

SUPREME COURT OF NIGERIA

6TH JULY, 2012. SC. 26/2005

**CORAM:- W. S. N. ONNOGHEN, I. T. MUHAMMAD,
J. A. FABIYI, S. GALADIMA, N. S. NGWUTA, JJSC**

1. J. O. OSIDELE

2. SAM AKINMUSIRE

..... APPELLANTS

3. MADAM JULIANA SOBAKU

AND

MOSES O. SOKUNBI

..... RESPONDENT

LAND LAW - Title - Proof - Idundun v. Okumagba - Title to land can be proved by traditional evidence - Documents of title - Acts of ownership - Acts of long possession - And possession of adjacent land (H1)

LAND LAW - Title - Proof - Conflicting claims - Where parties derived titles from different sources - The source with better title gives superior root of title (H2)

LAND LAW - Auction sale - Ordered by court - Effect - It is presumed that such judicial act is valid - Where there is no fraud - And security given to purchaser of such property - Is a statutory one (H3)

DOCUMENTS - Recitals in - Effect - Where accurate recitals and descriptions of facts and parties - Are made in document of more than 20 years - The same shall be taken as sufficient evidence of truth of such facts and matters (H4)

LAND LAW - Title - Proof - Onus is on plaintiff - As defendant is never called upon to defend the claim of plaintiff - Until plaintiff establishes a prima facie case (H5)

APPEALS - Fresh issue - Raised without leave - Fate - Since leave was not obtained to raise new issue of trust property - The issue shall be deemed incompetent (H6)

LAND LAW - Lis pendens - Purpose - The doctrine postulates that

sale conducted when a matter is in litigation - Is void ab initio - And no title can be passed to purchaser (H7)

LAND LAW - Sale - Lis pendens - Effect - Vendor may lack capacity to effect legal transfer of title - While purchaser stands the risk of purchasing nothing from vendor (H8)

FACTS

Plaintiff/respondent claimed that he became an owner in fee simple of the land in dispute by virtue of a Deed of Conveyance executed between him and one Isaiah Omotunde Otitoju. Respondent further claimed that he was in physical possession of the land when defendants/appellants trespassed on same. Consequently, respondent commenced this action at the High Court of Lagos State Ikeja, wherein he claimed for special and general damages, order of injunction and declaration of title.

Except where specifically admitted, appellants denied every allegation contained in respondent's amended Statement of Claim. At the end of hearing, the court dismissed respondent's claims. Aggrieved, respondent filed appeal at the Court of Appeal, Lagos Division. The court allowed the appeal and dismissed trial court's judgment. Being dissatisfied, appellants appealed to Supreme Court.

ISSUE FOR DETERMINATION

Whether the learned Justices of the Court of Appeal were right to hold that the plaintiff/respondent is entitled to a statutory right of occupancy of the parcel of land in dispute and finding for him on his claim for trespass and injunction.

HELD (Unanimously dismissing the appeal per

MUHAMMAD JSC)

LAND LAW - Title - Proof - Idundun v. Okumagba

1. It is trite that in a claim of title to land, the plaintiff can succeed if he establishes his claim through anyone of the following five (5) ways:

1. by traditional evidence;

2. by production of documents of title;

3. by acts of ownership extending over a sufficient length of time which acts are numerous and positive enough to warrant the inference that the person is the true owner;

4. by acts of long possession and enjoyment of land;

5. by proof of possession of connected and adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute. (p. 2868 E)

LAND LAW - Title - Proof - Conflicting claims

2. In the first place, it is a well settled principle in land transactions that where the plaintiff and the defendant derived their titles from different families (sources), the family or source with a better title will give a superior root of title in support of a declaration of title in favour of a party deriving its title from that family or source. (p. 2870 G)

LAND LAW - Auction sale - Ordered by court - Effect

3. It is to be noted that Exh. P5 is a judicial act certifying a judgment and a sale ordered by the then Supreme Court of Nigeria. There is therefore a presumption that such judicial acts are regular and valid which can only be rebutted by establishing fraud or other vitiating circumstances (section 150 of the Evidence Act). There was no attempt by the appellants at rebutting that presumption. The consequence of a sale by auction ordered by a court of law is that there is a presumption that such judicial act is regular and valid where no fraud or other vitiating circumstances are shown. Again, the security given by law to a purchaser of property in a court ordered sale is a statutory one which can defeat the title of the real owner who did not protest the sale. (pp. 2872 D/2875 F)

DOCUMENTS - Recitals in - Effect

4. Thirdly, I set out earlier, the provision of section 130 of the Evidence Act. This is to buttress the law and practice of the courts that where recitals, statements and descriptions of facts and parties etc are made in a document which is more than 20 years, and where not found to be inaccurate, such recitals,

statements and descriptions of facts, etc shall be taken to be sufficient evidence of the truth of such facts, matters and descriptions. (p. 2872 F)

LAND LAW - Title - Proof - Onus on plaintiff

- B 5. It is not in dispute that Exh. P5 was made in 1943. It contains recitals, statements and descriptions of facts, matters and parties which provide evidence of the facts upon which the respondent was entitled to rely while getting into Exhibit P2. The respondent ought to have been held to establish a prima facie case against the appellants. What now remained was for the appellants to dislodge the presumption of the ownership of the land arising from the Exhibits P1 - P6 as per the requirement of section 137(2) of the Evidence Act. This, D the appellants failed to do. The law is certain as held by this court in several decisions that in land cases, the defendant is never called upon to proceed to defend the claim of the plaintiff until the plaintiff establishes a prima facie case, relying on his own evidence alone, at which point the defendant is then E called to produce evidence in rebuttal to the presumption of the prima facie case.** (p. 2872 G)

APPEALS - Fresh issue - Raised without leave - Fate

- F 6. Now, I have myself studied the pleadings put by the appellants, especially that of the 2nd appellant and evidence given in his favour. I find, as submitted by learned counsel for the respondent, that the issue of "Trust Property", important as it is, was never pleaded by the 2nd appellant or any appellant G for that matter. It was also not raised before the court below. It is thus a new issue before this court. No leave was sought or granted from/by this court against the established practice that new issues to be raised on appeal level require the leave of the appeal court otherwise it will be incompetent. The court H below did not have the opportunity to pronounce upon it. It is thus; difficult for this court to dissipate energy on such issues. The issue of "trust" relating to the land in dispute and arguments on it in this appeal are hereby discountenanced.** (p. 2880 C)

LAND LAW - Lis pendens - Purpose

7. No one could have doubted that the plaintiff as the owner of the land in dispute on 2/11/76 when the Writ of Summons was issued had the right and the capacity to commence the suit. The question is - Did he lose the capacity to continue the suit from 20/9/78 following the sale of the land by him to Lawrence Fawehinmi? The answer is in the negative. This is because as far as the law is concerned no title had been passed by the plaintiff to Lawrence Fawehinmi because of the operation of the doctrine of LIS PENDENS. This doctrine postulates the rule that sale conducted when a matter is in litigation, such a sale is void ab-initio and no title can be passed to the purchaser. The doctrine as a matter of policy precludes plaintiff from selling the land in dispute when he knows that there is dispute in court over the ownership of the land. In the case on hand, the conveyance affected by the doctrine, as it is, could not transfer any effective title to the purchaser because the doctrine deprives him of any right over the property during the currency of the litigation or pendency of the suit. (p. 2881 C)

