

SUPREME COURT OF NIGERIA
15TH JUNE, 2012. SC. 129/2004
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, J. A. FABIYI, B. RHODES-VIVOUR,
N. S. NGWUTA, JJSC**

MR. LAMIDI RABIU APPELLANT
AND
MR. TOLA ADEBAJO RESPONDENT

APPEALS - Concurrent findings - Supreme Court will not interfere -
Since the findings did not cause a miscarriage of justice (H1)

COURTS - Discretion - Exercise of - Once discretion is exercised
judicially and judiciously - Supreme Court does not interfere (H2)

FACTS

Plaintiff/appellant and defendant/respondent made competing claims to the land in dispute situate at Gbagada, Lagos State. In furtherance of his claim, appellant filed writ of summons at the High Court of Lagos State, Ikeja Division wherein he claimed inter alia against respondent an order of perpetual injunction and damages for trespass on the disputed land. Respondent on his part counter-claimed inter alia against appellant, for injunction and general damages. Both parties adduced traditional evidence tracing their titles to the Oloto chieftaincy family. In its judgment at the end of the trial, the court preferred the version of traditional evidence adduced by respondent and dismissed appellant's claim. Thus, the court granted the reliefs sought in the counter-claim by respondent. Appellant was not satisfied with the judgment. Hence, he appealed to the Court of Appeal, Lagos Division. The court found the appeal to be unmeritorious and dismissed same. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

(i) Whether the inference that the Respondent had established a better title was premised on errors and misdirection.

(ii) Whether the appellant's plea of limitation ought to have been considered and decided upon and whether the omission so to

2330 Rabiu v. Adebajo (2012) 6 KLR (pt. 314) 2329; (2012) 15
do has led to a miscarriage of justice.

HELD (Unanimously dismissing the appeal per
NGWUTA JSC)

APPEALS - Concurrent findings

1. The trial Court considered the evidence adduced in the counter-claim including the judgment in Suit No.ID/133/81 and concluded that:

“In view of this finding the defendant in this case should be entitled to statutory right of title.”

Again, the lower Court affirmed the finding made by the trial Court in favour of the respondent. The appellant did not establish by evidence that the finding of fact of the trial Court, affirmed by the lower Court, is perverse, led to a miscarriage of justice or was not based on credible evidence before the trial Court. In the circumstance, this Court cannot interfere or disturb the judgment based on the said finding of fact.
(p. 2337 C)

COURTS - Discretion - Exercise of

2. In issue two, the appellant impugned the exercise of the trial Court’s discretion in refusing to grant the appellant’s motion for amendment at the close of the case for the purpose of enabling the appellant to plead and rely on the Limitation Law to prove his case. As argued by the respondent, a plea based on limitation law would have changed the nature of the case and in any case, limitation law is a weapon of defence not attack. In rejecting the application, the trial Court exercised its discretion judiciously and judicially. The lower Court affirmed that exercise of discretion. Once discretion is exercised judicially and judiciously, this Court cannot interfere even if it would have exercised its discretion differently in the same situation. (p. 2337 F)

REPRESENTATION

Ajomo, Esq, for the Appellant

Alajola, Esq., for the Respondent

CASES REFERRED TO

Lamex Ltd v. NAB Ltd (1997) 643
 Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718
 Ogbachie v. Onochie (1986) 2 NWLR (Pt. 23) 494
 Ezeokonkwo v. Okeke (2002) 9 MJC 189
 Elias v. Omo-Bare (1982) 5 SC 25
 Oyadare v. Keji (2005) 14 MJSC 172
 Ajero v. Ugorji (1999) 7 SC (Pt.1) 58
 Nwabuko v. Ottih (1961) All NLR 487
 Mamman v. Salaudeen (2005) 12 SC (Pt. 11) 46
 Oyekanmi v. NEPA (2000) 12 SC (Pt. 1) 70
 Saraki v. Kotoye (1990) 4 NWLR (Pt. 143) 144
 Laguro v. Toku (1992) 2 NWLR (Pt. 223) 278
 Balogun v. Labiran (1988) 3 NWLR (Pt. 80) 66
 Chinwendu v. Mbamali (1990) 3-4 SC 32
 Theophilus v. State (1996) 1 NWLR (Pt. 423) 139

STATUTES REFERRED TO

Constitution of Federal Republic of Nigeria 1999, ss. 233(3), 237 (2)(3)

LEAD JUDGMENT BY NGWUTA JSC

Endorsed on the Writ of Summons filed in the Registry of the Ikeja Division of the High Court of Lagos State are the following claims made by the plaintiff (now appellant) against the defendant (now respondent):

(i) Perpetual injunction restraining the Defendant by himself, his servants, agents, privies and otherwise howsoever trespassing on or in any manner dealing or interfering with the plaintiff's possession of the property lying and situate at No. 7 Adebajo Street, Soluyi Village, Gbagada, Lagos State.

