

**SUPREME COURT OF NIGERIA**  
FRIDAY 13TH APRIL, 2012. SC. 93/2003  
**CORAM:- A. M. MUKHTAR, F. F. TABAI,**  
**M. S. MUNTAKA-COOMASSIE, N. S. NGWUTA,**  
**O. ARIWOOLA, JJSC**

ALHAJI GANIYU M.B.  
ISEOGBEKUN & ANOR .....APPELLANTS  
AND  
ALHAJI SIKIRU GBERIGI  
ADELAKUN & ANOR .....RESPONDENTS

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APPEALS - Issues - Failure to raise timely - Complaint that appellants' brief was lately filed is of no moment - Since respondent failed to raise the issue at Court of Appeal (H1)

LAND LAW - Identity of land - Purpose - This is to ascertain the property in litigation - So as to avoid granting of land - To a party who is not entitled to same (H2)

LAND LAW - Identity of land - Proof - Party who seeks title to land - Must prove identity of the land - In respect of which he seeks remedy (H3)

LAND LAW - Title - Traditional history - Proof - Party who claims title vide such history - Must establish how his ancestor acquired the land (H4)

ACTIONS - Civil matters - Proof - Standard of - Civil suits are determined on preponderance of evidence - And balance of probability - As he who asserts must prove (H5)

LAND LAW - Title - Failure to prove - Counter-claim of 4<sup>th</sup>-6<sup>th</sup> defendants cannot be granted - Since they failed to adduce credible evidence - In proof of their title to the land (H6)

LAND LAW - Possession - Proof - As plaintiffs established possession of the disputed property - They are entitled to order of possession

**3574** Iseogbekun v. Adelakun (2012) 11-12 KLR (pt. 319) 3573;  
against respondents - Who have not proved better title (H7)

SUPREME COURT - Powers - Orders of court - Modification - By s. 22 S.C. Act - The court is empowered to modify orders - Given by Court of Appeal (H8)

LAND LAW - Title - Possession - Proof - Possession when proved is a title against the whole world - Where no one has proved better title (H9)

### ***FACTS***

Plaintiffs instituted this action in the High Court of Lagos State, claiming inter alia, declaration to the disputed property, possession of same and account of all rents and profits collected by defendants from tenants on the property. At the trial, plaintiffs relied on traditional evidence in support of their claim. 1<sup>st</sup> – 3<sup>rd</sup> defendants on their part, also gave traditional evidence of their title to the property, while 4<sup>th</sup> – 6<sup>th</sup> defendants counter-claimed inter alia, for declaration of title and possession of the disputed property.

At the end of hearing, the court dismissed plaintiffs' claim and counter-claim of 4<sup>th</sup> – 6<sup>th</sup> defendants. Dissatisfied, plaintiffs appealed to the Court of Appeal, Lagos Division. The court allowed the appeal in part. 1<sup>st</sup> - 3<sup>rd</sup> defendants were aggrieved, hence they appealed to Supreme Court, while 4<sup>th</sup> - 6<sup>th</sup> defendants cross-appealed.

### **ISSUES FOR DETERMINATION**

#### **MAIN APPEAL**

1. Whether having regard to the time the appellants' brief of argument was filed in the court below being outside the 60 days allowed by the rules of court and no application filed, served nor argued for extension of time, the lower court could be said to be competent to have exercised its jurisdiction properly, as the appeal before it, was incompetent?

2. Whether the identity of the land in dispute was proved on probabilities when Exhibit 'A' tendered by the plaintiffs/appellants/respondents has no relationship with any property at Onisemo Street, Lagos, but with Bridge Street, Lagos and there is neither evidence nor any pleading that Onisemo Street, Lagos, was once Bridge Street, Lagos?

3. Whether having regard to the pleadings and evidence of the appellants to the effect that their ancestors and themselves, have been in continuous and undisturbed possession of the land since 1836, which was nowhere denied by the plaintiffs/respondents, the learned Justices of Appeal were right to ascribe long possession of between 1950 to 1981 to the plaintiffs/respondents?

4. Whether the plaintiffs/respondents discharged the onus placed on them by law to warrant a decision in their favour especially when they alleged payment of tenement rate in respect of the premises and failed to show any receipt either by them or any other person in respect of the land in dispute?

#### CROSS-APPEAL

*“(1) Whether the cross-appellants did not prove or show better title than the defendants/appellants/respondents and the plaintiff/1st - 2nd respondents.*

*“(2) Whether possession of the property in dispute ought not to be granted to the cross-appellants.”*

**HELD** (Unanimously dismissing the main and cross appeal per **MUKHTAR JSC**)

*APPEALS - Issues - Failure to raise timely*

**1. At any rate the complaint that the appellants' brief was filed some six days after the period allowed by the rules should have been raised in the Court of Appeal where the said brief of argument was filed and adopted at the hearing of the said appeal. I wonder why the appellants then the respondents did not raise it as a preliminary objection or an issue when the appeal was about to be heard, until now? This is like wanting to take medicine after death. It is too late in the day to raise the issue now. Assuming this issue (1) is resolved in favour of the present appellants, then what will be the effect, when the appeal in the lower court has been heard and determined on its merit? Will this court be expected to strike out the appeal before this court, when the appeal to be struck out was the appeal in the lower court to which the brief complained against is related? Definitely not, the learned counsel slept on their**

**right as he failed to raise the issue timeously.** (p. 3583 G)

*LAND LAW - Identity of land - Purpose*

**2. Indeed the area edged pink is near Bridge Street, but Onisemo Street is not reflected on the plan attached to exhibit 'A'. This corresponds with the plan on Exhibit E, also tendered by the plaintiffs. There is correlation in the shape and location of the land in dispute, as is also reflected in exhibit H2, where the property is shown to be near Bridge Street. These pieces of evidence being consistent confirm that the property in dispute is the same property in the exhibits, and the property referred to by the parties in their oral evidence. The identity of the property is not in dispute as all the parties are in tandem on this, the fact that Bridge Street was contained in exhibit 'A' and its attachments, notwithstanding. The reason for the desirability of the establishment of the identity of a land in dispute is to ascertain the property involved in a litigation, so as to avoid the granting of a piece of land or a part thereon to a party who is not entitled to it.** (p. 3591 D)

*LAND LAW - Identity of land - Proof*

**3. The law is settled on the principle of law that a party who seeks title to land vide any of the five ways of seeking such, must prove the identity of the land in respect of which he seeks remedy. Once the opponent parties, (as in this case) have admitted the identity of the land in dispute as pleaded in the pleadings either through pleadings or oral evidence then identity has been established.** (p. 3591 G)

*LAND LAW - Title - Traditional history - Proof*

**4. The plaintiffs did not prove their root of title to the land, for they have not testified as to how the said land in dispute devolved on the said Ajegun Bashua. The position of the law is that a party who hinges his claim on declaration of title to land vide traditional history must establish how his ancestor, the original owner acquired the land i.e. whether by settlement, conquest or grant. Authorities abound that a claim predicated on traditional history or evidence must be proved by**

**any of these methods, and traditional evidence adduced must be cogent, uncontradicted evidence that must also be conclusive, if the party is to succeed. In a claim for declaration of title to land the law is trite that a party who claims such remedy in court must prove its case with cogent uncontradicted evidence that remains credible and reliable. In the instant case, it is obvious that the plaintiffs did not prove their first claim for declaration of title to the parcel of land which is in controversy:** (pp. 3593 H/3594 G) B

*ACTIONS - Civil matters - Proof - Standard of* C

**5. I will now consider the principle of law governing the proof of civil suits. It is settled law that civil suits are determined on preponderance of evidence and balanced of probability, and also it is well settled that he who asserts must prove in order to succeed in his claim.** (p. 3594 E) D

*LAND LAW - Title - Failure to prove*

**6. As can be seen from the above, the beneficiary of the Crown grant is Alli, Exhibit 'B' which the 4th - 6th defendants also relied upon is in respect of grant to Obashua by Aromire Chieftaincy family through one Alli. The said 4th - 6th defendants by the evidence they adduced did not prove their counter-claim, as required by law, for they have not established the said allotment to their ancestor whom they claimed was the first Bashua. The documents they produced have not satisfactorily proved that the property in dispute was allotted to them by the Aromire family, the original owner from whom they claimed title. Having failed to prove title to the land by adducing cogent and credible evidence, they cannot succeed in their claim (1), and unless they succeed in claim (1) they cannot secure forfeiture of the rights of occupation-possession of the property.** (p. 3597 F) E  
F  
G

*LAND LAW - Possession - Proof* H

**7. It is on record that possession has been established by the plaintiffs, and having succeeded in proving long possession of the property in controversy they are entitled to an order of**

