Before the High Court of Kwara State sitting at Ilorin, plaintiff/
appellant brought this chieftaincy matter against defendants/respond-
ents, claiming inter alia, a declaration to title of Alagar of Agar king-
dom. Appellant nevertheless did not specifically prove by credible
evidence how and when he became the Alagar of Agar. On his part,
respondent contended that appellant had never been the Alagar of
Agar. Respondent further contended that appellant has the burden
to establish how he ascended the throne of Alagar of Agar in accord-
ance with Agar native law and custom. At the end of hearing, the
court held that appellant failed to establish conditions that will entitle
him to the rights sought. Not satisfied, appellant appealed to the
Court of Appeal, Ilorin Division. The court dismissed the appeal and
affirmed the decision of the trial court. Aggrieved further, appellant
appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. *“whether the court below was right to have held that the plaintiff did not prove his claim before the trial court and whether it was right to have held that if the totality of the evidence adduced by both parties should be put on an imaginary scale, the evidence of the respondents and their witnesses will be heavier than those adduced by the appellant and his lone witness.*

2. *Whether the court below was right to have affirmed the decision of the trial court.”*

HELD (Unanimously dismissing the appeal per
MUHAMMAD JSC)

CHIEFTAINCY MATTERS - Appeals

1. I think my spring board in starting the consideration of this appeal is to have recourse to the provisions of sections 135 - 137 of the Evidence Act, Cap 112 LFN, 1990 (Now Cap. E14 LFN, 2004) By the above provisions therefore, it is the requirement of the law that he who asserts, must prove. In all civil matters, the proof rests squarely on the person who approaches the court (plaintiff) praying that his legal right, which he claims from somebody (defendant) should be restored to him. In our adversarial system of adjudication, it is the practice and the law that the plaintiff should first lay his complaints before the court by filing his pleadings.

My Lords, there is no dispute that this is a civil appeal. There is no dispute also that it is an appeal on chieftaincy matter. The requirements of the law in all civil appeals is that the plaintiff should rely on the strength of his case rather than rely on the weakness of the defendants case. All the law requires from him is to discharge the burden placed on him by the law.

(p. 1690 B/1696 D)

Pleadings - Averment - Not supported by evidence - Fate

2. Next is that, where issues have been joined with him by the defendant, then he shall go ahead to call evidence to establish each and every one of the averments and the evidence must

tally. They go together. They are inseparable twins. They either survive together or perish together. Where there is an averment which has no corresponding evidence, it is deemed abandoned. Where there is evidence but there is no supporting averments, it is a worthless evidence. (p. 1690 F)

APPEALS - Concurrent decision

3. The above holding by the court below makes it to be a concurrent decision of which I have no reason to tamper with unless it is shown to be perverse or contrary to known principles of the law which the appellant failed to show.

(p. 1696 C)

NOTABLE POINT OF INTEREST

ADEKEYE JSC

1. Declaratory actions – Condition precedent in

It is right and proper to identify the purpose of a declaratory action and what a party must show to be entitled to it. It has been emphasized in decided authorities of this court that the purpose of a declaratory action is essentially to seek an equitable relief in which the plaintiff prays the court in the exercise of its discretionary jurisdiction to pronounce or declare an existing state of affairs in law in his favour as may be discernable from the averments in the statement of claim. In order to be entitled to a declaration a person must show evidence of a future legal right subsisting or in the future and that the right is contested. What would entitle a plaintiff to a declaration is a claim which a court is prepared to recognize and if validly made it is prepared to give legal consequence. (p. 1702 B)

REPRESENTATION

Prince J. O. Ijaodola, for the Appellant

Mr. M.I. Hanafi with D. T. Nwachukwu, for 1st respondent

Mrs. Funsho Lawal (DCL, MOJ, Ilorin), with Moyosore G. Rasheed (SSC) for the 2nd respondent

CASES REFERRED TO

Adigun v. A-G Oyo State (1983) 1 NWLR (Pt.53) 678

- Dantata v. Mohammed (2000) 7 NWLR (Pt. 664) 176
 Ekundayo v. Baruwa (1965) 2 ALL NLR 211
 Nwokudu v. Okanu (2010) 3 NWLR (Pt. 1181) 362
 Nkwo v. Iboe (1998) 7 NWLR (Pt. 558) 354
 Uche v. Eke (1998) 9 NWLR (Pt. 564) 24
 B Umoru v. Zibiri (2003) 11 NWLR (Pt. 832) 647
 Mafimisebi v. Ehuwa (2007) 2 NWLR (Pt. 1018) 385
 Olowu v. Olowu (1985) 3 NWLR 372
 Ezeonu v. Onyechi (1996) 3 NWLR (Pt. 438) 499
 C Ogunbiyi v. Adewunmi (1988) 5 NWLR (Pt. 93) 215
 Ivienagbor v. Bazuaye (1999) 9 NWLR (Pt. 620) 52
 Olaiya v. Olaiya (2002) 8 NWLR (Pt. 782) 652
 Adegoke v. Adibi (1992) 5 NWLR (Pt. 242) 410
 Amodu v. Amode (1990) 5 NWLR (Pt. 150) 356

D

STATUTES & RULES REFERRED TO

Evidence Act Cap. E14 LFN 2004, s. 137
 Kwara State High Court Civil Procedure Rules 1989, O. 25 r. 14(1)

E

LEAD JUDGMENT BY MUHAMMAD JSC

The appellant, herein, as plaintiff at the High Court of Kwara State (trial court), holden at Ilorin, took out a writ of summon, claiming some declaratory reliefs against the respondents herein, as defendants. The plaintiff's statement of claim contains the reliefs sought as follows:

- "12. Wherefore the plaintiff prays for:
- i. a declaration that he is the Alagar of Agar
 - ii. a declaration that the 1st defendant is not the Alagar of Agar
 - G in that he is not appointable since he is not a member of Abdul Salami family of Agar and (ii) his appointer has no power to appoint an Alagar and;
 - iii. a perpetual injunction prohibiting the 1st defendant from
 - H parading himself as the Alagar and the 2nd defendant from so treating him."

In their respective statements of defence, both the 1st and 2nd respondents, as defendants, at the trial court, denied the claims of the appellant. Full trial including addresses by the parties were taken by the trial court. At the conclusion of hearing, the learned trial judge

delivered his judgment on 11/7/2002 wherein he made a finding that the plaintiff had failed to establish a credible case to entitle him have the declarations sought. He accordingly dismissed the plaintiff's action. Dissatisfied, the plaintiff appealed to the Court of Appeal, Ilorin Division (the court below). After having reviewed the proceedings of the trial court, counsel's submissions and the prevailing law, the court below dismissed the appeal. Dissatisfied further the plaintiff/appellant appealed to this court on four grounds of appeal urging this court to allow his appeal. Briefs were filed by the parties. On the hearing date, learned counsel for the appellant adopted his brief of argument and urged us to allow the appeal. Learned counsel for the 1st respondent adopted the brief filed on behalf of the 1st respondent. He urged this court to dismiss the appeal. The issues formulated by the learned counsel for the appellant read as follows:

i. "Did it matter whether a court or a defendant understood the plaintiff's case or not (Ground 1)?"

ii. Did the plaintiff plead any native law and custom or procedure for appointing an Alagar (Ground 2)?"

iii. Was it necessary for the plaintiff to produce any evidence of procedure for appointing an Alagar of Agar (Ground 3)? and

iv. Was it right of the Court of Appeal to have affirmed the trial High Court judgment (Ground 4)?"

Learned counsel for the 1st respondent formulated his issues as follows:

1. "whether the court below was right to have held that the plaintiff did not prove his claim before the trial court and whether it was right to have held that if the totality of the evidence adduced by both parties should be put on an imaginary scale, the evidence of the respondents and their witnesses will be heavier than those adduced by the appellant and his lone witness."

2. Whether the court below was right to have affirmed the decision of the trial court."

Learned counsel for the 2nd respondent as well, formulated his issues as follows:

1. "whether the plaintiff has been able to properly establish a case if any against the defendants before the trial court to warrant any judgment in his favour."

2. Whether the Court of Appeal was right to have unanimously

affirmed the decision of the trial court by dismissing the appellant's appeals with cost."