(2) The sum of N500,000.00 being damages for trespass committed by the Defendant, his agents, servants and or privies on the plaintiff's property situate at No. 7 Adebajo Street, Soluyi Village, Gbagada, Lagos State.

However, in the amended statement of claim, the plaintiff

claimed from the defendant as follows:

“(i) A declaration that the plaintiff holds the right of occupancy over the said parcel of land delineated in Plan No.OF/879 of 23rd March 1977, lying and situate at No.5 Adebajo Street, Soluyi Village, Gbagada, Lagos.

B *(ii) An injunction restraining the Defendant by himself, his servants, agents, privies or otherwise howsoever from further acts of trespass on the said land.*

C *(iii) Special and general damages for trespass to the land amounting to N652,490.00*

A. Special Damages		N
(a) 12 Nos. Mattresses @ N400.00 each	-	4,800.00
(b) 12 Nos. Bedding at N265.00 each	-	3,300.00
(c) Assorted clothing materials	-	8,700.00
D (d) 9" x " blocks (1, 350 pieces)	-	14,850.00
(e) Main Gate	-	4,500.00
(f) Cement (1,350 bags) @ N86 each	-	116,100.00
(g) Key to Main Gate	-	90.00
(h) Chain (Long)	-	150.00
E Balance b/f	-	152,490.00
B. General Damages		
General damages for trespass and Harassment	-	500,000.00
TOTAL	-	652,490.00"

F In his amended Statement of Defence, the respondent, as defendant denied the claim and counter claimed thus:

“32. The defendant repeats his averments in paragraphs 1 to 36 of the Amended Statement of Defence.

38. The defendant therefore claims against the plaintiff

G *(a) A declaration that the defendant is entitled to the statutory or customary Right of Occupancy of the piece of land edged red in Plan No.LD39/92 situate lying and being at 5 Adebajo Street, Soluyi Village, Gbagada, Shomolu Local Government Area, Lagos State.*

H *(b) N1,000.00 general damages for trespass committed by the plaintiff, his servants and agents in the land.*

(c) Injunction restraining the plaintiff, his servants and agents from committing further act of trespass on the said land.”

In its judgment at the end of the trial, the trial Court dismissed the plaintiffs (appellant’s) claim and granted the reliefs sought in the

counter-claim by the respondent. Appellant was not satisfied with the judgment against him and he appealed to the Court below. In its judgment the Court below concluded thus:

“In summary, having regard to all I have been saying, it is my judgment that this appeal is unmeritorious. It is accordingly dismissed with N7, 500.00 costs in favour of the Respondent.” (See page 371 B of the record.)

Still not satisfied with the judgment, the appellant appealed to this Court on seven grounds from which the following two issues were distilled for determination in the appellant’s brief:

(i) Whether the inference that the Respondent had established a better title was premised on errors and misdirection. (Grounds (iv), (vi) and (vii)) C

(ii) Whether the appellant’s plea of limitation ought to have been considered and decided upon and whether the omission so to do has led to a miscarriage of justice. (Grounds (i), (ii), (iii) and (iv) D

Learned counsel for the respondent, in his brief, raised a preliminary objection to all the seven grounds of appeal on the ground that:

“It is therefore clear that at best, each of the grounds is a ground of mixed law and fact. And as such, the appellant ought to have sought and obtained leave of the lower court or the leave of this court to file all the grounds of appeal. This failure is in contravention of the provisions of s.237 (2) and (3) of the 1999 constitution. The 7 F grounds are therefore incompetent and the notice of appeal dated 16/6/2004 is liable to be struck out.”