LAND LAW - Sale - Lis pendens - Effect

8. In a sale of a subject matter in Lis pendens, both the vendor and the purchaser suffer some disadvantages. The former stands the risk of lack of capacity to effect a legal transfer of title while the latter stands the risk of purchasing nothing from the vendor. (p. 2882 B)

REPRESENTATION

O.A. Akinsanya; Olukayode Enitan, F.O.M. Ogundeye, for the Appellants

Dr. A. N. Onejene; Seni Adio Esq, for the Respondents

CASES REFERRED TO

Arase v. Arase (1981) 5 SC 33

Duru v. Nwosu (1989) 4 NWLR (Pt. 113) 24

Aromire v. Awoyemi (1972) 2 SC 1

- Cardoso v. Daniel (1986) 2 NWLR (Pt. 20) 1
Okupe v. Ifemembri (1974) 3 SC 97
Ayinde v. Sijuwola (1984) 5 SC 44
Akanke v. Awero & Anor (1977) 1 SC 71
Duru v. Nwosu (1989) 4 NWLR (Pt. 113) 24
B Aromire v. Awoyemi (1972) 2 SC 1
Shaibu v. Bakare (1984) 2 SC 187
Amadi v. Chinda (2009) 10 NWLR (Pt. 1148) 107
Nwokorobia v. Nwogu (2009) 10 NWLR (Pt. 1150) 553
C Johnson v. Lawanson (1971) NMLR 380
Mbanugo v. UACN Ltd (1961) All ER (Pt. 4) 775
Idundun v. Okumagba (1976) NSCC 44 (1976) 9-10 SC 227

STATUTES REFERRED TO

- D Sheriffs & Civil Process Act Cap 407 LFN 1999
Evidence Act, ss. 130, 150
Lands Instruments Registration Law Cap 111 Law of Lagos State

LEAD JUDGMENT BY MUHAMMAD JSC

- E In the Ikeja Judicial Division of the High Court of Justice of Lagos State (trial court), the plaintiff, who is the respondent herein, as per paragraph 13 of his last Amended Statement of Claim, made his claim as follows:
- F “13. *WHEREUPON THE plaintiff claims:*
a) *Special and general damages in the sum of N1,000.00*
b) *An injunction restraining the defendant whether by themselves or their agents or servants or otherwise whatsoever from entering forthwith and/or building on the aforesaid plaintiff’s land.*
- G c) *Declaration that the plaintiff is entitled to a statutory right of occupancy of the piece or parcel of land situate, lying and being at Ohigbagbo village, Ikeja and covered by the deeds of conveyances registered as 29/29/1484, 100/100/519 and 30/30/1780 of the Lands Registry, Lagos.”*
- H The genesis of the plaintiffs claim as per his pleadings is that by a Deed of conveyance dated 6/10/43 and registered as No.42 at page 42 in volume 635 of the Registry of Deeds at the Lands Registry, Lagos, one Mr. Isaiah Blundell Otitoju became seised in fee simple absolute in possession from all encumbrances of a large area of land

measuring approximately 13.02 acres of which the land in dispute forms part. The said Otitoju died testate and under and by virtue of his last will of testament, he devised the said land to his three children namely: [1] Benjamin Mobolaji [2] Isaiah Omotunde and [3] Noah Olufemi. Benjamin Mobolaji and Noah Olufemi died intestate and were survived by Isaiah Omotunde in whom the property was vested and who exercised maximum acts of ownership over the same after the death of the said Benjamin Mobolaji and Noah Olufemi. B

The plaintiff claimed further that under and by virtue of a Deed of Conveyance executed between the said Isaiah Omotunde Otitoju of the one part and the plaintiff of the other part, dated 10/2/75 and registered as No.29 at page 29 in volume 1484 of the Lands Registry, Lagos, the plaintiff became seised in fee simple, the parcel of land referred to above and free from all encumbrances. He averred further that he was in physical possession and occupation of a larger piece of land including the land now in dispute since 28/8/69 before the defendants trespassed. That his predecessors in title who conveyed the larger area of land including the land now in dispute to him had been in physical possession of the land and had been exercising all acts of ownership without let or hindrance since 9/3/43 up to 28/8/69 when the same was sold to him. That all the defendants trespassed on the said piece of land. He averred that the defendants started to dig building foundation on the land in 1973/74 and that he warned them in several ways against their acts of trespass immediately he discovered same but they refused to heed his warnings. That the acts of trespass of the defendants have caused damage to the plaintiff to the tune of N1,000.00 and that unless an injunction is issued against the defendants jointly and severally, they will continue their illegal act of trespass to the detriment of the plaintiff. F G

In their respective pleadings, the defendants, except where specifically admitted, denied each and every allegation contained in the plaintiff's Amended Statement of Claim. After full trial, the learned trial judge in his judgment of 31/12/86, dismissed plaintiff's claims in their entireties. Aggrieved by the trial court's decision, the plaintiff proceeded to the Lagos Division of the Court of Appeal (court below), in its well considered judgment of 12/4/2001, the court below allowed the appeal, set aside the trial court's judgment and entered judgment for plaintiff. Dissatisfied, the defendants/respondents and H

now appellants, appealed to this court on three grounds of appeal urging that this court should allow the appeal, set aside the judgment of the court below and restore that of the trial court. In their brief of argument, the 1st set of appellants (1st, and 3rd) formulated the following lone issue for this court's determination:

B *"Whether the learned Justices of the Court of Appeal were right to hold that the plaintiff/respondent is entitled to a statutory right of occupancy of the parcel of land in dispute and finding for him on his claim for trespass and injunction."*

C The 2nd appellant formulated three issues. They are as follows:

1. Whether the Court of Appeal rightly interpreted and applied the sale of the land by pw4.

D 2. Whether the Court of Appeal was right in setting aside the finding of the trial court

3. Whether on the evidence before the court, the appellant discharged the burden of proof on him by preponderance of evidence.

E In his amended brief of argument, the respondent set out two issues:

"1. Whether the learned justices of the Court of Appeal were right in treating the certificate of purchase, Exh. P5, as a good root of title beyond which the respondent is not expected to go on proving his ownership and title to the land in dispute."