In his brief of argument, the learned counsel for the appellant, submitted on issue No.1 that the trial court did not understand the case which led the learned trial judge to dismiss the plaintiff's case. If he did so, he would, instead of dismissing the plaintiff's case, have struck out 3rd relief as the two offices of Alagar of Agar and Alangua of Agar were separate and distinct. Learned counsel submitted that in Agar, the Colonial Masters created separate administrative office holders i.e. Alangua, in contradistinction to many parts of the Northern Nigeria which experienced the introduction of Indirect Rule by the Colonial Masters. Learned counsel referred this court to Chiefs (Appointment and Deposition Law) and to the Native Authority Law (unspecified). He argued further that the respondents overlooked the fact that there was a world of difference between the traditional Yoruba office of Alagar and the Fulani/Hausa administrative office of Alangua which misconception is most unjustifiable and cannot be justified. He stated further, that Order 25 Rule 14(1) of the Kwara State High Court (Civil Procedure) Rules, 1989, is ignored by the defendants' statement of defence. He urged this court to answer issue No.1 in the positive and to allow ground 1 on which it has been pivoted.

Issue No.2 is related to ground of appeal No. 2. Learned counsel drew our attention to paragraphs 8 and 10 of the Statement of Claim which constitute the Agar Native Law and custom for the appointment of the Yoruba traditional office of Alagar. That the claim at page 94 line 41 - page 95 line 1 of the record is totally misconceived. The plaintiff's pleading and evidence are more than adequate to sustain the plaintiff's case. He urged this court to hold that issue No.2 was sustainable and to allow ground 2 on which the issue has been pivoted.

Appellant's issue No.3 is related to ground of Appeal No.3. Learned counsel for the appellant submitted that it was not necessary for the plaintiff to do more than he did in his evidence and that of his lone witness and that both the pleading and the evidence of PW1 and PW2 were adequate. The cross-examination by the counsel for the 2nd defendant filled any gap if any. He urged us to answer issue 3 in the negative.

In making his submission on issue 4, the learned counsel for the appellant argued that the learned trial judge did not meticulously consider the case of each side and that the learned trial judge had gone out of his normal course to arrive at his conclusions by holding that the two offices of Alagar and Alangua were the same and he contradicted himself both left and right. He ought to have given judgment in favour of the plaintiff as prayed. The Court of Appeal, learned counsel contended further, gravely erred in affirming the most perverse judgment of the High Court. He urged us to answer issue No.4 in the negative and to allow ground 4 on which the issue has been pivoted.

In his submission, the learned senior counsel for the 1st respondent cited the provision of section 135 of the Evidence Act in support of the trite position of the law that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. He submitted that the court below affirmed the decision of the learned trial judge showing instances where the plaintiff failed to establish a credible case to entitle him have the declaration he sought. That the court below held that the appellant did not plead any native law and custom or the tradition and procedure for appointing an Alagar and that he did not adduce any evidence of any procedure to be followed in appointing an Alagar or of compliance with such a procedure. The learned SAN cited and relied on the case of *Olaiya v. Olaiya & Ors* (2002) 8 NWLR (Pt.782) 652 at p.664. He argued further that the appellant having claimed to be the head of Agar Village the burden rests squarely on him to prove that he was entitled to the throne which burden he woefully failed to discharge. The learned SAN argued further that the learned trial judge's decision was reasonably founded on the evidence adduced before the court. In urging us to resolve this issue in favour of the 1st respondent, the learned SAN submitted that the totality of evidence adduced by the appellant as plaintiff before the trial court is not sufficient to sustain his claim or earn him the reliefs sought from the court.

It was argued for the 1st respondent on issue two that the Court of Appeal was right to have affirmed the decision of the trial court. The learned trial judge meticulously considered the case of each party with their pleadings and evidence before he delivered the

considered judgment. The Court of Appeal scrutinized the pleadings and evidence before the trial court before affirming the trial court's decision. It is not the business or function of an appellate court to re-try a case particularly where there was evidence before the trial court from which its findings can reasonably be supported. The case of ^B Layinka & Anor v. Makinde & Ors (2002) 10 NWLR (Pt.775) 358 at 375 was cited in support. It is submitted further that the settled principle of law is that the finding of a trial court ought not to be disturbed unless such finding is perverse. Several cases were cited e.g. ^C Anigbogu & Ors v. Uchejigbo (2003) 10 NWLR (Pt.776) 492; ^C Odusoye v. The Military Governor of Ogun State & Ors (2002) 10 NWLR (Pt.776) 566.

The learned SAN submitted that the appellant has failed to establish that the findings of the two lower courts have led to a mis-
^D carriage of justice or that there has been a violation of some principles of law or procedure or a substantial error or that the findings are perverse. The concurrent findings of the two lower courts cannot therefore, be easily disturbed. Okpala Ezeokonkwo & Ors v. Nwafor Okeke & Ors (2002) 11 NWLR (Pt.777) 1 at p.28; Onwuama v. ^E Ezeokoli (2002) 5 NWLR (Pt.760) 353 at 366, were, among others, cited in support. This court is urged to resolve this issue in favour of the 1st respondent and to finally, dismiss this appeal. The learned counsel for the 2nd respondent made submissions on all the issues which are almost at per with the submissions made by the learned ^F SAN for the 1st respondent. So, I will only re-produce such arguments as appear to elucidate on some points contemplated by the issues formulated. Learned counsel argued that it is pertinent to note that the plaintiff and the only witness called by him testified to the ^G effect that Abdul Salami Ruling House is the sole Ruling House in Agar. This piece of evidence needs to be established by cogent, sufficient and compelling evidence as required by law in proof of traditional history which the plaintiff failed to establish. That question of native law and custom is a question to be proved by evidence and ^H the burden is on he who asserts. The case of Giwa v. Erinminlokun (1961) 1 All NLR 296 was cited. The learned counsel submitted further that since the appellant failed to show by evidence how he ascended the throne of Alangua of Agar in accordance with Agar native law and custom it only leads to one conclusion that neither the

trial court nor the Appeal Court is in a position to manufacture evidence in support of the appellant's case. So, the trial court rightly dismissed same and was equally affirmed by the Court of Appeal. He cited and relied on the case of Fabian Onyejekwe & Ors v. Obiora Onyejekwe (1999) 3 SCNJ 63 at 72. That a plaintiff must succeed on the strength of his case not by the weakness of the defence. Oyinloye v. Esinkin & Ors. (1999) 6 SCNJ 278 at 288. The learned counsel for the 2nd respondent cited paragraph 1 of the plaintiff's statement of claim where the plaintiff claimed that he has been the Alagar of Agar for quite sometime. Learned counsel stated that this fact needs to be substantiated with both oral and documentary evidence since the failure or success of his case is basically premised on same. Learned counsel urged this court to resolve this issue in favour of the respondents.

Issue No.2 is on whether the Court of Appeal was right to have unanimously affirmed the decision of the trial court. Learned counsel answered it in the affirmative adding that the Court of Appeal found no difficulty in affirming the judgment of the learned trial judge in the absence of any substantive or procedural error that may be said to lead to a miscarriage of justice. The case of Layinka v. Makinde (supra) is cited in support. Learned counsel submitted that appellant's arguments as contained in his brief can be said to be more of academic exercise trying to demonstrate something unfounded, baseless and or rootless. He submitted that by whatever title called either Alagar of Agar or Alangua of Agar, it means a village head and urged this court to take judicial notice that only a person at a time can be appointed and addressed as a village head of a particular village. That the terms Alagar or Alangua of Agar are separate and distinct as argued by learned counsel for the appellant should be discounted. This court is finally urged to dismiss the appeal before it.

Reply briefs were subsequently filed by the learned counsel for the appellant in answer to new points of law raised by both the 1st and 2nd respondents in their respective briefs of argument. In both replies, one filed on 1/11/2004 and the other filed on 13/3/2006, none has specified the new points of law being replied. The replies are just a repetition of what has already been submitted in the main appellant's brief. As far as I am concerned, none of the replies is worthy of a judicious consideration and are both, hereby, discounted.

nanced. I will adopt the issues formulated by the learned SAN for the 1st respondent in treating this appeal; the 2nd respondent's issues are a replica of the 1st respondent's issues. The issues are comprehensive enough and cover adequately, all the issues raised by the learned counsel for the appellant.