**possession against the respondents who have not proved better title to the land.** (p. 3598 B)

*SUPREME COURT - Powers - Orders of court - Modification*

**8. Another point to be revisited at this juncture is that the appellants were not in possession since 1836, as claimed by them, and the two lower courts are in tandem on this. Having found that the appellants were not in possession from the time they claimed they were, the defendants were not entitled to collect the rents they have been collecting since 1981, and so the order of the court below in respect of the third relief sought by the plaintiffs is in order, but it will be slightly modified by this court. The order of the Court of Appeal is for the 1st and 3rd defendants to render account from 1979, but in view of my finding above that the most probable year of the collection of rents by the 1st - 3rd is 1981, the order should read 1981, instead of 1979. By virtue of Section 22 of the Supreme Court Act Cap. 424, 1990 Laws of the Federation of Nigeria, this court is empowered to make this modification. Hence this court hereby orders thus:- The 1st and 3rd defendants/respondents shall render account of all rents and profits collected by them from the tenants on No. 24, Onisemo Street, Lagos from 1981 up to date and shall be paid over to the plaintiffs inclusive of profits thereon.** (p. 3601 C)

*LAND LAW - Title - Possession - Proof*

**9. The position of the law is that possession when proved is a title against the whole world where no one has proved better title.** (p. 3607 B)

### **REPRESENTATION**

Mr. G. O. A. Ekisola with Miss Comfort Enejo, for the Appellants, 1st & 2nd Cross-Respondents

Mr. B. A. Sotayo-Aro, for the 1st & 2nd Respondents

Mr. Aderemi Bashua, for 3rd - 5th Respondents/Cross-Appellants

### **CASES REFERRED TO**

Ogbechie v. Onochie (1988) 1 NWLR (pt. 70) 370

Nwosu v. Udeaja (1990) 1 NWLR (pt. 125) 188  
Inakoju v. Adeleke (2007) 1 SC (pt. 1) 128  
Atunrase v. Sunmola (1983) 7 NWLR (pt. I) 105  
Odubeko v. Fowler (1993) 7 NWLR (pt. 303) 637  
Oduola v. I.C.Q. (1978) 4 SC 59  
Solomon v. Mogaji (1982) 11 SC 1  
Onajobi v. Olanipekun (1985) 4 SC (pt. 2) 156  
Imana v. Robinson (1979) 3-4 SC 1  
Elias v. Omo-Bare (1982) 5 SC 25  
Woluchem v. Gudi (1981) 5 SC 291  
Olayiwola v. Oladeinde Oso (1969) 1 All NLR 281  
Agboola v. Abimola (1969) 1 All NLR 287  
Nwogo v. Njoku (1990) 3 NWLR (pt. 140) 570  
Adeleke v. Balogun (2000) 4 NWLR (pt. 651) 113

### **STATUTES & RULES REFERRED TO**

Supreme Court Act Cap. 424 LFN 1990  
Constitution of the Federal Republic of Nigeria 1999, s. 233(1)  
Court of Appeal Rules 1981, O. 6 r. 10

### **LEAD JUDGMENT BY MUKHTAR JSC**

As per the writ of summons taken out by the plaintiffs in the High Court of Justice of Lagos State the plaintiffs claimed the following reliefs:

*“(i) A declaration that the hereditaments situate at and known as No. 24 Onisemo Street, Lagos is the family property under Yoruba Native Law and Custom of the descendants of Ajegun Bashua (deceased).”*

*“(ii) possession of such portion of the said hereditaments as G are in the possession or control of the defendants or any of them.”*

*“(iii) And all account of all rents and profits collected by the defendants from tenants on the said hereditaments and payments of the said rents and profits to the plaintiffs. Annual rental value is N50.00k.”*

Learned counsel exchanged their pleadings, and the pleadings went through series of amendments. Briefly, the case of the plaintiffs is that they are the only surviving principal descendants of the family of late Ajegun Bashua who originally owned the land in dis-

pute, which is situate at No. 24 Onisemo Street, Lagos. Ajegun Bashua had two children; Sule alias Baba Musa and Sinatu Abiodun, who was survived by a daughter Alhaja Suwebatu Adufe, who was survived by the plaintiffs, Sule having died without any child. Alhaja Suwebatu exercised many acts of possession on the land in dispute and even caused an iron sheet structure to be erected thereon, and leased the property out. She continued to collect rents from the tenants until she died in 1981. After her death the defendants who are the descendants of one Bakare Iseogbekun who was an arota of Ajegun Bashua instructed a solicitor to write to the tenants forbidding them from paying rents to the plaintiffs. The defendants started collecting rents and profits of the premises; and have now been in unlawful possession of the land by themselves or by their tenants.

The defendants as per their amended statement of defence denied most of the averments in the amended statement of claim. Their case is that Ajegun was not a blood relation of the Bashua family, but was son-in-law to Esubi Bashua having married Seliyat his daughter. Seliyat begat Ayawo Ajegun and Sule Ajegun. The land in dispute originally belonged to the Onisemo family, from which Esubi Bashua got a parcel of land, and gave a portion of it to Ayawo Ajegun. The parcel of land given to Esubi Bashua was later registered in the name of Obashua under crown grant dated 19th November 1874. Ayawo Ajegun and her husband Bakare were put in possession of the land including the land in dispute without any challenge from anyone until they died. They were survived by Abdullahi Bakare Osho popularly called Iseogbekun and their ownership of the land in dispute was confirmed in the crown grant of ole-Alli, the owner of an adjoining property No. 12 Bridge Street Lagos. The defendants traced their title to the land to Chief Obashua. One Madam Suwebatu Adufe the plaintiffs' mother was collecting the rents of the property from the tenants therein, but did not account for the rents she collected to the defendants until she died. The defendants denied that the plaintiffs' mother was in possession of the property in dispute, but stated that she was a trespasser on the property. On the other hand the 4th to 6th defendants admitted that the plaintiffs' mother was related to the Ajeguns and that was how she came to the property, and so their claim to ownership together with 1st - 3rd defendants is liable to forfeiture. The 4th to 6th defendants thus counter-



claimed as follows:-

*“37. (i) A declaration that the Bashua chieftaincy family is the person entitled to statutory Right of Occupancy to the property known as No. 24 Onisemo Street, Lagos.*

*(ii) A declaration that the Plaintiffs and 1st to 3rd defendants held the property No. 24 Onisemo Street, Lagos under native law and custom of Lagos and as allottees of Bashua chieftaincy Family land.*

*(iii) Forfeiture of the rights and interest of the plaintiffs and 1st to 3rd defendants in respect of 24, Onisemo Street, Lagos.*

*(iv) Possession of the said property No. 24 Onisemo Street, Lagos.”*

After the completion of pleadings parties adduced evidence. At a stage of the proceedings, Alhaji M. A. Kekere-Ekun, Alhaji R. A. Adewale, and Alhaji Rafiu Akinlade sought to be joined as defendants/counter-claimants, and the court granted their order of joinder. This court also granted the orders of substitution of some of the original parties who became deceased. All evidence before the court were evaluated by the learned trial judge who at the end of the day found the claim of the plaintiffs and the counter-claim of the 4th - 6th defendants not proved. Consequently he dismissed both the plaintiffs' claim and the 4th - 6th defendants' counter-claim. Dissatisfied with the decision the plaintiffs appealed to the Court of Appeal, Lagos Division. The Court of Appeal allowed the appeal in part, and also dismissed it in part as follows:-

*“In the final analysis, this appeal succeeds in part. To the extent to which it complains against the order of the court below dismissing the first leg of the claim which is for declaration of title, this appeal is dismissed.*

*However, this appeal is allowed in respect of the order made by the court below concerning reliefs 2 and 3. The judgment of the court below affecting these two reliefs is hereby set aside. In its place is the judgment entered in favour of the plaintiffs/appellants but against the defendants/respondents on the following terms:*

*(1) possession of No 24 Onisemo Street, Lagos now in the possession of the defendants shall immediately revert to the plaintiffs/appellants.*

*(2) the 1st and 3rd defendants/respondents shall render ac-*

*count of all rents and profits collected by them from the tenants on No.24, Onisemo Street, Lagos from 1979 up to date and same shall be paid over to the plaintiffs inclusive of profit thereon.”*

The 1st - 3rd defendants were aggrieved by the decision of the Court of Appeal, hence they appealed to this court. The 4th - 6th  
B defendants were also aggrieved and they cross-appealed to this court against the decision of the lower court. In pursuance to the rules of this court, briefs of argument were exchanged by learned counsel to the parties, and the briefs were adopted at the hearing of the appeal.  
C I will herein commence with the treatment of the main appeal before proceeding to the cross-appeal. The issues for determination distilled from the grounds of appeal in the amended appellants’ brief of argument are as follows:-

1. Whether having regard to the time the appellants’ brief of  
D argument was filed in the court below being outside the 60 days allowed by the rules of court and no application filed, served nor argued for extension of time, the lower court could be said to be competent to have exercised its jurisdiction properly, as the appeal before it, was incompetent?

E 2. Whether the identity of the land in dispute was proved on probabilities when Exhibit ‘A’ tendered by the plaintiffs/appellants/respondents has no relationship with any property at Onisemo Street, Lagos, but with Bridge Street, Lagos and there is neither evidence  
F nor any pleading that Onisemo Street, Lagos, was once Bridge Street, Lagos?

