

SUPREME COURT OF NIGERIA
FRIDAY 18TH JANUARY, 2013. SC. 227/2005
CORAM:- I. T. MUHAMMAD, M. U. PETER-ODILI,
O. ARIWOOLA, K. B. AKAHS, S. S. ALAGOA, JJSC

1. THOMAS NRUAMAH
 2. SAMUEL MADUABUM
 3. ANADUMAKA NNEDENU APPELLANTS
 4. EZEIKEBULU UFONDU
 5. JOHN ONUORA
- AND
1. REUBEN EBUZOEME
 2. PIUS OGUONU & 8 ORS RESPONDENTS
-

LAND LAW - Title - Proof - Title may be proved through any of the five methods - But plaintiff is not required to prove all - As it is sufficient if one is proved (H1)

LAND LAW - Title - Proof - Burden of - Plaintiff must succeed on strength of his case - And not on weakness of defence - Save where defence's case supports his case (H2)

LAND LAW - Traditional history - Proof - A party who relies on such history - Must plead founder of the land - Manner the land was founded - And the names of successive owners (H3)

EVIDENCE - Inconclusive evidence - Meaning - This means that adduced evidence does not lead to a conclusion - Or definite result (H4)

LAND LAW - Title - Conflicting claims - Where claimant fails to prove title via traditional history as pleaded - He is not allowed to turn round and rely on mere acts of ownership & possession - Upon which he originally based his title (H5)

LAND LAW - Customary law - Arbitral panel - Since nothing in the law shows that the arbitrators constituted judicial tribunal - Court of Appeal rightly affirmed findings of trial court on the panels (H6)

FACTS

Plaintiffs/appellants instituted suit no. HN/22/76 in a representative capacity at the High Court of Anambra State, Nnewi division, claiming against defendants/respondents, a declaration of title to the land in dispute, damages for trespass and injunction. After filing their defence to the action, five out of the ten respondents filed a separate action in suit no. HN/14/77 against appellants. In the latter action, respondents made similar claims (as aforesaid) against appellants. The two suits were consolidated and heard together. At the trial, the parties called six witnesses respectively to prove their case. At the conclusion of the trial, the trial court found that appellants failed to prove their case. As a result, the claims in suit no. HN/22/76 were dismissed whilst judgment was entered in favour of respondents in suit no. HN/14/77 as per their claim.

Being dissatisfied, appellants proceeded on appeal to the Court of Appeal, Enugu. In its judgment, the court found that both parties failed to establish the root of title of their common ancestor. The judgment of the trial court in suit no. HN/14/77 in favour of respondents was thus set aside. The court finally concluded that the appeal succeeded in part having resolved the first two issues in favour of appellants. Appellants were aggrieved and hence they further appealed to Supreme Court. Respondents were also dissatisfied and thus cross-appealed.

ISSUES FOR DETERMINATION

MAIN APPEAL

“Was the learned appellate Justices of the court of Appeal right in saying that the Appeal succeeded in part having accepted that the two grounds of appeal had succeeded after setting aside the judgment in HN/14/772”

CROSS APPEAL

1. Whether the court below was correct in holding that the trial Judge after finding that the pleadings and evidence led about the parties' root of title were inconclusive went ahead to grant root of title based on same evidence

2. Whether the court below was right when it failed to affirm the specific findings of the trial court in the arbitration panels pleaded and relied on by the parties to the land in dispute.

3. Whether the court below was correct when it held that acts of ownership and possession cannot overlook or be placed over and above radical title established by the parties.

4. Whether the defendants/respondents/cross appellants succeeded in establishing their title to the land in dispute through acts of long possession, living on the land, building on the land and enjoyment of the land.

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

LAND LAW - Title - Proof

1. In an action for title to land, it has long been settled that there are five methods by which title to land may be proved. They are:

- (a) By traditional evidence,**
- (b) By production of documents of title duly authenticated and executed.**
- (c) By acts of ownership extending over a sufficient length of time numerous and positive enough as to warrant the inference of true ownership.**
- (d) By acts of long possession and enjoyment.**
- (e) Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.**

However, a plaintiff or claimant is not required to prove all the above five methods or ways to establish his claim for declaration of title. The methods are not conjunctive. It is sufficient if one of the five ways is proved. This will suffice to entitle the claimant to the declaration. (p. 145 E)

LAND LAW - Title - Proof - Burden of

2. Generally, in a claim for declaration of title to land, it is trite that the onus is on the plaintiff to establish his title upon a preponderance of evidence or on the balance of probability. He must therefore succeed on the strength of his own case

not upon the weakness of the case of the defendant, except only where the defendant's case supports his case.

There is no doubt, that in any claim for declaration of title, where the defendant does not file a counter claim, the burden is heavier on the claimant to prove his title to land in dispute.

B The defendant certainly has no duty to prove his title to the same land in dispute. (p. 146 C)

LAND LAW - Traditional history - Proof

C 3. It is clear from the pleadings that the plaintiffs/appellants herein relied on traditional evidence in proof of their title to the land in dispute. It is trite that a party who is relying on traditional history must specifically plead and prove the following before the trial court:

- D (a) Who founded the land?**
- (b) In what manner was the land founded?**
- (c) The names and particulars of successive owners through whom he claims. (p. 146 G)**

E Inconclusive evidence - Meaning

4. When evidence adduced is said to be inconclusive, it means it does not lead to a conclusion or definite result. See Black's Law Dictionary 9th Edition page 833. In the instant case, the inconclusiveness of the evidence of traditional history adduced

F by both parties to support their respective claim to declaration of title in their favour, meant that neither party discharged the onus of proof the law places on them. It is noteworthy that the trial court made a finding that both parties descended from
G common ancestor. After the trial court had considered the acts of ownership and possession exercised by both parties, on the land in dispute, the court came to the conclusion that the plaintiffs in the consolidated suits have failed to prove their case. (p. 154 F)

H

LAND LAW - Title - Conflicting claims

5. However, where a claimant fails to prove, as pleaded, the traditional history to establish his root of title by that means, he cannot and should not be allowed to turn round to rely on

merely acts of ownership and possession upon which his claim to title of the land in dispute was originally based.