B I think my spring board in starting the consideration of this appeal is to have recourse to the provisions of sections 135 - 137 of the Evidence Act, Cap 112 LFN, 1990 (Now Cap. E14 LFN, 2004)

C “135. (1) *whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*

136. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

D *137. (1) In civil cases the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.”*

E By the above provisions therefore, it is the requirement of the law that he who asserts, must prove. In all civil matters, the proof rests squarely on the person who approaches the court (plaintiff) praying that his legal right, which he claims from somebody (defendant) should be restored to him. In our

F adversarial system of adjudication, it is the practice and the law that the plaintiff should first lay his complaints before the court by filing his pleadings. Next is that, where issues have been joined with him by the defendant, then he shall go ahead

G to call evidence to establish each and every one of the averments and the evidence must tally. They go together. They are inseparable twins. They either survive together or perish together. Where there is an averment which has no corresponding evidence, it is deemed abandoned. Where there is evidence

H but there is no supporting averments, it is a worthless evidence. See: Bamgbegbin v. Oriare (2009) 13 NWLR (Pt.1158) 370; Ojukwu v. Yar'adua (2009) 12 NWLR (Pt.1154) 50; Oseni v. Bajulu (2009) 18 NWLR (Pt.1172) 164.

In a bid to succeed the appellant/plaintiff, in his statement of

claim, averred as follows:

"1. The plaintiff has been the Alagar of Agar for quite some time.

8. No Emir of Ilorin has ever appointed an Alagar or rejected an appointment made by the Abdul Salami family of Agar.

9. The Ilorin Emirate Council is a Child of the Local Government Edict No.8 of 1976 and has never appointed an Alagar of Agar.

10. Whoever the Abdul Salami family appointed as the Alagar was normally used by the Local Government as its tax collection agent to collect community taxes.

11. The two functions are separate and distinct but are normally combined for administrative purposes."

In reply to the above averments, the 1st defendant/1st respondent stated, inter-alia:

"2. The 1st defendant denies paragraphs 1, 2, 5, 7, 8, 9, 10, 11 and 12 of the statement of claim and put the plaintiff to the strictest proof thereof.

3. In particular answer to paragraph 1 the 1st defendant states that the plaintiff had never been the Alangua of Agar at any time before or now. The 1st defendant will at the trial of this suit relate the history of Alangua chieftaincy title and that neither the plaintiff nor his predecessors were entitled to the Alangua stool.

8. In denying paragraph 8 of the statement of claim the 1st defendant states that in no time had Abdul Salami family (which does not exist as a ruling family) appointed the Alangua of Agar since the town was founded talk less of presenting an appointee to the Emir of Ilorin for his blessing or turbanning.

9. The 1st defendant avers that as a matter of custom and tradition of Agar, the Alangua is appointed by Ibrahim Lawal the only ruling family and blessed by the Ilorin Emirate Council. The 1st defendant will lead evidence on the 1st to the last Alangua of Agar and the role of the Ilorin Emirate Council to date in their history.

10. In further answer to paragraph 10 of statement of claim, the 1st defendant states that the only ruling family in Agar as at today is the Ibrahim Lawal family who has the duty of selecting and appointing a new Alangua at the demise of the other and that Abdul Salami ruling family does not exist in Agar.

16. The 1st defendant avers that his appointment was accord-

ing to custom and tradition of Agar and as such was duly appointed and blessed by the Ilorin Emirate Council accordingly.”

The 2nd defendant/respondent, in his statement of defence, averred equally, as follows:

B “2. The 2nd defendant denies paragraphs 1, 2, 5, 7, 8, 9, 10, 11 and 12 of the statement of claim and put the plaintiff to the strictest proof thereof.

C 3. In particular answer to paragraph 1 of the statement of claim the 2nd defendant states that the plaintiff had never been the Alangua of Agar at any time before or now as he has never been presented for blessing. The 2nd defendant will at the trial of this suit relate history of Alangua Chieftaincy title and the plaintiff nor his predecessors has ever been presented for blessing or turbanning.

D 4. The 2nd defendant denies paragraph 2 and states that the Alangua chieftaincy title is never subject of his prerogative but of Ibrahim Lawal ruling family who had the appointment/selection power since the founding of Agar.

5. The 2nd defendant will trace the origin and capacity of his role in the Alangua titleship at the trial of this suit.

E 6. In denying paragraph 7 of the statement of claim, the 2nd defendant avers that his role in the appointment of an Alangua of Agar is that of blessing/turbanning after the Alangua must have been appointed by the only recognized ruling family of Ibrahim Lawal.

F 7. That the turbanning ceremony the 2nd defendant performs only signifies blessing and that the paramount validity of the appointment lies in the Ibrahim Lawal family which does same according to custom and tradition of Agar.

G 8. In denying paragraph 8 of the statement of claim the 2nd defendant states that at no time in the history of Agar and Alangua titleship has Abdul Salami family presented any appointee for blessing or turbanning.

H 9. The 2nd defendant avers that in the history of Agar and Alangua titleship the Ilorin Emirate Council has been acting in the capacity of blessing an Alangua of Agar after due appointment by Ibrahim Lawal ruling family the only ruling family recognized at Agar since the founding of Agar. The 2nd defendant will lead evidence on the role of the Ilorin Emirate Council till date from the time Agar was founded.

10. In further answer to paragraph 10 of the statement of claim the 2nd defendant avers that the plaintiff's family refuse to surrender their tax to the Alangua duly appointed by Ibrahim Lawal family and blessed by him and directly pay to the Local Government.

13. The 2nd defendant avers that the 1st defendant is the duly appointed Alangua of Agar having been appointed so by Ibrahim Lawal ruling family after the death of Mamudu Ayinla in 1998. B

14. The 2nd defendant will contend at the trial of this suit that there is no Alangua appointed from the family of the plaintiff and blessed by the Ilorin Emirate Council.

15. The 2nd defendant avers that the appointment of the 1st defendant was according to custom and tradition of Agar and was accordingly blessed by his council. C

16. The 2nd defendant will also lead evidence to show that the 1st defendant was duly recognized by all and sundry in Agar and its environs. D

17. The 2nd defendant pleads relevant document especially the letter of recognition of the 1st defendant by the Ilorin Emirate Council.

18. The 2nd defendant denies paragraph 12 and replies that the 1st defendant is the duly elected Alangua of Agar having been recognized by his people and the Ilorin Emirate Council. E

The suit proceeded to full trial. Both sides called evidence in support of their pleadings. At the end of trial, the learned trial judge made his findings and held as follows: F

"It appears from the pleadings and the evidence that there is some seeming confusion about the titles interchangeably used in this case. The titles are Alagar of Agar, Alangua or Alangua of Agar, and, village Head. Alagar of Agar is the Yoruba version of the Fulani title viz Alangua or Alangua. The two titles are synonymous with the headship of the community. The first appears traditional while the second is an administrative coinage but the two titles never co-exist at Agar. In any case, both Alagar and the Alangua must need be turbaned by the Emir to be recognized as validly appointed. Being in control or in charge of affairs in the village is the essence of the headship and, there always must be a head of the village or community. G

I find that in this case Alangua in Hausa/Fulani means the village head. In the instant case, the plaintiff claims that he is appointed H

as the Alagar of Agar by his family while the defendants deny the existence of such an appointment saying that it was he the 1st defendant who was appointed the Alangua of Agar (Village Head) as shown by Exhibits D1 and D2 written by the Emirate Council and the Moro Local Government respectively. There is nothing to show that the Local Government gave the plaintiff's appointment its blessing. It is not seriously disputed that Alangua (village head, Daudu (District Head) and Emir are titles commonly used in Moro Local Government. There is no disputing it that both the plaintiff and the 1st defendant are maternally related by blood and that they are both Egba settlers from Abeokuta at Agar a Yoruba community using Fulani titles. Without any challenge, evidence was given of past Alanguas and that one Ibrahim Lawani was a past Alangua with his house becoming the only (sole) Alangua Ruling House. Also without any challenges, the names of the past Alangua is said to have control over Mogajis who head smaller neighbouring communities and in the case of Agar, there are 17 such communities under Agar. Agar is in Malete District under the control of the Daudu (District Head) of Malete accountable to the Emir of Ilorin. From the evidence, this is the established hierarchy of command (rulership) applicable to Agar. There is no challenge to this vital evidence which complies with pleadings and I believe it. See *Egbunike v. A.C.B. Ltd.* (1995) 22 NWLR (Pt.375) 526 at 540.