Learned counsel however presented the following three issues drawn from the appellant’s grounds of appeal for determination:

“3.01 Since it was common good that both parties traced their title to the some original owners whether the lower Court was right to have upheld the trial Court’s finding that the respondent had proved earlier title to the original owners and had established better title to the land in dispute. G

3.02 Whether the lower Court was right in its refusal to interfere with the trial Court’s exercise of discretion which led to the refusal of the appellant’s post trial application to amend its reply to plead the special defence of Limitation Law. H

3.02 Whether having upheld the exercise of the trial Court’s

discretion to refuse the application to amend, the lower Courts refusal to consider the Applicant's entitlement or otherwise, to the plea or special defence of limitation, had led to a miscarriage of justice."

A preliminary objection as a threshold issue is a pre-emptive strike to scuttle the hearing of the appeal. It has to be disposed of before any further step can be taken in the appeal. The respondents objected to the seven grounds of appeal on the ground that they are grounds of mixed law and facts on which the appellant cannot appeal as of right. Learned Counsel argued that the failure by the appellant to seek and obtain leave of Court to appeal on the said grounds contravened s.231 (2) and (3) of the 1999 Constitution. He urged us to strike out the notice of appeal. In his reply brief, learned Counsel for the appellant referred to the classification of grounds of appeal in *Lamex Ltd v. NAB Ltd* (1997) 643 at 656-657; *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt.67) 718 at 744-745; *Ogbechie v. Onochie* (1986) 2 NWLR (pt.23) 494 at 491 and submitted that all the grounds of appeal are grounds of law alone. In certain cases, the line between a ground of law and a ground of mixed law and fact can be very fine. Apart from the classification relied on by the appellant, it is safer in this case to hear and determine the appeal on the merits. Consequently, the preliminary objection is over-ruled.

In dealing with issue one in his brief, learned Counsel for the appellant reproduced a passage in the judgment of the Court below:

"The findings of the trial Court cannot therefore be faulted that the valid title to the land in dispute rests in the defendant/counter-claimant respondent."

Relying on portions of the judgment and case law, Counsel for the appellant concluded that the Court below failed to direct itself as to who bought first in time between the appellant and the respondent.

In issue two, learned Counsel reproduced in extenso various judgments of this Court on Limitation Law and its effect on title where it applies. He impugned the judgment for failure to let in the plea of limitation by the appellant and argued that the failure occasioned a miscarriage of justice because, according to Counsel, the record indicates that the plea should have been upheld. In conclusion, he urged the Court to allow the appeal, based on his argument. He said that the Court below adverted to wrong and immaterial considerations

in:

“(a) deciding on who had a better title as between the appellant and respondent;

(b) refusing the appellant’s post evidence application to amend the pleading and rely on Limitation Law;

(c) refusing to consider the plea of limitation and;

(d) regarding the plea of limitation as co-terminus with a claim for a possession with a claim of “possession rooted in rightful possession.”

Learned Counsel for the appellant introduced a novelty in brief writing by his Appendix A at the end of his brief in which he practically re-argued his appeal.

In issue one, learned Counsel for the respondent referred to the finding of the lower Court that *“the finding of the trial Judge cannot therefore be faulted that valid title to the land in dispute rests in the defendant/counter-claimant/respondent”* at page 369 of the record. He submitted that the failure of the appellant to call oral evidence of traditional history is fatal to his case, adding that it is not sufficient to plead and tender conveyance as the basis of claim for declaration of title. He argued that evidence of intervening owners through who the appellant claimed ought to have been pleaded and given at the trial. He relied on *Ezeokonkwo v. Okeke* (2002) 9 MJC 189, 203; *Total Nig. v. Wilfred Nwankwo* (1978) 5 SC 1, 12; *Elias v. Omo-Bare* (1982) 5 SC 1, 12; *Elias v. Omo-Bare* (1982) 5 SC 25, 27-58; *Oyadare v. Keji* (2005) 14 MJSC 172, 193-194. He argued that the failure of the appellant to give evidence of traditional history as pleaded means that the averments in the pleading had been abandoned. He relied on *Ajero v. Ugorji* (1999) 7 SC (Pt.1) 58 at 71; *Nwabuoko v. Ottih* (1961) All NLR 487. Learned Counsel contended that this Court should not disturb the concurrent findings of the lower Court and the trial Court since the appellant could not show that there is a miscarriage of justice or a violation of some principles of law or procedure or that the findings are perverse. He relied on *Ajuwa v. Odili* (1985) 2 NWLR (Pt.9) 710; *Oyadare v. Keji* (2005) 1 SC (Pt.1) 19 at 30; *Igweso v. Ezengo* (1992) 6 NWLR (Pt.249) 561. He urged the Court to resolve issue one in favour of the respondent.