(p. 155 C)

Arbitration panel - Customary law

6. From the above findings and conclusions of the trial court on customary law arbitrations there is nowhere the cross appellants were shown to have clearly pleaded and convincingly proved that those who sat over the dispute were under the customary law alleged, competent to adjudicate over the case of the land in dispute. In other words, nothing to show that they constituted a judicial tribunal under that law. Their decision was also not shown to be final, not subject to subsequent review or modification by the panel of chiefs or elders who pronounced it. The court below was therefore right not to have affirmed the findings of the trial court on the arbitration panels on the land in dispute. (p. 157 B)

REPRESENTATION

B. C. Igwilo Esq. with Q. B. Atabansi Esq., C. C. Ewesi Esq., for the appellants

Ejike Ezenwa Esq., for cross-appellants

B. C. Uzoegbu Esq. - for the Respondents

Emeka Etiaba Esq. with Ifejinwa Nwabueze (Miss), for cross-respondents

CASES REFERRED TO

NDIC v. SBN (2003) NWLR (pt. 801) 31

Ewo v. Ani (2004) 3 NWLR (pt. 861) 610

Kojo II v. Bonsie (1956) WLR

Abubakar v. INEC (2004) 1 NWLR (pt. 854) 207

Okomalu v. Akinbode (2006) 9 NWLR (pt. 985) 338

Echi v. Nnamani (2000) FWLR (pt. 13) 2159

Dim v. Enemuo (2009) 4 SCNJ 199

Idjah v. Eriavwore (2001) FWLR (pt. 57) 963

Onwugbufor v. Okoye (1996) 1 SCNJ 1

Oyewale v. Oyesoro (1998) 2 NWLR (pt. 539) 663

Federal Ministry of Health v. Comet (2009) SCNJ L73

Idundun v. Okumagba (1976) 9-10 SC 224

Ojoh vs. Kamalu (2005) 12 SCM 332

Okoko v. Dakolo (2006) 14 NWLR (pt. 1000) 401

Obioha v. Duru (1994) 8 NWLR (pt. 365) 631

B STATUTE REFERRED TO

Supreme Court Act, s. 22

LEAD JUDGMENT BY ARIWOOLA JSC

C This is an appeal against the judgment of the Enugu Division of the Court of Appeal, delivered on the 13th day of July, 2005.

The appellants herein were the plaintiffs at the trial Court in Suit No. HN/22/76 instituted in a representative capacity at the Nnewi Division of the Anambra State High Court against the Respondents D as Defendants. The appellants had sometime in July 1976 instituted an action against the respondents as defendants. By paragraph 32 of the Amended Statement of claim dated 16th January, 1984, they claimed jointly and severally as follows:

E (i) Declaration of title to all that piece or parcel of land known and called “Ogwugwu Ahaba” situate at Uruokwe Ezeanike Egbema Ozubulu verged pink in the plaintiffs Plan No. MEC/308/77 within the jurisdiction of this court the annual value of which is N20,000.

(ii) N1,000.00 damages for trespass.

F (iii) Injunction restraining the defendants, their servants and/or agents from further trespass into the said “Ogwugwu Ahaba” land.

Subsequently, in 1977, after filing their defence to the action, five out of the ten (10) Defendants who had earlier been sued filed a separate action in Suit No. HN/14/77 against the plaintiffs/appellants G in Suit No. HN/22/76. In the latter action, the plaintiffs now respondents had claimed against the defendants/appellants jointly and severally, as follows:

H (i) Declaration that the plaintiffs are the persons entitled to the customary right of occupancy of all that piece or parcel of land known and called “Ogwugwu Ahaba” land situate at Uruokwe Ezeanike Egbema, Ozubulu verged green in the plaintiffs’ plan No. MEC/420/87.

(ii) N1,000 (One thousand Naira) damages for trespass.

(iii) Injunction restraining the defendants, their servants and or

agents from further trespass into “Ogwugwu Ahaba” land.

Upon completion of pleadings, the two suits were consolidated and heard together. In the consolidated suits, the plaintiffs in Suit No. HN/22/76 were referred to as the plaintiffs whilst the defendants in the same suit remained the defendants in the consolidated Suits.

At the trial, the parties called six (6) witnesses respectively to prove their case. At the conclusion of the trial, in its considered judgment, the trial court found that the plaintiffs failed to prove their case. As a result, the claims in Suit No. HN/22/76 were dismissed whilst judgment was entered in favour of the plaintiffs in Suit No. HN/14/77 as per their claim in the following terms:

(i) It is hereby declared that the plaintiffs are the persons entitled to customary right of occupancy of all that piece or parcel of land known and called “Ogwugwu Ahaba” land situate at Uruokwe Ezeanike Egbema, Ozubulu verged green in the plaintiffs plan No. MEC/420/87.

(ii) Plaintiffs are awarded N1,000 (one thousand Naira) as damages for trespass, and

(iii) The defendants, their servants, and or agents are restrained from further trespass into the said Ogwugwu Ahaba land.

The plaintiffs/appellants were dissatisfied with the trial court’s judgment hence they proceeded to the Court below by filing their Notice and Grounds of Appeal on 3rd day of November, 1998. They were however granted leave by the Court below to file four additional grounds of appeal. The appellants distilled five issues for determination of the appeal, which issues were re-numbered by the Court below in its judgment.

In the considered unanimous decision of the Court below, it was found that both parties in the consolidated action failed to establish the root of title of their common ancestor - Egbema or Ezeannaike as the case may be. The two claims were said to have failed to meet the required standard of proof in a claim for declaration of title, hence the claims for declaration of title in both consolidated suits failed and were both accordingly dismissed by the Court below. The judgment of the trial court in Suit No. HN/14/77 in favour of the Respondents herein was set aside. The Court below finally concluded that the appeal succeeded in part and did not consider it necessary to go over the other three issues for determination, having resolved the first two

issues in favour of the Appellants.

The plaintiffs/appellants were dissatisfied with the judgment of the Court below hence they further appealed to this Court on two grounds of appeal. The defendants/respondents were also dissatisfied hence they cross-appealed on seven grounds. Both parties filed and exchanged briefs of argument. On 22/10/2012 when this appeal came up for hearing, Mr. Igwilo of counsel for the appellants sought to abandon the brief of argument dated 2/6/2006 but filed on 9/6/2006 for the appellants. He adopted the brief of argument filed on 28/9/2006 though which was deemed properly filed and served on 14/2/2007. He relied on same brief of argument to urge the court to allow the appeal and set aside the judgment of the court below. Mr. Uzuegbu of counsel for the respondents referred to the respondents' brief of argument filed on 18/10/2012 but deemed filed on 22/10/2012. He adopted same to urge the Court to dismiss the appeal.