The plaintiff, according to the evidence, was selected or (if you like) appointed by his family as the Alagar of Agar. He did not plead any native law and custom or tradition and procedure for appointing an Alagar and did not adduce any evidence of any such procedure and compliance therewith. Neither was the plaintiff shown to the 17 communities under Agar as proffered in evidence nor was he taken before the District Head of Malete nor was he taken before the Emir of Ilorin for turbanning. There is no evidence that the Moro Local Government was also informed of the plaintiff's appointment talk less of the Local Government approving or blessing his appointment as the Alagar of Agar. He did not say when he was appointed i.e. the day, the month and the year.

It is essential that in a case like this, the plaintiff has to plead and lead evidence in support of such facts as the history, native law and custom or tradition and procedure governing the appointment

to the traditional stool of Alagar. It is not sufficient to make very bare assertion. The failure to plead the essential relevant facts is fatal to the case of the plaintiff. For the plaintiff to succeed in seeking this chieftaincy declaration that he was validly nominated and appointed in accordance with the native law and custom relating to Alagar of Agar chieftaincy, the onus is on him to plead and give evidence in line with his pleadings to prove that he was validly nominated and appointed. See Giwa v. Erinminlokun (1961) 1 All NLR 296; Adeyeri v. Atanda (1995) 5 SCNJ 175; Adediji Jokanola v. Military Governor of Oyo State (1996) 5 SCNJ 99 and Balogun v. Labiran (1988) 3 NWLR (Pt.80) 66.

Interestingly, both sides agree the turbanning by the Emir of Ilorin of any one appointed as the head of Agar is a necessity. In a situation where the evidence of the adversary favours or supports that of his opponent, any such admission against interest only strengthens the latter's position. See Adeyeye v. Ajiboye (1987) 7 SCNJ 1; Ekretsu v. Oyobeberere (1992) 9 NWLR (Pt.266) 438 at 462 - 463 and Kimdey & Ors v. Governor of Gongola State (1988) 5 SCNJ 28 holding 4.

In this case, the plaintiff has failed to establish a credible case to entitle him have the declarations sought. As for the third claim of perpetual injunction, the 1st defendant has not claimed to be appointed as the Alagar of Agar. The plaintiff has failed to show that the 1st defendant holds himself out to be so appointed. The 2nd defendant was not shown by evidence to have appointed or turbaned the 1st defendant as the Alagar of Agar. An injunction, in the circumstance of this case is, unwarranted.

Consequently, this action is, accordingly, dismissed."

In affirming the decision of the trial court, the court below held *inter alia*:

"From all these, it is obvious that if the totality of the evidence adduced by both parties should be put on an imaginary scale, the evidence adduced by the appellant and his witness on one side of the scale, and that of the respondents and their witnesses on the other side, and weighed, the evidence of the respondents will be heavier. I agree therefore with the learned trial judge that:

'In this case, the plaintiff has failed to establish a credible case to entitle him have the declarations sought. As for the third claim of

perpetual injunction, the 1st defendant has not claimed to be appointed as the Alagar of Agar. The plaintiff has failed to show that the 1st defendant holds himself out as to be so appointed. The 2nd defendant was not shown by evidence to have appointed or turbaned the 1st defendant as the Alagar of Agar. An injunction, in the circumstance of this case is unwarranted.’

The lone ground is resolved in favour of the respondent. The appeal fails and is hereby dismissed.

The judgment of Gbadeyan J., delivered on 11/7/2002 in Suit No. KWS/74/98 is hereby affirmed.”

The above holding by the court below makes it to be a concurrent decision of which I have no reason to tamper with unless it is shown to be perverse or contrary to known principles of the law which the appellant failed to show.

My Lords, there is no dispute that this is a civil appeal. There is no dispute also that it is an appeal on chieftaincy matter. The requirements of the law in all civil appeals is that the plaintiff should rely on the strength of his case rather than rely on the weakness of the defendants case. All the law requires from him is to discharge the burden placed on him by the law. As far back as 1976, this court settled the law in the case of Lewis & Peat (NRI) Ltd. v. Akhimun (1976) 10 NSCC 160 at 365, as follows:

1. “where there is no issue the question of burden of proof does not arise.

2. On the burden of proof on the pleading the rule is that the burden of proof rests on the party whether plaintiff or defendant who substantially asserts the affirmative of the issue.

3. On the burden of adducing evidence: the burden of proof may shift depending on how the scale of evidence preponderates. Subject to the scale of evidence preponderating the burden of proof rests squarely on the party who would fail if no evidence at all or no more evidence as the case may be were given on either side. In other words it again rests before evidence is taken by the court of trial on the party who asserts the affirmative of the issue.”

See also: Olaiya v. Olaiya (2002) 8 NWLR (Pt.782) 652 at 664; Adegoke v. Adibi (1992) 5 NWLR (Pt.242) 410; Amodu v. Amode (1990) 5 NWLR (Pt.150) 356; Famuroti v. Agbeke (1991) 5

NWLR (Pt.189) 1; Ogbuanyinya v. Okudo (No.2) (1990) 4 NWLR (Pt. 146) 551.

I think it is not only sensible but necessary and legal for a claimant of a chieftaincy declaration such as the Alagar of Agar or the Alangua of Agar (as may appear appropriate), village head of Agar, as found by the learned trial judge, to prove sufficiently that he is entitled to the throne. This would, certainly, include, as found by the learned trial judge, that:

1. it is essential for the plaintiff to plead and lead evidence in support of such facts as the history, native law and custom or tradition and procedure governing appointment to the traditional stool of Alagar.

2. he was validly nominated and appointed to the stool.

3. he should receive the blessing of the paramount Emir of Ilorin by turbaning him.

4. he should receive the blessing of the Local Government Council and the traditional Emirate Council

5. he should plead and establish the year/period of his appointment by the authorizing body/bodies.

These, in the least, are necessary in appointing a person who is expected to lead and be responsible to and for the people and authorities he should interact with. It should not be left open like a wild fire which knows no limit or bound. If Chieftaincy stools should be left to chances, a day would come when only the strongest man or the most influential, will grab everything into his palms. That certainly will pose danger, anarchy and destabilization to the throne. It shall cease to be monarchical but autocratic. It will engender jungle justice. People will be subjected to fear, intimidation and subservience.

I think I have no cause to tamper with the decision of the court below which affirmed the decision of the trial court. I affirm the decision and dismiss this appeal, the respondents each, is entitled to N50,000.00 costs from the appellant.

Let me thank at the end, the learned counsel from the State Ministry of Justice who made available to us copies of the Chieftaincy Law of Kwara State which was aimlessly cited and not produced by the learned counsel for the appellant.

ADEKEYE JSC

I read in advance the judgment just delivered by my learned brother I. T. Muhammad JSC. My learned brother meticulously covered the background facts of the case in his lead judgment. In the appeal to this court the appellant Alhaji Adebayo Akande raised four issues for determination as follows:

- 1) Did it matter whether a court or a defendant understood the plaintiff's case or not.
- 2) Did the plaintiff plead any native law and custom or procedure for appointing an Alagar.
- 3) Was it necessary for the plaintiff to produce any evidence of procedure for appointing an Alagar of Agar.
- 4) Was it right for the Court of Appeal to have affirmed the trial High Court Judgment.

The 1st respondent settled two issues for determination as follows:-

- 1) Whether the court below was right to have held that the plaintiff did not prove his claim before the trial court and whether it was right to have held that if the totality of the evidence adduced by both parties should be put on an imaginary scale - the evidence of the respondents and their witnesses will be heavier than those adduced by the appellant and his lone witness.

2) Whether the court below was right to have affirmed the decision of the trial court.