3. Whether having regard to the pleadings and evidence of the appellants to the effect that their ancestors and themselves, have been in continuous and undisturbed possession of the land since 1836,  
G which was nowhere denied by the plaintiffs/respondents, the learned Justices of Appeal were right to ascribe long possession of between 1950 to 1981 to the plaintiffs/respondents?

4. Whether the plaintiffs/respondents discharged the onus placed on them by law to warrant a decision in their favour especially  
H when they alleged payment of tenement rate in respect of the premises and failed to show any receipt either by them or any other person in respect of the land in dispute?

The respondents in their brief of argument raised a single issue for determination which is:-

*“Whether this Honourable court, should interfere with the judgment of the lower court which had acted judiciously and judicially in coming to a just decision on the 9th day of April, 2002.”*

The 3rd - 5th respondents in their brief of argument formulated the following issues in the alternative:-

*“Whether the appellants and the 1st - 2nd respondents were able to prove or show better title than the 3rd - 5th respondents, entitling them to possession of the property in dispute. Or, should possession be granted to the appellants, and, or the 1st - 2nd respondents, both who were not able to show or prove a better title than the 3rd - 5th respondents”.*

I will commence the treatment of this appeal with issue (1) in the appellants' brief of argument supra. The appellants' grouse in this issue is the lateness of the plaintiffs/appellants'/respondents' brief of argument in the Court of Appeal. It is the submission of learned counsel for the appellants that the appeal at the court of Appeal ought to have been struck out for want of diligent prosecution, the fact that the learned counsel for the respondents failed to raise objection. He placed reliance on the court of Appeal case of Iro & Ors v. Echewendu & Ors 1996 8 NWLR part 468 page 629.

In reply the learned counsel for the respondents argued that the appellants ought to have raised the six days lateness in filing appellants' brief of argument at the Court of Appeal. This was not made an issue at the lower court and so having failed to raise the issue, they cannot now raise it. The learned counsel further submitted that the late filing of the appellants' brief of argument did not affect the substance of the appeal which was heard on its merit and in good faith.

I have looked at the record of proceedings before me and that of the court's copy and I cannot find a page 208 referred to this court by the appellants in their brief of argument, so the claim of the appellants in their brief of argument, that the record of proceedings was collected by the respondents cannot be ascertained.

***At any rate the complaint that the appellants' brief was filed some six days after the period allowed by the rules should have been raised in the Court of Appeal where the said brief of argument was filed and adopted at the hearing of the said appeal. I wonder why the appellants then the respondents did not raise it as a preliminary objection or an issue when the***

***appeal was about to be heard, until now? This is like wanting to take medicine after death. It is too late in the day to raise the issue now. Assuming this issue (1) is resolved in favour of the present appellants, then what will be the effect, when the appeal in the lower court has been heard and determined on its merit? Will this court be expected to strike out the appeal before this court, when the appeal to be struck out was the appeal in the lower court to which the brief complained against is related? Definitely not, the learned counsel slept on their right as he failed to raise the issue timeously.***

The case of *Iro v. Echewendu* supra is distinguishable from this instant case because (a) it was raised timeously in the Court of Appeal, and the appellants refused/failed to file an application for extension of time to file the appellants' brief of argument, (b) the respondents did not wait until it appealed to this court before it raised it. Although rules of court are made to be obeyed (in this case Order 6 Rule 10 of the Court of Appeal Rules 1981) the non-compliance in that case was not brought to the attention of the court, so the court disposed of the appeal on its merit. I am sure if the appellants had succeeded in their appeal, the lateness wouldn't have mattered. In the light of the foregoing, this issue is resolved in favour of the respondents, and ground (1) of appeal which covers it fails and it is hereby dismissed.

The appellants' complaints under issues (2) and (3) supra are predicated on the lower court's finding on possession based on exhibit 'A'. Exhibit 'A' which was admitted in evidence through the 1st plaintiff, is a lease agreement dated 31st of January 1952 between Suwebatu Adufe with one Gabriel Ade Kehinde. The learned counsel for the appellants has submitted that even if 24 Onisemo Street, Lagos could be said to be the same as Bridge Street Lagos, the plaintiffs' possession since 1952 or thereabout notwithstanding, the onus to establish the identity of the land was on the plaintiffs/respondents. The learned counsel has argued that the evidence of possession by the appellants since 1836 was nowhere disproved neither was it established that both the mother of the plaintiffs nor the plaintiffs themselves were ever in possession of any part of No. 24 Onisemo Street. Reliance was placed on the case of *Shell BP Ltd v. Abelli & Ors* 1974 1 All NLR page 19.

In reply, the learned counsel for the respondents has con-

tended that there was no controversy on the identity of the land in dispute neither at the High Court nor at the Court of Appeal. At this juncture I will reproduce the relevant pleadings in respect of this discussion. In their final amended statement of claim the plaintiffs made the following averments:-

*“2. The land in dispute is situate at and known as No.24<sup>B</sup> Onisemo Street, Lagos. It consists of two main houses; one is made of bricks and the other is built of iron sheets.*

*3. The land in dispute was originally owned by Ajegun Bashua who died intestate in Lagos very many years ago and was survived<sup>C</sup> by only two children.*

*4. The two children were Sule (otherwise known as Baba Musa) and Sinatu Abiodun. Both were in possession of the land in dispute until they died.*

*5. Whilst Sule Alias Baba Musa left no issue in his life time, D Binta Abiodun was survived by one daughter by name Alhaji Suwebatu Adufe who died on the 20th of February 1981 survived by the 1st and 2nd plaintiffs herein.*

*6 (a) Before her death, the said Alhaja Suwebatu Adufe was in possession of the land in dispute. In fact she was the person who caused the iron sheet house to be erected on the said land in 1950.*

*(b) In the same year the said Alhaja Suwebatu Adufe employed one licensed surveyor by name Mr. M. A. G. O. Thompson to survey the portion which housed the iron sheet house.*

*Accordingly a survey plan No. T/2/1/52 dated 16th January<sup>F</sup> 1952 was so produced.*

*(c) On the 31st day of January 1952 Suwebatu Adufe granted a lease of ten years on the land in dispute and the said lease was registered at No. 18 at page 18 in Volume 919 of the Registrar of G deeds kept at the Lagos State land Registry Lagos Nigeria.*

*The above acts i.e. 6a-6c are acts of possession and ownership exercised by Alhaja Suwebatu Adufe the plaintiffs' mother on the land in dispute.*

*7. She was the only one who hired out all the four bedrooms<sup>H</sup> in the said incorrugated iron sheet house to tenants and she in fact collected the rents therefrom until she passed away on February 20 in 1981.*

*8. It was at this stage, i.e. after the death of the plaintiffs' mother*

*that the 1st to 3rd defendants instructed a solicitor to write to all the tenants of the said iron sheet house forbidding them from paying their rents to the plaintiffs”.*

In support of the above pleadings the 1st plaintiff gave the following pieces of evidence.

B *“The land in dispute situate at No. 24, Onisemo Street, Lagos. There are 2 buildings on the land. The first building is made of bricks and the other is made of iron Sheet. The original owner of the land is Late Ajegun Bashua. Bashua had 2 children, namely Sule Baba Musa and Sinatu Abiodun. Both children are now deceased ... Died childless. Baba Musa and Sinatu Abiodun lived and died on the disputed land. Baba Musa had no child, living now. Abiodun had a child namely Alhaja Suwebatu Adufe. Suwebatu Adufe died on 20-12-81. Suwebatu Adufe was my mother...*

D *In 1950, my mother built a corrugated iron sheet or structure on the land. My mother before she died engaged a licensed surveyor to survey the disputed land. He surveyed the land. The name of the licensed surveyor is H.A.G. Thompson...*

*This is lease agreement registered...*

E *There are 4 rooms and she collected the rent up to the date she died on the 20-2-81. After the death of my mother, the defendants engaged a solicitor who ... they should not (sic) their rent to us (plaintiff and my sister) because they claimed to be both the land in dispute and the structure on the land”.*

F The above pieces of evidence supported the plaintiffs’ claim and they were consistent with it. In their amended statement of defence, it was admitted that the land in dispute is situate at No. 24 Onisemo Street, Lagos and they inter alia averred thus:-

G *“7. With reference to paragraph 3 of the statement of claim’ the Defendants aver that the land in dispute, i.e. 24 Onisemo Street, Lagos originally belonged to the Onisemo family.*

H *8. Many years ago, the said Esubi Bashua, got a parcel of land at Idunmota from the Onisemo family and gave a portion (of which the land in dispute forms a part) to his Grand-daughter Ayawo Ajegun and her husband one Bakare Akeresewu who was an Aseforiji from Emure-Ekiti in Ife (Ile-Ife) to live upon.*

*9. The said parcel of land given to Esubi Bashua was later registered in the case of Obashua under Crown Grant dated 19th*

day of November 1874 as No. 190 at page 190 in Volume 8 of the Register of Deeds at the Lands Registry, Lagos.