Mr. Ezenwa of counsel for the cross appellants referred to their brief of argument though filed earlier on 18/10/2012 but was deemed filed properly on 22/10/2012. He adopted and relied on the said brief of argument to urge the Court to allow the cross appeal and set aside the judgment of the Court of Appeal. Mr. Etiaba of counsel for the cross respondents referred to the cross respondents' brief of argument filed on 19/10/2012 within time. He adopted and relied on same to urge the court to dismiss the cross appeal in its entirety.

In the appellants' brief of argument was formulated a sole issue from the only left ground of appeal. The said issue goes thus:

"Was the learned appellate Justices of the court of Appeal right in saying that the Appeal succeeded in part having accepted that the two grounds of appeal had succeeded after setting aside the judgment in HN/14/772"

In proffering arguments on the sole issue, the appellants' counsel referred to the various provisions in the constitution by which the Nigerian Courts of records were created and granted their respective jurisdictions. He submitted that an appeal is not a fresh action but a continuation of the original action, relying on NDIC vs. SBN (2003) NWLR (pt 801) 31. He submitted further that the clear function of an appellate court is a review of the decision of the lower court. The appellants contended that in the instant appeal, the Court below af-

ter reviewing the issues presented before it agreed that the identity of the land in dispute was certain and that the traditional evidence presented to the trial court was inconclusive. By this, the appellants believed the appeal had succeeded. They submitted therefore that the conclusion reached by the court below that the appeal succeeded only in part was erroneous and has caused a miscarriage of justice. B Learned appellants' counsel submitted further that as it is, the judgment of the trial court was not conclusive or was wrongly concluded and the court below did not help the matter either. The appellants contended that if the court below had considered all the five (5) C issues brought before it instead of limiting the consideration to only two issues, the problem may not have arisen. They relied on *Ewo & Ors vs. Ani & Ors* (2004) 3 NWLR (pt 861) 610.

The appellants referred to their 3rd issue which when renumbered by the Court below became issue No. 4 and submitted that the Court below failed to resolve the said Issue No. 4, otherwise they D believed that the law is settled, that where traditional evidence of both parties is inconclusive, the court would resort to the principle established in the old case of *Kojo II vs. Bonsie* (1956) WLR. The appellants contended that the trial court ought to have gone into the E pleadings and evidence of both parties to find out the recent acts of possession and ownership pleaded by the parties and the evidence adduced.

They contended further that the court below ought to have F seen this defect and should have effectively examined the record before it to find out the pleadings and evidence on recent acts of possession/ownership. The appellants referred to the key witnesses called by both parties, as PW1 and DW1, how both parties pleaded and testified on the issue of recent acts of possession and ownership. G They contended that the court below had found that the respondents' brief of argument was grossly inadequate and that the arguments and submissions of counsel are below expectation. They referred to the respondents' brief of argument and contended that H they failed to answer the issue raised in the appellants' brief of argument. They submitted that the said Issue No. 3 of the appellants is deemed admitted. They relied on *Abubakar vs. INEC* (2004) 1 NWLR (pt 854) 207. The appellants submitted that the court below failed in its duty by delivering an inconclusive judgment. They urged the Court

to correct the miscarriage of justice under Section 22 of the Supreme Court Act, as no fresh or further evidence is required. The Court is urged to allow the appeal or in the alternative remit the case to the trial Court for retrial by another Judge of Anambra State. They submitted that the judgment of the Court below is neither here nor there
B relying on *Okomalu vs. Akinbode* (2006) 9 NWLR (pt 985) 338.

The respondents also distilled an issue from the single ground of appeal left in the Notice of Appeal filed by the appellants having abandoned the 1st Ground of Appeal. Their said issue goes thus:

C *“Whether considering the decision of the Court of Appeal in this Suit, the Court below should have allowed the appeal, thereby granting the appellants declaration of title over the land in dispute when they failed to meet the required standard of proof in a claim for declaration of title.”*

D They referred to the concluding part of the judgment of the court below at page 463 of the printed record. The respondents observed that it was the way the Court of Appeal concluded their judgment that made the appellants contend that having resolved the two
E issues in their favour, the Court should have allowed their appeal or in the alternative ordered a retrial. In response to the above contention of the appellants, the respondents submitted that the law is now trite and settled that in all cases where a plaintiff seeks a declaration of title to land, the burden lies on such a plaintiff to prove his case on
F evidence. And that he will fail if he is unable to discharge that burden. They relied on *Echi vs. Nnamani* (2000) FWLR (pt 13) 2159 at 2159; *Dim vs. Enemuo* (2009) 4 SCNJ 199 at 222.

In the same vein, the respondents submitted that a party claiming declaration of title to land need not plead and prove more than
G one of the five recognised methods of establishing title to land in order for him to succeed. Each of the five methods will suffice independent of the others to prove title. However, if a claimant pleads or relies on more than one method to prove his title, he merely does so ex-abundant cautela, as proof of one single root of title is sufficient to
H sustain plaintiff’s claim for declaration of title to land. They relied on *Idjah vs. Eriavwore* (2001) FWLR (pt 57) 963 at 972. *Onwugbufor vs. Okoye* (1996) 1 SCNJ 1 at 21.

The respondents referred to the roots of title on which both parties based their respective claims and traced same as called in evi-

dence. They again referred to the findings of the trial court and affirmed by the court below on how both parties are related and that they inherited the land from common ancestor. But that both parties however failed to establish the root of title of their common ancestor.

The respondents conceded as both Courts rightly found, that the traditional evidence adduced by both parties is not plausible and conclusive. They submitted that although a plaintiff is entitled to rely on traditional evidence alone to prove his claim for declaration of title to land, if such evidence is inconclusive, the case must rest on the remaining other facts pleaded and relied on at the trial. The respondents referred to the facts of acts of ownership pleaded and upon which evidence was called and adduced through DW1, DW4 and DW6. They referred to the records, in particular at pages 112 to 125 for PW1 and 173 to 176 for DW1 to prove their respective acts of ownership. They further referred to the findings of the trial court upon careful evaluation of the various testimonies adduced by both parties on their acts of ownership. They submitted that the trial court eventually found and was satisfied that the respondents had exercised maximum acts of ownership and possession in and over the land in dispute and which exercises were numerous and positive. Similarly, the respondents submitted that the trial court also found in their favour, concerning the arbitration panel of the four Obis and three others of Ozubulu. They referred to pages 300 to 304 of the printed record. The respondents submitted that the Court below was wrong to have disturbed the findings of fact by the trial court on the ground that trial Judge after finding that the parties' evidence on their root of title was inconclusive went ahead to grant root of title based on the same evidence. They contended that the trial court did not base its judgment for them in Suit No, HN/14/77 on the parties root of title but on acts of ownership and possession. The respondents conceded that the court is bound to make pronouncement on any issue properly placed before it, but they disagreed with the appellants that the Court below ought to have allowed the appeal by granting them declaration of title over the disputed land on the ground that the Court below resolved the two issues for determination in their favour or in the alternative make an order for retrial. They submitted that from the pleadings and the evidence adduced by the appellants, it is clear that they did not prove their title to the land in