The 2nd respondent formulated two issues for determination as follows:

- 1) Whether the plaintiff has been able to properly establish a case if any against the defendants before the trial court to warrant any judgment in his favour.
- 2) Whether the court of Appeal was right to have unanimously affirmed the decision of the trial court by dismissing the appellant's appeals with costs.

At this juncture, I will briefly restate the evidence of the parties before the trial court to expose the quality of their respective case and to relate same to the evaluation of evidence by the learned trial judge.

The plaintiff/appellant's claim is as pleaded in his statement of claim as follows:-

Paragraph 1:

That the plaintiff has been the Alagar of Agar for quite some-time.

Paragraph 2:

The predecessors of the 2nd defendant conferred the statutory post of a village head on Sumonu Ayinla; the father of the 1st defendant which led the plaintiff to sue the said Sumonu Ayinla and 2 others at the Ilorin High Court. B

Paragraph 7:

On or about 18/5/98 the 2nd defendant in a turbaning ceremony pronounced the 1st defendant as the village head of Agar. C

Paragraph 8:

No Emir of Ilorin had ever appointed an Alagar or rejected an appointment made by Abdul Salami family of Agar.

Paragraph 10:

Whoever the Abdul salami family appointed as the Alagar of Agar was normally used by the Local Government as its tax collection agent to collect Community taxes. D

Paragraph 11:

The two functions are separate and distinct but are normally combined for administrative native purposes. E

The plaintiff in giving evidence, called a witness in support of his own testimony but he did not tender the Local Government Edict No. 8 of 1976 averred in his pleadings before the court. Vide pages 2 - 3 of the Record of Appeal. Whereas the 1st and 2nd defendant's/ respondent's pleaded as follows:- F

"That the plaintiff had never been the Alagar of Agar at any time before or now".

Paragraph 4:

That the chieftaincy title of Alangua is never subject of the decision/prerogative of the Ilorin Emirate council but a special prerogative of the ruling family of Ibrahim Lawal who had the appointment/selection power since the founding of Agar. G

Paragraph 6:

That it is after the Alangua might have been appointed by the ruling family and district head at Malete certifies it that the blessings of the Emir of Ilorin becomes paramount. H

Paragraph 7:

That it is not the turbaning ceremony which the Emir con-

ducts that makes the appointment of an Alangua valid but the blessing of the Ruling family according to custom and tradition.

Paragraph 8:

B That in no time had Abdul Salami family which does not exist as a ruling family appointed the Alangua of Agar since the town was founded talk less of presenting an appointee to the Emir of Ilorin for his blessing or turbaning.

Paragraph 9:

C That as a matter of custom and Tradition of Agar, the Alangua, is appointed by Ibrahim Lawal family the only ruling family and blessed by the Ilorin Emirate Council.

Paragraph 13:

D That according to this tradition and customs in Agar in other towns of Moro Local Government received the blessings of the Emir of Ilorin with respect to their Alangua's and that Jankunnu's Alangua was blessed the same day with the 1st defendant.

Paragraph 14:

That the 1st defendant was the next Alangua after the death of Mamudu Ayinla appointed on 9/8/90 and died in 1988.

E Paragraph 16:

F That his appointment was according to custom and tradition of Agar and as such he was duly appointed and blessed by the Ilorin Emirate Council accordingly. Vide pages 5 - 6 of the Record of Appeal.

The 2nd defendant/respondent pleaded as follows:

Paragraph 3:

G The 2nd defendant states that the plaintiff had never been the Alangua of Agar at any time before or now as he has never been presented for blessing. The 2nd defendant will at the trial of this suit relate the history of Alangua chieftaincy title and the plaintiff nor his predecessors has never been presented for blessing or turbaning.

Paragraph 4:

H That the Alangua chieftaincy title is never subject of his prerogative but of Ibrahim Lawal ruling family who had the appointment/selection power since the founding of Agar.

Paragraph 6:

The 2nd defendant avers that his role in the appointment of an Alangua of Agar is that of blessing/turbaning after the Alangua

must have been appointed by the only recognized ruling family of Ibrahim Lawal.

Paragraph J:

That the turbanning ceremony, the 2nd defendant performs only signifies blessing and that the paramount validity of the appointment lies in the Ibrahim Lawal family which does same according to custom and tradition of Agar. B

The gist of the evidence of the plaintiff/appellant is that he is the Alagar of Agar as he was appointed by the Abdulsalami Ruling family, the only Ruling family in Agar. No Emir of Ilorin had ever rejected a nominee of the Abdulsalam family. The predecessor of the incumbent Emir of Ilorin conferred the statutory post of a village head on Sumonu Ayinla the father and predecessor of the 1st defendant/responded. The second defendant/respondent in a turbanning ceremony proclaimed the 1st respondent as the village head of Agar. The 1st respondent claimed that nobody from the appellant's family had ever been the Alangua or Alagar of Agar at any given time. According to the custom and tradition of Agar since it was founded the Ibrahim Lawal Ruling Family had the sole power and prerogative of selecting and appointing the candidate for the chieftaincy title of Alangua/Alagar. C

The 2nd respondent testified that it is only after the appointment of an Alagar by the Ruling family of Ibrahim Lawal and after the District head of Malete must have confirmed the appointment that the blessing of the Emir of Ilorin ratifies the appointment according to the custom and tradition of Agar in Moro Local Government Area of Kwara State. The 1st respondent's appointment was approved by the letter dated the 8th of June 1998 emanating from the Ilorin Emirate Council. The concurrent findings of facts of the two lower courts was that the appellant failed to lead evidence in support of his pleadings to establish that he was ever appointed or recognized, as the village head of Agar. The conclusion of the two lower courts cannot be faulted for the under mentioned reasons:- D

a) The appellant sought declaratory reliefs from the trial court in respect of his claim to the title of Alagar of Agar. E

According to paragraph 12 of the statement of claim the appellant claims as follows:

i. A declaration that he is the Alagar of Agar. F

ii. A declaration that the 1st defendant is not the Alagar of Agar in that he is not appointable since he is not a member of Abdulsalami of Agar and

iii. His appointor has no power to appoint an Alagar.

iv. A perpetual injunction prohibiting the 1st defendant from parading himself as the Alagar and 2nd defendant from so treating him.

It is right and proper to identify the purpose of a declaratory action and what a party must show to be entitled to it. It has been emphasized in decided authorities of this court that the purpose of a declaratory action is essentially to seek an equitable relief in which the plaintiff prays the court in the exercise of its discretionary jurisdiction to pronounce or declare an existing state of affairs in law in his favour as may be discernable from the averments in the statement of claim. In order to be entitled to a declaration a person must show evidence of a future legal right subsisting or in the future and that the right is contested. What would entitle a plaintiff to a declaration is a claim which a court is prepared to recognize and if validly made it is prepared to give legal consequence.

A declaratory action is discretionary in nature, hence the onus of proof lies on the claimant as in this case the appellant and he must succeed on the strength of his own case and not on the weakness of the defence except where the case for the defence supports the appellant's case. *Adigun vs. A-G Oyo State* (No. 1) 1983, 1 NWLR, Pt.53, pg. 678, *Dantata vs. Mohammed* (2000) 7 NWLR, Pt. 664, pg. 176, *Ekundayo vs. Baruwa* (1965) 2 ALL NLR 211, *Nwokudu vs. Okanu* (2010) 3 NWLR Pt. 1181, Pg. 362, *Nkwo vs. Iboe* (1998) 7 NWLR, Pt. 558, Pg. 354, *Uche vs. Eke* (1998) 9 NWLR Pt. 564, Pg. 24.

It is the case of the 1st and 2nd respondents that in the history of the Alangua chieftaincy title of Agar, and according to Agar Native law and Custom only the Ibrahim Lawal family had been selecting and appointing an Alangua of Agar. The Abdulsalami family had never presented any appointee to the 2nd respondent for turbanning. The Ilorin Emirate Council has been blessing the appointees of the only Ruling family recognized at Agar since the founding of the village.