10. The said Ayawo Ajegun and Bakare Akeresewu her husband, were put in possession of the land including the land in dispute in 1836. They built a mud house on the land and lived in it throughout their life time without any challenge. They died several years ago and were survived by their only son. Abdulai Bakare, who continued in possession and also lived and died in the house also without any challenge from any quarters. <sup>B</sup>

10a. The real name of the only issue of Ayawo Ajegun and Bakare Akeresewu that is, Abudulai Bakare is Abdulai Bakare Osho and is hereinafter referred to as such. The name 'Iseogbekun' was an alias of the second son of Abdulai Bakare Osho named Musa Bakare Osho (Alias Iseogbekun). <sup>C</sup>

This Musa Bakare Osho became so popular and by his popularity his alias Iseogbekun had since been attached so firmly as if it were the name of the family. <sup>D</sup>

10b. The ownership of Abdulai Bakare Osho of the land in dispute was also confirmed in the Crown Grant of one Alli, the owner of the adjoining property, No. 12 Bridge street, Lagos registered under Crown Grant dated 20th day of August, 1968 as No. 128 at page 128 in volume 3 of the Register of Deeds at Lagos Registry, Lagos. <sup>E</sup>

10c. The said Abdulai Bakare Osho, also bought a property at No. 19 Idunshagbe Street, Lagos, for which he was given Land Certificate of measurement No. XVI dated August 24th 1892. <sup>F</sup>

10d. The extent of Abdulai Bakare Osho's property including the land in dispute and in relation to the other adjoining properties were well and truly shown in the Crown Grant Sheets 1 of Alakoro section kept in the plan section of the Lagos State Land Registry. <sup>G</sup>

13. The two children of Abdulai Bakare Osho that is Raji Bakare Osho and Musa Bakare Osho (alias Iseogbekun) took possession after the death of their father and built the brick house on the land in dispute in the presence of Sule Ajegun (alias Baba Musa) who was the brother of their mother Ayawo Ajegun <sup>H</sup>

14. That after the death of Ayawo and Akeresewu their son Abdulai Bakare Osho invited Sule Ajegun (alias Baba Musa) to live with him at 24, Onisemo Street, Lagos. After the death of Abdulai

*Bakare Osho. Sule Ajegun (alias Baba Muse) (sic) continued to live on the property with his wife...*

*15. After Sule Ajegun (alias Baba Musa) left for No. 5 Tokosi Lane, Lagos the mud house in which he had been living at 24, Onisemo Street, Lagos collapsed and was not rebuilt for several years...*

B *16. Raji Bakare Osho thereafter appointed one Madam Shongobiya a friend of his late brother Musa Bakare Iseogbekun to be an overseer of the rents collected from the house.*

C *17. The Defendants aver that after the death of Sule Ajegun, the plaintiffs' mother, Madam Suwebatu Adufe, who was a friend of the said Madam Shongobiya introduced to her a tenant who wanted to rent the garden and built corrugated iron sheets. With the consent of Raji Bakare Iseogbekun, the garden was let to the tenant.*

D *18. The 1st Defendant's father Muibi Bakare Iseogbekun who was the son of Musa Bakare Iseogbekun, was all the time living in his mother's at Ita Akanni but he came and joined his uncle Raji Bakare Iseogbekun at 24, Onisemo Street, Lagos. Muibi asked Madam Suwebatu Adufe for the ten years rent she collected, the latter threatened she would see to it that he loses his only son that is the 1st*  
E *Defendant if Muibi dared to raise the matter again.*

*21. The Defendants will contest at the trial of this case that no water rate was ever paid on the property 24, Onisemo Street, Lagos. The property was exempted from payment of rates through the influence of the grand father, father and uncle respectively, Musa Bakare*  
F *Iseogbekun who was very popular as a driver."*

The 1st defendant gave the following pieces of evidence in-  
ter alia:-

G *"Esubi Bashua gave birth to Seliat, Seliat gave birth to Ayawo Ajegbo and Sule Ajegbo ...*

*Esubi Inem went to Chief Onisemo to ask for land for building.*

*Onisemo now gave him a piece of land at side of his land where he built his place... Abdulai Osho was born on the land. Ayawo*  
H *had 1 child by name Bakare Osho. Bakare Osho had 2 children, namely Raji Bakare Osho (2) Muse Bakare Osho. The 2 children were living on the land...*

*Later Muse died, leaving behind Raji. The land which we gave to Esubi was registered for Chief Bashua. This is a certified true*



*copy of the Crown Grant in favour of Obasa...*

*My great grand father had been on the land since 1836, without any disturbance from anybody”.*

Under cross-examination the witness testified as follows on the Crown Grant:-

*“The adjoining property to the land in dispute is No. 12 Bridge Street, it belongs to Alli family. I have obtained the certified true copy of the Crown Grants granter (sic) to Alli family”*

The 4th -6th defendants’ salient averments in their final statement of defence are:-

*“5 ... the land in dispute was originally owned by Odu who later became the first Chief Bashua Odu and who has his Iga at Idummoyinbo Street, Lagos. The said Chief Bashua Odu belonged to Ashogbon class of Chiefs of Lagos and all the land originally owned by the said Chief Bashua and his successors to the Chieftaincy were obtained from Aromire Chieftaincy by the Obas of Lagos who granted same land to him absolutely, without any incident of customary rights.*

*7. Defendants aver that most of the land were covered by Crown Grants obtained for the Bashua family otherwise Bashua Chieftaincy family and the land No. 24, Onisemo Street, Lagos the land in dispute is one of such land covered by the Crown Grant issued to Obashua later on called Bashua.*

*8. Defendants aver that under native customary law of Lagos, a Chieftaincy family consists of the blood descendants, the Arotas (liberated slaves), Domestics and Alabagbes.*

*9. Defendants also avers that a head of Arotas, domestics and Alabagbes can be appointed and when appointed he (sic) takes charge of all the properties of his overlord that is the family and his children and also takes charge of the living and overseeing of the other Arotas, domestics and the Alabagbes.*

*10. Defendants aver that during the life of Esubi, he was given these roles so mush so that he was called Esubi Bashua instead of Esubi and he was the person who allotted No. 24 Onisemo Street, Lagos to occupants of members of the Bashua Chieftaincy family.*

*11. Defendants aver that it was in this way that the property at No. 24 Onisemo Street, Lagos were allocated to Esubi’s daughter with his (sic) husband to live upon as family house of Bashua Chieftaincy family.*

12. Defendants aver that under native customary law of Lagos, a member of the family has a right of possession and possession does not ripen to absolute ownership but right to possession...

B 15. Defendants aver that Esubi Bashua was an Arota of Bashua under Bashua Chieftaincy family and that he acted for the family in respect of all the lands of the family in which he allocated possession to members or otherwise and it has been adjudged that he held all these lands in-trust-for the family, a fact which has been confirmed in suits LD/522/83, and LD/973/86...

C 25. Defendants aver that Ajegun was not a blood relation of Bashua, married Seliyat one of the daughters of the said Esubi Bashua.

26. The said-Ajegun and Seliyat were survived by two children, namely:-

1. Ayawo Ajegun 2. Sule Ajegun.

D 28. Defendants aver that Sule and his brother was also given portion to live upon at 24 Onisemo street, Lagos.

E 32. Defendants aver that it is customary to allow relations either near or distant to live together and it was because of this that plaintiff's mother came into the property and not because of acts of ownership".

Nurudeen Alabi Kekere-ekun, the 4th defendant testified in-ter alia thus:-

F "The plaintiffs and defendants are members of the Bashua Chieftaincy family who are entitled to the arota in the affairs of the family up to certain points

G The property which (sic) situate at No. 24 Onisemo Street belongs to Bashua Chieftaincy family. Neither plaintiffs or 1st to 3rd defendants are owner of the property in issue. The 2 parties in this action have no authority to claim the land as they are AROTA (slaves) under the native law and custom...

The Bashua Chieftaincy family rare Awori (yeuba) It was Esubi who allotted the property in issue for the plaintiff and the defendant.

H ...The land in dispute is part of the landed property given to Bashua chieftaincy family by Aromire chieftaincy family".

As can be seen from the above pieces of evidence, each party traced their claim to the land to their ancestors. However one thing is clear, and that is that the plaintiffs and the original defendants are related. Another thing that is also clear is that the parties are in tan-

dem on the property in dispute, which is 24, Onisemo street, Lagos, even if there is confusion on the description of the site of the property, albeit whether it is on Bridge Street or Onisemo Street.