dispute. And that having failed to prove that they were the owners of the land in dispute, it will be an aberration for them to seek an order allowing the appeal in their favour or alternatively an order for re-trial. They submitted that having failed to prove by any of the five methods laid down by law that they are the owners of the land in dispute, their claim for declaration of title must fail and be dismissed.

The respondents urged the Court to set aside the decision of the Court below in Suit No. HN/14/77 which they submitted is a product of the misconception of the judgment of the trial court by the court below and restore the judgment of the trial court. They relied on *Oyewale vs. Oyesoro* (1998) 2 NWLR (pt 539) 663; *Federal Ministry of Health vs. Comet* (2009) SCNJ L73 at 194-195.

As stated earlier, in the consolidated suit, both the appellants and Respondents had their respective claim to declaration of title to a piece or parcel of land which they believe is in dispute. From the pleadings, it is clear that the plaintiffs based their claim on traditional history and acts of ownership and possession numerous enough to warrant the inference that they are the owners of the land in dispute. They also based their claim on the ownership of adjoining lands.

Upon review of the testimony of both parties called on their pleadings, the trial court found as follows:

“In the consolidated suits neither the plaintiffs’ nor the defendants sufficiently pleaded and proved how the land in dispute was acquired originally - whether, for example, by conquest or discovery as a virgin land. There is no evidence either as to who first cleared the land. In other words, there is no proof of who founded the land and no proof of how the land was founded... traditional evidence by both parties is inconclusive. The case must therefore rest on the other facts pleaded and relied on during the trial.”

The trial Court further found that both parties in their respective pleadings in the consolidated suits copiously pleaded and relied on various acts of ownership and possession, in and over the land in dispute by their forefathers and themselves and that these acts are numerous and positive enough to warrant the inference that they are the exclusive owners thereof. It was noted by the trial court that the traditional evidence for the plaintiffs was given by the 2nd plaintiff who testified as PW1 whilst that of the defendants was given by DW1 and DW4. As far as the traditional evidence adduced by both

parties regarding their lineage was concerned, the trial court preferred the version of DW1 and DW4. In other words, the trial court accepted as correct version that Ezelonuma was the 4th son of Okwe or Ezeanike. Yet, although the trial court found, and rightly too, that both parties descended from common ancestor, it conducted that the ownership of the land in dispute was to be decided between the parties. The trial court then went ahead to consider the evidence led by both parties in respect of (a) Acts of ownership and possession (b) Arbitration tribunals. The trial court later found and accepted that Ogwugwu Ahaba land is a vast area of land and many families own portions of the land.

There is no doubt, the sole issue formulated by both parties for determination of this appeal is couched in different forms but the same single ground of appeal of the appellants Notice of Appeal, I must say that I am comfortable with the sole issue of the appellants. For ease of reference, the said issue is-

whether the learned Justices of the Court below were right to have held that the appeal succeeded in part after having accepted and resolved the two issues in favour of the appellants and set aside the judgment in suit No. HN/14/77.

In an action for title to land, it has long been settled that there are five methods by which title to land may be proved. They are:

(a) *By traditional evidence,*
(b) *By production of documents of title duly authenticated and executed.*

(c) *By acts of ownership extending over a sufficient length of time numerous and positive enough as to warrant the inference of true ownership.*

(d) *By acts of long possession and enjoyment.*

(e) *Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.* See D. O. Idundun & Ors. vs. Daniel Okumagba (1976) 9-10 SC 224 at 227, LLAC Vol. 1, 177 at 190-191 (2002) 20 WRN 127 at 186; (1976) 1 NMLR 200.

However, a plaintiff or claimant is not required to prove all the above five methods or ways to establish his claim for

declaration of title. The methods are not conjunctive. It is sufficient if one of the five ways is proved. This will suffice to entitle the claimant to the declaration. See Peter Ojoh vs. Owuala Kamalu & 3 Ors. (2005) 12 SCM 332, (2005) 12 SCNJ 236 at 261; (2005) 18 NWLR (pt 958) 523 at 574-575. But the claim of the Plaintiff and the facts and circumstances of each case will be dependent on the particular way or method being sought to be proved to establish his claim to title. See; Mogaji vs. Cadbury (Nig.) Limited (2004) 23 WRN 54; (1985) 2 NWLR (pt. 7) 393; Omoregie vs. Idugiemwanye (1985) 2 NWLR (pt 5) 41; Fasoro vs. Beyioku (1988) 2 NWLR (pt 76) 263. Fagge vs. Uba Adakawa & Anor (2006) 46 WRN 162 at 186-187.

Generally, in a claim for declaration of title to land, it is trite that the onus is on the plaintiff to establish his title upon a preponderance of evidence or on the balance of probability. He must therefore succeed on the strength of his own case not upon the weakness of the case of the defendant, except only where the defendant's case supports his case. See Kodilinye vs. Odu 1 LLAC 254, Onwugbufor vs. Okoye (1996) 1 NWLR (pt 424) 252; Shittu vs. Fashawe (2005) 14 NWLR (pt 946) 671; Eze vs. Atasie (2000) 9 WRN 73 at 88; (2000) 10 NWLR (pt 676) 470; Adesanya vs. Aderonmu (2000) 13 WRN 104 at 115 (2000) 9 NWLR (pt. 672) 370. **There is no doubt, that in any claim for declaration of title, where the defendant does not file a counter claim, the burden is heavier on the claimant to prove his title to land in dispute. The defendant certainly has no duty to prove his title to the same land in dispute.** See Adekanbi vs. Jangbon (2007) All FWLR (pt. 383) 152 at 160; (2007) 24 WRN 45 at 57, Elias vs. Disu (1962) 1 SCNLR 361; (1962) All NLR (pt. 1) 214 at 220.