The appellant disputed the foregoing facts. The burden of proof therefore lies on him to prove his assertion. It follows from the fact

that a declaration is a discretionary remedy, anybody seeking such remedy has the legal burden of proof as well as the evidential burden under Sections 135 to 137 of the Evidence Act. Section 135 of the Evidence Act reads:- 135

1) Whoever desires any court to give judgment as to any legal right or viability dependent on the existence of fact which he asserts must prove that those facts exists. B

2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 136 of the Evidence Act states that:-

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at will were given on either side. C

Section 137(i) reads:-

In civil cases the burden of first proving the existence or non-existence of a fact lies on a party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. D

It is trite that in chieftaincy matters where there is no formal declaration in respect of the appointment and selection to a particular chieftaincy the custom and tradition of the people concerned must be strictly adhered to. *Umoru vs. Zibiri* (2003) 11 NWLR, Pt. 832, Pg. 647. Where the issue of who is qualified to ascend to any traditional title is subject to the customary law and traditions of the people concerned it is a question of fact to be proved by adducing evidence unless it has attained such legal status or notoriety so as to be judicially noticeable. *Mafimisebi vs. Ehuwa* (2007) 2 NWLR, Pt. 1018, Pg. 385; *Olowu vs. Olowu* (1985) 3 NWLR 372 E F

In the evaluation of evidence and ascription of probative value the learned trial judge was left with scanty evidence from the appellant to put on his side of the imaginary scale of justice. It is apparent that the scale of justice can never in that scenario tilt in his favour. In this appeal there are two concurrent findings of facts of the two lower courts which are unimpeachable. G H

It is trite that this court will not make it a practice of interfering with concurrent findings of fact of the lower courts where there is sufficient evidence in support of such findings and where no substantial error is apparent on the record such as miscarriage of justice or

violation of some principle of law or procedure. Ezeonu vs. Onyechi (1996) 3 NWLR, Pt. 438, Pg. 499, Ogunbiyi vs. Adewunmi (1988) 5 NWLR, Pt. 93, Pg. 215, Ivienagbor vs. Bazuaye (1999) 9 NWLR, Pt. 620, Pg. 52.

B With fuller reasons given by my learned brother in his lead judgment I also agree that the appeal lacks merit and it is accordingly dismissed. I adopt the consequential orders made in the lead judgment as mine.

C

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the judgment of my learned brother Muhammad JSC, I am in full agreement with it. I propose to add only a few observations.

D On the pleadings the issue contested by the parties was a narrow one. The plaintiff (appellant) contended that he is the Alagar of Agar and asked for declarations to that effect and injunction to prohibit the 1st defendant (1st respondent) from parading himself as the Alagar and the 2nd defendant (2nd respondent) from so treating
E him. On the other hand the contention of the 1st respondent was that the plaintiff has never been the Alagar of Agar. Relevant extracts from the plaintiffs pleadings reads:

1. The plaintiff has been the Alagar of Agar for quite some
F time.

8. No Emir of Ilorin has ever appointed an Alagar or rejected an appointment made by the Abdul salami family of Agar.

9. The Ilorin Emirate Council is a child of the Local Government Edict No. 8 of 1976 and has never appointed an Alagar of
G Agar.

10. Whoever the Abdul Salami Family appointed as the Alagar was normally used by the Local Government as its tax collector agent to collect Community taxes.

11. The two functions are separate and distinct but are normally
H combined for administrative purposes.

Both defendants denied all of the above and gave detailed averments that:

1. The plaintiff had never been the Alagar of Agar.

2. Abdul Salami Family does not exist as a Ruling family and

has at no time appointed the Alagar of Agar.

3. That the Alagar of Agar is appointed by Ibrahim Lawal (the only Ruling family).

4. The appointment of Alagar of Agar is done according to custom and tradition of Agar.

5. The 1st defendant is the duly appointed Alagar of Agar having been appointed by Ibrahim Lawal Ruling family after the death of Mamudu Ayinla in 1998.

6. That the 1st defendant is duly recognized by all Sundry in Agar and its environs and the Ilorin Emirate Council.

After hearing evidence the learned trial judge had this to say:

“In this case, the plaintiff has failed to establish a credible case to entitle him have the declaration sought”

I agree with both courts below. A party swims or sinks with his pleadings. Pleadings must be detailed and comprehensive on material facts and not evasive or vague. Where an averment is not supported by evidence the averment is abandoned. The long laid down position of the law is that the burden of proof in civil case lies on the person who would fail if no evidence at all were given on either side, consequently findings are made by the trial court based on what is/was before that court, i.e. the pleadings and evidence in support, and so when such findings are made it is for the appellate court to examine if these findings are correct and not to retry the matter. See *Adimora v. Ajufo* 1988 3 NWLR Pt.80 p.3, *George v. UBA* 1972 8 - (SC p.264; *Anigbogu & Ors v. Uchejigbo* 2003 10 NWLR Pt.776 p.492. It is abundantly clear that the burden of proof rests on the appellant (as plaintiff) to show how he ascended the throne of Alagar of Agar.

There can be no doubt that a plaintiff who asserts that he is the recognized chief (or the Alagar of Agar is expected to plead;

(a) when he was appointed Alagar of Agar, i.e. the day, month, year he was appointed, and produce a Gazette to that effect.

(b) The native law, custom, tradition and procedure adopted for appointing an Alagar of Agar.

(c) Names of Alagar of Agar before him and Ruling House/responsible, or which produces Alagar of Agar. and lead evidence in support.

The plaintiff did not plead the above. He merely said that he

has been the Alagar of Agar for quite some time. This pleading is vague and does not meet the standards expected. Furthermore evidence led was not helpful. The learned trial judge was in the circumstances correct refusing to grant the plaintiffs claims.

In confirming the judgment of the trial court, the Court of Appeal said:

“...it is obvious that if the totality of the evidence adduced by both parties should be put on an imaginary scale, the evidence adduced by the appellant and his witness on one side of the scale, and that at the respondents and their witnesses on the other side and weighed the evidence of the respondents will be heavier.”

And with the above reasoning the appeal was dismissed. This is a chieftaincy matter and both courts below found that the appellant was never the Alagar of Agar since he was unable to discharge the burden of proof placed on him by law.

The well laid down position of the law is that this court would not disturb findings of fact by a trial court, affirmed by the Court of Appeal except it is found to the satisfaction of this court that the concurrent findings.

(a) were perverse or cannot be supported by evidence
(b) amounted to a miscarriage of justice or violation of some principle or procedure. See *Adejobi v. State* NSCQLR Vol. 46 Pt. 11 p.737, *Echi v. Nnamani* 2000 4 WRN p. 79. There are concurrent findings of the courts below that at no time was the appellant the Alagar of Agar, and the appellants have not shown any good reason why the concurrent findings of the trial court and Court of Appeal should be disturbed. I find the findings of fact by both courts below to be correct.

For the reasons given in the leading judgment I would dismiss the appeal with costs of N50,000.00 each to the respondents.

NGWUTA JSC

I had the privilege of reading in draft the lead judgment just delivered by My Lord, Muhammad, JSC. All the issues raised in the appeal were properly resolved.

Pleading is the bedrock upon which evidence is laid to sustain the claim.

Paragraph 1 of the appellant's Statement of Claim is hereunder reproduced:

"The plaintiff has been the Alagar of Agar for quite some time". The appellant meant to say he had been the Alagar of Agar for quite some time. His claims are predicated on the said pleading. It is too vague to be of any use in establishing his claims. The appellant failed to specify how he became the Alagar of Agar and most importantly he did not disclose when he became the Alagar. Moreover, this appeal is against the concurrent decisions of the two Courts below, as pointed out in the lead judgment. Appellant has not advanced any reason for this but to disturb the said judgment.

For the above and the fuller reasons in the lead judgment, the appeal is bereft of merit. Consequently, I also dismiss same and affirm the judgment of the lower Court. I abide by the order for costs.

PETER-ODILI JSC

I agree with the judgment just delivered by my learned brother, Ibrahim Tanko Muhammad, JSC which decision and reasonings I agree with. In support therefore I shall make some remarks.