Now, let me look at the plans tendered in the court of first instance, and some other exhibits admitted in evidence. In exhibit 'A' which is the lease agreement tendered by the plaintiffs can be found the following in the second paragraph:-

*"NOW, THIS DEED WITNESSETH that in consideration of the Rents and the covenants herein after reserved and contained the lessor doth hereby demise unto the lessee ALL THAT piece or parcel of land with the building thereon situate, lying and NEAR Bridge Street, Lagos Nigeria aforesaid and more particularly delineated and described with its dimensions and abuttal's on the Plan drawn and attached to the foot of these presents and thereon edged "Pink" (hereinafter referred to as the piece of land)."*

**Indeed the area edged pink is near Bridge Street, but Onisemo Street is not reflected on the plan attached to exhibit 'A'. This corresponds with the plan on Exhibit E, also tendered by the plaintiffs. There is correlation in the shape and location of the land in dispute, as is also reflected in exhibit H2, where the property is shown to be near Bridge Street. These pieces of evidence being consistent confirm that the property in dispute is the same property in the exhibits, and the property referred to by the parties in their oral evidence. The identity of the property is not in dispute as all the parties are in tandem on this, the fact that Bridge Street was contained in exhibit 'A' and its attachments, notwithstanding. The reason for the desirability of the establishment of the identity of a land in dispute is to ascertain the property involved in a litigation, so as to avoid the granting of a piece of land or a part thereon to a party who is not entitled to it. The law is settled on the principle of law that a party who seeks title to land vide any of the five ways of seeking such, must prove the identity of the land in respect of which he seeks remedy. Once the opponent parties, (as in this case) have admitted the identity of the land in dispute as pleaded in the pleadings either through pleadings or oral evidence then identity has been established.** See *Nwogo v. Njoku* 1990 3 NWLR part 140, page 570,

Epi v. Eigbedion 1972 10 S.C. 53, and Adeleke v. Balogun 2000 4 NWLR part 651 page 113.

The learned counsel for the appellants has submitted that even if 24 Onisemo Street, Lagos could be said to be the same as Bridge Street Lagos, the appellants possession since 1835 is prior to the possession of the plaintiffs/appellants/respondents of 1952, as apart from exhibit A no other valid document was tendered in respect of 24 Onisemo Street. The onus was on the plaintiffs to prove identity of the land in dispute, and not on the 1st - 3rd defendants/appellants. In this wise, the learned counsel has argued that the court below was in error in ascribing exclusive possession in the plaintiffs. The appellants are quarrelling with the observation of the court below which reads thus:-

*"In essence, the evidence is that the property at No. 24, Onisemo Street, Lagos belonged to Bashua Chieftaincy family who were the original owners of the land in dispute to witness (sic) to confirm at least that they granted the land to them."*

The learned counsel further submitted that unlike the 4th - 6th defendants/respondents who had a counter-claim on whom there was a burden of proof, the appellants herein only needed to rely on the long possession as a defence and not as a sword since they did not file a counter claim. Reliance was placed on the cases of Olayiwola v. Oladeinde Oso 1969 1 All NLR 281, and Agboola v. Abimola 1969 1 All NLR 287. It was further argued that there was no evidence that the plaintiffs or their ancestors at anytime put the appellants in possession, nor was evidence led to show that water rates were paid on the premises prior to the time they claimed they instructed the appellants' father to use money collected from the tenants in occupation to settle water rates on the premises in dispute. In addition to the above argument, it was contended that the evidence of possession by the appellants since 1836 was not disproved, and it was not established that both the mother of the plaintiffs or the plaintiffs themselves were in actual possession of any part of No. 24, Onisemo Street Lagos, having earlier submitted that exhibit A could not avail the plaintiffs. Reliance was placed on the case of Shell BP Ltd. v. Abelli & Ors 1974 1 All N.L.R. page 19. In response, the learned counsel for the 1st & 2nd respondents posited that the appellants relied on traditional evidence and on exhibit B, a Crown Grant, which the learned

trial judge rejected, as exhibit B was in the name of one Alli, a stranger to the action.

In their reply the learned counsel for the 3rd - 5th respondents submitted in their brief of argument that by confirming the dismissal of the 3rd - 5th respondents' case on the reason of failure to prove their title by traditional history, the lower court had come to the wrong conclusion and a total misunderstanding of the 3rd - 5th respondents' case, as by the judgment of the lower court, the issue of title is still in the air. Accordingly the lower court erred in law and in fact when it failed to appreciate the case presented by the 3rd - 5th respondents and inevitably came to a wrong conclusion, for when it failed to decide that title resides in the 3rd - 5th respondents they lost the bearing of the case, and arrived at the wrong conclusion on the issue of possession. It has been contended that the 3rd - 5th respondents proved their root of title to the original owners of the land Aromire Chieftaincy family, by production of crown grant. By virtue of the authority of *Idundun & Ors v. Okumagba* 1976 10 SC 277 title to land can be proved by the following five grounds:-

*"(1) Proof by traditional history or traditional evidence.*

*(2) Proof by grant or the production of document of title.*

*(3) Proof by acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference that the persons exercising such acts are true owners of the land.*

*(4) Proof by acts of long Possession.*

*(5) Proof by possession of connected or adjacent land in circumstances rendering it probable that the owner of such land would in addition be the owner of the land in dispute."*

In the instant case, the plaintiffs predicated their case on traditional evidence. The plaintiffs traced their root of title to the land to one Ajegun Bashua who begat their ancestors and their mother Suwebatu Adufe who built a corrugated iron sheet structure on the land and exercised several acts of possession which included renting out the property to one Gabriel Kehinde, the lease agreement of which was tendered in evidence and marked Exhibit 'A'. It is also their case that the 1st - 3rd defendants are descendants of Ajegun Bashua's slave i.e. arota.

**The plaintiffs did not prove their root of title to the land,**

**for they have not testified as to how the said land in dispute devolved on the said Ajegun Bashua. The position of the law is that a party who hinges his claim on declaration of title to land vide traditional history must establish how his ancestor, the original owner acquired the land i.e. whether by settle-  
 B ment, conquest or grant. Authorities abound that a claim predicated on traditional history or evidence must be proved by any of these methods, and traditional evidence adduced must be cogent, uncontradicted evidence that must also be conclu-  
 C sive, if the party is to succeed.** See Aikhionbare v. Omoregie 1976 12 SC. 16, Kodilinye v. Mbanefo Odu 2 W.A.C.A. 336, and Eboha v. Anakwenza 1967 FNLR 279. This, obviously the plaintiffs failed to do, and so their case was riddled with shortcomings that stems from the vacuum created by that lacuna. The tendered lease agreement  
 D exhibit A, which they sought to reinforce their claim with was made on 31st day of January 1952 between Suwebatu Adufe and Gabriel Ade Kehinde of 14 Bridge street, Lagos for a period of 10 years. It was thumb printed by the said Suwebatu Adufe, the ancestor of the plaintiffs and signed by the said lessee Gabriel Ade Kehinde in the  
 E presence of Magistrate S. O. Lambo. Now, the pertinent question to be asked at this juncture is, did the plaintiffs with the above reproduced evidence prove their claim of a declaration that the land in dispute was their family property?

**I will now consider the principle of law governing the proof of civil suits. It is settled law that civil suits are deter-  
 F mined on preponderance of evidence and balanced of probability, and also it is well settled that he who asserts must prove in order to succeed in his claim.** See Imana v. Robinson 1979 3 -  
 G 4 SC. 1, Elias v. Omo-Bare 1982 5 SC. 25, and Woluchem v. Gudi 1981 5 SC. 291.

**In a claim for declaration of title to land the law is trite that a party who claims such remedy in court must prove its case with cogent uncontradicted evidence that remains cred-  
 H ible and reliable. In the instant case, it is obvious that the plaintiffs did not prove their first claim for declaration of title to the parcel of land which is in controversy:** They therefore failed in that aspect of the claim, and I endorse the finding of the lower court, which reads as follows:-

*"In the final analysis, this appeal succeeds in part. To the extent to which it complains against the order of the court below dismissing the first leg of the claim which is for declaration of title, this appeal is dismissed."*

The learned Justice who wrote the lead judgment went further in his findings to state the following:- B

*"However, this appeal is allowed in respect of the order made by the court below concerning reliefs 2 and 3. The judgment of the court below affecting these two reliefs is hereby set aside."*

To justify this latter finding, I will now return to exhibit 'A' which is the evidence that the mother of the plaintiffs did actually lease the property in controversy to a tenant for a period of ten years, and which has not been challenged. It will not be out of place if one asks the question, if Suwebatu Adufe (the plaintiffs' mother) was not in possession or had no authority or right over the land, would she be audacious to lease the property out, for that period and without any disturbance from anybody? The presumption that she had interest in the land, (irrespective of the claim of the defendants) is well founded as testified by the 1st defence witness evidence which reads as follows:- C  
D  
E

*"Raji Bakare Osho then approached, (sic) and Modinat Songobiya a friend of his late brother Muse Bakare to rely him (sic) to oversee the rent on the land from the house. Songobiya agreed and she was collecting the rent. The mother of plaintiff (sic) went to the (sic) Songobiya and said that he had got somebody to rent the land in dispute. Songobiya was directed to Raji Bakare Osho, and he agree that (sic) the rent the land in dispute. The rent was paid to the mother of the plaintiffs but the mother of the plaintiff did not hand over the rent to Songobiya, Raji Bakare Osho. My father and myself went to the mother of the plaintiff and demanded for the rent. She refuse (sic) to produce the rent. My father was the head of the family. The mother of the plaintiff is Adufe. When Madam Adufe refuse to pay us the rent I undertook to collect the rent..."* F  
G