It is clear from the pleadings that the plaintiffs/appellants herein relied on traditional evidence in proof of their title to the land in dispute. It is trite that a party who is relying on traditional history must specifically plead and prove the following before the trial court:

- (a) **Who founded the land?**
- (b) **In what manner was the land founded?**
- (c) **The names and particulars of successive owners through whom he claims.** See; Akinloye vs. Ejiyola (1968) NMLR

92, Mogaji vs. Cadbury Nig Ltd. (supra); Olujinle vs. Adeagbo (1988) 2 NWLR (pt. 75) 238, Lawal vs. Olufowobi (1996) 12 SCNJ 376, (1996) 10 NWLR (pt. 477) 177.

As stated earlier, the plaintiffs/appellants relied on the traditional history for their claim. They claimed that the Ogwugwu Ahaba land in dispute was part of their family land, which they inherited from their progenitor Ezeanaïke or Egbema. The trial court in its findings found that there was no specific evidence from the appellants as to who founded the land and in what manner the land was founded by their ancestors. Whether it was by settlement or by conquest or by grant.

The appellants in their amended statement of claim pleaded, inter-alia, as follows:

Paragraph 5

"The land in dispute has been the property of the plaintiffs from time immemorial. The Plaintiffs and their ancestors before them have exercised maximum acts of ownership and possession over this "Ogwugwu Ahaba" land in dispute by living and farming thereon, reaping the fruits of all economic trees thereon giving out portions to seasonal tenant farmers, giving out portions to persons to build living houses thereon without let or hindrance from anyone including the defendants.

6. All the plaintiffs' ancestors lived, died and were buried on this land in dispute.

7. Both the plaintiffs' and the defendants' ancestors descended from Egbema, one of the four sons that make up the town of Ozubulu today."

The respondents on the other hand in their amended statement of Defence, in paragraph 4(iii) pleaded as follows:

"That the land in dispute has been the property of the descendants from time immemorial. The defendants and their ancestors before them have exercised maximum acts of ownership and possession over this Ogwugwu Ahaba land by living and farming thereon reaping the fruits of all economic trees thereon, giving out portions to seasonal tenants, farmers, giving out portions to construct foot paths and village roads without let or hindrance from anyone including the Plaintiffs."

After reviewing the pleadings and testimonies adduced by both

parties in the consolidated suits, the trial court at page 296 of the record found as follows:

“... neither the plaintiffs nor the defendants sufficiently pleaded and or proved how the land in dispute was acquired originally - whether, for example, by conquest or discovery as a virgin land. There is no evidence either as to who first cleared the land. In other words, there is no proof of who founded the land and no proof of how the land was founded. It is therefore my view that traditional evidence by both parties is inconclusive.”

After the above conclusion on the traditional evidence of both parties, the trial court resorted to other facts said to be pleaded and relied on during the trial. It was found that the plaintiffs in Suit No. HN/22/76 at their paragraphs 4 to 40 of their amended statement of claim and the defendants at their paragraphs 5 to 15 of their further amended statement of claim in Suit No. HN/14/77 copiously pleaded and relied on various acts of ownership and possession, in and over the land in dispute, by their forefathers and themselves and that these acts are numerous and positive enough to warrant the inference that they are the exclusive owners thereof.

In the same vein, by their pleadings, the parties also relied on arbitration panels. These were native arbitration Tribunals. The first was a 12 man committee of Umunkwoejim in 1967. According to the appellants, the panel found in their favour whilst the defendants said that the matter was referred to “Chukwu oracle” which then found in their favour. On this first arbitration, only PW1 testified even though he named seven persons who took part in the panel. There is no evidence that any or all of the others are dead and no reason was given why none of them could come forward to testify in support of PW1.

On the respondents’ side, DW1’s evidence was supported by the testimony of DW3 - Ezeugwunwa Obunike. He was said to be an eye witness to the 12 man panel of Umunkwoejim and Ukwuofor panels. The trial court accepted the version of the respondents’ testimony on the arbitration panels with respect to their findings but yet came to the conclusion that the panels finding was inconclusive for having to refer the matter again to “Chukwu oracle”. The trial court held that the 12 man panel of arbitration did not satisfy the requirements of findings of a customary arbitration tribunal.

On the second arbitration panels of the Ukwuofor elders and the Obis, the appellants were still opposed to their findings for administering oath on the parties, but the trial court felt differently. That the acts of walking out of two of the members - Chiefs Oruche and Nnubia did not alter the competence of the panel. The Court then held the arbitration to be proper. B

It is noteworthy that before the court below, the appellants had submitted that the trial court was wrong to have made use of the evidence of traditional history which the court had declared to be inconclusive in arriving at its judgment in favour of the Respondents. C The trial court had found that indeed there was no evidence of who founded the land and no proof of how the land was founded.

The Court below had stated that once a party pleads and traces his root of title to land to a particular person or source and his averment is disputed and challenged, that party to succeed in the suit D must not only establish his own title to such land, he must also satisfy the court on the validity of the title of that particular person or source from which he claims to have derived his title. The court below at pages 461-462 found as follows:

"All the parties pleaded is that they have been on the land E from time immemorial which according to the decision in Alli vs. Alesinloye (supra) is not sufficient for a party who relies for proof of title to land on traditional history. In order to succeed, the appellant must not only establish his title to such land he must also satisfy the F court as to the title of the person or source from whom he claims. Anybody claiming for title cannot ignore the validity of his grantor's title where this has been challenged and concentrate only on his title to such land, as he would not have acquired a valid title to such land, if in fact his grantor had no title thereto." G

The decision of the trial court in awarding the respondents their claims in their Suit No. HN/14/77 based on the above state of the trial Court's findings was rightly adjudged to be perverse by the Court below. Furthermore, the Court below had opined that the customary arbitration which the trial court considered after he found H that the traditional history of the parties was inconclusive is not one of the five recognised methods of proving title to and under the Nigerian Legal System. Indeed, it is meant to compliment proof by traditional history based on custom of the parties.

Similarly, the court below rightly held that the various acts of ownership and possession which the trial court examined, after having found the traditional history of root of title inconclusive, are ways and means of exercising dominion over the land. Yet, such acts cannot overlook or be placed over and above any radical root of title established by the parties. In other words, where both parties in their claims and counter claims have failed to plead and establish their root of title or that of their predecessors in title, then their claims and/or counter claims must fail.