F *2. Whether the plaintiff/respondent proved the title he asserted in his pleading and evidence against the defendants."*

G I think, the lone issue formulated by the learned counsel for the 1st and 3rd appellants, covers largely the 2nd and 3rd issues of the 2nd appellant and the 3rd issue of the respondent. I should deal with that first. The plank of the arguments on this issue is exhibit P5. Learned counsel for the 1st and 3rd appellants submits that although the court below accepted exhibit P5 as a good root of title the learned counsel argued, these exhibits did not prove anything. He submitted H further that there is need to ascertain what does Exh. P5, a certificate of purchase, claim to have been sold which learned counsel submitted is the right, title and interest of Martha Otitoju in the land. Learned counsel argued that there was no evidence or anything to show what interest Martha Otitoju had in the land and Exh. P5 cannot create

title. The judgment which was executed by Isaiah Blundell Otitoju against his mother Martha Otitoju and his siblings Joseph Otitoju and Adeline Kasumu, was not a judgment between the parties. It was only an execution of a judgment obtained elsewhere. The certificate of purchase, it is argued further, did not attempt to pronounce that Martha Otitoju or any of her members as the owner of the land in dispute neither did it trace the interest of Martha Otitoju to the land in dispute. It merely transferred whatever interest Martha Otitoju had to one Shittu A. Abdullahi and till now, there is no evidence of what the interest of Martha Otitoju is or what interest was acquired when S. A. Abdullahi purchased the interest of Martha Otitoju at the auction sale. The certificate of purchase should have traced the ownership of the land to its original owners. He cited the case of *Cardoso v. Daniel* (1986) 2 NWLR (Pt.20) 1. Learned counsel for the 1st and 3rd appellants argued that the respondent has failed to fulfill the requirements as laid in *Cardoso's* case (*supra*) and cannot therefore succeed in an action for declaration of title as he has not discharged the onus on him of proving his title. Learned counsel equates certificate of purchase to a certificate of occupancy which is merely a prima facie evidence of title but will give way to a better title. He cited the case of *Hona v. Idakwo* (2003) 11 NWLR (Pt.830) 55 at 84.

Learned counsel for the 2nd appellant in his submission on issues 2 and 3 faulted the evidence of the respondent that it never revealed from whom A. Abdullahi derived his title or how Otitoju owned the land in Ikeja. That a man purchased it from an adverse possessor. Further, it is argued, the fact that the land was sold to the vendor's father by a man whose source of title is not disclosed, the Deed of Conveyance being 20 years old notwithstanding, has not established a prima facie title of the plaintiff. The respondent, he argued, does not have a better title than that of the appellants. It is the further submission of learned counsel for the 2nd appellant that the 2nd appellant traced the origin of his title and possession of the land to the four children of IYADE: Aina Ose; Maku Dala; Ilo and Ogisanyi all on whom the land devolved by right of succession under Yoruba Law and Custom after the demise of their father IYADE who was the only child of his father. The evidence of 1st and 3rd appellants confirmed the said traditional history. There is therefore, no discrepancy whatsoever in the appellant's traditional history as found by the court

below. Learned counsel relied heavily on the evidence of DW2 which he said, confirms the title of the 2nd appellant. He also cited the evidence of DW6, that the fact that 2nd appellant is in actual possession of the land has made a prima facie case against the respondent. Learned counsel cited several authorities in support including Mahiomi v. Ladejobi (1960) LLR 233, Adenle v. Oyegbade (1967) NMLR 136.

Learned counsel for the respondent made his submissions on his two issues (1 and 2) which are considered together hereunder. Learned counsel started by Exh. P5 as a root of title, He referred to some of the provisions of Sheriffs and Civil Process Act, Cap 407, LFN, 1990, under which Exh. P5 was issued, (SS 44, 48, 50 and 131). The certificate of purchase he argued qualified as an instruments affecting the land it relates to and is registrable under the Lands Instruments Registration Law, Cap 111, Law of Lagos state. He referred to sections 2, 6 and 7 of that law. Registration of the certificate under the Registered Land Law vests in the absolute ownership of the land together with all rights and privileges belonging or appurtenant to it. Section 131 of the Evidence Act; Abiodun & Ors v. Adehin (1962) 1 All NLR 550 at 555 were cited in support. Learned counsel argued that the estate of Martha Otitoju, the judgment debtor, was described clearly in Exh. P5 as the land messages and tenements and there is nothing to suggest a limitation to the estate described as the right title and interest of Martha Otitoju. Moreover, when Shittu Abdullahi, the grantee of the land in Exh.P5 conveyed it to Isaiah Blundell Otitoju in 1943, he conveyed it in FEE SIMPLE which could only mean that Martha Otitoju's right title and interest in the land amounted to a fee simple estate which, at the time Exh.P5 was issued or Exh. P6 was executed meant the largest estate a person can have in the land. Case of Ali v. Ikusebialo (1985) 1 NWLR (Pt.4) 630 at 640 was cited in support. That where a certificate describes the estate of a judgment debtor, that will be it, there will be no need for evidence to prove it. The court below, he submitted was perfectly in order to reverse the judgment of the High Court which called Exh.P5 a worthless paper and to treat the Exhibit as a valid root of title of the respondent.

Respondent's issue No.2 is on proof of title the plaintiff asserted. Learned counsel for the respondent submitted that the respondent based his claim on documentary evidence and possession

by his predecessors in title and himself. He stated further that the respondent pleaded and tendered in evidence, exhibits P1 - P6 without objection. The respondents he argued, has established a prima facie case of his entitlement to the land in dispute. The lower court, it is argued further, was right on the basis of applying section 130 of the Evidence Act which makes recitals, statements and description of facts, matters and parties, contained in deeds and instruments twenty years old at the date of contract sufficient evidence of the truth of such facts, matters etc and the respondent was entitled to rely on Exh. P5. The appellants, he argued, failed to dislodge the evidence of title based on the documents exhibited as P1, P2, P5 and P6. Learned counsel argued as well that the respondent did not have to show how Martha Otitoju owned the land after having established his root of title and a prima facie case. And, the respondent was thus not required or duly bound to plead or prove any grant or history beyond his established root of title.

On the first issue formulated and argued by the 2nd appellant, the learned counsel for the respondent submitted that the issue or point is fresh and is being raised for the first time in this court. The 2nd appellant did not plead it, neither did he or his witness raise it in their evidence at the trial court. It was not also, raised in the Court of Appeal. The issue is Incompetent and should be struck out or ignored completely. Secondly, the appellants, he said, posed as an 'intermeddler' or 'interlopers'. They are complete strangers and have no concern with the Otitoju family. Thus, sale of the land by PW4 was not and could not be void.

In response to new points raised by the respondent, the 2nd appellant, in a reply brief filed on 8/11/2006, submitted that the issue of the land in dispute being trust properly, is rather an explanation of an issue which was pleaded by the 2nd appellant in their amended Statement of Defence upon which the trial was based and judgment delivered declaring the same sale of the land in dispute as a void sale. It was pleaded by the 2nd appellant that the real issue of which 'Trust Property, was an explanation, the respondent does not have a legal right to dislodge the 2nd appellant who was in possession of the land, considering his title on the land and considering that the trial court held Exhibit P to be a worthless document. The respondent's counsel, it was submitted, completely derailed and mis-

interpreted as a new or fresh issue the detailed analysis of already pleaded issue which was only used as ‘trust property’ to explain. Learned counsel for 2nd appellant urged this court to discountenance the respondents’ submission that 2nd respondent’s brief be struck out. Learned counsel for the 2nd appellant submitted on the point of respondent’s title that the argument of the respondent’s counsel, no matter how erudite will not replace the law or validate the ‘worthless’ and ‘voidable’ title document of the respondent as described by the High Court and the Court of Appeal. Several cases were cited in support including Raimi Akande & Ors v. Busari Alagbe & Ors (2000) 15 NWLR (Pt.690) 353 at 362. Learned counsel argued further that the cases Alh. Sani Shaibu v. J.S. Bakare (1984) 2 SC 187 is distinguishable from the present case. The respondent proved no better title. The respondent’s counsel, it is further alleged, misconstrued the will of Blundell Otitouju that the land in dispute could be sold for other reasons. Learned counsel urged this court to allow the appeal and declare the respondents’ title void and restore the trial court’s judgment.