This is an appeal against the decision of the Court of Appeal Ilorin Division delivered on the 11th of June 2003 in which judgment the appeal of the present Appellant who was the Plaintiff at the trial High Court was dismissed. The facts briefly stated are that the Appellant as plaintiff at the trial Court presided over by Honourable Justice J. F. Gbedeyan of the High Court of Kwara State sitting at Ilorin sued the defendants upon a Statement of Claim, a summary of which is stated hereunder:-

- i. That he has been the Alagar of Agar for quite some time.
- ii. That the predecessor of the second defendant conferred the Statutory Post of a village head on Sumonu Ayinla the father and predecessor of the first defendant.
- iii. That the second defendant pronounced the first defendant as the village head of Agar in a turbanning ceremony.
- iv. That no Emir of Ilorin has ever either appointed or rejected the appointment made by Abdul Salami family.

The summary of the defence in the pleadings of the 2nd defendant are thus:

i. That the plaintiff had never been the Alangua or Alagar of Agar at any time before or now.

ii. That the Chieftaincy title of Alangua/Alagar is the prerogative of Ibrahim Lawal ruling family of Agar who had the appointment and selection power since the founding of Agar by its custom and tradition.

iii. That it is only after the appointment of an Alangua by the ruling family of Ibrahim Lawal and after the District Head of Maletе certifies the appointment that the blessing of the Emir of Ilorin becomes paramount by custom and tradition of Agar in Moro Local Government Area.

iv. That Abdul-Salami family does not exist as a ruling family in Agar, the only ruling family in Agar is Ibrahim Lawal ruling family.

v. That after the death of Momonu Ayinla the 1st defendant was duly appointed as the next Alangua according to the custom and tradition of Agar. The appointment was blessed by the Ilorin Emirate Council and accordingly recognized by all and sundry including Moro Local Government.

vi. That the first defendant's appointment was duly approved vide a letter from the Ilorin Emirate Council dated 8th June 1998.

vii. That the plaintiff has failed to lead evidence in support of his pleadings to prove that he was ever appointed or recognized as the village head of Agar.

The Plaintiff/Appellant to prove his case called a witness and testified for himself. The Defendant/1st Respondent relied on the testimony of two witnesses and also testified for himself and to (sic) tendered two documents as exhibits. At the end of the trial the learned trial Judge decided against the plaintiff/appellant who being dissatisfied appealed to the court of Appeal and losing there has appealed to this court. On the 14th February 2012 date of hearing, Prince J. O. Ijaodola learned counsel for the Appellant adopted the appellants' Brief filed on 12/1/04, a Reply Brief on 1/11/04 and another Reply Brief on 13/3/06, this time in reply to 2nd respondent's Brief. In the Appellant's brief were distilled four issues for determination which are as follows:-

i. Did it matter whether a court or a defendant understood the plaintiff's case or not.

ii. Did the plaintiff plead any native law and custom or proce-

cedure for appointing an Alagar.

iii. Was it necessary for the plaintiff to produce any evidence of procedure for appointing an Alagar of Agar.

iv. Was it right of the Court of Appeal to have affirmed the trial High Court's judgment?

In a Brief of argument settled by Aliyu Salman SAN on behalf of the 1st Respondent, two issues were distilled for determination being:-

1. Whether the Court below was right to have held that the plaintiff did not prove his claim before the trial court and whether it was right to have held that if the totality of the evidence adduced by both parties should be put on an imaginary scale the evidence of the respondents and their witnesses will be heavier than those adduced by the appellant and his lone witness.

2. Whether the court below was right to have affirmed the decision of the trial court.

The 2nd Respondent had his Brief filed on 24/1/05 and settled by Saka A. Isau, the Honourable Attorney General and Commissioner of Justice of Kwara State. He raised two questions for determination which are, viz:-

1. Whether the plaintiff has been able to properly establish a case if any against the Defendants before the trial court to warrant any judgment in his favour.

2. Whether the court of Appeal was right to have unanimously affirmed the decision of the trial court by dismissing the appellants' appeal with cost.

Arguing for the appellant, Prince Ijaodola contended that it is imperative for a Court and an adversary to understand the plaintiff's case. That the danger in not properly understanding a plaintiff's case is demonstrated by the case on appeal on hand. He cited *Hope v. Central Bank of Nigeria Ltd* (1974) 4 SC 1. That it is because the trial judge did not understand the case at the High Court that led him to dismiss the plaintiff's case. That if he understood the case he would not have dismissed the plaintiff's case but would have struck out the 3rd relief since the two offices of Alagar of Agar and Alangua of Agar are separate and distinct. He said the misconception arose, in Northern Nigeria because of the doctrine of Indirect Rule established by the Colonial masters which was not rightly applied. That in many

parts like Offa, Ogori, Ajaokuta etc, the traditional Chief doubled as the administrative office holder, but in some areas such as Agar, the colonial masters created separate administrative office holders i.e. Alangua. He cited Chiefs (Appointment and Deposition) Law: Native Authority Law.

B He further contended that the defendants who are respondents just like they were at the Court of Appeal over - looked the fact that there was a difference between the traditional Yoruba office of Alagar and the Fulani/Hausa administrative office of Alangua. That
C Order 25 Rule 14 (1) of the Kwara State High Court (Civil Procedure) Rules, 1989 was ignored by the defendants' statement of defence. Mr. Ijaodola went on to state that paragraphs 8 and 10 of the statement of claim constitute the Agar native law and custom for the appointment of the Yoruba traditional office of Alagar. That the plaintiff's pleading and evidences are more than adequate to sustain the
D plaintiff's case.

For the 1st Respondent it was submitted that the law is clear that the burden of proof in a suit or proceeding lay on that person who would fail if no evidence at all were given on either side. That in
E civil cases just like the present, it is normally fixed by the pleadings. He cited section 135 of the Evidence Act. He said the ultimate burden of establishing his case as disclosed by his pleadings rested squarely on the plaintiff before the trial court which the plaintiff failed woefully
F to do in the trial court and as affirmed by the Court of Appeal. He cited *Remilekun Olaiya v. Cornelia Olaiya & Ors.* (2002) 8 NWLR (Pt.872) 652 AT 664; *Lewis & Peat (Nig.) Ltd. v. Akhimien* (1976) 10 NSCC 360 at 365. Learned counsel for the 1st Respondent contended that where evidence is adduced by the party upon whom the
G burden rests the evaluation of such evidence and the ascription of probative value to such evidence are usually the primary functions of the Trial Court which saw, heard and assessed the witnesses as they testified at the trial in the witness box. Therefore where the court of trial unquestionably evaluates the evidence before it and justifiably
H appraises the facts, it is usually not the business of an appellate court to substitute its own views for those of the trial court. He referred to *Etim Okonkon Ita & Anor v Nkoyo Ekpeyong & Anor* (2001) 1 NWLR (Pt.695) 587; *Ifer v. Ikyannyon* (2001) 4 NWLR (Pt. 703) 324. That in this case the trial judge reasonably made findings based

on the evidence adduced before court and it is to be noted that a plaintiff must succeed on the strength of his own case and not the weakness of the defence.

For the 1st Respondent was submitted that since the trial Judge made the findings on what was before him the appellate court cannot retry the matter since there was no miscarriage of justice. He cited many authorities, a few of which one: *Adebiyi Layinka & Anor. v. Adeola Makinde & Ors.* (2002) 10 NWLR (Pt. 775) 358 at 375, *Anigbogu & Ors. v. Uchejigbo* (2003) 10 NWLR (Pt. 776) 492. Learned counsel for the 1st Respondent concluded by saying that the concurrent findings of both Courts below should be sustained since there was nothing upon which they can be disturbed. He cited *Okpala Ezeokonkwo & Ors v Nwafor Nneke & Ors* (2002) 11 NWLR (Pt. 777) 1 at 28; *Onwuama v: Ezeokoli* (2002) 5 NWLR (Pt. 760) 353 at 366; *Chief Kalu Igwe & Ors v. Chief Onwuka Kalu & Ors* (2002) 5 NWLR (Pt. 761) 678.

Reacting on behalf of the 2nd Respondent, learned counsel on his behalf said that it is settled that in any civil matter, for a proper evaluation and appreciation of the evidence before the trial court, that court before coming to the conclusion as to which evidence to believe, accept or reject should put the totality of the testimony adduced by both parties on an imaginary scale and proceed to assess in whose favour the evidential pendulum shifts in determining whose evidence it should accept, reject or believe. He cited *Ndulue v Ojiakor* (2001) 14 NWLR (Pt. 734) 792. That the question of native land and custom as put up by the Appellant is a question to be proved by evidence and the burden is on he who asserts especially where the custom has not received a judicial pronouncement. He referred to Section 14 of the Evidence Act, *Giwa v. Erinminlokun* (1961) 1 All NLR 196.