On the way the trial court relied on the arbitration panels to give judgment to the Respondents in their Suit No. HN/14/77, I need to state the situation as it is now settled. In *Chief Kweku Assampong vs. Kweku Amuaku & Ors. (1932) 1 WACA 192*, it became established as part of our Nigerian legal system that even the unrecorded decision of a body of persons, who in normal circumstances would not be regarded as a court, could create an estoppel by way of res judicata, on proof that the decision was in fact pronounced as alleged, and that it affected the parties or their privies. Yet, before they arrived at the above decision, the court considered in some details the six essential prerequisites of a successful plea of estoppel per rem judicatam. It was also opined by the court that a plea presupposes that the persons who gave the decision were persons exercising judicial functions by customary law and were duly authorized by the said customary law to adjudicate upon the dispute referred to them for decision.

In *Dick Eruka Akoma vs. Timothy Eke (1966-1979) Vol. 6 OLR 1 at 11*, per Oputa, J (as he then was) opined that “any party relying on arbitration under customary law should clearly plead and convincingly prove that those who sat over his dispute were, under the customary law alleged, competent to adjudicate over that class of cases. In other words, that they constituted a judicial tribunal under that law. It should also be pleaded and proved that the decision of the arbitrators was final in the sense that it left nothing to be determined or ascertained thereafter in order to make it effective and capable of execution.

There is no doubt that the appellants indeed pleaded reference to arbitrators. (See paragraphs 17 to 30 of the amended Statement of Claim at pages 51 to 64 of the printed record). And both

parties called oral evidence, but the trial court believed and accepted as more authentic, the version of the story of the respondents and in a way rejected that of the appellants. The plaintiff/appellants was later adjudged by the trial court to have failed to prove their case in suit HN/22/76 and dismissed same. Judgment was entered in favour of the plaintiffs in suit No HN/14/77 who is the respondents herein. The court below notwithstanding the resolution of the two issues it took in favour of the appellants, rightly dismissed the claims for declaration of title in the consolidated suits and set aside the trial court's judgment in favour of the Respondents in suit No. HN/14/77.

There is no doubt that there was no dispute as to the identity of the land in dispute. Even though both parties filed their respective dispute plans. These were noted to have been drawn by the same Surveyor and were tendered and admitted by consent. The identity of the particular land in dispute was therefore not in dispute even though parties may refer to it in different names Edjekpo vs. Osia (2007) 7 SCM 128. They are entitled so to do.

Therefore, from the available evidence before, the trial, court, the judgment of the trial court on this point was properly declared perverse by the court below. Similarly, having found, and rightly too that the parties' evidence of traditional history was inconclusive, the trial court was wrong to have based its judgment in favour of the respondents on same inconclusive traditional evidence of root of title and decision of arbitration panels whose members were not pleaded and established to be competent to so adjudicate on the said case. The appellants' case was rightly held by the court below to have succeeded in part.

In the circumstance, the sole issue distilled by the appellant for determination is resolved against the appellants. Accordingly, the appeal for lacking in merit and substance is dismissed. Now to the cross appeal.

The cross appellants were the respondents at the court below. They were the defendants in the consolidated suits that were tried together before the trial court. The trial court found in favour of the respondents in their suit No. HN/14/77 wherein they were plaintiffs who claimed declaration that they were the persons entitled to the customary right of occupancy of all the piece and parcel of land known and called "Ogwugwu Ahaba" land situate at Uruokwe Ezeanike,

Egbema - Ozubulu verged green in the plaintiffs plan No. MEC/420/87. They also claimed damages for trespass and injunction. The suit was consolidated with the HN/22/76 and heard together. The trial court gave judgment to the cross appellants as per their claims but upon appeal by the cross respondents, the appeal succeeded in part and the judgment in favour of the cross appellants was set aside by the court below. That led to this cross appeal predicated on seven (7) Grounds of Cross Appeal.

Upon filing and service of the notice of cross appeal, parties filed and exchanged briefs of argument. Respondents/cross appellants' brief of argument was filed on 18/10/12 but deemed filed on 22/10/2012 while the cross respondents' brief of argument was filed on 19/10/2012 within time. From the said grounds of cross appeal were distilled the following four (4) issues for determination:

Issues for Determination:

1. Whether the court below was correct in holding that the trial Judge after finding that the pleadings and evidence led about the parties root of title were inconclusive went ahead to grant root of title based on same evidence. (Grounds 1 and 4)

2. Whether the court below was right when it failed to affirm the specific findings of the trial court in the arbitration panels pleaded and relied on by the parties to the land in dispute. (Ground 2)

3. Whether the court below was correct when it held that acts of ownership and possession cannot overlook or be placed over and above radical title established by the parties. (Grounds 3)

4. Whether the defendants/respondents/cross appellants succeeded in establishing their title to the land in dispute through acts of long possession, living on the land, building on the land and enjoyment of the land. (Grounds 5, 6, and 7)

The cross respondents to this cross appeal were the plaintiffs and appellants at the trial court and the court below respectively. In their cross respondents' brief of argument deemed filed on 22/10/2012 they formulated two issues for determination by this court as follows:

1. Whether the Court, of Appeal granted root of title to any party after agreeing with the trial Judge on the inclusiveness of the pleadings and evidence of parties.

2. Whether the Court of Appeal was not wrong in its aban-

donment of its constitutional duty of making a definitive determination in the appeal before it.

In proffering arguments to the issues raised for determination, learned counsel for the cross appellants took the issues seriatim.

On Issue No.1, the cross appellants contended that the court below totally misconceived the basis upon which the trial court gave judgment in favour of the defendants/respondents/cross appellants in suit No.HN/14/77. They contended further that the trial court never based its judgment in suit No.HN/14/77 on the parties root of title but on acts of ownership and possession in and over the land in dispute and which exercise were numerous and positive as well as on customary arbitration of the four obis and 3 others. They referred to the averments in paragraphs 3, 39 and 40 of the Statement of Claim of the plaintiffs/appellants/cross respondents and paragraphs 4(iii) of the cross appellants further Amended Statement of Defence at pages 99 and 104 of the Record. They also referred to the oral testimony of some of the witnesses for both parties such as PW1, DW1 on their traditional history and evidence of their ownership and, being in possession of the land in dispute. The cross appellants made reference to the findings of the trial court and contended that it was after the consideration of the question of acts of ownership and possession that the trial court entered judgment for the plaintiffs now cross appellants in suit No. HN/14/77 in terms of their claims and dismissed suit No. HN/22/76. They submitted that the court below misconceived the purport of the judgment of the trial court hence urged the court to set aside the said judgment of the court below for its misconception.