In issue two, counsel argued that in denying the application to amend pleading, the trial court exercised its discretion in accordance

with law and equity. He urged the court not to disturb the exercise of the trial court's discretion as affirmed by the lower court even if the court would have exercised the discretion differently in similar circumstances. He relied on *Mamman v. Salaudeen* (2005) 12 SC (Pt.11) 46 at 55; *Oyekanmi v. NEPA* (2000) 12 SC (Pt.1) 70; *Saraki v. Kotoye* (1990) 4 NWLR (Pt.143) 144. He referred to order 17 rule 11 of the High court of Lagos state (Civil Procedure) Rules 1994 and said that there was no foundation for reliance on limitation law since it was not pleaded.

C He said that issues were joined on whether or not the appellant was in actual, adverse and exclusive possession of the land for 12 years and so further evidence would have been required if the application for amendment was granted. He said that the amendment would have changed the nature and character of the case and so it was rightly rejected. He relied on *Laguro v. Toku* (1992) 2 NWLR (Pt.223) 278 at 294 - 295; *Abimbola George v. Dominion Flour Mills* (1963) 1 All NLR 21 AT 77. He urged the court to resolve issue two in favour of the respondent. Learned counsel said issue three is on the refusal of the trial court to grant an amendment to accommodate a plea of limitation and said that the appellant did not show that the denial of his application led to a miscarriage of justice. I observe that the issue of limitation law and refusal of the application to accommodate it has been repeated enough. He urged the court to dismiss the appeal.

F In his reply brief, learned counsel for the appellant contended that there is nothing in *Akerele v. Atunrase* (supra) or *Fasoro v. Beyioku* (supra) that precludes the appellant from relying on limitation once it is properly pleaded, irrespective of whether he relied on purchase or long and adverse possession in proof of his title and failed in establishing it.

H Appellant's issues one and two correspond with respondent's issues one and two. The third issue in the respondent's brief and argument thereon are a recast of issue and argument already in the brief. I will determine the appeal on the two issues presented by the appellant. In issue one, it appears a common ground that radical owners of the land in dispute is the Oloto Chieftaincy family of Lagos. The conveyance relied on by the appellant did not mention the original owners of the land so conveyed. The trial Court had this to say

on the evidence led by the appellant:

“Once more I wish to state the immutable principle of law that any party laying claim to ownership of a piece or parcel of land, must, in order to succeed by credible evidence, establish his root of title... there is no scintilla of evidence from plaintiff/appellant connecting the Oloto Chieftaincy family with Exhibits P7-P2.” Furthermore, the lower Court that: B

“The findings of the trial Judge cannot therefore be faulted that valid title to the land in dispute rests in the defendant/counter-claimant/respondent.” C

On the other hand, **the trial Court considered the evidence adduced in the counter-claim including the judgment in Suit No.ID/133/81 and concluded that:**

“In view of this finding the defendant in this case should be entitled to statutory right of title.” (See page 226 of the record). D

Again, the lower Court affirmed the finding made by the trial Court in favour of the respondent. The appellant did not establish by evidence that the finding of fact of the trial Court, affirmed by the lower Court, is perverse, led to a miscarriage of justice or was not based on credible evidence before the trial Court. In the circumstance, this Court cannot interfere or disturb the judgment based on the said finding of fact. See Balogun v. Labiran (1988) 3 NWLR (Pt.80) 66 at 77; Chinwendu v. Mbamali (1990) 3-4 SC 32; Theophilus v. State (1996) 1 NWLR (Pt.423) 139 at 150. I resolve issue one against the appellant and in favour of the respondent. E
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In issue two, the appellant impugned the exercise of the trial Court’s discretion in refusing to grant the appellant’s motion for amendment at the close of the case for the purpose of enabling the appellant to plead and rely on the Limitation Law to prove his case. As argued by the respondent, a plea based on limitation law would have changed the nature of the case and in any case, limitation law is a weapon of defence not attack. In rejecting the application, the trial Court exercised its discretion judiciously and judicially. The lower Court affirmed that exercise of discretion. Once discretion is exercised judicially and judiciously, this Court cannot interfere even if it would have exercised its discretion differently in G
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the same situation. See *Ogbechie v. Onochie* (1988) 1 NWLR 370.