The 1st and 3rd appellants’ issue No.1 questions the propriety of the court below’s decision that the respondent is entitled to a statutory right of occupancy of the parcel of land in dispute. I think in attempting to answer this question to my satisfaction, I will expand my coverage to the 2nd appellant’s issues Nos. 2 and 3 and the respondent’s issues Nos. 1 and 2. ***It is trite that in a claim of title to land, the plaintiff can succeed if he establishes his claim through anyone of the following five (5) ways:***

- 1. by traditional evidence;***
- 2. by production of documents of title;***
- 3. by acts of ownership extending over a sufficient length of time which acts are numerous and positive enough to warrant the inference that the person is the true owner;***
- 4. by acts of long possession and enjoyment of land;***
- 5. by proof of possession of connected and adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.*** See: Idundun & Ors v. Okumagba & Ors (1976) NSCC 44 (1976) 9 - 10 SC 227; Omoregie & Ors. v. Idugiemwanye & Ors. (1985) 2 NSCC 838; Amadi v. Chinda (2009)

10 NWLR (Pt.1148) 107; Nwokorobia v. Nwogu (2009) 10 NWLR (Pt.1150) 553.

The respondent traced the origin of his title to the certificate of purchase issued in favour of one Abdullahi in 1943. It was admitted in evidence as Exh. P5. The purchase was said to be in execution of a judgment obtained in a suit by Isaiah Blundell Otitoju as plaintiff against his mother, Martha Otitoju and his siblings Joseph Otitoju and Adeline Kasumu. The land was then sold to Abdullahi who subsequently sold it to the present respondent. It is the submission of learned counsel for the respondent that the respondent laid his claim to the title of the said piece of land through possession by his predecessors in title and by himself. The findings and holdings of the trial court on the title of the land in dispute read as follows:

“The title of the plaintiff is grossly defective. He has failed to adduce credible evidence of how Otitoju owned land in Ikeja. The pieces of evidence of the plaintiff, pw3 and pw4 that Otitoju claimed for compensation are false. He has failed to prove ownership of the land to fall into one of the ways laid down by our Supreme Court in the case of Idundun v. Okumagba (1976) 9 - 10 SC 227. I agree with the submissions of Messrs. Olajolo & Adedoyin that Exhibit P1, Ps, P5 and P6 are worthless documents. Pw4 Isaiah Omotunde Otitoju lacked capacity to convey the land to the plaintiff. Nobody had vested the land in him. It is decided in the case of David Mahiomi v. Ladejobi (1960) LLR 233 Coker, JSC as he then was held that where a person in actual occupation of land traces his title to the original owners of the land the onus which lies on a rival claimant to prove his title is a very great one indeed. See also Adenle v. Oyegbade (1967) NMLR 136. Regrettably the plaintiff has failed to discharge the onus of proof.”

The court below, on the other hand, made a contrary finding and holding, it found and held, inter alia, as follows:

“Apart from the obvious discrepancies in the traditional histories of title pleaded by the 2nd defendant on the one hand and the 1st and 3rd defendants on the other, it is clear that the evidence as to the source of title of Iyade family as given by DW2 was meager and inclusive. There was no shred of evidence as to how title in the Iyade family had descended within the family over the years until it came to the turn of those who sold to the defendants or their predecessors-in-interest. There was no evidence as to how DW2 derived his link

with the *Iyade* family. It is now well settled that a person relying on traditional history as the evidence of his title must give a consistent evidence as to the devolution of such title over the years. There must also be evidence as to how the persons claiming to be the present owners of the land derived their interest and root from those who first settled on the land. On the facts of this case, that translates into (1) Evidence as to who first settled on the land [2] the genealogy of such first settler traced to the present members of *Iyade* family who sold the land to the defendants. All the evidence we have in this case was that the ancestors of *Iyade* family settled on the land. There was no evidence as to who these ancestors were and how the defendants' vendors descended from the original settlers. See *Owoade v. Omitola* (1988) 2 NWLR (Pt. 77) 413 SC. Clearly the defendants failed to trace their title to any original founder of the *Iyade* family.

When the lower court expressed that the land in dispute belonged to the *Iyade* family, the only evidence before it which it could have so accepted was the meagre evidence given by DW2 since the plaintiff did not make any admission that the land belonged to *Iyade* family. In *Idundun v. Okumagba* (supra), one of the recognized ways by which title may be proved is by production of the documents of title which was what the plaintiff did in this case. The conclusion is inescapable that the defendants woefully failed in dislodging the evidence of title based on the documents exhibits P1, P2, P5 and P6 tendering the plaintiff."

The respondent based his claim on two of the known ways set out earlier, thus: documentary and undisturbed possession of the land in dispute by both his vendors and himself. The appellants, on the other hand, derived their title from *Iyade* family. This latter source of title was found to be weak, meager and inconclusive by the court below on the basis that there was no evidence as to who the ancestors of *Iyade* family were and how the appellants' vendors descended from the original settlers. They thus failed to trace their title to any original founder of *Iyade* family. **In the first place, it is a well settled principle in land transactions that where the plaintiff and the defendant derived their titles from different families (sources), the family or source with a better title will give a superior root of title in support of a declaration of title in favour of a party deriving its title from that family or source.** See: *Akande v. Awero*

& Anor (1977) 1 SC 71 at 74; Arase v. Arase (1981) 5 SC 33.

Secondly, on the documents tendered in evidence, particularly Exhibits P1, P2, P5 and P6, it is the finding of the learned trial judge that those exhibits were worthless documents. But in disagreeing with the learned trial judge, the court below held that:

“The conclusion is inescapable that the defendants woefully failed in dislodging the evidence of title based on the documents exhibits P1, P2, P5 and P6 tendered by the plaintiff.” ^B

The court below observed that the learned trial judge completely misconceived the case of the plaintiff and the impact of section 130 of the Evidence Act on it. If the learned trial judge had borne in mind section 130 of the Evidence Act, he would have known that the truth of the contents of exhibits P1, P2, P5 and P6 were to be deemed established to the extent that they were not disproved by the defendants. Thus, having established a prima facie title by exhibits P1, P2, P5 and P6, the onus was on the defendants to show that the title of Iyade pre-dated that which devolved on the plaintiff through Shittu A. Abdullai vide exhibit P5. Furthermore, there was no counter claim by the defendants. Section 130 of the Evidence Act provides as follows: ^C

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

In both his pleadings and evidence, the plaintiff/respondent laid heavy reliance on the following documents as the sources of his title to the land in dispute: ^E

a) Exhibits P1 & P2 which are the conveyances by which Isaiah Otitoju sold the land to him; ^F

b) Exhibit P3 - letters of Administration with the WILL of Isaiah Blundell Otitoju; ^G

c) Exhibits P5 and P6 are certificates of purchase in favour of Shittu A. Abdullai and the deed executed by Shittu Abdullai in favour of Isaiah Blundell Otitoju, respectively. ^H

Exhibit P5 was made on 30/3/1943. Exhibit P6 was made on 6/10/43. Exhibits P1 and P2 were made on 10/1/75 and 9/9/75

respectively, i.e. the contract by which the plaintiff acquired his interest in the land in dispute. Both exhibits P1 and P2 recited the contents of exhibits P5 and P6 and the sale to the plaintiff of the said land was ratified by exhibit P4 made on 29/1/80. Thus, the practical application of section 130 of the Evidence Act (*supra*) would have resulted in the following findings.

i. that the land in dispute was sold to Shittu A. Abdullai in 1943

ii. that the said Shittu A. Abdullai sold the land to the father of plaintiff's vendor in 1943

iii. that ownership of the said land had resided in plaintiff's predecessor in title since 1943.