I find it inconceivable that a total stranger (as depicted above) H would be entrusted with a property she had no interest in to lease out for ten years, and to enter into a lease agreement which was registered in the land registry, and to collect the rents for the period. I have difficulty in believing that that is feasible. The exercise of the

acts of possession by plaintiffs' mother was reinforced by the same DW1 when he gave the following testimony under cross examination:-

B *"I have been collecting this rent since 1981. The iron sheet building was built by Gabriel Kehinde. Kehinde was a tenant of the plaintiffs' mother. I don't know anything about the agreement. I agree that Gabriel was on the land for about 10 years and he built the iron sheets.*

C *Gabriel Kehinde is not (sic) longer on the land. We put the tenant on (sic) iron sheet building. I stopped the mother of the plaintiff (sic) collecting the rent on the premises since 1979."*

D The above pieces of evidence contradict the evidence of the plaintiffs witness, which said that it was after their mother's death that the defendant stopped them from collecting the rents of the property. The evidence of the plaintiffs' witness is more likely to be believed for the defence witness prevaricated on the year he started collecting the rents. First he said it was in 1981, then he changed it to 1979, which portrays him as an inconsistent witness. At any rate, which ever year one considers to be correct, the facts that stands clear is that Madam Suwebatu continued to exercise acts of possession vide the collection of rents on the property even after the expiration of the leasehold contained in exhibit 'A' , which expired in 1962. When one adds ten years to 1952 when the lease agreement commenced and was signed, the expiration year was 1962. So between 1962 and 1981, when the plaintiffs' mother died, she continued to collect rents, and the defendants allowed her to do so undisturbed until 1979 or 1981. It is instructive to note that the suit was instituted in 1981, immediately after the death of the plaintiffs' mother, F when the plaintiff's were prevented from collecting rents. G

H In the circumstances, it cannot be said that the plaintiffs folded their arms and allowed the defendants to assume active possession. The plaintiffs being the heirs of Madam Suwebatu continued the act of possession of their ancestors by initiating this action timeously in the high court of Lagos State. Exhibit B which the 1st - 3rd defendants tendered to prove their claim of ownership is a Crown Grant to which is attached a plan of a larger parcel of land allegedly granted Obashua, their ancestor in 1875, and it was on this Crown Grant that the defendants relied on to prove ownership and possession.



They have not counter-claimed on the land in dispute, and proof of possession has eluded them.

It is not correct that the defendants were in possession, for the plaintiffs proved that they were merely allowed to live on the premises after the death of their parents who were arotas to the plaintiff's' descendants. I will not also lose sight of the fact that Madam Suwebatu Adufe caused a site plan of the property to be drawn in 1952. A person with no authority or interest on a parcel of land will not go to that extent. As for the 4th- 6th defendants' defence and counter-claim, they also based their claim on traditional evidence, tracing their title to Aromire Chieftaincy family, which gave the land in dispute to the first Bashua of the Bashua Chieftaincy family named Odu. The Bashua family allotted the land in dispute to the plaintiffs and defendants who are arotas of the Bashua chieftaincy family under native law and custom. The crown Grant in respect of the property in dispute which forms part of the greater land of Bashua which was admitted in evidence as exhibit 'C' is however not in tandem with the claim of the 4th- 5th defendants. The said exhibit 'C' reads as follows:-

*"KNOW ALL MEN, BY PRESENTS, that I, John Macaulay Glover Commander in the majesty's Royal Navy and' of the Government of the Island and Territories having investigated the claim set forth by Alli... A part of land situated at Ebute Alakoro measuring fifty five feet back, adjoining land of Osho, Seventy five feet West of Bridge Street, forty eight feet North adjoining land of Osho, with angle ... Grant and Assign to the said Alli..."*

**As can be seen from the above, the beneficiary of the Crown grant is Alli, Exhibit 'B' which the 4th - 6th defendants also relied upon is in respect of grant to Obashua by Aromire Chieftaincy family through one Alli. The said 4th - 6th defendants by the evidence they adduced did not prove their counter-claim, as required by law, for they have not established the said allotment to their ancestor whom they claimed was the first Bashua. The documents they produced have not satisfactorily proved that the property in dispute was allotted to them by the Aromire family, the original owner from whom they claimed title. Having failed to prove title to the land by adducing cogent and credible evidence, they cannot succeed in their**

**claim (1), and unless they succeed in claim (1) they cannot secure forfeiture of the rights of occupation-possession of the property.** The Court of Appeal was therefore correct when it posited inter alia in its judgment thus:-

B *"In the instant case, both the plaintiffs/appellants and the 4th, 5th and 6th defendants/counter -claimants/respondents have failed to prove their title by traditional evidence. Even, attempt to prove their case through documents of title failed."*

C ***It is on record that possession has been established by the plaintiffs, and having succeeded in proving long possession of the property in controversy they are entitled to an order of possession against the respondents who have not proved better title to the land.*** See Oduola v. I.C.Q. 1978 4 S.C. 59, Maji v. Shafi 1965 NMLR 31 and Solomon v. Mogaji 1982 11 D SC. 1. In the case of Wula-Ofei v. Mabel Damquah 1961 WLR 1238 (PC) Lord Guest had the following to say on possession.

E *"Their Lordships do not consider that in order to establish possession it is necessary for a claimant to take same active steps in relation to the land such as enclosing the land or cultivating it. The type of conduct which indicates possession must vary with the type of land. In the case of vacant and unenclosed land which is not being..."*

F For the foregoing reasoning I resolve the above two issues in favour of the respondents, and dismiss grounds (2) and (3) of appeal which cover them.

The next issue for determination is in respect of the rendering of account of rents to the respondents by the appellants. The learned counsel for the appellants in canvassing argument under this issue, submitted that there is no proof that the ancestors of the plaintiffs ever put the appellants in possession of the land in dispute, and there was no proof that tenement or water rates were payable or ever paid in respect of the property in controversy, at any time or that it is an obligation which the appellants failed to discharge. According to learned counsel, the lower court's order that account be rendered to the plaintiffs/respondents is not only wrong but also very material to warrant the intervention of the Supreme Court. Reliance was placed on the cases of Ukejianya v. Uchendu W.A.C.A. volume xiii 45 and Onajobi & Anor v. Bello Olanipekun & Ors 1985 4 SC part 2 page 156.

In their brief of argument, the learned counsel for the respondents argued that there was evidence given at the trial that the appellants were allowed to live on a portion of the land in dispute and to use the rents for payment of tenement rate. He also stated that the 1st appellant in his evidence at trial admitted collecting rents for some rooms on the land in dispute since 1979. In the circumstances, the court of Appeal was justified by ordering the appellants to account for the rents they had collected since 1979 to the 1st and 2nd respondents. Finally, the learned counsel has submitted that, whereas in this appeal the Court of Appeal's findings are:-

- (1) reasonably justified;
- (2) supported by credible evidence;
- (3) where no special circumstances are shown why the Supreme Court should interfere;
- (4) where there is no substantial error apparent on record of proceedings;
- (5) where there is no miscarriage of justice;
- (6) no violation of the principle of law;
- (7) where such findings are not perverse;
- (8) patently erroneous,
- (9) where the Court of Appeal has not drawn wrong conclusions from accepted credible evidence or
- (10) where no miscarriage of justice will result, this court will not interfere.

The relevant averments in respect of the supra argument of the parties will be reproduced here below. In the plaintiffs' statement of claim are the following averments:-

*"11. After the death of Ajegun Bashua, his children allowed Bakare Iseogbekun to live rent free in the aforesaid brick house on the land in dispute.*

*12. Similarly after the death of Bakare Iseogbekun, his children Muibi and Modinat were allowed to live rent free in the said house but that a room and a parlour in the brick house should be let out and rents thereby realized should be used to pay the water rates for the whole premises of No. 24 Onisemo Street, Lagos i.e. the land in dispute.*

*13. Muibi the father of the 1st and 3rd defendants carried out the instruction until he died when the 1st defendant and 2nd*

*defendant took over the payment of the said water rates through the said arrangement and this is the method by which the water rates of land in dispute is being paid up till today.”*

In response, the 1st - 3rd defendants averred thus:-

“23. With reference to paragraphs 12 and 13 of the statement of claim the 1st and 3rd defendants aver that their ancestors lived in and occupied the property 24, Onisemo-Street, Lagos from 1836 as of right and as owners thereof under native law and custom, and not by the permission of or at sufferance of the alleged Ajegun Bashua or any other person.

24. The aforesaid Suwebatu Adufe, the plaintiffs’ mother was never in possession of 24, Onisemo Street, Lagos, but all the time she had been a trespasser on the property.

25. The 1st and 3rd Defendants are in possession of the property 24, Onisemo Street, Lagos, as the rightful owners thereof under native law and custom and are not accountable to the Plaintiffs in any way whatsoever.”