On the whole, the appellant who wants this Court to disturb a concurrent finding of the two Courts below has failed to provide a ground for so asking. The appeal lacks merit and is hereby dismissed. Appellant to pay costs assessed at N50,000.00 to the respondent.

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MOHAMMED JSC

I have had a preview of the judgment just delivered by my learned brother Ngwuta, JSC before today. I am completely with him in his reasoning and conclusion in resolving the issues arising for determination in the appeal.

However, I wish to make no more than concurring comments of my own on the Respondents preliminary objection to the grounds of appeal of the Appellant and the issues raised for the determination of the appeal. The appeal is from the decision of the Court of Appeal Lagos Division delivered on 31st May, 2004 dismissing the Appellant's appeal against the judgment of the trial Lagos State High Court given on 20th November, 2000 dismissing the Appellant's action filed in that Court as the plaintiff against the Respondent who was the Defendant. In the course of the hearing of the case between the parties at the trial Court, both parties agreed by their pleadings and evidence called by them, that the Oloto Chieftaincy family had the original title to the land in dispute and that both parties claimed to have derived their respective title from that original source or owners.

From the seven grounds of appeal filed by the Appellant in his Notice of Appeal, the following two issues were identified in the Appellant's brief of argument, viz -

"(i) Whether the inference that the Respondent had established a better title was Premised on errors and misdirection.

(ii) Whether the Appellant's plea of limitations ought to have been considered and decided upon and whether the omission so to do has led to a miscarriage of justice."

The learned counsel to the Respondent's brief of argument also adopted in the Appellant's brief of argument except for splitting of the issue (ii) into two separate issues by making the Appellant's complaint in that issue of an alleged miscarriage of justice in the conduct of his case by the two courts below, a third separate issue. In

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addition, all the seven grounds of appeal filed by the Appellant were challenged in a preliminary objection by the Respondent on the ground that all the grounds of appeal being grounds facts, mixed facts and law filed without the leave of the Court below or of this Court, were incompetent and liable to be struck out by virtue of Section 233(3) of the Constitution of the Federal Republic of Nigeria, 1999. In the instant case where the facts in issue between the parties are not at all in dispute as to how each of the parties derived his title to the property in dispute No. 5 Adebajo Street, Soluyi Village Gbagada, Lagos State, the application of the law to the facts and the drawing of inference therefrom by the trial Court and the Court below, I am of the view that all the grounds of appeal in the Appellant's Notice of appeal are grounds of law. Hence I also dismiss the Respondent's preliminary objection to pave the way for the hearing of the appeal on the merit. From the record of this appeal, having regard to the evidence adduced by the parties in support of their claims and counter-claims respectively, it is quite plain that it is common ground between the parties that the Oloto Chieftaincy Family are the radical or the original owners of the large parcel of land which contains the property in dispute No.5 Adebajo Street. The law is well settled that in situations as in the present case that the party who had proved that he had obtained an earlier title traceable to the Oloto Chieftaincy family, is the party who ought to be held to have proved a better title to the land in dispute. See *Adeniran v. Ashabi* (2004) 2 N.W.L.R. (Pt. 857) 375. Therefore the Respondent whose evidence had satisfied this requirement of the law was rightly declared by the trial Court and affirmed by the Court below as the party who proved a better title to the land in dispute. This is because the trial Court was on very firm grounds in refusing to allow the Appellant to amend his Reply to the Respondent's Statement of Defence and Counter-Claim to raise a fresh issue under the Statute of Limitation. To have exercised its discretion otherwise than the way it was correctly exercised, would have landed the trial Court in allowing the Appellant as Plaintiff to have raised a completely new and entirely different case from the case fought by the parties thereby resulting in causing miscarriage of justice to the Defendant now Respondent. In all the circumstances of this case, this appeal being one against concurrent findings of facts of the trial High Court and the Court of Appeal and there being no

complaint that the decisions of the two Courts below are perverse or not flowing from the evidence led and accepted by the trial Court and affirmed by the Court below, the appeal is doomed to fail. Accordingly, I also hereby dismiss the appeal with N50,000.00 costs to Respondent against the Appellant.