I am in total agreement with the court below that pursuant to section 130 of the Evidence Act the trial court would have found that the plaintiff ought to have been taken as having established a *prima facie* case against the defendants/appellants. See: *Johnson & Ors v. Lawanson & Anor* (1971) NMLR 380; *Okupe v. Ifemembri* (1974) 3 SC 97; *Ayinde v. Sijuwola* (1984) 5 SC44. ***It is to be noted that Exh. P5 is a judicial act certifying a judgment and a sale ordered by the then Supreme Court of Nigeria. There is therefore a presumption that such judicial acts are regular and valid which can only be rebutted by establishing fraud or other vitiating circumstances (section 150 of the Evidence Act). There was no attempt by the appellants at rebutting that presumption. Thirdly, I set out earlier, the provision of section 130 of the Evidence Act. This is to buttress the law and practice of the courts that where recitals, statements and descriptions of facts and parties etc are made in a document which is more than 20 years, and where not found to be inaccurate, such recitals, statements and descriptions of facts, etc shall be taken to be sufficient evidence of the truth of such facts, matters and descriptions It is not in dispute that Exh. P5 was made in 1943. It contains recitals, statements and descriptions of facts, matters and parties which provide evidence of the facts upon which the respondent was entitled to rely while getting into Exhibit P2. The respondent ought to have been held to establish a prima facie case against the appellants. What now remained was for the appellants to dislodge the presumption***

of the ownership of the land arising from the Exhibits P1 - P6 as per the requirement of section 137(2) of the Evidence Act. This, the appellants failed to do. The law is certain as held by this court in several decisions that in land cases, the defendant is never called upon to proceed to defend the claim of the plaintiff until the plaintiff establishes a prima facie case, relying on his own evidence alone, at which point the defendant is then called to produce evidence in rebuttal to the presumption of the prima facie case. See *Duru v. Nwosu* (1989) 4 NWLR (Pt.113) 24; *Aromire v. Awoyemi* (1972) 2 SC 1 at p.3. The court below was right, in my view, to have found that the respondent had established a prima facie case in this matter. This answers 2nd appellant's issues 1 and 3 and respondent's issue No.2.

I now turn to the issue of whether the court below was right in treating the certificate of purchase (Exh.P5) as a good root of title (covered apparently by the sole issue of the 1st and 3rd appellants; 2nd appellant's issues 1 and 2 and respondent's 1st issue). Learned counsel for the 1st and 3rd appellants submitted, inter alia: as follows:

"Exhibit P5 is a Certificate of purchase. The purchase was said to be in execution of a judgment obtained in suit brought by one ISAAH BLUNDELL OTITOJU as plaintiff against his mother MARTHA OTITOJU and his siblings JOSEPH OTITOJU & ADELINE KASUMU. The land was said to have been sold to the plaintiff SHITTU A. ABDULLAI. Strangely, a few months later Abdullai sold it to the plaintiff in the action, Isaiah Blundell Otitoju. It needs to be ascertained what does exhibit P5 claim to have been sold. It is "the right, title and the interest of Martha Otitoju" in the land. There is no evidence or anything to show that what interest Martha Otitoju had in the land. Exhibit P5 has not created title. It was not a judgment between the parties. It was only an execution of a judgment obtained elsewhere. What is the judgment? What was the action about? No body has supplied the answer. It is not available. Could it then be rightly concluded that ownership has been established with Exhibit P5? The answer, to my mind, is in the negative. This certificate also did not attempt to pronounce that Martha Otitoju or any of its members as the owner of the land in dispute neither did it trace the interest of Martha Otitoju to the land in dispute. It merely transferred whatever

interest Martha Otitoju had, to one Shittu A. Abdullahi. The certificate of purchase is at pages 294 - 296 of the Records. Till now there is no evidence of what the interest or Martha Otitoju is or what interest was acquired when S. A. Abdullahi purchased the interest of Martha Otitoju at the auction sale.

B *The certificate of purchase should have traced the ownership of the land to its Original Owners as was done in Cardoso v. Daniel (1986) 2 NWLR (Pt.20) 1 in that case the plaintiff who bought from an auction was held to still be duty bound to trace the root of his predecessor in title before he could have a good title. The respon-*
 C *dent in this case has failed to do so and thus cannot succeed in an action for declaration of title as he has not discharged the onus on him of proving his title. In any event, an action is only binding on the parties to it and not certainly to the world at large. Even this fact was*
 D *accepted by the court below at page 4 of its judgment which is at page 540 of the Records when his Lordship held thus."*

In it's judgment, the trial court held as follows:

"This brings (me) to the consideration of the titles of the parties. The plaintiff traced his title to Exhibit P5 and Exhibit P6 while the
 E *defendants traced their title to Iyade family. I accept the evidence of DW2 Oba Momodu Ilo. I hold that his family is the traditional owner of the land in dispute from time immemorial. In fact PW3 gave evi-*
 F *dence that Otitoju bought from Awori people. The title of the plaintiff is grossly defective. He has failed to adduce credible evidence of how*
 G *Otitoju owned land in Ikeja. The pieces of evidence of the plaintiff, PW3 and PW4 that Otitoju claimed for compensation are false. He has failed to prove ownership of the land to fall into one of the ways laid down by our Supreme Court in the case of Idundun v. Okumagba*
 H *(1976) 9 -10 SC 227. I agree with the submissions of Messrs. Olajolo & Adedoyin that Exhibit P1, P2, P5 and P6 are worthless documents. PW4 Isaiah Omotunde Otitoju lacked capacity to convey the land to the plaintiff. Nobody had vested the land in him. It is decided in the case of David Mahiomi v. Ladejobi (1960) LLR. 233 Coker, JSC as*
 H *he then was held that where a person in actual occupation of land traces his title to the original owners of the land the onus which lies on a rival claimant to prove his title is a very great one indeed. See also Adenle v. Oyegbade (1967) NMLR 136. Regrettably the plaintiff has failed to discharge the onus of proof."*

But, were these exhibits (P1 - P6) worthless, as found by the trial court? The court below found otherwise. It held as follows:

“For instance, if the lower court had borne in mind section 130 of the Evidence Act, it would have known that the truth of the contents of exhibits P1 , P2, P5 and P6 were to be deemed established to the extent that they were not disproved by the defendants. . .The plaintiff having established a prima facie title by exhibits P1, P2, P5 and P6 (P6), the onus was on the defendants to show that the title of Iyade predated that which devoid on the plaintiff through Shittu A. Abdullai vide exhibit P5.”