The plaintiffs proved the occupation of the defendants’ ancestors thus:-

“After the death of the original owner the slave put in room built in (sic) the mud (sic) on the land. After (sic) the slave (Bakare Isoegbon) had died, we put in possession (sic) of his 2 children to live in the room on the land. We told them to use the rent collected in respect of the 2 rooms in the premises for the water rate. Muyibi carried out our instruction until he died. After the death of Muyibi 1st defendant and 3rd defendants carried out our instruction to use the rent of the 2 rooms in the premises to pay the water rate. The arrangement was carried out up to 1981.”

The above evidence was not debunked, but the 1st defendant in his evidence denied that they were put in possession, and that they paid water rates on the premises because Muse Bakare Osho worked with the British people. Consequently they were exempted from paying water rate. Not a likely story, for the British will not condone such act of indiscipline like the failure to discharge a civic responsibility; but then that was part of their defence. When cross examined D.W.1 said he had been collecting rents since 1981. The defendant has himself admitted that he has been collecting a N10.00 monthly rent from two tenants on the land. There was ample

evidence on record, both by the plaintiffs and the defendants that has proved the claim of the plaintiffs that the defendants/appellants were put in possession on the land in dispute by the respondents, and that the defendants collected rents since 1981. 1981 is more probable than 1979, (the defendant witness claimed both years as years they started collecting rents), as it corresponds with the year the plaintiffs alleged the defendants started collecting rents i.e. after Suwebatu Adufe's death, for it supports the plaintiffs' claim, contrary to the stance of the learned appellants' counsel that the defendants/appellants regained possession of the property in 1979, when they started collecting rents after the demise of the plaintiffs' mother.

***Another point to be revisited at this juncture is that the appellants were not in possession since 1836, as claimed by them, and the two lower courts are in tandem on this. Having found that the appellants were not in possession from the time they claimed they were, the defendants were not entitled to collect the rents they have been collecting since 1981, and so the order of the court below in respect of the third relief sought by the plaintiffs is in order, but it will be slightly modified by this court. The order of the Court of Appeal is for the 1st and 3rd defendants to render account from 1979, but in view of my finding above that the most probable year of the collection of rents by the 1st - 3rd is 1981, the order should read 1981, instead of 1979. By virtue of Section 22 of the Supreme Court Act Cap. 424, 1990 Laws of the Federation of Nigeria, this court is empowered to make this modification. Hence this court hereby orders thus:- The 1st and 3rd defendants/respondents shall render account of all rents and profits collected by them from the tenants on No. 24, Onisemo Street, Lagos from 1981 up to date and shall be paid over to the plaintiffs inclusive of profits thereon.***

In the light of the foregoing I resolve this last issue in favour of the respondents. Grounds of appeal Nos (4) and (5) which the issue is married to fails, and they are hereby dismissed. In fact all the grounds of appeal in this appeal have no merit, and they have been dismissed. The end result is that the main appeal lacks substance and merit, and so it is dismissed. The judgment of the lower court is affirmed to the extent of the change of year to read 1981 in the second

order made by it. I assess costs at N50,000.00 in favour of each set of respondents, against the appellants.

The 4th - 5th respondents filed a cross-appeal before this court, after obtaining leave. The cross appeal is on two grounds. In this appeal I will refer to the cross-appellants as appellants, and the plaintiffs and the 1st & 3rd defendants in the court of first instance will be referred to as the respondents, the plaintiffs as 1st and 2nd respondents, while the 1st - 3rd defendants as 3rd - 5th respondents. The learned counsel for the 1st and 2nd respondents filed a notice of preliminary objection against the cross-appeal. The grounds of objection as stated in the notice of objection are:-

*"1. The Cross-Appeal is unconstitutional in that it did not arise from the decision of the lower court (i.e. the Court of Appeal) of 9th April, 2002.*

*2. The Supreme Court of Nigeria has no jurisdiction to hear and determine an appeal from the decision of the High Court, leave of the Supreme Court of Nigeria notwithstanding.  
(See S. 233 of the 1999 Constitution of the Federal Republic of Nigeria)".*

I have carefully perused the cross-appellants' notice of cross-appeal, and I fail to see that the cross-appeal did not arise from the decision of the lower court, but from the decision of the High Court. The grounds of appeal and their particulars did not emanate from the decision of the High Court. It is not in dispute that appeal lies to the Supreme Court only from the Court of Appeal, as is stipulated in Section 233(1) of the Constitution of the Federal Republic of Nigeria 1999 thus:-

*"233(1) The Supreme Court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal".*

I do not see that the grounds of appeal have infringed the above provision of the constitution. In the circumstances I find no merit in the notice of preliminary objection, and so no justification for raising it in the first place. The notice of preliminary objection is hereby overruled. The cases of Inakoju & 17 Ors v. Adeleke & 3 Ors 2007 1 SC part 1 page 128, and Odiase v. Agho 1972 3 S.C. 69 cited in the reply brief of appellants are not applicable to the instant case. The learned counsel for the parties exchanged briefs of argument in re-

spect of the cross-appeal. Two issues for determination were formulated by the appellants in their cross-appellants' brief of argument. The issues are:-

*"(1) Whether the cross-appellants did not prove or show better title than the defendants/appellants/respondents and the plaintiff/1st - 2nd respondents."* B

*"(2) Whether possession of the property in dispute ought not to be granted to the cross-appellants."*

The 1st and 2nd respondents in their brief of argument raised a sole issue for determination, which is:- C

*"Whether your lordships should interfere with the judgment by the lower court which had acted judicially and judiciously in arriving at a just and well considered decision on April 9, 2002."*

It seems the learned counsel for the 3rd - 5th respondents has not filed a respondents' brief of argument as I have not seen it in the file before me. I have also directed the registrar to search the court's master file, but none could be found. At any rate, the learned counsel at the hearing of the appeal adopted only a 'reply brief of argument of appellants to the cross-appellants' brief, not a cross-respondents brief of argument. E

On issue (1) supra, the learned counsel for the appellants has submitted that the established position of the law is that possession of property in dispute would be granted to the party who is able to establish title to the property. Where there are conflicting claims to possession, title automatically becomes an issue where one or all of the parties to a suit raise it as an issue the decision on ownership becomes inevitable, and ownership would be ascribed in favour of that party who is able to prove or establish title by any of the five established ways of proving title prescribed in the case of *Idundun v. Okumagba* supra. The learned counsel further submitted that the Court of Appeal by confirming the dismissal of the cross-appellants' case on the reason of failure to prove their title by traditional history, the lower court had come to the wrong conclusion and a total misunderstanding of the cross-appellants' case, for by the judgment of the lower court, the issue of title is still in the air. According to him the lower court only gave possession to the plaintiffs without deciding where title resides. The learned counsel has further submitted that the appellants established and satisfied mode (2) of proving title stated H

in Idundun's case supra i.e. proof by production of document (the Crown Grant in this case), and according to learned counsel, the appellants proved traditional history of the land in dispute, as a second mode of proof of title.

The learned counsel for the 1st and 2nd respondents has submitted that the appellants did not credibly prove their case of traditional history, and the Crown Grant, which had no bearing to the land in dispute. Now, what are the salient averments of the appellants in their pleadings? In my opinion, they are:-

*"5. Defendants aver that in answer to paragraph 3 of the 3rd Amended Statement of claim, the land in dispute was originally owned by Odu who later became the first Chief Bashua Odu and who has his Iga at Idunmoyinbo Street, Lagos.*

*6. The said Chief Bashua Odu belonged to Abagbon class of chiefs of Lagos and all the lands originally owned by the said Chief Bashua Odu and his successors to the Chieftaincy were obtained from Aromire Chieftaincy by the Obas of Lagos who granted some land to him absolutely, without any incidence of customary rights.*

*7. Defendants aver that most of the land were covered by Crown Grants obtained for the Bashua family of otherwise Bashua Chieftaincy Family the land known as No. 24, Onisemo Street, Lagos, the land in dispute is one of such land covered by the Crown Grant issued to Obashua later on called Bashua.*

*22. Defendants aver that there is plan of the area in the Land Registry referred to as section 3 Alakoro Lagos and the Crown Grants covering the land shows that the land on plan SEW/L/1126/6 dated 21st January 1991 falls inside the Crown Grant No. 128/129/3 Lands Registry, Lagos which was issued to Alli & while the land in dispute known as No. 24 Onisemo Street, Lagos falls into the Crown Grant of Obashua 190/190/8 Lands Registry, belong to Bashua Chieftaincy family.*

*Defendants aver that the land in Lagos were first settled upon by the Idejo Chiefs and the property No. 24 Onisemo Street, Lagos is one of the land settled upon by Chief Aromire of Lagos ..."*

To prove the above pleadings, the head of the Bashua Chieftaincy family gave the following pieces of evidence:-

*"Aromire Chieftaincy family are the original owners of the whole land in Lagos Island. The land in dispute was first given to the*



*1st Bashua who (sic) name was Odu Bashua Chieftaincy family in Lagos (sic) are 4th defendants Chief. There is a crown grant in respect of the property in dispute which is Exhibit B as the crown grant.*

*Obashua is the same name Bashua it is by (sic) corruption of Obashua.”*

The 2nd defence witness of the appellants, a surveyor tendered exhibits H-H2. A careful perusal of the traditional evidence adduced by the appellants reveal that the counter-claimants/appellants did not meet the principle of law of the proof of declaration of title to land predicated on traditional history. The appellants it seems contradicted themselves on the original settlers of the land in dispute, as per paragraph 24 of their pleadings reproduced above and their evidence, also already reproduced above.