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MUNTAKA-COOMASSIE JSC

I was opportuned to have read before now the clear-to-the point lead judgment of my noble lord Justice Sylvester Ngwuta JSC. His reasoning and conclusions in dismissing this particular appeal tally with my understanding of the law as it is. I, in fact adopt same, with respect, as mine. Another added advantage in favour of the respondent is the concurrent decisions of the two lower courts which are not perverse.

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I do not wish to add more points of mine or elaborate since my lord Ngwuta, has done a good job and, in my view, arrived at a correct decision. I therefore dismiss the appeal and affirm the decision of the lower court in which the judgment of the trial court was affirmed. I endorse the order as to costs made in the lead judgment.

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FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother, Ngwuta, JSC. I agree with the inescapable conclusion reached therein that the appeal lacks merit and deserves to be dismissed.

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Parties herein made competing claims to the land in dispute at the trial High Court. Both parties tried to trace their titles to the Oloto chieftaincy family. The respondent's title was earlier in time. The trial court garnered evidence and was duly addressed by learned counsel for the parties. In a considered judgment, the claim of the plaintiff was dismissed while the counter-claim of the defendant was granted. The plaintiff appealed to the court below where same was found to be unmeritorious and dismissed. This is a further appeal to this court.

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I wish to touch mainly the first issue couched on behalf of the appellant which reads as follows:-

“(i) Whether the inference that the respondent had established

a better title was premised on errors and misdirection.”

As observed by the learned justice of the court below, the appellant failed to trace by credible evidence his root of title to Oloto chieftaincy family whose ownership of the land had been established as enjoined in *Romaine v. Romaine* (1992) 4 NWLR (Pt.238) 650; *Chief Adeyemi Lawson & Anor v. Chief Ayodele Ajibulu & Ors.* (1997) 6 NWLR (Pt.507) 14. There was no shred of evidence by the plaintiff/appellant which connected the Oloto chieftaincy family with Exhibits P1-P2 his deed of conveyance. On the other hand, the defendant/respondent tendered a number of deeds-Exhibits D4-D8 to support the validity of his title to the land. Yusufu Agunbiade gave evidence as a member of Oloto family that the land was conveyed to Murtala Arogundade who conveyed same to the defendant/respondent. The court below found that the case of the defendant, as to the validity of his title to the land in dispute, to be on a firm ground. The finding of the learned trial judge was confirmed by the court below. The finding is without blemish and same is sustained. The two courts below made concurrent findings of fact on crucial points. This court will not interfere with same unless compelling reasons are shown by the other side which justify interference. See: *Seatrade v. Awolaja* (2002) 2 SC (Pt.1) 35; *Anaeze v. Anyaso* (1993) 5 NWLR (Pt.291) 1. I shall not interfere as no reason was adduced. It is also extant in the record of appeal that both sides at the close of evidence sought to amend their pleadings. The two courts below felt that such was calculated to overreach. In considering such an application, the court must be guided by due exercise of discretion carried out judicially and judiciously as well. See: *Adekeye v. Akin-Olugbade* (1987) 6 SC 208; *Eronini v. Iheuko* (1989) 3 SC (Pt.1) 30. I fail to see the rationale for arguments canvassed on the point on behalf of the appellant. Same failed to hit the required target. For the above reasons and those carefully adumbrated in lead judgment, I too feel that the appeal has no chance success. It is hereby dismissed. I endorse all the consequential orders contained therein; inclusive of that relating to costs.

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the judgment prepared by my learned brother, Ngwuta JSC, I am in full agree-

ment with his lordship reasoning and conclusions. The appellant as plaintiff claimed in the main for a declaration that he holds the right of occupancy over a piece of land situate of No. 5 Adebajo Street, Soluyi Village, Gbagada, Lagos, The respondent as defendant counter-claimed for the same piece of land. The central issue is who, between
 B the appellant and the respondent has a better title to No. 5 Adebajo Street, Soluyi Village, Gbagada Lagos. The learned trial judge dismissed the plaintiff/appellant claim and held that the defendant/respondent is entitled to statutory right of occupancy in respect of No.
 C 5 Adebajo Street Soluyi village Gbagada, Lagos. The learned trial judge reasoned as follows:

*“The Law is that it is the person who has a better title that would be regarded as being in rightful possession. See Aromire & ors v Awoyemi 1972 1 ALL NLR 112. The court has held that the Oloto
 D family who has sold the land to the defendant source of title in 1972 had nothing to sell to Ogunyade in 1975. Consequently the plaintiff has nothing to purchase from Ogunyode. In the circumstances the defendant even thought what he has is only on evidence of equitable interest yet his title is better to that of the plaintiff who has not purchased anything from Ogunyade since Ogunyade himself had nothing to sell.”*
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After reviewing testimony of witnesses and examining documentary evidence the Court of Appeal had no difficulty agreeing with the trial judge. The Court of Appeal said:
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“The findings of the trial judge cannot therefore be faulted that valid title to the land in dispute rests in the defendant/counter-claimant/respondent.”