To the best of my understanding, the court below is saying, in a different way that the trial court, while evaluating the evidence placed by the parties before it, only acted on the traditional evidence of Iyade family’s ownership as given by DW2. It completely ignored the evidence put forward by the respondent which it described as “worthless”. Like the court below, I, too, believe that these documents (exhibits P1, P2, P5 and P6) cannot be taken to be worthless. For one, exhibit P5 is the certificate of purchase of the land part of which is in dispute. This is a document issued by the then Supreme Court of Nigeria in 1943. It certified that one Shittu A. Abdullai was declared the purchaser of the right, title and interest of one Martha Otitoju, in which the sale was ordered. It identifies the land sold and contains a detailed plan of it. It was registered as No.47 at page 47 in Vol. 585 of the Lands Registry in Lagos. There was nothing to show that Iyade family or any other family, for that matter, interpleaded in the sale of the land by public auction conducted in 1943. ***The consequence of a sale by auction ordered by a court of law is that there is a presumption that such judicial act is regular and valid where no fraud or other vitiating circumstances are shown. Again, the security given by law to a purchaser of property in a court ordered sale is a statutory one which can defeat the title of the real owner who did not protest the sale.*** In fact it was held as far back as 1961, in the case of Mbarugo & Ors v. UACN Ltd. (1961) All ER (Pt .4) 775, where the plaintiff claimed possession of the goods sold to a purchaser in a bailiff’s sale, that the purchaser acquired a good title to the goods. The dictum of Lord Denning, L. J; which he made in the case of Cutis v. Maloney (1950) 2 AER 982 at 986 was quoted in Mbarugo’s case. The Lord Justice

stated, inter alia, as follows:-

“This is yet another instance of a contest between the common Law rule that no man can give a better title than he has got and the statutory exceptions in favour of innocent purchasers I do not think we ought to whittle down the protection which parliament has given to innocent purchasers. In a commercial community, it is very important that their title should be protected.”

The notorious case of *Cardoso v. Daniel* (1986) 2 NWLR (Pt.20) 1, laid another precedence in land law transactions where the conclusiveness of a certificate of purchase of land issued by a court in accordance with law was affirmed. This was an action for declaration of title. The plaintiff averred in his statement of claim that the land in dispute was purchased by John St. Matthew Daniel (plaintiff's predecessor) at Kirikiri, Lagos at a public auction with a sum of 100 (one hundred pounds) on the 16th day of October, 1940 (Exh. F) issued by the licensed auctioneers, Messrs., James T. Ogun & Co, an auction sale executed by the said James T. Ogun & Co. pursuant to the order of the then Supreme Court (as the High Court was then called), in suit No. 81/1940 between Amoda Tijani (Chief Oluwa) and John Ajobo Agbeyegbe on 23rd September, 1940. The Supreme Court was of the view that in 1940 when the auction sale was made the High Court, (Supreme Court) could have granted a certificate of title under the applicable law (the County Courts Act 1934, 24 - 25 George 5 Cap 53) in much the same way as was later done under section 49 of the Sheriffs and Enforcement of Judgments and Orders Ordinance, No. 30 of 1945; Section 49 of the Sheriffs and Enforcement of judgments and Orders Ordinance Cap 205 Volume 6 Laws of Nigeria , 1948 and Section 50 of the Sheriffs and Civil Process Act, Cap. 189, Laws of the Federation of Nigeria and Lagos 1958. That unfortunately was not done resulting in the several proceedings between the Cardosos and Daniels in which the validity of the title of John Ajobo Agbeyegbe was called into question. That was why, Aniagolu, JSC, in his concurring judgment stated his mind as follows:

“What has been perplexing in this case is why the then Supreme Court (the High Court) had not taken steps to perfect the title of the purchaser from the court (John St. Mathew Daniel), under the public auction sale, by issue of a certificate of title to the purchaser who, from then on, would have the certificate as his root of title,

making it unnecessary for him to go beyond the certificate in grounding his title and making it impossible for any subsequent claimant/challenger who had not interpleaded before the court, to succeed in disturbing the purchaser.”

On the effect of the binding nature of an earlier decision of the court, Aniagolo, JSC commented: *“In the end the investigation narrowed itself to a re-assertion of the principles of binding force of precedents, often called STARE. DECISIS principles which have been maintained over the years being held salutary for the certainty of the law”* (see: Davis v. Johnson (1978) 2 WLR 553 at 577 H - I; (1978) 2 WCL 182 - C.A). The courts are jealous of these principles and would not lightly tolerate interference with them. (See: Board of Customs and Excise v. J. B. Bolarinwa (1968) NMLR 350; Young v. Bristol Aero plane Co. (1944) 2 All E.R. 293; Osumamu v. Amadi 2 WACA 437; Cassel & Co. v. Broom C & Anor (1972) 2 WLR 645. D

In the case on hand and at the risk of repetition, exhibit P5 is the certificate of purchase issued by the then Supreme Court (dated 9/4/43) upon a sale ordered by that court and duly registered in the Registry of Deeds in the Lagos office. One Shittu Abdullai, became the owner of a piece or parcel of land at Ikeja incorporating the land in dispute. The said Abdullai sold the land to one Isaiah Blundell Otitoju and gave him a conveyance (exh. P6) which was as well registered as No.42/42/635 in the Register of Deeds in Lagos. Isaiah B. Otitoju died testate and devised his land jointly to his three children; Benjamin, Omotunde and Olufemi (Exh. P3). Both Benjamin and Olufemi died intestate and were survived by Omotunde who then sold the land to the plaintiff/respondent in two lots. He said that Omotunde gave him two conveyances: exhibits P1 and P2. Exhibit P1 covered the area registered as No.29/29/1484 while Exhibit P2 G covered the area registered as 100/100/1519 which incorporated the land in dispute. The plaintiff/respondent tendered these documents and were admitted as exhibits P1, P2, P3, P5 and P6. He heavily relied on them as establishing his title or ownership of the land including the land in dispute. It is clear from their pleadings that the defendants/appellants did not counter claim. They went to court only to defend the claim made against them by the plaintiff. They based their respective claims on grants by Iyade Family. H

Section 50 of the Sheriffs and Civil Process Act, Cap 407,

Laws of the Federation of Nigeria, 1990, under which Exhibit P5 was issued provides as follows:

“the court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right title and interest of the judgment debtor in the property sold and that certificate shall be taken and deemed to be valid transfer of such right title and interest.”

On the 1st issue by the 2nd appellant: whether the court below rightly interpreted and applied the sale of the land by PW4. The 2nd appellant in his amended statement of Defence gave the traditional history of the land in dispute originally belonging to one Osoja, through Talabi to Iyade. That the attorneys of Iyade family conveyed the land in dispute to the 2nd appellant (paras. 3 - 10 of the 2nd defendant’s amended statement of Defence dated 2/12/86). Witnesses (DW6 & DW7) testified in favour of the 2nd defendant. Although issues were clearly defined in the pleadings, it is to be noted that neither the 2nd defendant/appellant nor the 1st and 3rd defendants/appellants made any counter-claim in these pleadings. Thus, they were in court to defend the claims made against them by the plaintiff/respondent.