Learned counsel for 2nd Respondent said the burden of proof rested squarely on the Appellant to show to the court how he ascended the throne of Alagar of Agar in accordance with Agar native law and custom. That it was the failure to establish that which led to the trial Court's finding which the Court of Appeal could not impugn. He cited *Fabian Onyejekwe & Ors. v. Obiora Onyejekwe* (1999) 3 SCNJ 63 at 72; *Richard Igago v. The State* (1999) 12 SCNJ 140 at 160; *Ojengbede v. M.O. Esan (Loja-Oke) & Anor.* (2001) 12 SCNJ

401 at 422.

What should have been replies on point of law based on the Reply Briefs of the appellant turned out to be no more than short recaps of the earlier submissions of learned counsel for the appellant. I would recast the Writ of Summons which had the Statement of Claim
B filed at the same time and within the same process.

WRIT OF SUMMONS: ENDORSEMENTS:

The plaintiff's claim against the 2nd defendants both jointly and/or severally is for:

C i. A declaration that the plaintiff is the Alagar of Agar having been appointed by his Abdul Salami family of Agar.

ii. A declaration that the 1st defendant is not entitled to be appointed as an Alagar of Agar since he is not a descendant of the said Abdul Salami.

D iii. A perpetual injunction prohibiting the 1st defendant from parading himself as the new Alagar of Agar on the pronouncement of the 2nd defendant, on 18/5/98, that the 1st defendant was the village head of Agar in the Moro Local Government Area of Kwara State.

E **STATEMENT OF CLAIM:**

1. The plaintiff has been the Alagar of Agar for quite some time.

F 2. The predecessors of the 2nd defendant conferred the statutory post of a village head on one Sumonu Ayinla, the father of the 1st defendant which led the plaintiff to sue the said Sumonu Ayinla and 2 others at the Ilorin High Court.

3. The said High Court suit was struck out because the plaintiff did not pay the statutory N10,000 non-refundable deposit.

G 4. The plaintiff therein, who is also the plaintiff herein, appealed to the Court of Appeal, Kaduna, in *Alhaji Adebayo v Momonu Ayinla & Ors.*, CA/K/203/95.

H 5. The court of Appeal in their ruling delivered on 5/6/97 which the plaintiff hereby pleads allowed the appeal on the ground the said deposit was not payable and directed that the case be heard by another Judge of Kwara State, other than J/A Ibiwoye.

6. The plaintiff was waiting to be re-called for the hearing but about 2 months ago the then 1st defendant, Mallam Momonu Ayinla died.

7. On or about 18/5/98 the 2nd defendant in a turbaning ceremony pronounced the 1st defendant as the village head of Agar.

8. No Emir of Ilorin has ever appointed an Alagar or rejected an appointment made by the Abdul Salami family of Agar.

9. The Ilorin Emirate council is a child of the Local Government Edict No. 8 of 1976 and has never appointed an Alagar of Agar. B

10. Whoever the Abdul Salami family appointed as the Alagar was normally used by the Local Government as its tax collection agent to collect community taxes.

11. The two functions are separate and distinct but are normally combined for administrative convenience purposes. C

12. Wherefore the plaintiff prays for:

i. a declaration that he is the Alagar of Agar;

ii. a declaration that the 1st defendant is not the Alagar of Agar D in that he is not appointable since he is not a member of Abdul Salami family of Agar and (ii) his appointor has no power to appoint an Alagar and;

iii. a perpetual injunction prohibiting the 1st defendant from parading himself as the Alagar and the 2nd defendant from so treating him. Dated this 27th day of May, 1998. E

In summary, the version as put forward by the appellant through learned counsel is that they are entitled to their claim and the two Lower Courts failed to grant the appellant the relief sought due to a lack of appreciation and proper evaluation of the evidence proffered. F The first respondent's view is that the appellant did not plead any native law and custom or the tradition and procedure for appointing an Alagar. That the situation was worsened by appellant's failing to adduce any evidence of any procedure to be followed in appointing G an Alagar or of compliance with such a procedure.

The Honourable Attorney General, Saka A. Isua's position in countering the appellant is that appellant as plaintiff failed to establish that Abdulsalam Ruling House is the Sole Ruling House in Agar. That such a piece of evidence needed be substantiated by cogent, sufficient and compelling evidence and this was not done. H

The learned trial judge after considering all the materials available held thus:-

"In this case, the plaintiff has failed to establish a credible case

to entitle him have the declaration sought. As for the third claim of perpetual injunction, the 1st defendant has not claim (sic) to be appointed as the Alagar of Agar, that plaintiff has failed to show that the 1st defendant holds himself out as to be so appointed. The 2nd defendant was not shown by evidence to have appointed or turbaned the 1st defendant as the Alagar of Agar. An injunction in the circumstances of this case is unwarranted.”

The decision above stated was affirmed by the Court of Appeal. The follow up question then is whether what was found and decided upon by the two Courts below are what this Court is comfortable within the fight of the prevailing laws and legal principles. Of note is that there is clarity in the law that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side and the guide is the pleading which sets the tone in keeping with Section 135 of the Evidence Act. Then comes the fact that the burden of establishing what has been claimed rests on the plaintiff and in this case plaintiff/appellant. The respondents say the appellant failed to discharge the burden and the appellant says he did, that their failure to be awarded the judgments at the two Courts below is because those courts did not understand the applicable laws and the case before them.

Considering the pleadings and the evidence laid, what I find difficult to get on with is the fact of the vagueness of the Statement of Claim including the issue of native law and custom and at the root of this entire case is a traditional stool. The evidence proffered by the plaintiff/appellant did not help matters. A point as crucial as the traditional ways of Agar people is something that must be pleaded with particulars and the appellants hanging on it for the purpose of being the Alagar of Agar which he claimed is a situation which details are neither found in the pleadings nor evidence. An example of this vague opaque pleading is seen at the statement of claim paragraph 1, wherein appellant stated:

“The plaintiff has been the Alagar of Agar for quite some time.”

In his Brief of argument learned counsel, Mr. Ijaodola for the appellant had commended this Court to the Chiefs (Appointment and Deposition) Law and the Native Authority Law. He further contended that the defendants had carelessly over-looked the fact that there a world of difference between the traditional Yoruba office of

Alagar and the Fulani/Hausa administrative office of Alangua. Also that the defendants/respondents had ignored Order 25 Rule 14(1) of the Kwara State High Court (Civil Procedure) Rules, 1989 in their Statement of Defence.

It is evident that it is the appellant who has had the misconception there is: Firstly, the nexus linking the laws and rules of Court he pushes forward and the facts of this case are well settled only in the imagination. They are not on the surface and the appellant has left the burden either for the respondents or court to dig out the necessary materials and establish the burden for him. From what I can see the Court below had no blame in affirming the findings and conclusion of the trial High court which court carried out its assignment of considering each side's pleadings and evidence. The evaluation made at that court of trial was properly made and it is not the duty of the Court of Appeal or this court to embark upon a retry which is a process that cannot be justified within the context of what is available. See *Ita & Anor v. Ekpenyong & Anor.* (2001) 1 NWLR (Pt.695) 587; *Adebisi Layinka & Anor. v. Adeola Makinde & Ors.* (2002) 10 NWLR (Pt.775) 358 at 375.

It needs be restated that a plaintiff has to succeed on the strength of his own case and not by the weakness of the defence and the exception to that rule is that the rule changes if the plaintiff finds in the evidence of the defence facts which strengthen his own case. That exception has not happened and the appellant's case not saved. I rely on *Ezekiel Oyinloye v Babalola Esinkin & Ors* (1999) 5 SCNJ 278 at 288.

From the above and the fuller reasons of my learned brother, Ibrahim Tanko Muhammad JSC, I see no reason to disturb the concurrent findings of the two Courts below and so I dismiss the appeal and affirm the judgment of the Court of Appeal which in turn affirmed the decision and orders of the trial High Court. I award N50,000.00 to each of the two Respondents.