I agree with both courts. The respondent has a better title than
 G that of the appellant and he is entitled to declaration that he holds the right of occupancy over No.5 Adebajo Street, Soluyi village, Gbagada, Lagos. The Court has discretionary power to grant or refuse to grant a declaration of title, such discretion should only be exercised judicially. That is to say with caution, fairness and sound reasoning. It is long settled that the onus of proof in a suit for declaration of
 H title lies on the plaintiff and he succeeds on the strength of his case and not on the weakness of the defendants case. See Egonu v. Egonu 1978 11 - 12 SC p.111, Obiomo v. Olomu 1978 3 SC p.1. Where a plaintiff claims declaration of title to a piece of land and the defen-

dant counter-claims for title to the same piece of land, it is the duty of the plaintiff to establish his title, thereafter the burden of proving title shifts to the defence to show the contrary, Where the defendant is able to discredit the evidence of the plaintiff with oral or land documentary evidence, the claim of the plaintiff for declaration will be dismissed

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The plaintiff and defendant claim to have derived their title from the true owners of the land, the Oloto Chieftaincy Family. The question to be answered is who had acquired proper title from the original owner? That in effect is where two parties claim to own the land, the law ascribes title to the party with a better title. The appellant relied on exhibits p1 - p2, his title documents mode on the 14th of December, 1977. The vendor is Sunday Ogunyade of No.21 Buraimoh Street, Abule-Okoto in Lagos State, Nowhere is exhibit P1-P2 linked or connected to the Oloto chieftaincy family. On the other side, the respondent relied on exhibits D4-D8. Title documents dated the 18th of December, 1972 between Chief Emmanuel Jaiyesimi Ogundimu, the Oloto of Oto and other members of his family on one side and Muritala Arogundade on the other part. Arogundade sold the land to Cuthbert Oluremi Dawodu who sold to the respondent. Testimony in court, largely unchallenged and documentary evidence supports this fact.

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A party who claims ownership of a piece of land can only succeed if he establishes his root of title by credible and compelling evidence. The appellant built his case on P1 - P2. His case crumbles like a pack of cards as it is so clear that of the time he purchased the land on 14/12/77 there was no land to purchase. The land had already been sold to the respondent. Furthermore the appellant who claims to have derived his title from the Oloto Chieftaincy Family was unable to establish that fact by documentary evidence or compelling evidence. The appellants case is not credible. On the other hand the respondents' case is very credible and compelling. He purchased the piece of land before the appellant's alleged purchase of the same piece of land. He established his root of title to the Oloto Chieftaincy family (see Exhibits D4-D8).

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The well settled position of the law is that concurrent findings of fact are rarely disturbed by this court but this court would be compelled to interfere if the findings are perverse or cannot be supported

by evidence before the court or there was a miscarriage of justice or violation of some principle of law or procedure. See *Cameroon Airlines v. Otutuizu* (2011) 1 - 2 SC pt.111 p.200, *Anoeze v. Anyaso* 1993 5 NWLR pt.291 p.1. The reason is simple. Much weight ought to be attached to the opinion of the trial judge since he saw and
B heard the witnesses testify.

In deciding whether concurrent findings of fact are sound, an Appeal Court should examine the grounds that led to the conclusion reached and the inferences drawn from such conclusions by the court
C of first instance. A review of oral testimony and documentary evidence reveals that the findings of the trial court, confirmed by the Court of Appeal are indeed sound. The respondent has a better title than the appellant to the land in dispute. After all, documentary evidence makes oral testimony more compelling and on that point the
D respondents' case is to be preferred. Concurrent findings of fact by the two courts below that the respondent has a better title to the land in dispute is correct and sound.

For this and the detailed reasoning in the leading judgment I would dismiss the appeal with costs of N50,000 to the respondent.
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