On this point, the court below at page 461 of the record in its judgment had referred to paragraph 4(iii) of the further amended Statement of Defence on how the land in dispute had been their property from time immemorial and how they and their ancestors had exercised maximum acts of ownership and possession over the land in dispute. The court below had however felt that in accordance with the decision of *Alli Vs Alesinloye* (supra) what the parties relied on was not sufficient for a party who relies for proof of title to land on traditional history. That in order to succeed, the party must not only establish his title to the land, he must also satisfy the court as to the title of the person or source from whom he claims. The court below

had gone further to hold thus:

“Anybody claiming for title cannot ignore the validity of his grantor's title where this has been challenged and concentrated only on his title to such land, as he would not have acquired a valid title to such land, if in fact his grantor had no such title thereto.”

B What the court below deduced from the pleadings and evidence adduced thereon by the cross appellants was based only on how successive members of their family had inherited the land from their ancestors. Then the Court of Appeal came to the conclusion
C that it was on these pleadings and evidence that the trial court based its judgment on to grant title to the cross appellants in suit No.HN/14/77.

There is no doubt, in suit No.HN/14/77, the cross appellants herein were the plaintiffs claiming declaration that they are the persons entitled to the customary right of occupancy of the land in dispute. As stated earlier, the claim was based on traditional history. On this the trial court found as follows:

*“In the consolidated suits, neither the plaintiffs nor the defendants sufficiently pleaded and or proved how the land in dispute was
E acquired originally - whether e.g. by conquest or discovery as a virgin land. There is no evidence either as to who first cleared the land. In other words, there is no proof of who founded the land and no proof of how the land was founded. It is therefore my view that
F traditional evidence by both parties is inconclusive.”*

**When evidence adduced is said to be inconclusive, it means it does not lead to a conclusion or definite result. See Black's Law Dictionary 9th Edition page 833. In the instant case, the inconclusiveness of the evidence of traditional history adduced by both parties to support their respective claim
G to declaration of title in their favour, meant that neither party discharged the onus of proof the law places on them. It is noteworthy that the trial court made a finding that both parties descended from common ancestor. After the trial court
H had considered the acts of ownership and possession exercised by both parties, on the land in dispute, the court came to the conclusion that the plaintiffs in the consolidated suits have failed to prove their case.**

Accordingly, their claim to declaration of title of the land in

dispute was dismissed in suit No.HN/22/76. On the other hand, the trial court found that the defendants in the consolidated suits but plaintiffs in suit No.HN/14/77 were entitled to their claims. This was what the court below thought was wrong and rendered the judgment perverse in that respect. There is no doubt and this has been clearly stated earlier, the five methods or ways of proving ownership of land. It is not in dispute that all the parties based their claims on their consolidated suits is traditional evidence for their entitlement to declaration of title to the land in dispute. Ordinarily, a party relying on any of the five methods of proving title, to or ownership of the land in dispute is expected to succeed only on the strength of his case and not on the weakness of the defence. The Standard of proof required is preponderance of evidence.

However, where a claimant fails to prove, as pleaded, the traditional history to establish his root of title by that means, he cannot and should not be allowed to turn round to rely on merely acts of ownership and possession upon which his claim to title of the land in dispute was originally based. See Clement Odunukwe vs. Denis Ofomata & Anor (2010) 12 SCM 117 at 146.

In the consolidated suits, both parties predicated their claims to title to the land in dispute on traditional history for which they must adduce credible, cogent and uncontradicted evidence to establish their title. See Annonye Wachukwu & Anor vs. Amadike Owunwanne & Anor (2011) 5 SCM 205 at 229 Aikhionbere vs. Omorege (1976) 12 SC11. In this case, the parties both failed to discharge the burden on them as claimants respectively to title to the land in dispute via the only method they had chosen which was traditional history. The court below was, therefore right and correct in holding that the cross appellants also failed to prove their case for failure to adduce conclusively, cogent and credible traditional evidence that they are entitled to their claims. The trial court was therefore in error in granting the declaration of title to the land in dispute. The issue is resolved against the cross appellants.

The second issue is whether the court below was right when it failed to affirm the specific findings of the trial court on the arbitration panels pleaded and relied on by the parties to the land in dispute. The cross appellants clearly in their brief of argument conceded that the customary arbitration is not an exercise of judicial power under

the Constitution exercised by the courts. They however submitted that it is now recognized as one of the many ways of settling dispute, among African Societies. They relied on Odomi vs. Oyeleke (2001) FWLR (pt. 42) 172 at 178, Egesimba vs. Onuzuruike (2002) 15 NWLR (Pt. 791) 466 at 512. They contended that in this case the parties pleaded and relied heavily on customary law arbitrations on the 12 man panel of Umunkwoeji in council, the Ukwuofor Panel, the standing Committee of traditional Rulers of Ozubulu and that of the Umudas and Nwadianas. The cross appellants admitted, that each party at the trial gave a different version of the decision of the arbitration panels. They referred to the findings of the trial court on the arbitration panels and submitted that it is settled that where parties have agreed to submit their grievances to arbitration under customary law, they are bound by the outcome of such arbitration and can no longer re-litigate the issue in a court of law.

They submitted that having not found any fault with the findings of facts of the trial court in respect of the two customary arbitration panels between the parties, the court below ought not to have interfered with the decision of the trial court in favour of the cross appellants. Hence they urged the court to resolve the issue in their favour.

On this issue of customary arbitration as I earlier referred to, that erudite Jurist, often referred to as Socrates of the Supreme Court, Oputa, J, (as he then was) a long time ago in Akomah vs. Eke (supra) opined that

“any party relying on arbitration under customary law should clearly plead and convincingly prove that those who sat over his dispute were, under the customary law alleged competent to adjudicate over that class of cases - in other words, that, they constituted a judicial tribunal under that law. It should also be pleaded and proved that the decision of the arbitrators was final in the sense that it left nothing to be determined or ascertained thereafter in order to make it effective and capable of execution”.

On the customary arbitration panels the trial court on page 300 of the record states, inter alia, thus:

“... since the 12 man panel after hearing the parties decided to send the case to Chukwu oracle, the conclusion I have come to is that the panel failed to decide the matter...”

I hold that the 12 man panel's arbitration does not satisfy the requirement of the finding of a customary arbitration tribunal.

In respect of the arbitration by Nwadiana ...