On the issue of the sale of the land in dispute, it was argued for the 2nd defendant/appellant that the evidence of PW4 was misinterpreted and wrongly applied by the court below. The evidence as recounted by the learned counsel for the 2nd appellant is that Isaiah Otitoju who acquired the land in dispute from Shittu A. Abdullai died testate and devised the land jointly to his three children namely; Benjamin Mobolaji, Isaiah Omotunde and Noah Olufemi. Both Benjamin Mobolaji and Noah Olufemi died intestate and were survived by Isaiah Omotunde. Isaiah Omotunde later conveyed the land to the plaintiff/respondent. The trial court found that Isaiah Omotunde lacked capacity to convey the land to the plaintiff as nobody had vested the land in him. The court below upturned that finding and held the sale to be violable at the instance of the members of the family of the testator who would have inherited it had it not been sold by Mr. Omotunde (PW4), The court below, it is submitted by 2nd appellant, fell into an error by that holding and by its inability to distinguish a “Trust”, property from a “Family Property.” Learned counsel for 2nd appellant challenged the holding of the court below when it held the

sale to be in derogation of the terms of the grant. He argued that if the sale was in derogation of the terms of the grant, if the testators wish was that the land be not sold; if the testator intended to grant his three children a life - interest in the land in dispute, then it is obvious that any sale of such land cannot be otherwise but a void sale. It was argued seriously for the 2nd appellant that the land is not a family property but a trust property and a member of a family has no right to sell a trust property as Isaiah Omotunde Otitoju has done as he has no charitable interest in the property. He cannot also sell a trust property either as a beneficial owner or on behalf of the family members. He must hold the property in trust for the use and benefit of the descendants of all the children. Any sale, pledge or mortgage of such property is completely null and void. The sale of the land in dispute carried out by PW4 is null and void.

Learned counsel for the respondent submitted that the issue of “trust” is fresh and is being raised for the first time in this court. The 2nd appellant did not plead it in his amended statement of defence at the trial court neither did he nor his witness raise it in their evidence in that court. It was not, also, raised in the Court of Appeal and that court did not consider it. It also portrays the appellants as inter-meddlers. Any challenge of respondents’ title on the basis of voidness of the sale of the land to him by PW4, whether on the basis that the land is family land or trust property will inevitably signify acceptance by the appellants that the land in dispute belongs to Otitoju family and in that respect the appellants are complete strangers. The law will not allow them to intrude in the private family affairs of Otitoju family.

In his reply brief, learned counsel for the 2nd appellant submitted that the “trust property” was not an issue raised for the first time at the Supreme Court. It is an explanation of the real issue which already was pleaded by the 2nd appellant in their Amended Statement of Defence upon which the trial court based its decision. Learned counsel urged this court to discountenance the submission of the respondent’s counsel. Secondly, learned counsel for the 2nd appellant replied that the argument of the respondent’s counsel no matter how erudite, that “the challenge of the respondents’ title signifies acceptance that the land belongs to Otitoju’s family” will not replace the law or validate the “worthless” and “voidable” title document of

the respondent as described by the High Court and Court of Appeal respectively. Several cases were cited in support e.g. Omoyinmi v. Olaniyan (2000) 4 NWLR (Pt.651) 38. Learned counsel argued that the appellants are not interlopers. He insisted that the respondent has failed to prove better title. Learned counsel for the 2nd appellant finally argued that respondent's counsel's submission on the "prohibition" used in the will of Otitoju, not being absolute was limited to sale, pledge or mortgage for debt incurred, but could include "sale for other reasons" by any of the children of the testator, was not so stated in the said Will of Otitoju. This was just learned counsel for the respondent's submission which could not take the place of evidence. Several cases cited in support such as Bayo v. Njidda (2004) 8 NWLR (Pt 876) 544

Now, I have myself studied the pleadings put by the appellants, especially that of the 2nd appellant and evidence given in his favour. I find, as submitted by learned counsel for the respondent, that the issue of "Trust Property", important as it is, was never pleaded by the 2nd appellant or any appellant for that matter. It was also not raised before the court below. It is thus a new issue before this court. No leave was sought or granted from/by this court against the established practice that new issues to be raised on appeal level require the leave of the appeal court otherwise it will be incompetent. The court below did not have the opportunity to pronounce upon it. It is thus; difficult for this court to dissipate energy on such issues. The issue of "trust" relating to the land in dispute and arguments on it in this appeal are hereby discountenanced.

See Shonekan v Smith (1964) All NLR 168; Olaniyi v. Aroyehun (1991) 5 NWLR (Pt 194) 652; Agbaje v Adigun (1993) 1 NWLR (Pt.269) 261.

On the position of the appellants vis-à-vis this appeal, the court below called them "outsiders." The court held as follows:

"This was therefore an intra family affair of the family of PW4. It had nothing to do with the title of Iyade family. It is not in accord with principle of common sense to say that because a member of Otitoju family sold the land in dispute without the consent of the larger members of Otitoju family, the outsiders from Iyade family should be pronounced the owners of the land."

Right from the trial court, it is clear from the pleadings and evidence that the appellants did not derive or claim their respective titles from Otitoju family or from anyone claiming from that family. So, whatever the Otitoju family decided to do with their piece of land cannot be the concern or business of the appellants. See: Shuaibu v. Bakare (1984) 12 SC 187; Dosunmu v. B. Ajoto (1987) 9 - 11 SC 74. On the issue of the transfer of title of the property in litigation, the court below disagreed with the holding of the trial court that the plaintiff/respondent had no capacity to sue the 2nd defendant/appellant. The facts are clear in the printed record of that the plaintiff/respondent initiated this suit on 2/11/76. By exhibit D1, the plaintiff on 20/9/78, during pendency of this suit sold the land to one Lawrence Fawehinmi. The land formed the subject matter of the on-going litigation. **No one could have doubted that the plaintiff as the owner of the land in dispute on 2/11/76 when the Writ of Summons was issued had the right and the capacity to commence the suit. The question is - Did he lose the capacity to continue the suit from 20/9/78 following the sale of the land by him to Lawrence Fawehinmi? The answer is in the negative. This is because as far as the law is concerned no title had been passed by the plaintiff to Lawrence Fawehinmi because of the operation of the doctrine of LIS PENDENS. This doctrine postulates the rule that sale conducted when a matter is in litigation, such a sale is void ab-initio and no title can be passed to the purchaser. The doctrine as a matter of policy precludes plaintiff from selling the land in dispute when he knows that there is dispute in court over the ownership of the land. In the case on hand, the conveyance affected by the doctrine, as it is, could not transfer any effective title to the purchaser because the doctrine deprives him of any right over the property during the currency of the litigation or pendency of the suit.** See Osagie v. Oyeyinka (1987) 3 NWLR (Pt.59) 144. In fact, this court in the case of Ebueku v. Amola (1988) 3 SC 360 at page 366 stated the law succinctly as follows:

“What of the 6th defendant who bought from the plaintiff who had no title and who bought during the course of the present litigation? The simple answer is that the 6th defendant with his eyes wide open bought a law suit. The plaintiff who sold to him suffered

from double disability. The first is that he (the plaintiff) was precluded by the doctrine of Lis Pendens from selling the land in dispute when he knew that there was a dispute in court over the ownership of the self same land. The 6th defendant may be a purchaser for value without notice but as this court observed in Osagie v. Oyeyinka (1987) 3 NWLR 144 at 156 “the doctrine (of Lis Pendens) is really designed to prevent the vendor from transferring any effective title to the purchaser by depriving him (the vendor) of any rights over the property during the currency of the litigation or the pendency of the suit.”