In his evidence in chief D.W.1 said the land in dispute was given first to Bashua of the Bashua Chieftaincy, but under cross-examination, he said, “there is no chief yet in Bashua Chieftaincy family”. He also admitted that he was neither chief nor the head of the family as at the time he testified. He also testified under cross-examination that he did not know how many buildings were on the land. I would say that the evidence of this witness did not add value to the case of the appellants, for it was neither consistent nor reliable. No other witness, (apart from the surveyor) was called to add weight to their case. The appellants did not deem it fit to call anybody from Aromire family to give evidence on the grant, as would have been desirable to solidify their claim.

I have already set out the principles governing the success of a claim for declaration of title to land in the main appeal. It is very clear that the appellants have not met the criteria. See the cases of Aikhionbore v. Omoregie, Kodilinye v. Mbanefor Odu, and Eboha v. Anakwenze supra.

The court of first instance observed and found the following in his lead judgment:-

*“I think that Aromire chieftaincy family is a material witness for the Defendants Nos. 4,5,6. Agreed that the Aromire Chieftaincy family were the original owners of the land in dispute, therefore in an attempt to prove their root of title to the land in dispute the Defendants 4th, 5th, 6th, ought to call Aromire Chieftaincy family as a witness, but they failed to do so.*

*Having failed to call the Aromire Chieftaincy Family, they have not proved anything. Therefore Defendants Nos. 4, 5, 6, also failed to prove satisfactorily their original title to the land in dispute.”*

I cannot fault the above finding, so I endorse it in its entirety, and the lower court concurred with the finding when in its lead judgment, it posited thus:-

*“In the instant case, both the plaintiffs/appellants and the 4th, 5th and 6th defendant/counter-claimants/respondents have failed to prove their title by traditional evidence. Even attempt to prove their case through documents of title failed.”*

On the second mode of establishing title, which in this case is through Crown Grant, the appellants have not sufficiently traced and proved their title to the grant, apart from exhibit H which is the same as exhibit B. They also did not prove possession whatsoever, for there was no evidence that they exercised acts of possession.

In the light of this discussion, I answer this issue in the negative and dismiss ground (1) of appeal to which it is married. I will now proceed to issue (2) in the appellants’ brief of argument. It is the submission of the learned counsel for the appellants that having misconceived the appellants’ case the lower court fell into the error of granting possession to the plaintiffs/respondents, when among the three parties, appellants proved title to the land in dispute based on the Crown Grant. It was further submitted that among the three parties, appellants established their root of title to the rightful owners of the land, the Aromire Chieftaincy family. According to learned counsel where a party establishes his title through the true owner, possession cannot be granted to another See *Mogaji v. Cadbury Ltd.* 1985 7 S.C. 59. Possession in itself is a good title against the whole world except the true owner of the land. *Akano v. Akinade* 1978 3 S.C. 129. The counsel further submitted that a grant of land for a limited purpose can never ripen to an absolute ownership of the land adverse to the grantor. He referred to the cases of *Atunrase v. Sunmola* 1983 7 NWLR part I page 105, and *Odubeko v. Fowler* 1993 7 NWLR part 303 page 637. The learned counsel contended that the consequential order of granting possession is wrong in law for where a principal claim is refused a court cannot grant ancillary or consequential claim.

It was also contended that when a claim is based on traditional

history and the claim fails, any claim based on possession cannot stand. Reliance was placed on the case of *Ndukwe v. Acha* 1986 6 NWLR part 552 page 25. I have already found under issue (1) that the appellants did not establish their title to the land in dispute, either on traditional history or crown grant. Having not established their claim, and having been found to have failed to establish possession, then possession can be granted to a party who has proved possession for a long period by exercise of acts of possession. See *Ogbechie v. Onochie* 1988 1 NWLR part 70 page 370, *Nwosu v. Udejaja* 1990 1 NWLR part 125 page 188. ***The position of the law is that possession when proved is a title against the whole world where no one has proved better title.*** See the cases of *Oduola v. I.C.C.*, *Maji v. Shafi* and *Wuta-Ofei v. Mabel Danquah*. B C

In this case at hand the plaintiffs have proved long possession over a period of 30 years, for they have established that their mother exercised various acts of possession over the property in dispute including leasing it out to strangers. Whereas the above is the position in this case, the 4th- 6th defendants/cross respondents have failed to establish such possession, as they have not proved any act of possession, but rather allowed the plaintiff's mother to continue to exercise control over the property. Definitely they were not in possession and cannot expect an order of possession in their favour. For the foregoing reasoning I answer this issue in the negative, and ground (2) of the cross-appeal to which it is related fails and it is hereby dismissed. E F

In the final analysis, the cross-appeal has no merit and substance, and deserves to be dismissed. The cross-appeal is hereby dismissed. I assess costs at N50,000.00 in favour of each set of cross-respondents against the cross appellants. G

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### **MUNTAKA-COOMASSIE JSC**

This is a land matter which has started in the High Court of Justice Lagos State. The plaintiffs in that court claimed that they are the sole owners of the land in dispute which is situate at No. 24, Onisemo Street Lagos, because, according to them, the original owner of the land in question is undisputably *Ajegun Bashua* of whom they are the descendants, plaintiffs were survived by a daughter called H

Hajia Suwebatu Adufe, who was in-turn survived by the plaintiffs. Hajia Suwebatu had been proved to have exercised many acts of possession on the land at various time and she at one time, leased the property out and-has been collecting rents from her tenants until her death in 1981.

B After her death the defendants instructed their counsel to write to the tenants stopping them from paying rents to the plaintiffs. It was established that the defendants are now parading themselves as the owners of the property and collecting all the rents and benefits of the premises and it appears that the defendants have now occupied, lawfully or unlawfully the land in dispute. A lot of arguments, claims and counter-claims have been put in place by both parties in this matter. In their writ of summons the plaintiffs claimed the following reliefs:-

D “i. A declaration that the hereditaments situate at and known as No 24, Onisemo Street, Lagos is the family property under Yoruba Native Law and Custom of the descendants of Ajegun Bashua (Deceased)

E ii. Possession of such portion of the said hereditaments as are in the possession or control of the defendants or any of them.

iii. And an account of all rents and profits collected by the Defendants from tenants and the said hereditaments and payments over the said rents and profits to the plaintiffs annual rent value is N50.00k”.

F Pleadings were exchanged and filed. After hearing the case including the evidence, the trial court evaluated the evidence and its judgment did not, in any way, favour any of the parties. The claims of the plaintiffs were dismissed and the counter claim of the 4th- 6th G defendants were dismissed. Aggrieved by the above decisions of the trial court, the plaintiffs successfully appealed to the Court of Appeal which entered judgment in favour of the plaintiffs in part. The appeal, I can say, was allowed in favour of plaintiffs and also dismissed apparently in favour of defendants. The defendants, now appellants H appealed to this court. The 4th - 6th defendants were also aggrieved and also appealed to this court, and filed their cross-appeal.

Briefs were exchanged and filed, both counsel in the appeal adopted their briefs. Issues were formulated by the counsel on behalf of their respective clients. I was opportune to have read in draft the

all encompassing lead judgment delivered by my learned brother A. M. Mukhtar JSC, this appeal at the initial stage appeared to me confusing and complicated. However, when I read the lead judgment things became clear and sensible. With respect I admire the reasons adduced in the lead judgment that the defendants now appellants had never been, in law, in possession of the land in dispute. I adopt the said reasons which are correct, as mine. The facts are well captured by my learned brother I do not need to restate same in my judgment. B

The conclusion that the cross-appeal has no merit and deserves to be dismissed is correct and I agree that it must be dismissed. I too dismiss the cross-appeal. The appeal by appellant therefore fails, same is hereby dismissed in entirety. I endorse the order as to costs. C

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**NGWUTA JSC**

I have the privilege of reading in draft, the lead judgment just delivered by My Lord, Mukhtar, JSC. His Lordship meticulously resolved all the issues in the appeal against the appellant and came to the inevitable conclusion that the appeal is devoid of merit. I adopt the reasoning and conclusion in the main appeal. I also dismiss the main appeal with N50,000.00 costs to the Respondents. E

I also adopt the reasoning and conclusion in the Cross-Appeal. I also dismiss the cross-appeal for lack of merit. I award N50,000.00 to each set of Cross-Respondents. F

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**ARIWOOLA JSC**

I was privileged to have read the leading judgment of my learned brother, Mukhtar JSC. His lordship dealt with all the issues raised in the appeal and cross-appeal so meticulously that there is nothing left to add. I therefore adopt the reasoning in the said judgment and the conclusion arrived thereat as mine. G

I abide by the consequential orders in the said judgment including the order on costs. H