Again I am satisfied that the panel of Nwadianas was also inconclusive as it broke up in confusion ...

The arbitration of the 4 Obis and 3 others of Ozubulu is quite interesting ...

I am satisfied that that arbitration was proper."

From the above findings and conclusions of the trial court on customary law arbitrations there is nowhere the cross appellants were shown to have clearly pleaded and convincingly proved that those who sat over the dispute were under the customary law alleged, competent to adjudicate over the case of the land in dispute. In other words, nothing to show that they constituted a judicial tribunal under that law. Their decision was also not shown to be final, not subject to subsequent review or modification by the panel of chiefs or elders who pronounced it. The court below was therefore right not to have affirmed the findings of the trial court on the arbitration panels on the land in dispute. This issue is resolved against the cross appellants.

Third issue is whether the court below was right when it held that acts of ownership and possession cannot overlook or be placed over and above radical title established by the parties.

I do not think I should belabour this point again, having discussed same on Issue 1 above. Once a claimant relies on traditional history as a way of proving his title to or ownership of a particular land in dispute, the burden lies squarely on him to adduce credible and cogent evidence not contradicted to establish same. He must succeed on the strength of his own case but not on the weakness of the defence. In the case of Biariko vs. Edeh-Ogwuile (2001) 4 SC (pt 11) 96 at 114; (2001) 12 NWLR (pt. 726) 235 at 236, this Court, following its decision in Obioha vs. Duru (1994) 8 NWLR (pt 365) 631 at 650 held as follows:

"It is not the law that once there are conflicts in the traditional history adduced, the court must promptly declare them inconclusive and there upon proceed to consider recent acts. What indeed happens is that the case being one fought on hearsay upon hearsay, the

trial court has a duty to find which of the two histories is more probable by testing it against other evidence in the case. It is when it can neither find any of the two histories probable nor conclusive that he will declare both inconclusive and proceed to decide the case on the basis of numerous and positive act of possession and ownership."

^B See also; Okoko vs. Dakolo (2006) 14 NWLR (pt 1000) 401 at 422.

^C There is no doubt that the trial court had found that both parties are descendants of the same ancestor and both have their properties on the land. They had lived on the land in dispute from time immemorial. Their predecessors had lived, died and were buried on the land in dispute. Neither of the parties had shown that they are exclusively, as against the other, entitled to be on the land in dispute as owners. Upon the land where they are and had been, Yes! but upon the land of the other party, No!

^D The cross appellants adduced inconclusive evidence on traditional history on their claims to title to the land in dispute. They also deserve to fail. Hence, the judgment in their favour having been found to be perverse was properly set aside by the court below. This issue is also resolved against the cross appellants.

^E Issue No. 4 also does not need belabouring upon. The cross appellants failed to establish their title to the land in dispute by the method they selected to rely on traditional history. Their acts of long possession living and building on the land and enjoyment of the land are not better than proving of their root of title through their ancestor as claimed. For instance, the trial court found that the land in dispute is a vast area which belongs to many families. In his words, the trial Judge stated, inter alia, thus:

^F *"I have evidence which I accept that Ogwugwu Ahaba is a vast area of land and many families own portions of this Ogwugwu Ahaba land. Even the main sectors of Ozubulu own land there."*

^G Without any further ado, this Issue No. 4 is also resolved against the cross appellants.

^H As shown on the issues formulated by the cross respondents in their briefs of argument, nothing to show from which of the seven grounds of cross appeal of the cross appellants they were formulated from. However, the two issues of the cross respondents as couched can be linked to and be said to have arisen from the judgment of the court below. They are:

(i) Whether the Court of Appeal granted root of title to any party after agreeing with the trial Judge on the inconclusiveness of the pleadings and evidence of parties.

(ii) Whether the Court of Appeal was not wrong in its abandonment of its constitutional duty of making a definitive determination in the appeal before it. B

On issue No. 1 above, there is no doubt that the court below did not grant root of title to any of the parties after agreeing with the trial court on the inconclusiveness of the pleadings and evidence of the parties. Otherwise, there may not have been appeal and cross appeal against the said judgment of the court below. C

On the second issue, it is interesting to note that the findings of the trial court first on the claims for declaration of title to the land in dispute by both parties in the consolidated suits is that they failed to prove same via traditional history. It goes thus: D

“In the consolidated suits, neither the plaintiffs nor the defendants sufficiently pleaded and or proved how the land in dispute was acquired originally, whether e.g. by conquest or discovery as a virgin land. There is no evidence either as to who first cleared the land. In other words, there is no proof of who founded the land and no proof of how the land was founded. It is therefore my view that traditional evidence by both parties is inconclusive.” E

As I stated earlier, the trial court had found that both parties descended from the same ancestor. But that even though both parties failed to establish their respective entitlement to be granted exclusive title to the land in dispute, they are both entitled to remain on the land of their common ancestor. The court below went further to dismiss both claims as follows: F

“The unique aspect of the case is that the evidence vividly established that both parties are related and they inherited the land from a common ancestor. They have both failed to establish the root of title of their common ancestor - Egbema or Ezeanike as the case may be. The two claims have failed to meet the required standard of proof in a claim for declaration of title. Claims for declaration of title in both consolidated suits fail and are accordingly dismissed.” G H

There is no doubt as clear from the records, that both parties in their respective claims sought to be granted exclusive title to the land in dispute as against each other, But both claims were found not

established or proved hence were found liable to dismissal and were accordingly dismissed by the court below. The clear effect and implication of this is that neither party is entitled to restrain the other from being on the land each presently as ever occupied.

B In the final analysis, both the appeal and cross appeal fail for being un-meritorious. They are accordingly dismissed. However, this being a peculiar case between the same members of same ancestor who had lived together from time immemorial, parties are to bear their respective costs of these appeals. And they shall continue to live in peace. Neither has established that he is entitled to drive the other away from the portions of the land in dispute they occupy.

MUHAMMAD JSC

D I read in draft before now, the judgment just prepared and delivered by my learned brother, Ariwoola, JSC. I agree with his reasoning and conclusion that both the main appeal and the Cross-Appeal are un-meritorious. I too, dismiss both.

E I abide by the consequential orders made in the lead judgment.

ALAGOA JSC

F I read before now the Judgment just delivered by my learned brother, Olukayode Ariwoola, JSC. He has meticulously and comprehensively dealt with the issues concerned. I entirely agree with his reasoning and conclusion reached. I have nothing more to add. I also dismiss the appeal and cross appeal.

G

H