In a sale of a subject matter in Lis pendens, both the vendor and the purchaser suffer some disadvantages. The former stands the risk of lack of capacity to effect a legal transfer of title while the latter stands the risk of purchasing nothing from the vendor.

From the totality of the above, it is my view that the court below was right in its decision in allowing the appeal before it and granting the reliefs asked by the plaintiff/respondent. This appeal lacks merit and it is hereby dismissed by me. The respondent is entitled to N100,000.00 (One Hundred Thousand Naira, only) costs from the appellants.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother, MUHAMMAD, JSC just delivered.

I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed. I order according and abide by the consequential orders made in the said lead judgment including the order as to costs. Appeal dismissed.

FABIYI JSC

I have read before now the judgment just delivered by my learned brother, Muhammad, JSC. I agree with all the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed.

I seek leave to chip in just a few words of my own. The claim before the trial court was for declaration of title to a piece of land.

The plaintiff relied, inter alia, on Exhibit P5, a certificate of purchase at an auction sale sequel to a court judgment. The trial court treated same as a worthless document and that the plaintiff did not prove his root of title. The trial court thereafter dismissed the plaintiff's claim. The plaintiff felt unhappy with the position taken by the trial court and appealed to the Court of Appeal which had a contrary view and allowed the appeal. The plaintiff/respondent established a strong prima facie case by his own evidence. Reliance was rightly placed, inter alia, on Exhibit P5, a certificate of purchase registered as No. 47/47/635 at an auction sale ordered by the court. Same is a potent root of title. The appellants needed to prove better title to dislodge the respondent herein. The Court of Appeal found that the appellant's case was weak. This court in *Cardoso v. Daniel* (1986) 2 NWLR (Pt. 20) at 22 made it clear that a registered certificate of purchase or title as in Exhibit P5 herein is a valid root of title beyond which the owner is not expected to go in a claim for declaration of title. In the prevailing circumstance, the respondent was not required or duty bound to plead or prove any grant or history beyond his established root of title. Aniagolu, JSC at page 22 of the above referred case, pronounced as follows:- *"What has been perplexing in this case is why the court had not taken steps to perfect the title of the purchaser from court from the Public Auction Sale by issue of Certificate of Title to the Purchaser who from then on would have the certificate as his root of title making it unnecessary for him to go beyond the certificate in grounding his title and making it impossible for any subsequent claimant/challenger who had not inter-pleaded before the court to succeed in disturbing the purchase."*

I strongly feel that the above clinches any contrary argument advanced by the appellant in respect of proof of title by the respondent herein. The respondent was not required or duty bound to plead or prove any grant or history beyond his established root of title. The Court of Appeal was in order in the stance posed by it.

For the above reasons and the fuller ones carefully articulated in the lead judgment, I too, feel that the appeal is devoid of merit. I hereby dismiss the appeal and affirm the judgment of the court of Appeal. I endorse the order relating to costs in the lead judgment.

GALADIMA JSC

I have had the opportunity of reading in draft the lead Judgment just delivered by my Learned Brother MUHAMMAD JSC. I am in complete agreement with him that the appeal is devoid of any merit and it should be dismissed. I shall seize this opportunity to make
B a little contribution of my own. The facts of the matter have been meticulously exposed in the lead Judgment. However, the claim of the Plaintiff (the Respondent herein) was for a declaration that he was entitled to a parcel of land covered by a Certificate of Purchase.

Exhibit P5 was secured at an auction sale, sequel to a Court
C Judgment. The learned trial Judge treated the certificate as a worthless document and that the Plaintiff had failed to prove his root of title and therefore dismissed the plaintiff's claim. On appeal to the Court of Appeal it treated the certificate as a good root of title and for
D that reason it allowed the appeal. Dissatisfied the Defendants/Respondents (now the Appellants) appealed to this Court on three grounds of appeal urging that this Court should allow the appeal, set aside the Judgment of the court below and affirm that of the trial court. In their brief of argument the 1st set of Appellants (that is 1st and 3rd)
E formulated lone issue for determination, whilst the 2nd Appellant formulated three issues. Their grouse is that the court below was not right to hold that the Plaintiff is entitled to a statutory right of occupancy of the parcel of land in dispute. In other words, the court below was not right when it treated Exhibit P5 as a good root of title.
F In his amended brief of argument the responded set out two issues for determination. In sum, whether the respondent proved the title he asserted in his pleading and evidence against the Appellants.

My learned brother had meticulously and comprehensively
G considered all the issues raised for determination of this appeal. I agree with him that the Respondent established a strong prima facie case by his own evidence. Reliance was rightly placed on Exhibit P5, a Certificate of Purchase registered as No. 47/47/635 at an auction sale ordered by the court. The Appellants have not proved a better
H title to the disputed land. A registered Certificate of Purchase or title as in Exhibit P5, herein is a valid root of title beyond which the owner is not expected to go in claim for declaration of title. See CARDOSO V. DANIEL (1986) 2 NWLR (Pt.20) 1 at 22 where ANIAGOLU JSC in his concurring judgment stated as follows:

“What has been perplexing in this case is why the then Supreme Court (the High Court) had not taken steps to perfect the title of the purchaser from the Court (John, St Mathew, Daniel) under the Public Auction Sale by issue of a Certificate of title to the purchaser who from then on, would have the certificate as his root of title, making it unnecessary for him to go beyond the certificate in grounding his title and making it impossible or any subsequent claimant/challenger who had not interpleaded before the court succeed in disturbing the purchaser.” B

In the case on hand, it is clear from their pleadings that the Appellants did not counter claim. They were in Court only to put up a defence against the claim made by the Respondent. They based their respective claim on grants by Iyade Family. Exhibit P5 as I have stated came as a result of an Auction Sale ordered by the court as between the parties. The law is quite clear that in auction sale which has not been successfully challenged by anyone, the purchaser shall take a good and valid title. See also S.50 of the Sheriffs and Civil Process Act Cap. 407, Laws of the Federation of Nigeria, 1990 under which Exhibit P5 was issued. It provides as follows: *“The Court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right to title and interest of the Judgment debtor in the property sold and that certificate shall be taken and deemed to be valid transfer of such right title and interest.”* C D E

For the above and more detailed reasoning in the lead Judgment, as I have said, I dismiss the appeal and affirm the Judgment of the Court of Appeal. I adopt the order made as to costs. F

NGWUTA JSC

I had the honour of reading in advance the lead judgment just delivered by My Lord, Muhammad, JSC. I cannot but agree entirely with the reasoning and conclusion therein.

Accordingly, I also dismiss the appeal as devoid of merit. I adopt the order for cost in favour of the Respondent. G H